

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**RPTS**

**21 JUN 2010**

**SOUTHERN**

**Section 27A Landlord & Tenant Act 1985 (as amended)**

**DECISION**

**Case Number: CHI/00MR/LIS/2010/0031**

**Property: Flat 6 48F High Street  
Cosham  
Portsmouth  
Hampshire PO6 3AG**

**Applicant: Dr Deepak Dinkar Khopkar (tenant)**

**Respondent: Portsmouth Property Services Limited**

**Application: 12<sup>th</sup> March 2010**

**Directions: 12<sup>th</sup> April 2010**

**Hearing: 14<sup>th</sup> June 2010**

**Appearances: For the Applicant:  
Dr Deepak Dinkar Khopkar for and on behalf of himself and  
his co-tenant Mrs Angela Helen Khopkar**

**For the Respondent:  
Mr.S.Sykes and Mr.Stacey**

**Decision: 14<sup>th</sup> June 2010**

**Members of the Leasehold Valuation Tribunal**

**Mr S B Griffin LLB Chairman  
Mr P D Turner-Powell FRICS  
Mr R T Dumont**

**Case No CHI/00MR/LIS/2010/0031**

**Second Floor Flat, Number 6 48F High Street Cosham Portsmouth Hampshire  
PO6 3AG**

**Application**

1. This was an Application dated 12<sup>th</sup> March 2010 made by Dr Deepak Dinkar Khopkar (the co-tenant) pursuant to Section 27A of the Landlord and Tenant Act 1985 for a determination on the payability of service charges by himself and his co-tenant for the years 1<sup>st</sup> August 2005 to 31<sup>st</sup> October 2005, 1<sup>st</sup> November 2005 to 31<sup>st</sup> October 2006, 1<sup>st</sup> November 2006 to 31<sup>st</sup> October 2007, 1<sup>st</sup> November 2007 to 31<sup>st</sup> October 2008 and 1<sup>st</sup> November 2008 to 31<sup>st</sup> October 2009 in respect of Flat Number 6 48F High Street Cosham Portsmouth Hampshire PO6 3AG.
  
2. Directions were issued on the 12<sup>th</sup> April 2010 and provided for the Applicant to produce a full Statement of Case together with all relevant documents and for the Respondent to produce a Statement in reply. The parties complied with the Directions.

**Jurisdiction**

3. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the Lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable by a tenant to a landlord for the cost of services, repairs, maintenance or insurance or the landlord's costs of management under the terms of the Lease (Section 18 Landlord and Tenant Act 1985 "the 1985 Act"). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable in so far as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

### **Lease**

4. The Tribunal had a copy of the Lease of the Flat at the property. It is dated 16<sup>th</sup> September 2005. It is for a term of 125 years from the 1<sup>st</sup> June 2004 (less ten days) at a ground rent of £125.00 per annum (subject to review). There are six flats in the block.
5. The provisions relating to the calculation and payment of the service charge are to be found at clause 4 (1) (ii) and clause 8 (7). Clause 4 (1) (ii) provides that the lessee is to pay to the landlord "a demand by way of further rent the service charge (hereinafter referred to as "the Service Charge") specified in clause 8 (7).

6. Clause 8 (7) in so far as is material provides as follows:-

**Service Charge**

(7)(a) In this sub-clause

(i) "The Expenditure" means all expenses and outgoings incurred by the Landlord in the matters described in paragraph B of this sub-clause and includes

(A) not only expenses disbursed but a reasonable sum by way of provision future expenditure on such of those matters as called for intermittent expenditure and

(B) a reasonable sum by way of provision for depreciation on capital assets machinery apparatus and equipment.

(ii) "The Tenants Proportion" means a proportion fairly attributable to the property such proportion to be determined by the Landlord's surveyor taking into account the respective floor areas of

a. the property and

b. other premises benefitting by the provision of the service in question.

(iii) "The Account Year" means a year ending on 5<sup>th</sup> November or such other annual period as the Landlord may at its discretion from time to time determine and notify in writing to the tenant.

(iv) "Service" means any one of the matters described in paragraph (b) of this sub-clause and in particular includes repair.

(b) On each of the usual quarter days throughout the term the tenant shall pay to the Landlord by way of basic service charge a sum at the yearly rate of £250 (Two Hundred and Fifty Pounds) or at such other yearly rate as the Landlord's surveyor may from time to time notify in writing to the tenant in accordance with the provisions of paragraph (d). On completion of this Lease the tenant shall pay a due proportion of such yearly sum in respect of the period up to the next 31<sup>st</sup> December.

7. The Landlord's obligations to insure the property and to repair and maintain the common parts thereof can be found at clause (7) (e).

### **Inspection**

8. The members of the Tribunal inspected the property before the hearing. It consists of a second floor flat in a purpose built block of 6 flats (3 flats per floor) built in 2004 above Peacocks Store. The exterior was in good condition. The

interior parts were in good decorative order. The Tribunal did not inspect the flat itself as this was not germane to the present application. The block has access directly onto the High Street in Cosham. There were no external grounds.

### **Hearing**

9. The hearing took place in Chichester on the 14<sup>th</sup> June 2010. It was attended by Dr Deepak Dinkar Khopkar on behalf of himself and his co-tenant Mrs Angela Helen Khopkar and by Mr Sykes and Mr Stacey on behalf of the Portsmouth Property Services Limited.
  
