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

Residential Property
TRIBUNAL SERVICE

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

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| **Case Number:** | **CHI/45UB/LSC/2008/0076** |
| **Property:** | **Westland Court<br>West Road<br>Fishersgate<br>Southwick<br>BN41 1PR** |
| **Applicant/Leaseholders:** | **Mr Michael Lange** |
| **Respondent/Landlord:** | **Adur District Council** |
| **Appearances for the Applicant:** | **Mr Kevin Davies** |
| **Appearances for the Respondent:** | **Ms Clare Parry of Counsel<br>Mr Matthew Reeve of the Adur District Council** |
| **Date of Inspection /Hearing** | **15th January 2009** |
| **Tribunal:** | **Mr R T A Wilson LLB (Lawyer Chairman)<br>Lady Davies FRICS (Valuer Member)<br>Ms T Wong (Lay Member)** |
| **Date of the Tribunal's Decision:** | **9th February 2009** |

## THE APPLICATIONS

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

1. for a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 of his liability to pay service charge for his flat covering the years 2006, 2007 & 2008 and

2. for an order pursuant to Section 20C of the Act that the Respondents' 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 Tribunal (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 the reasons set out below that the following amounts are payable by the Applicant to the Respondent by way of service charge for the years specified: -

| ITEM IN DISPUTE | UPHELD/ REDUCED | 2006 | 2007 | 2008 |
|---|---|---|---|---|
| Contract Communal Area Cleaning | UPHELD | N/A | £52.43 | £51.85 |
| Non Contract Communal Area Cleaning | UPHELD | N/A | £68.83 | £67.06 |
| Door Entry System Replacement | REDUCED | £174.50 | N/A | N/A |
| Door Entry System Annual Maintenance | WAIVED | £11.70 Credit | £8.30 Credit | £8.46 Credit |
| Dryer Facilities | WAIVED | N/A | Waived | Waived |
| Window Repairs | REDUCED | £90.66 | £164.46 | £185.56 |
| TV Aerial repairs | UPHELD | | £122.50 | £6.67 |
| Communal Window Cleaning | UPHELD | £6.99 | £13.13 | £16.39 |

5. An order is made under Section 20C of the Act prohibiting the charging of Counsels brief fee in relation to the hearing as a future service charge item.

6. No order is made in relation to the repayment of fees incurred by the Applicant in these proceedings.

## PRELIMINARYS / ISSUES IN DISPUTE

7. The hearing took place at the Hove Town Hall on Thursday 15th January 2009. The Applicant appeared in person but was represented by his spokesman Mr Kevin Davies. Ms Clare Parry of Counsel represented the Adur District Council with Mr Matthew Reeve a Housing Administration Manager giving evidence for the Respondent.

8. Both parties had set out their respective positions in their statement of case and both parties had prepared and submitted a large bundle of evidence.

9. At the hearing the Tribunal established that the matters in dispute over which they had jurisdiction were as follows:-

   A) Contract Communal Area Cleaning, Years 2007 & 2008
   B) Non-Contract Communal Area Cleaning, 2007 & 2008
   C) Door Entry System replacement/annual maintenance
   D) Drying Facilities
   E) Repairs to Windows, 2006, 2007 & 2008
   F) TV Aerial maintenance, 2007 & 2008
   G) Communal Window Cleaning, 2007 & 2008

   Each of these disputed items is considered below.

## INSPECTION

10. The Tribunal members inspected the exterior and interior of the property before the hearing in the presence of the Applicant. The Respondent attended the exterior inspection only. Westland Court is a three storey purposed built block of six flats dating from the 1960s. It is situated close to Shoreham Harbour in a mainly residential area with green open space near by. The block is close to the sea and is exposed to the south westerly predominant wind. Construction is of plain brick under a pantiled roof with replacement double glazed UPVC windows. The general condition is fair to poor externally and the common parts are very basic with concrete floors to hall stairs and landings.

