

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No CHI/24UP/LSC2007/0051

Application under Section 27A of the Landlord and Tenant Act 1985

Re: Mountain Ash, Tilden Road, Compton, Winchester

		No
Applicants	Kathryn Louise Lane	11
	Angela Dinnie	8
	Geoff Cook	9
	Christine Turner	13
	Paul Shadick	15
	Claire Furnish	16
	Ruth Kirby	18
	Danielle Tucker	28
Respondent	Hyde Housing Association Limited	

Date of Application	23 rd May 2007	
Date of Inspection	5 th November 2007	
Date of Hearing	5 th November 2007	
Venue	Wells Place Centre, Eastleigh	
Appearances for the Applicants	Ms Lane; also attending: Ms Kirby, Mr & Mrs Cook, Mr Shadick, Mr Brain	
Appearances for the Respondent	Ms N Muir, Solicitor; also attending Ms J Spoor, Mr N Cross	
Members of the Leasehold Valuation Tribunal:		
	M J Greenleaves P D Turner-Powell FRICS Mrs J E S Herrington	Lawyer Chairman Valuer Member Lay Member
Date of Tribunal's Decision:	19 th November 2007	

Decision

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) that the following budgeted items of service charge relating to the Block of 12 flats at Mountain Ash, Tilden Road, Compton, Winchester (the Property) are reasonable to the extent shown in the third and fifth columns:

<u>Budget item</u>	<u>Budget year 2006/07</u>		<u>Budget year 2007/08</u>	
	Budget sum ££	Reasonable sum ££	Budget sum ££	Reasonable sum ££
Cleaning services contract	1,200.00	500.00	3,033.05	2,000.00
Grounds maintenance contract	1,258.09	0.00	1,387.17	1,000.00
Play area contract	31.68	0.00	-	-
Management Fees	1,307.68	1,307.68	1,726.75	1,726.75
<u>Provisions:</u>				
Emergency Lighting	60.00	0.00	-	-
Alarms/Entry phone	141.00	100.00	52.67	52.67
Alarms fire equipment	52.88	52.88	55.08	55.08
TV aerial	150.00	70.00	-	-
Furnishings/Furniture communal	-	-	141.00	141.00
Internal communal decorations	600.00	600.00	603.17	603.17
External decorations/repairs	900.00	900.00	2,848.66	2,848.66
Miscellaneous	2,986.52	0.00	2,544.39	0.00

2. The Tribunal makes an Order under Section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs incurred in connection with this application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge.

Reasons

Introduction

3. This is an application made by the Applicants under Section 27A of the Landlord and Tenant Act 1985 to determine, in respect of the Property, whether certain service charges for the years 2006/07 and 2007/08 are reasonable.
4. The application was made by Kathryn Lane on 23rd May 2007, the other Applicants being joined at their own request. The items to be considered by the Tribunal were the budgeted sums for the two years in question, although in the course of the hearing, the Applicants proceeded with only the items listed in the decision as set out above. The specific questions put by the Applicants for determination were
 - a. Whether the service charges were a reasonable amount given the type of property and the level of service provided

- b. What is a reasonable rate of increase for future years? (The Tribunal explained to the Applicants that it was not in the Tribunal's power to determine this issue as it depended on the particular circumstances at the time as to what might be reasonable).

Inspection

5. On 5th November 2007 the Tribunal inspected the premises in the presence of Ms Lane & Mr Brain, representatives of the Applicants, and Ms Muir and Mr Cross, representatives of the Respondent.
6. The whole development is laid out in shrub beds, play area, car parking and access roads, with low lighting. The dwellings comprise two terraces totalling 15 houses and a block of 12 flats between those two terraces.
7. The subject premises consist of the block of 12 flats ("the Block") laid out on three floors, sharing a common main entrance, hallways and staircases. The flats are constructed under a pitched concrete tile roof. The main fascias are wood clad. To the rear is a cycle shed, clothes dryer, shrubbed beds and a gravelled area. There is external lighting. External access to that area is by a fenced pathway northwards to the common external area.
8. The development had been completed in 2006 and is in good condition generally.

