

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



**Residential
Property**
TRIBUNAL SERVICE

S.27A Landlord & Tenant Act 1985 as amended

DECISION AND REASONS

Case Number: CHI/21UC/LIS/2006/0031

Property: Flat 5
12 Grassington Road
Eastbourne
BN20 7BP

Applicant (Landlord): 12 Grassington Road (Eastbourne) Management Ltd

Respondent: Mr M A Godin

Date of Application: 12 December 2006

Date of Hearing: 1 March 2007

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Chairman)
Mr S Lal (Legal Member)
Ms J A Morris (Lay Member)

Date of Decision: 30 April 2007

Summary of Decision

- i) Service charges are payable by the lessee at the relevant time. The Tribunal does not have jurisdiction to decide the identity of the lessee.
- ii) The proportion of service charge payable by the lessee of flat 5 is 14.56%.
- iii) The cost of insurance is not recoverable from the lessee.
- iv) The legal costs are not recoverable as part of the service charge.
- v) Subject to the production of final accounts in respect of the year ending 31 October 2006 and the provision of further invoices for expenditure, if requested, the amounts payable to the landlord, by the lessee of flat 5, in respect of each of the years in question at the rate of 14.56% are:

| | |
|-----------------------------|-----------|
| Year ending 31 October 2003 | Nil |
| Year ending 31 October 2004 | £104.69 |
| Year ending 31 October 2005 | £1,192.02 |
| Year ending 31 October 2006 | £457.91 |
- vi) The amounts payable on account are limited to £50 each half year.
- vii) The Tribunal has no jurisdiction in respect of the payability of ground rents.

BACKGROUND

1. This is an application under S.27A of the Landlord & Tenant Act 1985 (the Act) for the Tribunal to decide the liability of the lessee to pay certain items of service charges for the year ended 31 October 2003, 2004, 2005 and 2006.
2. The hearing was convened and held at the Horntye Park Sports Complex, Bohemia Road, Hastings, but neither party attended. Jonathan Waters of Stephen Rimmer & Co., Solicitors represents the Applicant, he had incorrectly entered the hearing date in his diary as 2 March. As the Tribunal needed clarification on various points not covered in the documents before it, the hearing was adjourned to allow a written enquiry to be made of the Applicant's solicitor representative.
3. Specific enquiries were made of Stephen Rimmer & Co. Having agreed an extension of time, a response dated 28 March 2007 was received by the Tribunal.
4. The Respondent was supplied with the supplementary documentation and no further representations were made.
5. The Tribunal considered the original documentation and a further documentation and made its Determination based upon those documents.

RELEVANT LAW

6. The Tribunal's jurisdiction derives from the Landlord & Tenant Act 1985 as amended (The Act). In coming to our decision we have had regard to the Act in full but include a summary here for the assistance of the parties.
7. S.18 defines the meaning of a service charge as being "*...an amount payable by a tenant ... in addition to the rent – (a) which is payable directly or indirectly, for services, repairs, maintenance, improvements, insurance, or the landlord's costs of management and (b) the whole or part of which varies or may vary according to the relevant costs*".
8. S.19 limits the relevant costs to be taken into account in determining the amount of service charge only to the extent that they are reasonably incurred and only if the services or works are of a reasonable standard.
9. S.27A provides that a Leasehold Valuation Tribunal may determine whether a service charge is payable and if it is, the Tribunal may also determine the person by whom it is payable, the person to whom it is payable, the amount which is payable, the date at or by which it is payable and the manner in which it is payable. These determinations can (with certain exceptions) be made for current or previous years and also for service charges payable in the future.

LEASE

10. The Tribunal was provided with a copy of the lease of flat 5, dated 6 January 1989 and has had regard to all the terms of the lease in coming to its decision but highlights here those clauses which it believes are specifically relevant to the payment of service charges.