## ISSUES IN DISPUTE AND DETERMINATION

A. Contract Communal Area Cleaning

11. The Applicant's evidence regarding this item was that the cleaning of the common ways had been carried out to a poor standard ever since he had moved into the property in 2006. All too often contractors carried out construction work to flats owned by the Council and they did not clean up after the work had been completed. The Council allowed pot plants to be placed outside the flats and the cleaning contractors simply mopped around the pot plants leaving the job half done. On occasions scheduled visits were aborted and re-scheduled with the leaseholders being charged for the aborted visit. The Applicant stated that the common parts had been cleaned the day before the hearing and what the Tribunal

had seen was not typical and usually the common parts were a great deal worse. The Applicant conceded that the situation had improved marginally since the Council had placed a new cleaning contract, however, the situation was generally unsatisfactory and the Council was failing to get value for money.

12. The Respondent denied that the communal areas were not adequately cleaned. The evidence of Matthew Reeve was that the communal areas were cleaned regularly by contractors. There was a fixed annual contract in place which meant that if a visit had to be aborted then the contractors returned and did not make a second charge; there had therefore been no double charging. The contract had been replaced but with the same specification. The Councils' maintenance contractors were under a duty to clean up after work had been completed and the Council had a 'clerk of works' to make sure this took place. On two separate occasions since the bringing of this application the clerk of works had observed the state of the property before and after the cleaning of the common parts had taken place and was satisfied with the standard of work.

13. The Tribunal had inspected the common parts prior to the hearing and considered them to be reasonably clean. However, the decorative state of the common parts and construction is such that even repeated deep cleaning would be unlikely to make a significant difference. The allegations of double charging had not been proven and the Tribunal had been presented with no evidence to doubt the existence of a fixed cost contract that prohibited an extra charge for abortive visits. The Tribunal noted that the annual charge for contract cleaning had increased from £30 in 2006 to £52 in 2007 and 2008. However the Respondent had been able to justify the increase by explaining that a five year fixed price contract had ended in 2006 and had been replaced with a new long term contract in 2007.

14. Based on the limited evidence put to it, the Tribunal considers that the common parts cleaning is carried out to a reasonable standard and it also considers the charges made by the Respondent at approximately £2 per visit per flat are fair. The Tribunal therefore upholds the service charges made by the Respondent for contract common way cleaning for the years 2007 & 2008.

B. Non-Contract Communal Area Cleaning

15. The Applicant complained that the bin store serving the flats was not being cleaned and as a consequence it attracted rats, mice and maggots. In addition the lack of wheelie bins encouraged the dumping of large items by the Respondent's secure tenants. Furthermore the Respondent was not supervising the estate properly as a result of which fly tipping by outsiders was also rife. The Applicant contended that the guilty tenants should be responsible for the additional charges and not the leaseholders via the service charge.

16. The Respondent denied that the bin store and communal areas were not being cleared of dumped items and that cleaning was not being carried out. Mr Reeve stated that the removal of any items which could be attributed to a particular flat was not charged to the service charge account but re-charged to the individual concerned. However, in many cases it was not possible to say with certainty who was responsible for the fly tipping and in these circumstances it was right that the leaseholders should bear the cost. The cost to the service charge depended on how much rubbish had been removed.

17. The Tribunal accepted the evidence of the Respondent on this issue. Under the terms of the leases covering the block, the Respondent is responsible for keeping the service area clean

and clear of rubbish. The Tribunal found the service area clean on the day of inspection and accepts that call out charges are unavoidable when fly tipping has occurred. In the absence of evidence that a particular tenant is responsible it is appropriate that the service charge should be debited with the cost of removal. In the Tribunal's opinion £70 per annum in the years 2007 & 2008 is not an unreasonable annual charge. The amounts claimed are upheld.

C. Door Entry System

18. The essence of the Applicant's complaint is that the new door entry system has never worked properly. The new system was only installed in 2008 and the electronic catch does not operate. Furthermore the intercom service is poor with the sound being distorted. This being the case he should have a rebate.

19. The Respondent confirmed that a new system had been installed in 2008 and that all the work was guaranteed. Accordingly if there was a problem, then it would be dealt with under guarantee. A full consultation process had been carried out prior to choosing the contractor and competitive quotes had been obtained. The problem with the poor sound was due to defective wiring. The estimate chosen did not include new wiring because at the time it was thought that new wiring was not necessary. However, it was now evident that new wiring was required and quotes had been obtained to have this carried out. The approximate cost would be in the order of £400. This additional cost equated with one of the original higher priced estimates, which had included new wiring. As a consequence the Respondent contended that it would cost no more to the leaseholder on account of the work being done in two stages.

