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LVT/MAN/OOFF/LSC/2005/0004

## **LEASEHOLD VALUATION TRIBUNAL**

**Of the**

## **NORTHERN RENT ASSESSMENT PANEL**

**Decision of the Tribunal on application under Section 27A and Section 20c of the Landlord and Tenant Act 1985 as amended by the Commonhold and Leasehold Reform Act 2002**

In the matter of

68 HANSOM PLACE YORK YO31 8FQ

**Applicant: G P Avery on behalf of Hansom Place Tenants Association**

**Respondent: Mainstay Group Ltd**

**MEMBERS OF THE TRIBUNAL: Mr C H Davies  
Mrs E Thornton-Firkin**

**Paper determination: 5<sup>th</sup> May 2005**

**LANDLORD AND TENANT ACT 1985 S27A and S20c as amended by the  
Commonhold and Leasehold Reform Act 2002**

**68 HANSOM PLACE YORK**

**The Application**

1. The application was made by G P Avery on behalf of Hansom Place Tenants Association in respect of the above property and five similar flats at Hansom Place on 15<sup>th</sup> February 2005
2. The application refers to Service Charge demands in respect of the year 2005 (sic) and for payments in respect of: asbestos inspection, audit fees, bank charges and insurance.
3. The parties have agreed to the Tribunal reaching a decision on the basis of a paper determination

**Lease**

4. The Tribunal has a copy of a draft lease in respect of Flat 68 the terms of which it believes to be common to all 6 flats. The term(s) are 120 years from 25 March 1995 subject to a ground rent (with review provisions) and the levy of an annual service charge for 'the maintenance expenses' listed in the seventh schedule and payable in equal part by the 6 leaseholders in the block
5. The service charge provision is written in standard terms covering repair and maintenance to the structure, grounds, cleaning of common parts, insurance, waste removal, lighting security and entry systems, lifts, administration etc.

**Decision**

6. The applicant disputed as in 2 above for estimated charges for the year 1 March 2005 to to 28 February 2006 being
  - a) asbestos inspection       £500
  - b) audit fees                   £300
  - c) bank charges               £180
  - d) insurance                   £500
7. The managing agents have provided for an asbestos survey to establish whether white asbestos is present in a building constructed C1982. Mr Avery has made enquiries of the Health & Safety Executive and pleads that given the date of construction the use of white asbestos is unlikely and in any event should be

traceable by the owners/agents through building plans in their possession directly or through previous connected freeholders. The Tribunal agrees that the possibility of asbestos content in the building is very low but given the strict and onerous duties put upon owners by legislation and the powers within the Seventh Schedule, particularly paragraphs 14, 16, 17 and 18 it concludes that a demand based upon an asbestos survey made under reasonable constraints would be payable. The costs of the survey have not occurred within the financial year ending 28<sup>th</sup> February 2005 and therefore a balance charge should be made in the year ending 28<sup>th</sup> February 2006 or if no survey is now anticipated a full refund should be made

8. In respect of Audit Fees it is admitted that the cost of £300 is made up of £187 to accountants and £113 to the managing agents for supplying documentation. It is the Tribunal's view that it is the duty of the Managing Agent to supply all necessary documentation to the auditors and that this is adequately rewarded within the present management charge. The Audit Fee should therefore be £187 for the service year.
9. Bank Charges for the development are under review at present. The amount demanded is not high and is approved as reasonable subject to adjustment in the light of ongoing negotiation. The Tribunal considers that a separate bank account for the cyclical and renewal funds should be set up with clear indication of interest earned on capital sums accruing to those funds.
10. It would appear that the applicant now has full details of insurance provision and that the costs of same after negotiations have fallen considerably. The Tribunal finds the cost estimate of £500 to be reasonable.
11. The Tribunal wishes to emphasise to the parties the provision in the lease(s) for estimation of further liability or crediting, and payment of the maintenance expenses, as set out in the Eighth Schedule.

#### **Section 20c**

12. Mr Avery submits that the landlord's agents have not acted in a proper manner and disputes four areas of the service charge demand. Mainstay Group Ltd considers that it has acted in a proper manner and has incurred £500 in costs, presumably largely or wholly on a time charge basis.

13. The Tribunal has found for the respondents, in three out of four items subject to further proof of cost and crediting where appropriate.
14. The Tribunal has decided that the lessors are entitled to charge £100 costs in the current years maintenance calculations towards their costs in these proceedings

This decision is made 5<sup>th</sup> May 2005

A handwritten signature in black ink, appearing to read 'C H Davies', with a long horizontal flourish extending to the right.

**C H DAVIES**  
Chairman of the Leasehold Valuation Tribunal  
25 May 2005