11. Clause 4(2)(a) to (d) sets out the arrangements for the payment of the service charge:

4(2)(a) To pay a share of the costs expenses and outgoings and matters mentioned in the Fourth Schedule hereto such share to be in the proportion that the rateable value of the flat bears to the total of the rateable values of all the flats comprised in the building (hereinafter called "the Service Charge")

(b) With every half yearly payment of rent to pay to the Lessor sum of £50.00 or such half yearly sum as the Lessor or his managing agents shall certify as a fair sum in advance and on account of Service Charge and shall also pay a proportionate part of such sum the signing hereof

(c) The Tenant shall also pay to the Lessor the balance of Service Charge due (if any) as shown on the Lessors management accounts for year such payment to be made within fourteen days after service of said accounts

(d) The amount of the service charge shall be ascertained certified annually by the Lessor or the Lessor's agents so soon after the end of the Lessor's financial year as may be practicable and shall contain a fair summary of the service charge during the Lessor's financial year to which it relates

12. The fourth schedule mentioned refers to costs and expenses incurred by the lessor in complying or in connection with the fulfillment of his obligations under sub clauses 3, 4 and 5 of clause 5 of the lease. These sub clauses in general terms cover the maintenance and repair of the main structure of the building, the paths and communal areas shown coloured brown on the lease plan, and service pipes and cables, together with the redecoration of the exterior and internal common parts and the lighting of communal areas. There is no dispute regarding the nature of those items recoverable by way of the service charge.

13. Paragraphs 2 and 3 of the fourth schedule allow for the recovery of the costs of management and the future cost of periodically recurring expenditure as follows:

2. The costs of management of the Building including the cost of employing an agent so to manage the Building or if the Lessor manages the same himself then a charge of ten per cent of the actual expenses may be added thereto

3. The expression "costs and expenses" referred to in this Schedule shall be deemed to include not only those costs and expenses which have been actually disbursed or incurred by the Lessor during the year in question but also such proportionate part of all such expenses outgoings and other expenditure hereinbefore described which are of a periodically recurring nature (whether recurring at regular or irregular periods) whenever disbursed incurred or made including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Lessor or his accounting or managing Agents (as the case may be) may in their discretion allocate to the year in question as being fair and reasonable in the circumstances and relating pro rata to the Flat

INSPECTION

14. As arranged members of the Tribunal inspected the property prior to the hearing. No access could be obtained to the interior or commonways but the Tribunal members were able to inspect the exterior of the property and the grounds.
15. The building is a detached house constructed of brick and tile with two single storey bays at the front with terracotta and rendered dressings. There are some small areas of flat roofs. The building has four floors and a basement and from the call buttons on the entryphone, would appear to have been converted into six flats.

ISSUES

16. The matters in dispute identified by the Applicant and the Tribunal can be summarised as follows.
17. The Respondent disputes that he is the leaseholder of flat 5.
18. The Applicant acquired the freehold of the property in November 2003, since which time no service charges have been paid in respect of flat 5 and the Tribunal is asked to confirm the amount of service charges payable in the relevant years.
19. Included in the service charge demand is an amount for the cost of insurance of the building and the Applicant seeks a determination that the relevant proportion of the insurance premium is payable by the lessee.

EVIDENCE

20. The Applicant's evidence is a Statement of Case dated 25 January 2006, together with responses to the Tribunal's enquiries dated 28 March 2007.
21. The Respondent is an individual who was the freeholder until the transfer to the Applicant in November 2003. The office copy shows the property is registered in the name of Albert Godin (deceased) and a copy of the register was produced. It is understood that Albert Godin, the Respondent's father, had passed away by the year 2001. A letter dated 28 May 2003 from Messrs Theaker, Loadsman & Reynolds, Solicitors, acting for Mr Martin Ashely Godin, the Respondent in this case, states "...that our client still retains ownership of flat 5 within the building."
22. Very little has been heard from the Respondent but the Tribunal received a letter dated 26 February 2007 enclosing a letter on M A G Construction notepaper, written on behalf of that company, addressed to 12 Grassington Road Management Ltd. It is understood that this letter is in fact written by Mr M A Godin. The letter states that the writer has spoken to the clerk at the Tribunal Office and has told him "... the lease to the above property is in [sic] Albert Godin not Martin Godin." The Tribunal believes that this is intended to mean that the flat is held in the name of Albert Godin although the address of the flat is not mentioned in the letter. The letter goes on to say that "... a cheque for £1,000 as part payment [it is not clear as part payment of what?] until the correct invoice is sent to enable us to pay the balance due".