Hearing

9. The hearing of the matter took place on 5th November 2007. The Applicants had a significant number of questions to clarify matters arising about management and information provided.
10. The issues left to be determined by the Tribunal were whether the services charges listed in the decision above were reasonable.
11. The Tribunal heard evidence from the parties, their submissions and considered all the case papers and further documents submitted. The Tribunal had a copy of the head lease dated 25th May 2006 relating to Flat 11 Mountain Ash in favour of Hyde Housing Association Limited for a term of 125 years from that date. The Flat was then demised by a sub-lease of the same date to Miss Lane for 125 years less 3 days. The Tribunal treated these as the standard forms of head lease and sub-lease applying to all flats in the Block, although neither document is completed to indicate the proportion of service charge payable per flat. It is understood to be 8.33% of that part of the service charges so far as they are apportioned to the flats only (as opposed to the flats and houses together).
12. So far as relevant to the issues to be determined, the head lease, in terms, provides:
 - a. for the leaseholder to pay [8.33%] of the cost of service provision
 - b. the service provision includes
 - i. estimated expenditure for the ensuing year and reserves towards expenditure beyond the ensuing year "(... to be computed in such manner as to ensure as far as reasonably foreseeable that the service provision shall not fluctuate unduly from year to year) but reduced by any unexpended reserve already made..."
 - ii. estimated reasonable fees charges and expenses for employing professionals in connection with the management or maintenance including the cost of preparation of accounts "and if any such work shall be undertaken by an employee of the Landlord then reasonable allowance for the Landlord for such work".
 - c. The sublease provides for the lessee to pay the service charge provided for in and in accordance with the head lease.

Evidence generally

13. When reading the reasons below on the specific items of charge, the parties should bear in mind that in addition to the points specifically made, the Tribunal also took into account where appropriate, the following matters.
- a. The Applicants' case was generally that the items to be determined represented a significantly higher sum than they had understood to be likely when they purchased their flats, that in some instances no service had been provided or that it was provided to a lower standard than they should be entitled to expect.
 - b. In respect of the charges indicated when the flats were marketed, the Respondent accepted those issues existed but that the Tribunal was not the right forum in which they could be dealt with. The Tribunal so found and specifically decided that those indications were not relevant to its determination of "reasonableness" under the Act.
 - c. Mr Cross said that when the budget for 2006/07 was prepared, it was based on the development being put through a "model" exercise to work out what charges would be at a time when the particular features of the development were not known. It was not until June 2006 that professional advice was sought from Faithorn Farrel Timms LLP (FTT) and their report was not available until October 2006. He submitted they were entitled to rely on that Report where relevant in determining charges unless there was anything glaringly incorrect.
 - d. The Tribunal wishes to emphasise that when determining whether service charges payable in advance are reasonable, the Tribunal has to consider the matter at the time when the Respondent made decisions about what advance payment should be made. The Respondent does not have the benefit of hindsight in making its decisions but, taking account of experience, knowledge of the premises and any other information available at the time, it has to decide what is a reasonable provision for the future expense. The Tribunal has to determine whether the decisions made at that time and on that basis result in demands for reasonable payments in advance.
 - e. The Tribunal generally accepted the evidence available from the FFT report of October although it considered that there are some items which might need review on both cost and frequency. The Tribunal noted the Respondent recognised this particularly in relation to provision for scaffolding.

Tribunal's findings on specific items of service charge

14. The issues arising on and the findings of the Tribunal (taking into account also the above points concerning evidence and also using its own expert knowledge and experience) on each item were as follows:
- a. **2006/07 & 2007/08: Cleaning services contract.**
 - i. Submissions and evidence. The Applicants said that so far the only work done under the contract had been one hour of hoovering each week and some dusting – nothing else such as the contract indicates; that the bin stores had not been cleaned at all; that weekly cleaning was not necessary. They considered that £500 for the first year (being a part year of 4.75 months) and £900 for the second year would be reasonable. Ms Spoor said that they did inspect quarterly anyway and also on other occasions when they might be visiting the development. Mr Cross said that less cleaning might well be appropriate as the property is new; that the rates charged are less than they are presently being quoted.
 - ii. Tribunal's findings. Bearing in mind that the Block was new in 2006 and that there was a measure of agreement that less frequent cleaning might be appropriate, the Tribunal considered that reasonable provision for 2006/07 would have been £500 and for 2007/08 £900.

b. 2006/07 & 2007/08: Play area.

