THE RESIDENTIAL PROPERTY TRIBUNALSERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Residential Property TRIBUNAL SERVICE

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

Case Number:	**CHI/00ML/LIS/2009/0106**
Property:	**First Floor Flat** **Queens Park Road** **Brighton** **East Sussex** **BN2 0GJ**
Applicant:	**Oasis Properties Limited**
Respondent:	**Mr C.A. Connell**
Appearances for the Applicant:	**Ms M Knowles of Osler Donegan Taylor Solicitors and** **Mr. M Clark of Parsons Son and Basely Managing agents**
Date of Inspection/Hearing	**19th February 2010**
Tribunal:	**Mr R T A Wilson LLB (Lawyer Chairman)** **Mr J N Cleverton FRICS (Surveyor Member)** **Mr J McAllister FRICS (Surveyor Member)**
Date of the Tribunal's Decision:	**12th March 2010**

THE APPLICATION.

1. This was an application pursuant to section 27A of the 1985 Act for a determination of the liability of Mr Connell to pay service charges in respect of flat 1 at the property for the years ending 28th September 2007, 2008, and 2009.

THE DECISION.

2. The tribunal determines that all the 2007, 2008 and 2009 service charges as disclosed by the annual accounts filed with the tribunal, are payable by Mr Connell in accordance with the payment provisions in his lease without deduction or set off.

JURISDICTION.

3. The tribunal has power under Section 27A of the 1985 Act 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.

4. By section 19 of the 1985 Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

THE LEASE.

5. The tribunal was provided with a copy of the lease relating to flat 1 the subject property. Mr. Connell does not contend that the service charge expenditure is not contractually recoverable as relevant service charge expenditure under the terms of the lease and therefore it is not necessary to set out the relevant covenants in the lease giving rise to his liability to pay a service charge contribution.

INSPECTION.

6. The tribunal inspected the property prior to the hearing in the presence of the parties' representatives. The property comprises a three storey semi-detached building converted into three self contained flats. The construction is of brick with fully rendered elevations on all three sides of this corner property under a pitched roof covered with slates. The property occupies an elevated position in the town which will undoubtedly exacerbate the weathering of the external decorations.

7. The Tribunal inspected the interior of the common hall and staircase to the upper two flats and noted they were in need of decoration and in addition there were areas where internal plastering needed repair.

8. The Tribunal then inspected Flat I on the first floor owned by the respondent and noted damp penetration to the ceilings of the bedroom and the need for repair to one of the windows again in the bedroom, which was showing signs of corrosion.

BACKGROUND AND PRELIMINARY MATTERS.

9. The case had been transferred from the Brighton County Court (claim no 9BN01996) pursuant to a claim made by the applicant for the recovery of service charges of £2,803.88.

10. At the hearing it was identified that the only issues in dispute over which the tribunal had jurisdiction were:-

    a. Cleaning of the Common ways for 2008 and 2009
    b. Maintenance and repairs for 2009.
    c. Outside redecoration and roof repairs 2007.
    d. Managing agent fees 2008 and 2009.
    e. Insurance for 2008 and 2009.

11. Mr. Connell agreed that with the exception of the above items, all service charges for the years 2007, 2008 and 2009 were contractually recoverable and reasonable.

12. Mr Connell reserved his rights in respect of the issues that the tribunal was not able to deal with namely the roof leaks, the damp patches to his flat and the leak caused from the flat above. He confirmed that he would take these matters further and in the County Court if necessary.

13. The applicant had set out its position on the issues in their statement of case and had submitted a hearing bundle containing their evidence. The respondent relied on the defence that he had filed at the County Court together with a letter purporting to be from a former tenant. At the hearing the parties expanded upon their cases and each of the disputed items is considered below.

a) Cleaning of the Common Ways: £10 per visit.

The applicant's case.

14. Mr Clark told the tribunal that the current cleaner had been engaged in 2007 and the terms agreed were more competitive than with the previous cleaner. A cleaner attended the property once a month charging £10 per visit. Bearing in mind the small size of the common hallway he did not consider that a weekly clean was necessary. Mr Clark denied that the common ways were neglected and told the tribunal that whenever he visited the property the hall way was satisfactory. He had received no complaints from anyone else. It might be possible to have the hallway cleaned more regularly but this would result in the leaseholders having to pay more.