23. The Applicant's statement refers to the requirement for the payment of £50 per annum in advance and on account of the service charge and states that this amount has not been paid.
24. The Applicant asserts that it is an implied term of the lease that the Respondent pay a reasonable proportion of the cost of insuring and cites sub clause 3(1)(b) of the lease which relates to the tenant paying "*... all rates taxes assessments charges impositions and outgoings which may at any time be assessed charged or imposed upon the flat or any part thereof or on the owner or occupier in respect thereof...*".
25. The Applicant in the original statement avers that the fourth schedule of the lease provides that the tenant is to contribute to the lessor's costs on a pro rata basis. The lessors, save for the Respondent, have agreed to pay and have paid the service charge on a monthly agreed amount of £50 rather than the lease stated amount of £50 per half year. The lessees, save for the Respondent, have agreed that the maintenance charge be split in equal shares. Following enquiries from the Tribunal, the Applicant confirms that there are six flats but provides no evidence of the agreement reached for the equal shares. Apparently this agreement arose when the Respondent was the freeholder. There is no Deed of Variation, although the Respondent collected and paid the service charge in this manner when he was the freeholder.
26. The Tribunal enquired of the rateable value for the flats and these were provided.
27. In evidence, accounts for the company, 12 Grassington Road (Eastbourne) Management Ltd are produced for the years or periods ending 31 October 2004 and 2005 and unaudited draft accounts for the year ended 31 October 2006. No accounts were available for the period ended 31 October 2003 as these are in the Respondent's hands but the claim for that year relates only to insurance and a copy of the policy schedule relevant for that period is produced.
28. Major works were undertaken in respect of fire precautions following an order made by Eastbourne Borough Council to make a house in multiple occupation fit for a number of occupants. The Applicant wrote a standard letter dated 15 February 2005 to all lessees stating that it was "*...to comply with its obligation under the provisions of the Landlord & Tenant Act 1985.*" That letter described the proposed work and mentioned the estimates that had been received, the lowest of which was £5,410.88 plus £125.73, the share for each flat being £1,027.55. It mentioned the right of each lessee to obtain their own estimate for work and present it to the freeholder for consideration. It also gave notice that unless, within thirty days of the date of the letter, any lessee provided an estimate for the work, the landlord, would serve a second notice giving details of the estimates received and setting out a timetable for the work to proceed. A further letter was sent on 3 April 2005 giving details of the work and seeking observations within thirty days. No response was received and the Applicants proceeded with the work.
29. The amounts owed have been duly demanded and the Applicant believes that they are reasonable and payable. The total amount claimed is £3,702.91.

30. The company accounts show an amount for legal fees of £356 in the year ending October 2004 and £45 in the year ending October 2005. An amount of £30 for legal fees also appears in the draft accounts for the year ending 31 October 2006. In its subsequent enquiry, the Tribunal sought an explanation of these charges. The Applicant indicates that the first amount of £356 relates to the balance of fees due to solicitors DMH in respect of the transfer of the freehold interest to the company. The later small amounts of £45 and £30 relate to the fees for annual returns, presumably meaning returns to Companies House.
31. As we say, the Respondent has said little in this case but in the letter to the Applicant dated 24 February 2007, he asks for proof of all insurance documents and to have invoices for all works and estimates obtained before works were carried out.