20. In the interest of resolving matters the Respondent agreed to refund the service charge contribution in respect of the door entry system up to April 2008, but not the installation charge.

21. During its inspection, the Tribunal tested the door entry system and found it to be less than satisfactory. The members of the Tribunal were able to gain entry to the block without activating the door bell to any flat. Apparently this was because the system could (and on the day of inspection had been) disabled by a switch, which was open to all to fiddle with! It was also evident that the locking mechanism had been changed at least once. In these circumstances the Tribunal was not satisfied that the new system represented a satisfactory first line of security. Furthermore it accepted the evidence of the Applicant that the intercom system was also less than satisfactory in that it was difficult to hear the caller through the handset installed in the Applicant's flat. In these circumstances the Tribunal determines that the total charge for the installation of this system should be reduced by £100 to £174.50. We consider that this reduced charge is a reasonable amount to pay for the system as installed which does not provide a satisfactory first line of security, and in effect only offers, or will offer when the new wiring is installed, an audio link between the ground floor entry lobby and the Applicant's flat.

D. Drying Facilities

22. As the amount in dispute was less than a £1 the Respondent conceded the amount in the interest of saving the Tribunal's time.

E. Repairs to Windows

23. The Applicant complained that the window repairs were not effective and there was ongoing water ingress. He felt it unreasonable to have to pay for call out charges in respect of defective work and contended that the Respondent should claim for repairs to the windows via its insurers.

24. The Respondent's evidence was that the windows in the Applicant's property had been repaired at least five times over the last three years. The repairs had not all been to the same windows and as far as they were aware some, if not all of the repairs had been satisfactory at least for a period of time. However, to a certain extent the problems complained of related to the design of the windows in relation to the environment and the Respondent could not be held liable for design issues, which could have been ascertained, by a buyers survey prior to purchase. The council had responded to the Applicants complaints about the windows on at least 5 separate occasions by contacting its contactor Ideal Window Solutions. They attended and carried out repairs to a reasonable standard having regard to the fact that the windows are large and exposed to coastal winds. There was no insurance covering the repairs that had been carried out. In these circumstances the service charge raised should be upheld.

25. The Tribunal was satisfied that the Council was contractually liable to repair the windows pursuant to the lease relating to the flat. At its inspection the Tribunal noted that the kitchen window was ill fitting and leaked. The window in bedroom two leaked and there was extensive damp in the outside corner, there was also a de-humidifier in this bedroom and evidence of mould growth. Bedroom one also had damp in the corner and there was evidence that both windows in the bathroom were leaking, possibly due to the faulty operation of vents.

26. The Applicant confirmed that in respect of the service charge made for general repairs, it was only that element of the cost which related to the defective window repairs that he had issue with. Unfortunately, the evidence presented to the Tribunal did not contain a breakdown of the cost of the window repairs and Mr Reeve for the Respondent was unable to assist. Based on its inspection, which clearly revealed the existence of damp, the Tribunal accepted the evidence of the Applicant that the repair work to the windows had not been satisfactory and considered that some reduction in respect of the ineffectual visits should be given. Doing the best that it could with the figures before it, the Tribunal considered that a reduction of £30 in 2006, £30 in 2007 and £40 in 2008 should be given.

F. TV Aerial maintenance

27. The Applicant's complaint was in relation to the sum of £122.50 charged in 2006. This related to a new communicating/amplifying box. The Applicant stated that the box was installed in 2006 and decommissioned by the Council barely two years later in 2008. The Applicant considered that this showed a short term view. If repairs were necessary in 2006 then the Respondent should have installed a digital system capable of lasting more than two years. In addition his television had worked in 2006 and therefore he felt that the box was not necessary.

28. The Respondent's case was that the TV aerial fell within its repairing covenant within the lease and as such the Respondent was obliged to maintain a TV signal to all the flats. In

2006 at least one of the leaseholders had reported a problem with their TV reception following which repairs could not wait and had to be carried out. In 2006 the Respondent was not anticipating any major upgrade and had not considered what long term changes were necessary. They contended that the box had to be installed and that the cost of supply and installation was reasonable.