The respondent's case.

15. Mr Connell told the tribunal that he did not accept that the cleaner ever attended the premises. He had never seen a cleaner when he visited his flat and he had received complaints from his tenant about the state of the hallway. He referred the tribunal to a letter from former tenants confirming the position with regard to the lack of cleaning.

The tribunal's consideration.

16. The tribunal was faced with conflicting and irreconcilable evidence. On the one hand the applicant contends that the hallways are cleaned once a month at a cost of £10 and on the other hand the respondent alleges that the cleaner never attends and accordingly no payment is due. On this matter we prefer the evidence of the applicant. There was a letter in the hearing bundle said by the respondent to originate from his tenants in which they complain about the state of the common ways. However the tribunal considered that little weight could be attached to this evidence as the letter was undated, unsigned and the authors were not at the hearing to answer questions. The cost of £10 per visit is in the opinion of the tribunal a reasonable figure to pay and indeed represents good value by today's standards. In the absence of any verifiable evidence that the cleaner is not attending the premises the tribunal feels bound to conclude that the cleaning charges for 2007, 2008, and 2009 are recoverable as service charge and reasonable in amount.

b) Maintenance and Repairs: Budget £1000

The applicant's case.

17. Mr Clark told the tribunal that the figure demanded of £1,000 represented an estimate of what would be required to carry out minor repairs to the property in the service charge year ending 28th September 2009. In the event the actual figure came to £1,257. He referred the tribunal to copies of the invoices in the hearing bundle totalling this figure. He confirmed that all the work featured in the invoices had been carried out and accordingly the applicant was entitled to charge the full amount to the service charge fund.

The respondent's case.

18. Mr Connell confirmed that now he had seen the invoices and had listened to the explanations from Mr Clark, he was satisfied that the sums demanded were contractually recoverable and reasonable in amount. In the circumstances he withdrew his challenge.

c) Major external redecoration and roof repairs: £18,424.

The applicant's case.

19. Mr Clark told the tribunal that these works were carried out in 2007 and he referred the tribunal to copies of the relevant documentation included in the applicant's bundle. He told the tribunal that the works included repairs to the roof as could be seen from the receipts raised by the appointed contractor. He informed the tribunal that the respondent had paid his contribution to these works and that up until recently the respondent had never challenged the quality or price. Mr Clark confirmed that his firm had prepared a specification for the works and had gone out to competitive tender. Three local firms had responded and in due course his firm had accepted the lowest quotation from Packham and Clark who were well known local contractors and in his opinion well suited to the job. He told the tribunal that the work was completed on time and on budget. His firm had supervised the job and was satisfied that it had been carried out to a reasonable standard. His firm had signed off the works and the contractor had been paid.

20. Mr Clark accepted that the property had weathered somewhat since completion and that there were now hairline cracks to the exterior rendering. However, in his opinion this was not unexpected considering that the work had been completed some two and half years ago. Bearing in mind the exposed elevated position of the property, external painting had to be carried out at least once in every five years. The building was half way through this cycle and in his opinion the deterioration was not unduly severe and to be expected.

The respondent's case.

21. Mr Connell was firstly critical of the price paid for the work. His share was some £6,000 and he considered that this figure was far too high. When his father, a professional builder of some 20 years standing, had attended site at the time of the work, he had spoken with the painter who indicated that he was being paid less than £3,000 for the whole job. His father's own opinion was that the completed works should not have cost more than £12,000.

22. Mr Connell was also critical as to the quality of the work. In his opinion it was absolutely obvious that 10 m^2 of rendering had not been carried out to the property as per the specification. Furthermore the rendering work itself had been badly done. If the job had been done properly then the defective rendering should have

been cut back and properly replaced rather than cosmetically raked over. It was his contention that the figure of £12,000 as maintained by his father would also have included proper rendering and not merely a "botch job". He also contended that the roof repairs had been totally inadequate and this was why his flat was suffering from damp and water ingress.

23. Mr Connell told the tribunal that the consultation documentation relating to the work had been sent to his flat rather than his home as a consequence of which he did not receive the paperwork until after the consultation period had expired. In the circumstances he had not been able to make his views known to the managing agents. Had he received the paperwork in time he would have certainly put forward the name of cheaper contractors.