CONSIDERATION

32. The Tribunal found itself in some difficulty with regard to the documentation in this case. There is little supporting evidence for much of the assertions made and the absence of either party at the oral hearing has added to the Tribunal's difficulties.
33. S.27A of the Act provides that the Tribunal may determine the person by whom a service charge is payable. The Tribunal has no jurisdiction to decide ownership of a flat as this is clearly a matter for the courts. This is an unusual case where the Land Registry does not recognise the Respondent, Mr M A Godin, as the owner of the flat which is still registered in the name of Albert Godin (deceased). This may be accurate but it also may be an indication that there has been no registration of the new owner. The Respondent's solicitors, by their letter dated 28 May 2003, seem satisfied that the Respondent was the owner and lessee of flat 5. However, as the flat is still registered in the name of Albert Godin (deceased), then the Tribunal expects that it is the personal representatives who have responsibility for the payment of any charges relating to this flat. No evidence was produced regarding any enquiries made of the personal representatives or of the estate of Albert Godin (deceased). It is for the parties to confirm the correct owner of the flat and the Tribunal states that it is the lessee at the appropriate time who is responsible for the payment of the charges.
34. The lease at clause 4(2)(a) clearly states that the share of the costs and expenses forming the service charge shall be such share in the proportion that the rateable value of the flat bears to the total of the rateable values of all the flats comprised in the building. We have been given no formal evidence that an agreement has been reached to share the costs equally and by the Applicant's own admission, the Respondent was not a party to the agreement. The lease has not been varied. Rateable values are available and have been provided to the Tribunal. There is nothing to prevent the apportionment of the service charges being made in the manner described in the lease and the Tribunal determines that this is the proper apportionment. Flat 5 should therefore pay 14.56% of the total of the service charges due.

35. The Applicant has been unable to point to any express provision in the lease to provide for the reimbursement of the cost of insurance. Although this is probably unusual, it is by no means in the experience of the Tribunal unheard of. There is nothing in sub clause 3(1)(b), which is the usual outgoings clause, to indicate that the freeholder should be reimbursed with the cost of insurance. The insurance costs are therefore not recoverable from the tenant.
36. The lease provides that an amount of £50 per half year (not per annum) or such half yearly sum as the lessor shall certify is to be paid on account of service charges. No evidence was produced that the lessor has certified a different amount as required by the lease, it was simply stated that an agreement had been reached between lessees, other than the Respondent, to pay instead a monthly amount of £50. The lease has not been varied and no certificate required by the lease has been produced. The Tribunal has no alternative but to follow the terms of the lease which states that an amount of £50 per half year is the only amount payable in advance on account of the service charge.
37. Turning now to the provision of accounts and the other general service charge items. It is not unusual for the Tribunal to find, as in this case, that the freehold company produces accounts as required by company law, but it fails to produce service charge accounts in accordance with the terms of the lease. The lease requires an amount of service charge to be certified annually by the lessor or the lessor's agent and this has not been done. The requirements of company law are different from the requirements of landlord and tenant law, insofar as the amounts included in the service charges are strictly laid down by the relevant landlord and tenant acts and by the terms of the lease. Invoices for expenditure must be available for inspection by lessees.
38. From the evidence before us, we are satisfied that the company accounts show a reasonable summary of the expenditure relating to the service charges, other than the amount for insurance which has already been dealt with and the amount for accountancy and legal fees.
39. Each year an amount is shown in the accounts for an accountant's fee. The requirement for audited accounts is a company requirement. The lease only requires a certificate of the lessor or the lessor's agent. It may be prudent for the lessor to obtain the assistance of an accountant in preparing the final accounts for each year but the detail required by company law is not required in respect of service charges. The amount of £229, however, is an amount that would normally be a reasonable amount for an accountancy charge on a service charge account and it is considered to be reasonably charged.
40. The legal fees of £356 clearly relate to the acquisition of the freehold by the company and this is not a service charge item allowed under the terms of the lease, it is therefore not a charge that has been reasonably incurred. Similarly the legal fees for company annual returns are not service charge items but company items and are not recoverable as service charges.

