RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

S.27A & S.20C Landlord & Tenant Act 1985

Residential Property
TRIBUNAL SERVICE

DECISION AND REASONS

Case Number:	CHI/OOML/LIS/2009/0028
Property:	139a & 141a Portland Road Hove East Sussex BN3 5QJ
Applicants:	Mr & Mrs Cham (Flat 141a) Mrs C Paravanti & Mr C Vega (Flat 139a) (Mrs Cham & Mrs Paravanti appearing in person)
Respondent:	Ivor Place Investments Ltd Represented by: Adrian O'Rourke, DE & J Levy (for the morning session)
Date of Application:	Received 14 April 2009
Date of Hearing:	10 September 2009
Date of Decision:	14 October 2009
Tribunal Members:	Mr B H R Simms FRICS MCIArb (Chairman) Mr J N Cleverton FRICS (Valuer Member) Ms J K Morris (Lay Member)

DECISION & ORDER

1. Until such time as proper statements of accounts for the relevant years and demands are prepared in accordance with the terms of the lease and in accordance with S.21 & S.21B of the Landlord & Tenant Act 1985 as amended by the Commonhold & Leasehold Reform Act 2002, no service charges are payable for the years 2007, 2008 or 2009.

2. The apportionment of the service charge account shall be in accordance with the terms of the lease on the basis that the lessee of each flat is responsible for only one quarter of the total costs of any deficiency in the account each year, in particular in accordance with clause 7 of the lease.

3. The total cost of the work to repair the roof leaks shall be limited to £380 (£95 for each flat).

4. Separate demands for building insurance are not payable as this cost should be included in the service charge.

5. The managing agent's fee is limited to £550 including VAT (£137.50 per flat) in each year.

6. In addition

THE TRIBUNAL ORDERS that to such extent as they may otherwise be recoverable the Respondent's costs, if any, in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.

REASONS

7. This is an application by the tenants of Flats 139a and 141a Portland Road, Hove for a determination whether or not the amounts of apportioned service charges are payable in respect of these flats. The application is in respect of the financial years 2007, 2008 and for future expenditure in 2009 and in the application 4 specific items were identified. These were, the management charges of £887.25, the cost of repairs at £425, the quality of repairs at £450 and buildings insurance at £531.91.

8. There was also an application made under S.20C that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs for the purpose of calculating service charges.

9. The paperwork submitted by the Applicants and the Respondents raised serious doubts regarding the ability of the managing agents to deal with the accounts and demands in accordance with the terms of the lease, or in accordance with the relevant law. The Tribunal has had difficulty in interpreting the paperwork presented by the Respondent, which was made more difficult by the Respondent's representative's absence during the afternoon of the hearing.

THE LAW

10. The statutory provisions primarily relevant to this application are to be found in S.s 18, 19, 20C and 27A of the Landlord & Tenant Act 1985 as amended (the Act). The Tribunal has of course had regard in making its decision to the whole of the relevant sections as they are set out in the Act, but here sets out a sufficient extract or summary from each to assist the parties in reading this Decision.

11. Section 18 provides that the expression "service charge" for these purposes means:

"an amount payable by a tenant of a dwelling as part of or in addition to the rent -

a. which is payable directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

b. the whole or part of which varies or may vary according to relevant costs."

12. "Relevant costs" are the costs or estimated costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable and the expression "costs" includes overheads.

13. Section 19 provides that:

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.

14. Subsections (1) and (2) of section 27A of the Act provide that:

(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 to whom it is payable

b. the person by 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.

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

There are certain exceptions that limit the Tribunal's jurisdiction under section 27A but none of those exceptions has been in issue in any way in this case.

15. In addition, it became apparent during the course of the hearing that the amendment to the Act introducing S.21B would be relevant. This states at sub section (1) a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges, and at (3) a tenant may withhold payment of a service charge which has been demanded from him if sub section (1) is not complied with in relation to the demand.

