

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Property** : Flat 8, 88 Alpha Street,  
Slough,  
Berks. SL1 1QX

**Applicants** : (1) Mr. R. Barclay  
(2) Mr. M. Bush Rainworth

**Respondent** : Mr. Wigglesworth

**Case number** : CAM/00MD/LSC/2005/0067

**Date of Application** : 7<sup>th</sup> December 2005

**Type of Application** : Application to determine reasonableness and  
payability of service charges (Section 27A of the  
Landlord and Tenant Act 1985 ("the 1985 Act"))

**Tribunal** : Mr. Bruce Edgington (lawyer chair)  
Mr. David Brown FRICS MCI Arb

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**DECISION**

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**Introduction**

1. This application is brought by the landlords of the property against the tenant for a decision from this Tribunal that claimed service charges are reasonable and payable. It is said in the Applicants' statement of case that the tenant "refuses to pay service charges demanded in 2004 and 2005".
2. The Applicants state in the application form that they are content for this matter to be dealt with by paper determination i.e. without an oral hearing, and a Directions Order was made on the 5<sup>th</sup> January 2006 confirming that the Tribunal agreed to deal with the case on that basis. Both parties were ordered to provide bundles of documents to include statements of case and a copy of any document relied upon.

3. The Applicants duly provided a bundle but the Respondent did not. A copy of the Applicants' bundle was sent to the Respondent. None of the Applicants' documents gave any indication of what the Respondent's case is and the Tribunal therefore has no idea why the Respondent has not paid the claimed service charges.
4. The Tribunal gave further notice to the parties by letter dated 13<sup>th</sup> March 2006 that there would be a paper determination of this case on or after 28<sup>th</sup> April 2006 unless either party requested a hearing. Only 28 days notice is required by the Regulations but as the Respondent apparently lives in Australia, a longer period was given. No such request was made by either party. This determination is therefore made on the basis of the papers filed.
5. In their statement of case, the Applicants say that in fact they want the Tribunal's Order so that they can start the forfeiture procedure and in these circumstances, a decision of the Tribunal is therefore a requirement (Section 170 (2) of the **Commonhold and Leasehold Reform Act 2002** ("the 2002 Act"). For these purposes, an amount of more than £350 must have been payable for at least 3 years before a landlord can exercise a right of forfeiture for non-payment of service charges (**The Rights of Re-entry and Forfeiture (Prescribed Sum and Period) (England) Regulations 2004**).

#### **The Claim**

6. The service charge demand for 2004 includes an amount for a prior period. In the Applicants' statement of case it is said that the management of the property transferred from CPM Ltd to Havelock Estates Ltd. in April 2004. It seems that little was passed over in terms of paperwork, but the amount said to be then outstanding from the Respondent was £303.04, being part of a claim for cleaning, gardening, window cleaning, surveyors' fees, insurance and a management fee. As the total figure for these services is less than equivalent claims in subsequent years, the Applicants ask the Tribunal to infer, on the balance of probabilities, that these figures are reasonable and payable.

7. For 2004 itself, a claim is set out for the same services in the total sum of £462.32.
8. For 2005, a claim is set out for the same services plus bank interest and charges, accountancy fees and a general reserve contribution of £625. The total claim is £1,243.53. In addition, claims on account of future service charges were made in the total sum of £891.97.
9. The total claim for all service charges would therefore appear to be £2,900.86
10. In respect of the actual service charges claimed by Havelock Estates Limited for 2004 and 2005, some copy vouchers have been produced.

#### **The Lease**

11. The Applicants have helpfully provided a copy of the lease and they have then directed the Tribunal to the relevant parts as to payability of service charges. The Tribunal is satisfied that the lease provides for the recovery of all the services included in the claim including the provision of a reserve fund and payments on account.

#### **Reasonableness**

12. Whilst the level of detailed information about some of the matters included in the claim e.g. for insurance cover, is somewhat sparse, the Tribunal is satisfied, using its considerable experience in these matters, that the amounts claimed are, overall, reasonable save for one item. Admittedly, this is a fairly broad brush approach but the Tribunal takes into account that the Respondent has put forward no argument to suggest otherwise. In particular, he has not suggested that any of the services have not been provided. As far as the reserve is concerned, such funds are almost always a wise and prudent measure in property management.
13. The one item which the Tribunal does not find reasonable is a claim for £117.50 for "reminder letters and legal action" for 9<sup>th</sup> May 2005. Havelock

Estates has already received a management fee and such fee is to include just this sort of work.

### **Legal Costs**

14. In their statement of case the Applicants ask the Tribunal “...to determine whether it is entitled to add its reasonable legal costs and disbursements incurred in making this application to the service charge account for the year ending 31 March 2006 under the terms of the lease in dismissing any application by the Respondent under Section 20C of the 1985 Act”.
15. It is only a tenant who can make an application under Section 20C of the 1985 Act. The applicants are the landlords. As the tenant Respondent has made no such application, no decision is therefore made on this issue.
16. Having said that, the Tribunal cannot see that such costs would be recoverable under the terms of the lease. It has long been established that a lease has to be very specific to enable landlords to recover legal costs incurred in respect of one tenant. General ‘sweep up’ clauses would not provide the necessary authority.

### **The Decision**

17. For the reasons stated above the Tribunal finds that the service charges claimed for 2004 and 2005 – save for the one item referred to above - in the total amount of £2,900 86 less £117.50 are payable and are reasonable. Thus, the sum recoverable is £2,783.36.

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**Bruce Edgington**  
**08.05.06**