41. Turning now to the consultation requirements of S.20 Landlord & Tenant Act 1985, these are set out in detail in the Service Charges (Consultation Requirements)(England) Regulations 2003 and in particular Schedule 4 Part 2. The requirements have been satisfied by the letters provided although the lessee apportionment is not confirmed. We are satisfied that the S.20 consultation requirements have been met.
42. An invoice from Pearson in the total sum of £6,717.48 is produced and is considered to have been reasonably incurred for the work undertaken.
43. Although audited accounts are produced in respect of the years in question, there are no supporting invoices relevant to the specific items of expenditure. The Respondent has raised no objection to any specific items. We are familiar with the levels of expenditure usual for premises of this type and there is nothing unusual in the amounts claimed. In the absence of any evidence to the contrary, we are satisfied that the charges are reasonable and payable.

DECISION

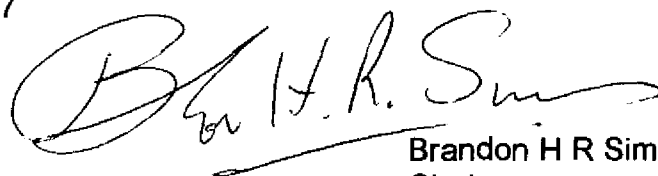
44. The lessee at the relevant time is responsible for the payment of the service charges in respect of this property. The Tribunal has no jurisdiction to decide the identity of the lessee.
45. The proportion of service charge payable by the lessee of flat 5 is 14.56% of the total service charge calculated in accordance with the lease.
46. The cost of insurance is not recoverable from the lessee.
47. The legal costs are not recoverable as part of the service charge.
48. Subject to the verification of further invoices if requested and, subject to the production of final accounts in respect of the year ending 31 October 2006, the amounts payable to the Landlord, by the lessee of flat 5, in respect of each of the years in question, at the rate of 14.56%, are:

| | |
|-----------------------------|-----------|
| Year ending 31 October 2003 | Nil |
| Year ending 31 October 2004 | £104.69 |
| Year ending 31 October 2005 | £1,192.02 |
| Year ending 31 October 2006 | £457.91 |

The details of the accounts calculations are attached.

52. The amounts payable on account are limited to £50 each half year.
53. The Tribunal has no jurisdiction in respect of the payability of ground rents.

Dated 30 April 2007



Brandon H R Simms FRICS MCI Arb
Chairman

Appendix**LVT Accounts Calculations 2004-2006****Year Ended 31 October 2004**

| | |
|-------------------|--------------------------------|
| Income | Nil |
| Light & Heat | 57 |
| Gardening | 400 |
| Post & Stationery | 32 |
| Sundry | 1 |
| Accounting | 229 |
| Legal Fees | <u>Nil</u> |
| | £719 @ 14.56% = £104.69 |

Year Ended 31 October 2005

| | |
|-------------------|------------------------------------|
| Income | Nil |
| Light & Heat | 69 |
| Repairs | 7,622 |
| Gardening | 75 |
| Post & Stationery | 23 |
| Cleaning | 146 |
| Sundry | 23 |
| Accounting | 229 |
| Legal Fees | <u>Nil</u> |
| | £8,187 @ 14.56% = £1,192.02 |

Year Ended 31 October 2006

| | |
|-------------------|----------------------------------|
| Income | Nil |
| Light & Heat | 143 |
| Repairs | 2,428 |
| Gardening | 200 |
| Post & Stationery | Nil |
| Cleaning | 134 |
| Sundry | -1 |
| Accounting | 241 |
| Legal Fees | <u>Nil</u> |
| | £3,145 @ 14.56% = £457.91 |