16. The Tribunal also had regard to S.47 of the Landlord & Tenant Act 1987 (the 1987 Act) which requires the landlord's name and address to be contained in demands for rents, etc. In particular at sub section (1) where any written demand is given to a tenant " ... the demand must contain the following information, namely:

(a) The name and address of the landlord and

(b) ... paragraph (2) where – (a) a tenant of such premises is given such a demand, but (b) it does not contain any information required to be contained in it by virtue of sub section (1), then ... "the relevant amount" shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant ...".

THE LEASE

17. The Tribunal was provided with a copy of the lease of each flat which for all relevant purposes are believed to be identical. The Tribunal was also provided with a copy of the lease for the ground floor, commercial part, of the premises 139 – 141 Portland Road, Hove, but this has had little relevance to its determination.

18. The leases of the residential parts provide at Clause 7 the details of the maintenance or service charges payable by the tenant.

19. An amount of £50 or such other sum as the managing agents shall decide is payable on the 24 June and 25 December each year.

20. On 25 December an annual account is to be prepared showing the amount spent on maintaining and managing the building and the amounts actually received from the lessees in that period. There is an opportunity for the account to include a reasonable reserve for items of expenditure which are likely to arise, exceptionally or at intervals of more than one year.

21. When the annual account is prepared and sent to the tenants the relevant tenant shall pay to the landlord one quarter of any deficiency shown. Any surpluses are carried forward as part of the reserve. A certificate signed by the landlord or its managing agent is sufficient evidence that the account has been properly produced.

22. Sub-section (5) of Clause 7 goes on to explain what may be included in the annual account, this specifically includes the landlord's cost of insuring the building and the cost of the landlord's obligation to repair and decorate the building.

23. There is no provision for the separate collection of the insurance premium or insurance rent.

24. There is a specific reference to the payment of fees to managing agents.

BACKGROUND

25. Following the issue of provisional directions a Pre-Trial Review Hearing was held on 13 May 2009 at which the Applicants attended. The Respondent did not attend but it submitted a bundle of documents including some service charge accounts and invoices.

26. A comment in the determination of the Pre-Trial Review Hearing indicates that the service charge accounts submitted by the Respondent appeared to show multiple debits for the same insurance premium and management fees, did not show an opening balance when the current agents took over in 2007, and appeared to present inconsistent balances at different times. The Tribunal was unable to trace the history of credits and debits or any running balance in respect of either of the Applicants' flats.

27. For this reason when directions were issued on 13 May part of the requirement was for the Respondent to provide a single complete statement of the service charge accounts since 26 December 2006.

28. In response the Respondent produced on 28 May summary service charge statements and on the 8 June replacement summary service charge statements.

29. As requested the party's submitted statements and responses and provided bundles of documents which were available at the hearing.

INSPECTION

30. The Tribunal members inspected each flat prior to the hearing, in company with Mrs Chan and Mrs Paravanti. The Respondent was not represented.

31. Each property comprises a self contained flat approached from its own ground floor entrance. The accommodation is arranged on the first and second floors in each case with a living room and kitchen on the first floor, and two bedrooms on the second floor.

32. In the case of flat 141a a divided part of the rear garden is included within the lease whereas the remaining part is included in the lease of the ground floor shop. Flat 139a does not have any rear garden area.

33. The building forms part of a terrace of properties being shops on the ground floors, with residential or commercial upper parts. There is a wide forecourt. Portland Road has time limited on-street parking.

EVIDENCE

34. Initially the Tribunal heard evidence from the Applicants. Mrs Paravanti took the lead in presenting evidence with Mrs Cham providing support where required. The Applicants had submitted a detailed statement of case with supporting documents.

THE APPLICANTS' CASE

Building Works

35. Two invoices had been submitted for building services from M & J Whelan, firstly for £425 dated 21 May 2008 and secondly for £450 dated 22 July 2008. The work at 141a was left unfinished and at 139a the work was ineffective. Mrs Paravanti found the need to call in her own builder at a cost of £120 in order to carry out work to stop water ingress.

