

**LEASEHOLD VALUATION TRIBUNAL**

**LONDON RENT ASSESSMENT PANEL**

**DECISION ON AN APPLICATION UNDER SECTIONS 27A AND 20C OF THE  
LANDLORD AND TENANT ACT 1985 (AS AMENDED)**

Property: Ground floor and first floor flats at 23 Northwood Road,  
Thornton Heath, Surrey CR7 8HU

Applicants: Mr and Mrs S Wright (first floor)  
Mr and Mrs E Uwaga (ground floor)

Respondent: Hampton Wick Estates Ltd on behalf of the landlord  
Cormorant Limited

Application Date: 13<sup>th</sup> August 2007

Date of Oral Pre-  
Trial Review: 27<sup>th</sup> September 2007

Hearing Date: 12<sup>th</sup> November 2007

Appearances for Applicants: Mr and Mrs S Wright and Mr and Mrs E Uwaga in person

Appearances for Respondent: Mr C Case of Hampton Wick Estates Ltd

Members of Tribunal

Mr PJ Korn (chairman)  
Mrs J Davies  
Mrs R Turner

**INTRODUCTION**

1. This is an application under Sections 27A and 20C of the Landlord and Tenant Act 1985 (as amended) (the “1985 Act”) for a determination of liability to pay service charges.

2. There are two separate flats, one occupied by Mr and Mrs Wright and the other occupied by Mr and Mrs Uwaga, and the issues in respect of each flat are identical, namely the liability to pay:-
  - (i) £429.13 service charge for the year ending 24<sup>th</sup> December 2005
  - (ii) £353.75 service charge for the year ending 24<sup>th</sup> December 2006
  - (iii) £262.79 excess service charge for the year ending 24<sup>th</sup> December 2006 and
  - (iv) £363.75 interim service charge for the year ending 24<sup>th</sup> December 2007

making a total of £1,409.42 for each Applicant.

3. The Applicants are not disputing their liability to pay the £100 per year ground rent.
4. A Pre-Trial Review at the Leasehold Valuation Tribunal took place on 27<sup>th</sup> September 2007.
5. Whilst the original application form only lists Mr and Mrs Wright as the Applicant, Mr and Mrs Uwaga were present at the Pre-Trial Review and were listed and treated as joint Applicants in the Directions. Mr Case did not raise any objections to their being treated as joint Applicants. Mr Case also confirmed that he had been appointed by the landlord to act on its behalf.

#### **THE APPLICANTS' CASE**

6. The Applicants' case, broadly, was that the amount of service charge for which they had been invoiced was excessive and that no works had been carried out by or on behalf of the landlord. They also raised concerns about the landlord's alleged lack of response to concerns raised about cracks on internal walls. Generally, they were concerned about what in their view was an almost total lack of communication by or on behalf of the landlord since the Applicants had been tenants at the Property.

#### **RESPONDENT'S RESPONSE**

7. Mr Case for the Respondent said that the current landlord – Cormorant Limited – had bought the freehold interest in the Property in August 2005. The previous landlord's records were poor, even to the extent that it was unclear whether the previous landlord had been insuring the Property. Mr Case immediately arranged insurance cover (as from 23<sup>rd</sup> August 2005). He also wrote to the tenants explaining that Cormorant Limited was now the freehold owner and that Hampton Wick Estates Ltd was the managing agent.

8. Mr Case took the Tribunal through the service charge demands. Whilst the **interim** (i.e. provisional) demand for the years ending 24<sup>th</sup> December 2006 and 2007 included a sum for “General Maintenance” of £200, Mr Case explained that this was an estimated figure based on the **possibility** that works of maintenance might need to be carried out during the year. In fact, no works of maintenance have yet been carried out on behalf of the current landlord, which is why the **actual** service charge for the year ending 24<sup>th</sup> December 2006 does not include an amount for maintenance.
9. The other amounts listed on the service charge demands related to buildings insurance and management.
10. As regards insurance, Mr Case pointed out that Hampton Wick had now provided the first floor tenant with details of the buildings insurance policy plus evidence of payment of the premium for the 3 years to August 2008. Hampton Wick’s letter confirming these details is dated 18<sup>th</sup> October 2007. Mr Case was unable satisfactorily to explain why this information had not been provided much earlier, since it was common ground between the parties that a letter requesting this information had been sent to Hampton Wick in April 2007 by an adviser to the Applicants. Nevertheless, Mr Case expressed the view that the insurance premium was properly payable and that the Applicants had provided no evidence to show that the amount was unreasonable.
11. As regards the management fee, Mr Case said that a flat fee was charged for management and he felt that the amount charged was reasonable.

