

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



S.27A & S20C Landlord & Tenant Act 1985(as amended)("the Act")

Case Number:	CH1/00ML/LSC/2008/100
Property:	Kings Gate 111, The Drive Hove East Sussex BN3 6FU
Applicant/Lesseeholders:	Lessees of flats 1-8, 11, 12a, 14-18
Respondent/Landlord:	Anston Properties Limited
Appearances for the Applicants:	Ms Calder of Counsel Mr Everitt Solicitor Lisa Clarke Lessee of Flat 17
Appearances for the Respondent:	John De' Vaal of Counsel Mr Harrington Solicitor
Date of Inspection /Hearing	23rd April 2009
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman) Mr N. Robinson FRICS (Valuer Member) Ms J Morris (Lay Member)
Date of the Tribunal's Decision:	6th May 2009

THE APPLICATIONS

The applications made in this matter by the Applicants are as follows: -

1. for a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 of their liability to pay management fees, surveyors fees and prepayments for the service charge years ending 2003, 2004, 2005, 2006, 2007 and 2008 and
2. for an order pursuant to Section 20C of the Act that the Respondent's costs incurred in these proceedings are not relevant costs to be included in the service charge for the building in future years.
3. The tribunal is also required to consider, pursuant to regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 whether the Respondent should be required to reimburse the fees incurred by the Applicant in these proceedings.

DECISION IN SUMMARY

4. The tribunal determines for each of the reasons set out below as follows:-
 - i) The sum of £5,499 inclusive of vat charged to the maintenance account in the years 2003 to 2007 by way of management fees was unreasonably incurred and should be returned to the service charge fund by the Respondents.
 - ii) The sum of £20,209.47 inclusive of vat charged to the maintenance account in the years 2003 to 2007 inclusive by way of surveyors' fees was unreasonably incurred and should be returned to the maintenance fund by the Respondents.
 - iii) The sum of £17,716 appearing in the end of year accounts for 2007 as "prepayments" has not been adequately particularised and to the extent that any part of this figure does not form a valid expenditure item for the service charge year ending the 25th March 2008, is to be returned to the service charge account by the Respondents.
5. An order under section 20C of the Act is made.
6. An order is made directing the Respondents to repay to the Applicants the tribunal fees paid by them in these proceedings.

JURISDICTION

Section 27A of the 1985 Act

7. The tribunal has power under Section 27A of the Landlord and Tenant Act 1985 to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable in so far

as it is reasonably incurred, or the works to which it related are of a reasonable standard. The tribunal therefore also determines the reasonableness of the charges.

THE LEASE

8. The tribunal had a copy of the lease relating to flat 14 and garage no.14, Kings gate, 111 The Drive, Hove, East Sussex which is dated the 24th March 1981 and is for a term of years from the 24th March 1981 expiring on the 29th September 2078 paying an initial annual rent of £60 rising to a rent of £480 per annum.
9. The tribunal was informed that all the leases of the flats in the building were in similar form.

INSPECTION

10. The tribunal inspected the property before the hearing in the presence of representatives of the Applicant. Neither the Respondent nor its representatives attended the inspection. Kings Gate is a 3 storey corner block of 18 purpose built flats constructed built circa 1980 with brick elevations and tiled hung section under a flat roof. Most of the windows appeared to be replacement UPVC although there were some aluminum windows, which the tribunal believed to be original. To the rear of the block there is a car parking / garaging area containing 18 garages. The exterior pointing appeared to be generally sound, but the paint work to the garages was poor with visible signs of deterioration to the timber work. The tribunal inspected the interior common parts very briefly but did not consider it necessary to inspect the interior of any of the flats.

PRELIMINARYS / ISSUES IN DISPUTE

11. The case had been the subject of a pre-trial review (PTR) heard on the 12th December 2008 when it was established that the matters in dispute over which the Tribunal had jurisdiction were management fees, surveyors fees and prepayments for the service charge years ending in 2003 to 2008 inclusive. The directions provided for the Applicants to file a statement of case, the Respondents to file a reply with permission being given to the parties to adduce expert evidence from a surveyor should they be so advised.
12. At the hearing the Tribunal had before it the Applicants' statement of case but the Respondent had failed to serve a reply. The Respondent had however filed expert evidence in the form of a report prepared by Mr Holden, FRICS a partner in the firm of Parsons Son & Basley and responsible for their residential management department. The brief outlined in the report was to examine the management fees, surveyor's fees and prepayments in respect of the challenged years and comment on whether they were reasonably incurred within the meaning of section 20 of the Act. The report contained a comprehensive and detailed review of all charges applied to the maintenance account for the years in question.
13. Ms Calder for the Applicants and Mr De'Vaal for the Respondent jointly reported to the tribunal that their clients had reached agreement in respect of both applications. In short both parties agreed with and adopted the conclusions arrived at by Mr Holden in his report in respect of each disputed item.