36. The cost charged for the work was excessive. The Applicants believed that a reasonable charge would be £500 for all the work. Internal re-decoration is still outstanding.

Managing Agent's Charge

37. The total charge was £1,175 which was believed to be well above a reasonable amount for the managing agent to charge. In 2003 the previous managing agents had charged less than £500. It was felt that £550 including VAT was a reasonable sum for the service offered.

38. The accounts were inconsistent and could not be understood. There were no proper end of year accounts or certificates and the apportionments of amounts to be charged were incomprehensible.

Buildings Insurance

39. Since the new managing agents had taken over there had been separate billing of buildings insurance in addition to the main account. When Mrs Cham purchased in 2002 and Mrs Paravanti in 2007 it was made clear to them that the insurance premiums should be included in the total cost of the service charge.

40. The insurance premium had always been included in the service charges in the past and when enquiries were made of the managing agents all that happened was that a back-dated invoice was issued for the insurance premium.

41. The Applicants had no argument with the cost of insurance, simply the way that it was demanded and apportioned.

Apportionment

42. The lease clearly sets out that each lessee is responsible for one quarter part of any deficiency in the account that arises at the end of each year. The managing agents had chosen to apportion costs in various different proportions and these were inconsistent. Previously all apportionments had been on a one quarter basis. In particular, the erroneous insurance premium charge had been apportioned at one third.

43. During the course of the Hearing it came to light that the lessees had until January 2009 been paying a monthly standard order of £55, the accounts presented did not acknowledge these receipts. The lease makes no mention of monthly payments.

44. The Applicants were concerned that the accounts should have shown an opening balance of £1,286.56 from the previous agents when DE & J Levy took over.

THE RESPONDENT'S CASE

45. Mr O'Rourke for the Respondent had produced a detailed written statement in response and proceeded to deal with this.

46. He was adamant that the tenants had not identified any problems with the building work and as funds had not been received it was difficult for the landlord to proceed with the work.

47. He had identified various arrears on the accounts and these were shown on his summary statement.

48. Mr O'Rourke was unable to explain the arrears or how they had arisen.

49. When it came to identifying outstanding matters all that could be seen were quarterly managing agent's fees charged of a total of £1,175 for the twelve months to December 2008 and the disputed roof repairs of £875. These figures were shown in his summary but could not be identified in any end of year accounts or separate demands.

50. The Tribunal questioned Mr O'Rourke at this stage regarding the apportionments of the costs at one third to each party, rather than one quarter, and he indicated that he believed this was fairer. When the Tribunal pointed out the wording of the lease he had no explanation for the difference.

51. Similarly, Mr O'Rourke was unable to explain how demands for the insurance premium could be sent separately, where the lease indicated that these costs should be included in the maintenance charge.

52. When questioned by the Tribunal Mr O'Rourke indicated that the only paperwork issued with a demand was a set of accounts and no further papers were provided.

53. As Mr O'Rourke did not appear after the lunch adjoumment the Tribunal clerk telephoned Mr O'Rourke's office who were unable to explain his absence. His mobile telephone was turned off. The Tribunal had no alternative but to proceed with the hearing without the Respondent being represented. Subsequently Mr O'Rourke's firm wrote to the Tribunal and explained that Mr O'Rourke had been notified of the death of his grandfather immediately before the hearing and although he believed that he would be able to proceed he became emotionally distressed in the lunchtime break and felt unable to continue. No request for an adjoumment was made at the hearing or subsequently.

54. The Tribunal allowed the Applicants to provide a summary of the evidence already given and answered questions put to them by the Tribunal. The Respondent took no further part in the proceedings.

CONSIDERATION

55. The summary accounts provided by Mr O'Rourke with his letter of 8 June 2009 were incomprehensible and bore no relation to any other statements of account that had been provided to the Applicants or to the Tribunal. The identification of arrears could not be explained by the Respondent.