- i. Submissions and evidence. The Applicants said this area was out of use for most of the first year due to subsidence. Mr Cross said he would not now disagree with a nil budget for 2006/07.
- ii. Tribunal's findings. The Tribunal agreed with both parties

c. 2006/07 & 2007/08: emergency lighting

- i. Submissions and evidence. The Applicants provided no evidence; the Respondent said that there is no emergency lighting – the budget was set without knowledge of the site.
- ii. Tribunal's findings. It followed from the Respondent's evidence that the figure should have been nil..

d. 2006/07 & 2007/08: Alarms/entry phone

- i. Submissions and evidence. the Applicants submitted that there was no reason why the first year should be higher than the second year. The Respondent said that it would be reasonable to expect replacement to be needed in 15 years time and the budgeted figures were reasonable.
- ii. Tribunal's findings. The Tribunal considered that a provision in 2006/07 of not more than £100 would have been reasonable and that the second year figure should remain

e. 2006/07 & 2007/08: TV aerial

- i. Submissions and evidence. The Applicants considered that £150 was high for the first year and queried whether it was a capital expense or a maintenance item. Mr Cross said the aerial served the whole development of 27 units; that replacement had cost £12,000 on other sites. He felt there should have been provision for the second year and was unsure whether it had been apportioned also between the houses.
- ii. Tribunal's findings. The Tribunal accepted that there should be some annual provision. However, there was lack of clarity from the Respondent on whether apportionment had been made with the houses. For that reason the Tribunal considered a provision for 2006/07 of £70 for the first year would be reasonable based on $£150 * 12/27$.

f. 2007/08: Furnishings/furniture communal

- i. Submissions and evidence. The Applicants felt that the provision for 2007/08 was high just for carpets and that the frequency of need for replacement had been overestimated. The Respondent said this was based on a cost of £4,800 over 15 years but they might last longer.
- ii. Tribunal's findings. The Tribunal did not consider the carpets could be expected to last 15 years and that the provision was therefore reasonable.

g. 2006/07 & 2007/08: Internal decorations.

- i. Submissions and evidence. The Applicants considered the provision to be extremely high because these areas were not much used and the frequency of need for re-decoration had been overestimated. Mr Cross said that a 5 year period was the industry standard but a longer period might prove appropriate.
- ii. Tribunal's findings. The Tribunal agreed with the Respondent's evidence and found both years' provision to be reasonable.

h. 2006/07 & 2007/08: External decorations & repairs

- i. Submissions and evidence. Mr Cook understood the wood cladding to be of teak; Mr Cross believed it to be cedar and therefore require treatment every 5 years. Mr Cross said that a large part of the provision was for scaffolding the estimated cost of which might require review – he thought that £9,000 for scaffolding might be more appropriate; the fencing costs are apportioned with the houses.
- ii. Tribunal's findings. The Tribunal considered the provision in the FFT report of about £26,000 was rather high, but if scaffolding provision was halved to £9,000 (which appeared to be reasonable and accepted as such by the respondents), the provision over 5 years would total £12,720 or £3,490 per year. The Tribunal considered that treatment would be required every 5 years and therefore that the provision made by the Respondent for both years was reasonable.

i. 2006/07 & 2007/08: Miscellaneous

- i. Tribunal's findings. The Tribunal had no evidence to support these figures and accordingly reduced them to nil.

j. 2006/07 & 2007/08: management fees

- i. Submissions and evidence. The Applicants considered that the standard of management fell short of what they could expect, specifically concerning the standard of accounting and failure to provide answers to queries which had arisen in the past. The Respondent noted that under the terms of the head lease they were entitled to charge reasonable fees. They had calculated this provision at 15% of service charges and submitted that was standard practice.
- ii. Tribunal's findings. The Tribunal's experience is that fees are usually calculated on the basis of a sum per unit unless a lease otherwise provides. The Tribunal would expect this to be around £125 per unit for this type of property; that the provisions made, although calculated on a percentage basis, fall within that figure and in the Tribunal's knowledge and experience are not unreasonable.