10. The Tribunal firstly considered the points numbered 1 to 9 inclusive in a letter dated 2<sup>nd</sup> May 2010 from Dr Khopkar to the Southern Rent Assessment Panel Office insofar as they were relevant to the present application. His first concern was the delay in his being informed of the outstanding service charges. Upon further enquiry by the Chairman of the Tribunal it became clear that the tenant and his family took up occupation of the flat from August 2005 when the flat was initially occupied by the tenant's son for the period through to August 2007 whereafter it was rented out until August 2008. In August 2008 the tenant resumed residence and re-let the flat in mid 2009 for a six month period. It is currently empty. Whilst the tenant had been made aware of the rent charge liability and the insurance contribution and had paid same as confirmed to the Tribunal by both Mr Sykes and Mr Stacey that it was only in August 2008 when

Mrs Khopkar had been contacted with details of the outstanding service charge. Prior to that time, Mr Sykes confirmed that the tenant's son had only been informed that the Management Company required to contact his father and no written intimation of the service charge liability had been provided to him.

11. Section 20B of the Landlord and Tenant Act 1985 provides that

(1) if of any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2), the tenant shall not be liable to pay so much of the service charge as relates to the costs so incurred.

(2) Subsection(1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his Lease to contribute to them by the payment of a service charge.

12. Accordingly the Tribunal decided that the service charge liability for the financial period 1<sup>st</sup> August 2005 to 31<sup>st</sup> October 2005 and 1<sup>st</sup> November 2005 to 31<sup>st</sup> October 2006 was not recoverable by the Landlord.

13. This left the financial periods 2006 to 2007, 2007 to 2008 and 2008 to 2009 for consideration. The service charge (anticipated) for the period 2009 to 2010 (by virtue of its anticipatory nature) was not relevant to the present determination.
  
14. Paragraphs numbered 2 and 3 of his letter of the 2<sup>nd</sup> May 2010 expressed concern that he had received no receipts for monies paid by himself to date for ground rent and buildings insurance nor had any receipts been supplied in respect of expenditure incurred by the Management Company pursuant to the requested service charges. It was explained to him there was no statutory right for receipts as such to be provided to him.
  
15. Paragraphs numbered 4 and 5 of his letter expressed concern as to errors in the billings as supplied to him and the unsatisfactory explanation he had received for certain of the charges. He was particularly concerned with the service charge entitled “cleaning other” charges and “landscaping contracts”. Accordingly the Tribunal sought clarification from Mr Sykes and Mr Stacey. It emerged that the cleaning contract was concerned with the expenditure incurred in the cleaning and redecoration of the communal area. The “cleaning other” referred to the charge incurred by the Management Company in arranging for the removal of tenants' rubbish deposited by outgoing tenants in the bin storage area. The “landscaping contracts” actually referred to periodic clearing of drainage gullies serving the block and the removal of rubbish deposited on the flat roof. The Tribunal considered that the statements as supplied to the tenant could have been more



clearly expressed. Mr Stacey was of the opinion that the confusion arose from the fact that the format being followed was more appropriate to other developments and was not tailored specifically to the present scheme under consideration. The Tribunal however also noted certain typographical/calculation errors in the share shown as being due from the tenant which suggested that the guidance contained within the Service Charge Residential Management Code (2nd Edn.) as approved by the Government could have been better adhered to.

16. The tenant in his application also queried the management fees. Accordingly at the hearing Mr Sykes was invited to explain the basis upon which his fees were charged. From his explanation it appeared to be a somewhat “ad hoc” arrangement between himself and his principal, the current owner of the freehold Mr Woods. Dr Khopkar expressed his satisfaction with the explanation.
17. On questioning from the Tribunal Mr Stacey confirmed that the sum of £750 previously paid by the applicant on account of his service charge liability was presently being held in a suspense account pending the resolution of liability.

### **Decision**

18. In the light of the explanations given for all the expenditure headings examined above the Tribunal was satisfied that they were all payable and reasonable. The

Management fees were low and doubtless reflected Mr Sykes ad hoc arrangement with the freeholder.

**Determination**

19. For the reasons given above the Tribunal determines that the following service charges are payable by Dr and Mrs Khopkar:-

**2004 – 2005**

Section 20B (the eighteen month rule) – no liability

**2005 – 2006**

Section 20B (the eighteen month rule) – no liability

**2006 – 2007**

Cleaning Contracts	£151.66	
Cleaning Other	£ 33.33	
Communal Electricity	£ 21.66	
Landscaping Contracts	£125.00	
Day to day repairs	£ 30.00	
Building repairs	nil	
Contracts	nil	
Miscellaneous scheme costs	nil	
Management fees	<u>£ 83.33</u>	
Total		£ 444.98

**2007 – 2008**

Cleaning Contracts	£173.33
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Cleaning Other	£ 41.66	
Communal Electricity	£ 20.00	
Landscaping Contracts	£ 43.33	
Day to day repairs	£ 33.33	
Building repairs	nil	
Contracts	nil	
Miscellaneous scheme costs	nil	
Management fees	<u>£ 83.33</u>	
Total		£ 394.98

**2008-2009**

Cleaning Contracts	£173.33	
Cleaning Other	£ 53.33	
Communal Electricity	£ 33.33	
Landscaping Contracts	£ 46.67	
Day to day repairs	£ 41.00	
Building repairs	£100.00	
Contracts	£ 60.00	
Miscellaneous scheme costs	nil	
Management fees	<u>£125.00</u>	
Total		<u>£ 632.66</u>

<b>Grand Total</b>		<b>£1472.62</b>
<b>Less (deduct) monies paid on account</b>		<b><u>£ 750.00</u></b>
Balance due		£ 722.62

20. The Tribunal determines that the total due of £722.62 should be paid as soon as possible and in any event within 14 days of the date of this Decision

Dated 14<sup>th</sup> June 2010

A handwritten signature in black ink, appearing to read 'S. B. Griffin', with a long horizontal stroke extending to the right.

**Stephen B Griffin LLB**  
**Chairman.**