29. The Tribunal was faced with the difficult task of determining this issue without the benefit of adequate evidence from either party. On the one hand the Applicant complains that the cost of £122.50 was not necessary in the first place and in any event the solution was too short term. Whilst on the other hand the Respondent maintains that it was merely responding to a repair as it was required to do by virtue of its repairing covenants in other leases and that the costs were reasonable. Neither party adduced expert evidence to support their submissions. On balance the Tribunal prefers the case put forward by the Respondent. The Applicant could only vouch for the reception of his own television and was not in a position to know if the reception to other flats was poor. He was simply able to confirm that his own television worked. The evidence before the Tribunal suggests that the Council did pay an invoice in 2006 for television repairs equating with the figure subsequently demanded of the Applicant. The Tribunal does not possess the expertise to know whether the repair costs were proportionate to the work carried out but in the absence of expert evidence casting doubt on either the quality or cost of repair, the Tribunal is not persuaded to reduce the charge which could possibly result in Council rate payers paying for the deficit. The figure is therefore upheld.

G. Communal Window cleaning

30. The Applicant confirmed that he did not challenge the quality of the work simply the amount. He considered that the price increase of £13 per annum in 2007 to over £16 per annum in 2008 was too high. He considered that no increase at all was justified.

31. The Respondent's evidence was that a contractor cleaned the windows every month. The cost had risen sharply in 2007 because a previous fixed term fixed price contract had come to an end. A new 3 year contract had been placed in 2007.The Respondent was under a contractual duty to keep the windows clean and it considered that the cost charged to the leaseholders of this block was a reasonable one based on the fact that the contract had been placed followed a competitive tendering process.

32. On this item of expenditure, the Tribunal accepts the evidence of the Respondent. The lease does require the Respondent to keep the windows clean and in the Tribunal's expert opinion the annual charge in each of the years under challenge was reasonable. The amount charged to the Applicant equates to little more than £1.50 per visit under the new contract, which in the Tribunal's opinion represents reasonable value for money bearing in mind the exposed location of the building.

## SECTION 20C AND REIMBURSEMENT OF FEES

33. Both of these matters can be taken together as the Tribunals' considerations in relation to both are largely the same. The section 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 the circumstances.

34. The Applicant's submission on the issue of costs was that 90% of his case was reasonable in content and it was right that the issues had been brought before the Tribunal. In these circumstances it was not reasonable that he should have to pay legal costs especially as some of the issues complained of were still ongoing.

35. The Respondent contended that they had demonstrated that the service charges demanded were just and reasonable. Whilst some small concessions had been made, these had been made on commercial grounds and not because the Respondent accepted the Applicant's case. They contended that the Applicant's statement of case did not provide specific reasons for his challenge and therefore the Respondent had in several instances to second-guess the nature of his case. By way of example the Applicant in his statement of case stated that he queried every job receipt that the Council had charged him from 2006 to the present date but the statement did not particularise his objections to the items charged. In these circumstances it was reasonable and just for the Respondent to be able to charge the legal costs of the hearing to the service charge account.

36. The Tribunal makes a limited order under Section 20 of the Act disallowing Counsel's brief fee. The Applicant can claim some small measure of success in that the Tribunal has reduced two items of service charge expenditure. However, the Respondent has been largely successful in defending all the allegations against it. In these circumstances the Tribunal considers that it is just and equitable for the Respondent to have the ability to charge the majority of its legal costs to the service charge account if the leases so allow. However, the Tribunal has reluctantly concluded that Counsels brief fee should not be recoverable. This should not be taken as an indication that the conduct or competence of Ms Parry is in doubt. Indeed the reverse is the case. Throughout the hearing Ms Parry conducted her clients case courteously, professionally, with good humour and in a way as to assist the Tribunal and the unrepresented Applicant with the issues that were before the Tribunal. However, the issues were not complex and in the opinion of the Tribunal could have been properly handled by the Respondent's 'in house' legal department. If this had been the case then the brief fee could have been avoided. The Respondent had argued that there were a number of unresolved complaints made by the Applicant against the Respondent which were still being investigated 'in house' and for this reason it was considered wise that an outside third party should conduct the defense so as to avoid the possibility of a perceived bias. The Tribunal is not persuaded by this reason and it disallows the brief fee but not the time incurred by Counsel in drafting the pleadings or preparing her skeleton argument.

Signed
Chairman

R.T.A.Wilson

Dated

9th February 2009