#### **SOME SPECIFIC LEGAL ISSUES**

12. It became apparent during the course of the hearing that the current owner – Cormorant Limited – was not registered as the owner at the Land Registry, despite having (according to Mr Case) bought the freehold in August 2005. Mr Case confirmed that Cormorant Limited was not registered as the owner and was unable to explain why this was so. The Tribunal pointed out that failure to register its title can affect the extent to which a property owner can rely on its title documents in court (or tribunal) proceedings.
13. The Tribunal also noted that although the leases contained an obligation for the tenant to “pay to the Landlord the Tenant’s share of the Maintenance Contribution”, they did not contain a definition of “Maintenance Contribution” and did not list or even summarise in general terms what the Maintenance Contribution covered. Mr Case contended that as the leases each contained a landlord’s obligation to insure and to repair/maintain the premises it was reasonable for the relevant tenant to contribute towards the cost, but the Tribunal questioned whether this created an **obligation** for the tenant to pay in the absence of a clear covenant to do so.

## **NO INSPECTION**

14. The members of the Tribunal did not inspect the Property. Neither party requested an inspection, and it was clear that inspection was not necessary in order for the Tribunal to make a determination in the circumstances of this particular case.

## **THE 1985 ACT**

15. Section 27A of the 1985 Act gives a leasehold valuation tribunal jurisdiction to determine (on an application made to it) “whether a service charge is payable and, if it is, as to...the amount which is payable...”. Section 19(1) states that “relevant costs shall be taken into account in determining the amount of a service charge payable for a period only to the extent that they are reasonably incurred ...”.
16. Section 18(2) defines “relevant costs” as “the costs or estimated costs incurred or to be incurred by or on behalf of the landlord ... in connection with the matters for which the service charge is payable”. Section 18(1) defines “service charge” as “an amount payable by a tenant ... which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and the whole or part of which varies or may vary according to the relevant costs”.
17. In light of the above the Tribunal is satisfied that it has jurisdiction to make a determination on the matters in dispute.

## **APPLICATION OF LAW TO FACTS**

18. Mr Case for the Respondent contended that the amounts charged for insurance and management, and the provision made for maintenance, were reasonable. The Applicants have not offered any real evidence to show that the amounts were **not** reasonable and the Tribunal’s view is that the amounts are not manifestly **unreasonable**. Therefore, if reasonableness of amount was the only issue then these sums would be properly payable.
19. However, there are other issues to consider. First, there is the non-registration of the transfer of the freehold to the current landlord. Technically, the non-registration gives rise to questions as to whether the landlord can rely on its title documents in court or (in this case) tribunal proceedings to prove a right or entitlement. Yet, in the Tribunal’s view, it would be rather harsh on the landlord to disallow its claim to reimbursement for costs incurred solely on this basis. The point has not been specifically pleaded by the Applicants, and the non-registration has come to the attention of the Tribunal almost by chance. Also, it is not the landlord who is making

the application but the tenants, and the documents which either create or fail to create the obligation to pay are the leases, both of which are registered and noted against the freehold title.

