

**SOUTHERN RENT ASSESSMENT PANEL AND
LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/OOML/LSC/2006/0101

BETWEEN:

VANDELLA KING APPLICANT/LESSOR

AND

ALEXANDRA FORSTER RESPONDENT/LESSEE

PREMISES:

FLAT 5, 48 BRUNSWICK SQUARE, HOVE
EAST SUSSEX BN3 1EF ("the Premises")

TRIBUNAL:

MR D AGNEW LLB, LLM (Chairman)
MR R A WILKEY FRICS FICPD
MS J K MORRIS

DATE:

20th December 2006

ORDER AND REASONS

ORDER

1. The Tribunal determines that the following service charges in respect of the Premises for the years indicated are reasonable :-

2003 : £4717.03
2004 : £ 965.31
2005 : £1297.37
Total : £6979.71

2. As at 25th December 2005 the Respondent owed the Applicant the said sum of £6979.71 for service charges in respect of the Premises and that the said sum of £6979.71 is payable forthwith.

REASONS

1. The Application

- 1.1 On 26th September 2006 the Applicant applied to the Tribunal under Section 27A of the Landlord and Tenant Act 1985 for a determination as to the reasonableness of service charges levied in respect of the Premises for the years 2003 to 2005 inclusive.
- 1.2 On 11th October 2006 directions were given by which the parties were required to file and serve their statements of case.
- 1.3 A statement of case was filed by the Applicant's solicitors on behalf of the Applicant but no statement of case in reply was filed by the Respondent.
- 1.4 The Applicant's statement of case identified the items of expenditure incurred by the Landlord in respect of the Premises for the years in question and appended audited accounts and copies of invoices for expenditure.
- 1.5 The items of expenditure for which a determination by the Tribunal was sought were as follows:-

	£
2003: Buildings Insurance	2000.26
Lighting of common parts	96.52
Cleaning of common parts	662.40
Refuse clearance	113.36
General repairs	662.63
Major Works	
External decoration	22577.62
Administration fee	2257.76
Fire alarm maintenance and repairs	275.20
Audit fee (2 years)	284.59
Management fee	<u>863.64</u>
	29793.98

The Respondent was, by the lease, responsible for 16% of the above total expenditure (ie 4767.03). However, as the Respondent had paid

£50 on account during that year £4717.03 was claimed to be due from the Respondent for 2003.

2004:	£
Buildings insurance	2862.68
Lighting of common parts	56.50
Cleaning of common parts	619.60
General repairs	904.16
Fire alarm maintenance and repairs	592.06
Door entry system maintenance	91.76
Audit fee	188.00
Management fee	<u>863.00</u>
	6115.40

of which, again, the Respondent was responsible for 16% in accordance with her lease. After being credited with 16% of interest earned on monies held during the year, the sum of £965.31 was claimed as due from the Respondent for 2004.

2005:	£
Buildings insurance	2602.58
Lighting of common parts	84.81
Cleaning of common parts	656.30
General repairs	2979.15
Fire alarm maintenance and repairs	684.68
Door entry system maintenance	75.00
Management plaque	29.38
Audit fee	192.70
Management fee	<u>863.64</u>
	8188.24

of which, again, the Respondent was required to pay 16%. After accounting for 16% of interest earned on monies held, the amount claimed from the Respondent for 2005 was £1297.37.

2. The Inspection

2.1 This took place immediately prior to the hearing on 20th December 2006.

- 2.2 The Premises comprises a flat on the top floor of a Regency terraced property in an imposing square on the seafront in Hove. The building is Grade I listed.
- 2.3 The Tribunal was able to gain entry to the common hallway and staircase of the building as the managing agent attended with a key, but was unable to access the Respondent's flat as the Tribunal could elicit no response from anyone at the Premises.
- 2.4 The building appeared to be in good condition. The front exterior of the building had recently been painted and the rear outside decoration work had been carried out in 2003. The common parts were clean and the carpeting in reasonable order.

3. The Law

- 3.1 Under section 19.1 of the Landlord and Tenant Act 1985 headed "Limitation of service charges: reasonableness" it is stated
- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
- (a) only to the extent that they are reasonably incurred, and
- (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard: and the amount payable shall be limited accordingly."
- 3.2 Under section 27A of the Act, headed: "Liability to pay service charges: jurisdiction" it is stated:-
- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to –
- a) the person by whom it is payable

- b) the person to whom it is payable
- c) the amount which is payable
- d) the date at or by which it is payable and
- e) the manner in which it is payable

(2) Subsection (1) applies whether or not a payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to

- a) the person by whom it would be payable,
- b) the person to whom it would be payable
- c) the amount which would be payable
- d) the date at or by which it would be payable and
- e) the manner in which it would be payable.”

4. The Lease

4.1 By clause 3(e) of the Respondent's Lease, the tenant covenants:-

“to contribute and pay to the Lessors on demand a proportionate part of the reasonable costs charges and expenses from time to time incurred in the performance of the obligation contained in Part V of the Schedule in connection with the Building including the cost of employing any professional or other person to supervise or perform the execution of the Lessors' obligations ... such proportionate part to be an amount equal to sixteen per centum of the costs ...”

- 4.2 Part V of the Schedule to the lease requires the Lessor to “clean maintain repair redecorate and renew all parts of the Building reserved by them including ...
- a) the external walls and structure and in particular the foundations roof chimney-stacks gutters and rainwater pipes ...
 - b) the gas and water pipes drains and electric cables and wires and television aerial in under and upon the Building and enjoyed or used by the Lessee in common with the lessees of the other flats in the Building.
 - c) any other parts of the Building and premises (including floor coverings and electrical fittings) so enjoyed or used by the Lessee in common as aforesaid.”
- 4.3 By paragraph 3 of Part V of the Schedule the Lessor is responsible for insuring the Building.
- 4.4 By paragraph 4.4 of Part V of the Schedule the Lessor is required to keep proper books of account of all costs charges and expenses incurred in carrying out the Lessor’s obligations under the Schedule.

5. The Hearing

- 5.1 This took place at Maritime House, Hove on 20th December 2006.
- 5.2 Present were Ms C Whiteman, solicitor, as agent for the Landlord’s own solicitors and Mr D Wheeler, from the Landlord’s managing agents, Austin Rees Ltd. There was no appearance on the part of the Respondent.
- 5.3 Ms Whiteman took the Tribunal through the audited accounts and the invoices and vouchers in support of the expenditure. She also

produced for the Tribunal a copy of the Section 20 notices and estimates which had been sent to the lessees in respect of the major works carried out in 2003.

6. The Determination

6.1 The Tribunal looked carefully at every item of expenditure incurred for the service charge years 2003, 2004 and 2005 in respect of the Premises and concluded that all the expenditure was reasonably incurred and that, where works had been done, they had been carried out to a reasonable standard.

6.2 The Tribunal was satisfied that the consultation procedure had been correctly followed in respect of the major works that had been carried out in 2003.

6.3 The Tribunal, having heard evidence that no payments had been made by the Respondent in respect of the years 2003, 2004 and 2005 save for the sum of £50 paid on account for 2003 and the Respondent having produced no evidence to the contrary, the Tribunal found that the Respondent owed the Claimant a total of £6979.71

Dated this 20th December 2006

A handwritten signature in black ink, appearing to read 'D Agnew', written over a horizontal dotted line.

D Agnew LLB LLM
Chairman