56. The Respondent could not produce end of year accounts drawn in accordance with the terms of the lease or S.21 of The Act.

57. Various statements made by Mr O'Rourke relating to the insurance which he said is separately reserved in the lease as rent are clearly untrue. His written statement to the Tribunal does not include a statement of truth or any of the declarations required by the relevant RICS guidance notes, however, assertions by him of matters which are clearly untrue leaves the Tribunal in some difficulty.

58. The frequency of billing was incorrect, the demands were not accompanied by a summary of the rights and obligations of tenants in relation to service charges as required by S.21B of The Act.

59. In view of the shortcomings of the Respondent's method of demanding service charges the Tribunal has no alternative but to determine that no service charges are payable until, or unless, the proper procedures are followed.

60. On the evidence presented the Tribunal is satisfied that the building work carried out to the roof was not effective. The Applicants had to spend their own money in order to obtain a builder who would carry out the necessary work and prevent water ingress. This was undertaken at a cost of £120. No expert evidence was provided either by the Applicants or the Respondents to indicate what work would have been required, or has been undertaken. The Applicants estimated that an appropriate charge would be £400.

61. As the Applicants themselves have already spent £120 in having the work carried out the Tribunal considers that a £500 allowance, less the £120 paid, leaving a total of £380 is the maximum that should be allocated to these repairs.

62. From its own knowledge and experience the Tribunal is satisfied that the managing agent's fees are substantially in excess of those that would be expected for the management of two residential properties of this type and a single shop on a full repairing lease. No evidence was produced by the Respondents in support of its fee or the method of calculation.

63. From the evidence in front of the Tribunal it was quite clear that the managing agents had failed to respond properly to the Applicants enquiries and an inadequate service was being provided.

64. The Applicants considered that £500 including VAT was the maximum that should be allowed for the management of the whole building and the Tribunal accepts this assessment.

65. The question of the apportionment of the service charge between the flats is clearly expressed in the lease at Clause 7 sub-section (2) at one quarter for each flat. The arrangements for collecting monies in advance are also clearly set out in Clause 7 within sub section (1), these arrangements were not followed by the Respondent.

66. The inclusion of a commercial property on the ground floor has confused the Respondent and for some reason it has chosen to apportion some of the costs in a manner completely opposed to the arrangements in the lease. Neither the Tribunal nor the Applicants have been provided with evidence in support of these confusing alternative methods of apportionment.

67. The assertions by the Respondent that the insurance premium should be collected as a separate item distinct from the service charge has no basis from the terms of the lease. The Tribunal can only assume that the Respondent was reading the wrong document when these assertions were made.

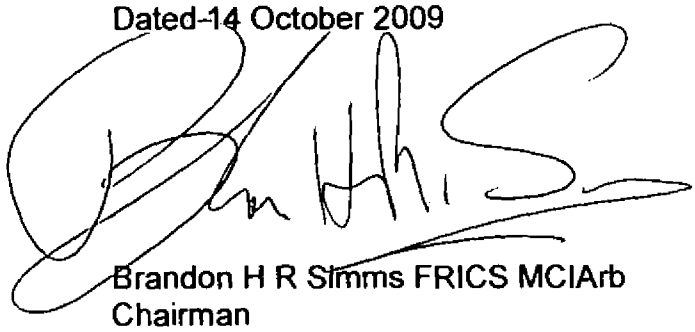
20C

68. The Applicants were receiving inadequate responses from the Respondent, if any at all, and no proper explanation was given either prior to or during the course of these proceedings to clarify the incomprehensible accounting procedures.

69. The Applicant had no alternative but to bring the matter to the Tribunal. In view of the circumstances of this case the Tribunal has no hesitation in making the necessary Order.

70. The Tribunal's decision is set out at paragraph 1 of this document.

Dated 14 October 2009



Brandon H R Simms FRICS MCIArb
Chairman