20. Secondly, there is the problem that whilst the tenants are each obliged to pay 50% of the "Maintenance Contribution" there is no definition of Maintenance Contribution in either lease. One could speculate as to what it was intended to cover, and the phrase "Maintenance Contribution" suggests a contribution towards the cost of maintenance, but the position is far from clear. Landlords and tenants can (within certain parameters) negotiate whatever terms they wish, and if they have not made clear provision for the tenant to pay for something then courts and tribunals are reluctant to imply an obligation to pay simply on the basis of what it is thought that the parties may have intended.
21. A general principle is that if the tenant's liability is uncertain from the wording of the lease, the interpretation of the clause will be against the landlord (i.e. in a way that favours the tenant): see for example *Gilje v Charlegrove Securities Ltd (2002) 1EGLR 41*. It follows from this that as a general rule landlords will not be able to rely on any implied (as opposed to express) obligation on the tenant to pay: see for example *Woodtrek v Jezeck (1982) 261 EG 571*.
22. Applying the above principle to the insurance premium, whilst it may have been the intention of the original landlord that the tenants be obliged to pay this as part of the "Maintenance Contribution", in the Tribunal's view there is insufficient basis on which to imply that the completely undefined phrase "Maintenance Contribution" was intended to include the cost of insurance. The cost of insurance is not referred to in the clause obliging each tenant to pay the Maintenance Contribution and the phrase does not even **imply** a contribution towards the cost of insurance. Indeed, it is the landlord's obligation to repair and maintain the Property, **not** its obligation to insure, that is expressed to be conditional on the tenants paying the Maintenance Contribution. Therefore, in the Tribunal's view the leases do not contain a legally binding obligation on the tenants to pay the insurance premium.
23. As regards the management fee, this at least bears some connection to the concept of Maintenance Contribution. However, again, as the services for which the tenants must pay are not listed and there is no definition at all of what the Maintenance Contribution is, the landlord is again in difficulty in demonstrating that the item in question is payable, and the principle referred to in paragraph 21 above applies. It is worth noting that in *Haveli Ltd v Amanda Glass LRX/22/2005* the Lands Tribunal took the view that management fees were recoverable even though not specifically mentioned, as on a construction of the service charge provisions as a whole these fees were "clearly contemplated". Also, in *London Borough of Brent v Nellie Hamilton LRX/51/2005* the management fees were held to be payable because although

they were not specifically listed as a head of charge the tenant covenanted to contribute towards expenditure incurred by the landlord in fulfilling a long list of obligations and functions. However, in the case before this Tribunal there is no statement **at all** in the leases as to what is or is not included in the Maintenance Contribution, and therefore in the Tribunal's view there is no justification for inferring that it includes the payment of a management fee.

24. In relation to the provisional amounts charged for General Maintenance, the situation is slightly different. The provisional amount charged for the year ending 24<sup>th</sup> December 2006 has effectively been overtaken by events, as the final service charge account for that period (being a statement of actual expenditure) confirms that no money was spent on general maintenance. However, the provisional amount charged for the year ending 24<sup>th</sup> December 2007 still stands, in that the year in question has not yet ended and therefore the landlord is not yet able to confirm how much (if anything) will have been spent on maintenance during the course of that year. Whilst it is still the case that the Maintenance Contribution is undefined and that this is unsatisfactory, in the view of the Tribunal it is reasonable to say that it must have been intended as a minimum to cover the cost of general maintenance, partly because this is the natural meaning of the words and partly because the landlord's obligation to comply with its repair and maintenance obligations is expressed to be conditional on the tenants paying the Maintenance Contribution.

25. Therefore the Tribunal accepts that the provisional charge for General Maintenance of £200 (£100 for each Applicant) for the year ending 24<sup>th</sup> December 2007 is properly payable. If it later transpires that no money was actually spent on general maintenance during the year ending 24<sup>th</sup> December 2007 then the £200 (assuming that the Applicants pay it) will need to be refunded by the landlord.

## **DECISION**

26. The Tribunal therefore determines that none of the insurance premiums or management fees charged for the service charge years 2005 to 2007 (the years which are the subject of the application) are properly payable by either of the Applicants. In addition, the provisional charge for General Maintenance in respect of the year ending 24<sup>th</sup> December 2006 is not payable by either Applicant. However, the provisional charge for General Maintenance in respect of the year ending 24<sup>th</sup> December 2007 is payable by both Applicants.

27. Therefore the amount payable by way of service charge is just **£100** for each Applicant (not £1,409.42).

28. This decision does not affect the arrears of ground rent, which the Applicants accept are properly payable.

29. The Applicants have applied to the Tribunal for an order under Section 20C of the 1985 Act that the costs incurred by the landlord in connection with these proceedings should not be recoverable as part of the service charge under the leases. In the circumstances of the Tribunal having found almost overwhelmingly in favour of the Applicants the Tribunal is happy to make such order, although the Tribunal's view is that such costs are not recoverable under the leases in any event.

30. The Applicants have not applied for reimbursement by the Respondent of the fees paid by the Applicants in connection with these proceedings.

CHAIRMAN.....  
Mr PJ Korn

Date: 19<sup>th</sup> November 2007