24. Mr Connell accepted that he had not formally registered his dissatisfaction when the work had been carried out. However he had contacted the agents about a year later and registered his concerns and dissatisfaction.

25. Finally he invited the tribunal to accept that the poor state of the exterior of the building as seen at the inspection must mean that the original quality of the work had been defective.

The tribunal's considerations.

26. The tribunal carefully weighed the evidence submitted by the parties. It could find no fault with the consultation process conducted by the applicant and the agents cannot be blamed for serving the consultation papers at the subject property. They had prepared a specification and invited tenders from three contractors and at the end of the consultation process they had accepted the lowest tender from Packham and Clark. The work had been carried out on time and on budget. Whilst Mr Connell was critical of the cost and quality of the work, his criticisms amounted to no more than unsupported allegations. He had not engaged in the consultation process which had lasted some three months and he had not voiced his concerns until nearly a year had passed after the project had been completed. He had not put forward any written comparable quotations and instead relied upon a verbal estimate from his father. The tribunal does not consider that this verbal estimate from a connected party to be enough to displace the competitive tendering process conducted by the applicants. The tribunal therefore upholds the price of the works.

27. The tribunal inspected the exterior of the property carefully on the day of the hearing and noted hairline cracks to the rendering. The property does look somewhat tired, but the tribunal is not surprised at this considering the position of the property, which is close to the sea on a hill. In these circumstances higher than normal maintenance is to be expected. Furthermore the adverse weather conditions of late would hasten the decline. Taking all these factors into account the tribunal considered that the current condition of the property does not suggest that the quality of the work to have been unduly poor. In these circumstances the final contract price of £18,424 is upheld with the respondent being responsible for his share of the cost in accordance with the service charge provisions of his lease.

d) The managing agents charges.

The applicant's case.

28. The tribunal was told that the managing agents charged a fixed fee of £175 per flat exclusive of VAT for 2007 and £185 plus VAT for 2008. These fees covered all standard work carried out by the managing agents in a year. It included carrying out two inspections, arranging insurance for the property, preparing annual service charge budgets, collecting ground rent and service charge, organising programmes

of works and attending to health and safety issues. The fee also included their time in dealing with leaseholders' enquiries and other routine management matters. They submitted that their charges were competitive bearing in mind the amount of work carried out.

The respondent's case.

29. Mr Connell considered the managing agents to be negligent in carrying out their work as they were frequently unaware of what needed to be done at the property. He also contended but they carried out no effective supervision and this is why the common ways were not cleaned. He pointed to a phone call that he had received from the managing agents in which they questioned why scaffolding had been put up when it was the managing agents who had arranged the scaffolding to be erected. He contended that the managing agents were only entitled to their fee if they did the job properly. As they had clearly not done their job they were not entitled to anything.

The tribunal's considerations.

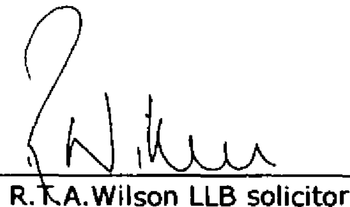
30. The tribunal has considerable experience of the level of fees charged by local managing agents for routine management work and it is satisfied that the figures of £175 in 2007, and £185 in 2008 are reasonable for a building of this kind and bearing in mind the scope of work undertaken. The tribunal does not find the allegations of negligence to be substantiated. Furthermore there was no dispute between the parties that some management has been carried out. There was evidence that the managing agents are preparing annual budgets, submitting annual accounts, arranging for buildings insurance and are seeking to collect service charge contributions. The tribunal was faced with conflicting evidence in relation to the cleaning of the common ways but this in itself does not justify the managing agents being denied their fees. Overall the tribunal considered that the building was being managed to a reasonable standard and that the charges made were not unreasonable. It therefore upholds the managing agents' fees for 2007 and 2008.

e) Buildings insurance.

31. Mr Connell confirmed that he had no further challenges to make in respect of buildings insurance and accepted the charges made for 2007 and 2008.

CONCLUSION.

32. For the reasons stated above the tribunal determines that all of the challenged service charges for 2007, 2008 and 2009 are recoverable and reasonable in amount and are therefore payable by the respondent within 21 days of the date of this decision.



Chairman ______________________
R.T.A.Wilson LLB solicitor

Dated 12th March 2010