14. Moreover, the parties had also reached agreement in respect of the section 20C application which was unopposed by the Respondent.
15. In the circumstances they had no further comment to make and invited the tribunal to review the Applicants' case and Mr Holden's report and then make its determination in effect on the papers. Ms Calder and Mr De'Vaal also reiterated that the section 20C application was unopposed and they invited the tribunal to arrive at its own decision in respect of this application based on the papers before it.
16. The tribunal chairman reminded the parties that the Leasehold Valuation Tribunal was an expert tribunal tasked with the duty of forming its own view on the merits of the applications before it having regard not only to the evidence adduced by the parties but also based on its own collective knowledge and expertise. The tribunal was not in a position to merely agree a consent order but would make its own determination on the evidence presented to it. The Chairman then ordered an adjournment so that the tribunal could review the written evidence before it and in particular the report from Mr Holden to see if it had any questions in relation to that report or any of its findings.
17. Upon resumption the Chairman requested and received a further three bundles of papers which contained the invoices and all other material referred to in the report of Mr Holden. In addition the tribunal requested and received a full explanation as to the nature of the prepayments from Ms Calder. Mr de Vaal for the Respondent confirmed that he agreed with the explanation and had nothing further to add.
18. The Chairman then closed the hearing so that the tribunal could consider each of the disputed items. The tribunal's deliberations on each of the disputed items are recorded below.

Management Fees

19. In paragraph 3.14 of his report, Mr Holden sets out his opinion in relation to the appropriate management fee for the property for each year in question. The tribunal agrees and adopts Mr Holden's conclusions which resonate with its own view of the appropriate basic annual fee per flat for a property of this kind in its geographical location for the years in question. Set out below is a table showing Mr Holden's opinion on the appropriate fee, the fee charged by the Respondent's managing agents and the difference between the two figures.

Year	Mr Holden	Fee charged	Difference
2003	£160 plus VAT	£195 plus VAT	£35 plus VAT
2004	£165 plus VAT	£180 plus VAT	£15 plus VAT
2005	£170 plus VAT	£180 plus VAT	£10 plus VAT
2006	£175 plus VAT	£195 plus VAT	£20 plus VAT
2007	£180 plus VAT	£360 plus VAT	£180 plus VAT

20. There are 18 flats within the property. Multiplying the "difference" figures shown above by 18, the tribunal determines that the management fees set out below were unreasonably

incurred within the meaning of section 19 of the Landlord and Tenant Act 1985 and therefore, are not payable by the Applicants:

2003	-	£630 plus VAT
2004	-	£270 plus VAT
2005	-	£180 plus VAT
2006	-	£360.00 plus VAT
2007	-	£3,240 plus VAT
Total		£4,680 plus VAT or <u>£5,499.00</u> inclusive of VAT

Surveyor's fees

21. In his report, Mr Holden analyses each invoice produced in respect of surveyor's fees together with the supporting documentation supplied to him. In respect of each invoice, Mr Holden expresses his opinion upon whether the amount charged is reasonable, in whole or in part, or whether the whole of the amount charged is unreasonable. The tribunal accepted Mr Holden's assessment of which tasks should fall within the basic annual fee and which tasks were properly chargeable as one off items. The tribunal also accepted Mr Holden's time estimates for the one off jobs and the hourly rates ascribed to the years in question. The tribunal therefore agrees and adopts Mr Holden's conclusions. Set out below is a table showing, for each year in issue, the total for surveyor's fees charged by the Respondent's managing agents, Mr Holden's opinion on the total of reasonable fees and the difference between the two figures.

Year	Fee charged	Mr Holden	Difference
2003	£2,939.00	£1,587.75	£1,351.25
2004	£7,456.00	£3,753.39	£3,702.61
2005	£5,934.00	£1,340.59	£4,593.41
2006	£11,451.00	£3,272.79	£8,178.21
2007	£7,493.00	£5,109.01	£2,383.99

22. The tribunal determines that surveyor's fees in the total sum of £20,209.47 (inclusive of VAT) were unreasonably incurred within the meaning of section 19 of the Landlord and Tenant Act 1985 during the years 2003 to 2007 inclusive and therefore, are not payable by the Applicants.

Prepayments

23. The tribunal noted that the Respondent has not been able to supply an adequate explanation of what the "prepayments" featured in the service charge accounts for the years 2003 to 2007 inclusive related to. Furthermore the Respondent has provided no evidence to justify the prepayments as constituting reasonable and properly incurred advance payments and / or that they were reasonably incurred or to be incurred within the meaning of section 19 of "the Act".
24. In these circumstances the tribunal accepts the Applicants contention that these prepayments were monies improperly withdrawn from the service charge fund by the Respondents former Managing Agent in respect of which no service had in fact been carried out, and therefore they are not payable and / or reasonably incurred. The tribunal finds as a matter of fact that the figure for "prepayments" that appears in the account for the year ending 25th March 2007 is £17,716.00. The tribunal therefore makes a determination that this sum was not properly payable and should be returned to the service charge fund by the Respondent save in so far as any of the prepayments form part of a valid expenditure item for the year ending the 25th March 2008.

SECTION 20C AND REIMBURSEMENT OF FEES

- 25 Both of these matters can be taken together as the tribunal's considerations in relation to both are largely the same. The legislation gives the tribunal discretion to disallow in whole or in part the costs incurred by a landlord in proceedings before it. The tribunal has a very wide discretion to make an order that is, 'just and equitable' in all the circumstances.
26. The tribunal is in no doubt that it is just and equitable to make a section 20C Order. The Applicants case has been made out and the tribunal has determined that a figure in excess of £25,700 by way of service charges has been unreasonably incurred. In addition prepayments in excess of £17,000 have been identified as at the 25th March 2007 and the Respondent has been unable to provide an explanation or any documentation covering this very substantial sum. In arriving at its decision to grant an order under section 20C of the Act the tribunal are mindful of the fact that the application stood unopposed by the Respondent.
27. For the same reasons the tribunal also makes an order under regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 that the tribunal fees incurred by the Applicants in these proceeding be reimbursed by the Respondents.

Chairman


R.T.A. Wilson

Dated 6th May 2009