15. The Tribunal also needed to decide whether the budget items had been "computed in such manner as to ensure as far as reasonably foreseeable that the service provision shall not fluctuate unduly from year to year".
16. The Tribunal appreciates that the Applicants felt they were being asked to pay much more than they had expected and that the provision for the 2 years does show fluctuation. With some exceptions, the Tribunal considers that the Respondent has made reasonable efforts to avoid undue fluctuation bearing in mind that this is a new development and in most respects they have had to rely on experience from other different sites they own. The Tribunal believes that in the light of actual experience on this site and with the Tribunal's findings borne in mind in setting future budgets, there should be far less likelihood of undue fluctuation. The Tribunal found that for the two years in question, taking into account the Tribunal's decisions, the provisions made do comply with the terms of the sublease.

Limitation of Costs.

17. The Applicants sought an Order preventing the Respondent's costs of this application being recovered from the Applicants by way of service charge.
18. The Tribunal found that in view of their findings on a number of service charges, the application made was reasonable and that the Applicants should not be penalised for so doing.
19. The Tribunal found that there was no provision in the Applicants' subleases which was sufficiently widely drawn to enable the Respondent to recover their costs in connection with

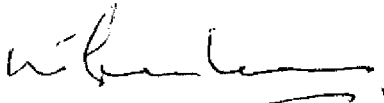
the proceedings from the Applicants. In case it was wrong about that, the Tribunal made an Order under Section 20C of the Landlord and Tenant Act 1985.

20. The Tribunal made its decisions accordingly.

Note

21. The Tribunal believes that these proceedings have assisted in communication and understanding between the parties. The Tribunal sincerely hopes that constructive dialogue will continue, with due speed, for the benefit of all concerned.
22. The Tribunal is, however, concerned that there are as yet no service charge accounts, complying with Section 21 of the Landlord and Tenant Act 1985. Apart from the requirement, they would also enable the Applicants to have a clear statement showing what sums are held to their credit, a concern which the Applicants raised at the hearing

Dated 19th November 2007



A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor

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LEASEHOLD VALUATION TRIBUNAL

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Re: Mountain Ash, Tilden Road, Compton, Winchester

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	Geoff Cook	9
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Respondent:	Hyde Housing Association Limited	
Date of Tribunal's Original Decision:	19 th November 2007	

Decision on Application by Respondent for Leave to Appeal

1. By letter dated 6th December 2007, the Respondent has applied for leave to appeal the decision of the Tribunal dated 19th November 2007 on the ground that the Tribunal determined the issues of Miscellaneous Charges for the two years in question on the basis that there was no evidence to support these items.
2. The Respondent says that there is such evidence and refers to the survey of Faithorn Farrell Timms LLP (FTT) at page 215 of the hearing bundle and also to the Respondent's skeleton argument at paragraph 19.
3. The Tribunal was not directed at the hearing to either the skeleton or the FTT survey report in connection with miscellaneous charges. The Tribunal takes the view that if parties wish to rely on any documents in support of their case, it is for that party specifically to put forward that evidence at the hearing, rather than the Tribunal being required to sift every page provided in a bundle for use at the hearing. On that basis, the Tribunal believes its reasons in this respect are correct.
4. For this reason, the Tribunal finds there are no grounds for appeal and refuses the application. However, if leave is sought from the Lands Tribunal and is granted, it is open to that Tribunal to determine whether this Tribunal's view is correct or not.

Dated 13th December 2007



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