RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00MS/LIS/2009/0093

Re: Flat 4, 22 St Anne's Road, Woolston, Southampton SO19 9FF

Applicant	Mr A D Hampton
Respondent	22 St Anne's Road Residents Management Limited
Date of court order transferring	23 October, 2009
Date of Inspection	8 April, 2010
Date of Hearing	8 April 2010
Venue	Independent Tribunal Service, The Barrack Block, Western Range, London Road, Southampton
Representing the parties	The Applicant in person. Ms L Howe and Mr C Boswell for the Respondent

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
Mr D Lintott FRICS	Valuer Member
Mr J Mills	Lay Member

Date of Tribunal's Decision: 14 May 2010

Decision

1. The Tribunal determines in accordance with the provisions of Section 27A of the Landlord and Tenant Act 1985 (the Act) for the following items in the service charge accounts for the years 2001/02 to 2008/09 inclusive (towards which the Applicant is required by his lease to pay a contribution of 14.28%) :
    a. the sums claimed are set out in the table below;
    b. those which are not payable by reason of section 20B of the Landlord and Tenant Act 1985 are marked in that column with a "X";
    c. those which are not payable pending the service of a valid demand and certification of accounts on the Applicant are marked in that column with a "X";

d. those items claimed which are not payable in full by reason of failure to comply with statutory consultation procedure are limited accordingly and identified in that column with a "X".

Table of reasonable/payable sums

Year	Service charge heading	Item	Sum claimed for item	Not payable (Section 20B)	Not payable yet (pending valid demand and certification of accounts)	Limited due to non-consultation	Reasonable sum payable for item on valid demand
2001/02	Maintenance and repairs	Decorations	£267.90		X		£267.90
2001/02	Maintenance and repairs	Sundry running expenses	£32.30		X		£32.30
2002/03	Maintenance and repairs	Materials	£25.90		X		£25.90
2002/03	Maintenance and repairs	Materials	£152.64		X		£152.64
2002/03	Carpeting		£1200.00		X	X	£1000.00
2003/04	Maintenance and repairs	Drain clearance	£151.10		X		£151.10
2003/04	Insurance		£804.78		X		£804.78
2003/04	Company annual return		£15.00		X		£15.00
2004/05	All items save electricity & insurance		£1268.00	X			Nil
2005/06	All items save electricity and insurance		£830.00	X			Nil
2006/07	All items save electricity and insurance		£1958.97	X			Nil
2007/08	Garden, guttering and other external maintenance		£1370.00		X		£1370.00
2007/08	Guttering replacement of roof flashing repair Chimney re-		£940.00		X	X	£1750.00 (total to cover both items)

	pointing		£1880.00				
2007/08	Stairs repair		£452.76		X		£452.76
2008/09	Garden guttering and other maintenance		£1330.00		X		£1330.00
2008/09	Repairs		£154.55		X		£154.55
2008/09	Insurance		£1425.35		X		£1425.35

2. That in respect of each of the service charges in the table none has been incurred in respect of a qualifying long term agreement within the meaning of Section 20 of the Act as defined in Section 20ZA (2) of the Act.

3. The Tribunal records that all other items of charge in the service charge accounts for the above years are not disputed by the Applicant subject to valid demand and certification of the accounts.

4. That the service charge accounts for the accounting years in respect of which the above service charges arose have not been duly certified to comply with paragraph 3 of the 4th Schedule to the lease of flat 4 dated 24 September, 1990 and made between Kevin Christopher Baker and Annette Jane Baker (1) and Anthony David Hampton (2) such that no accounts yet exist within the provisions of that paragraph to identify any balance due to the Applicant or from the Applicant to the Respondent.

5. The Tribunal makes no determination in respect of any other issues submitted by the Applicant for want of jurisdiction under Section 27 A of the Act.

Reasons

Introduction

6. By Order of Southampton County Court dated 23 October, 2009 (Claim Number 8SO05609) the Court ordered the case to be transferred to the Leasehold Valuation Tribunal. In those Court proceedings, the Respondent, as Claimant, had applied for judgement in respect of unpaid maintenance charges and interest totalling £2743.50 and court fees, those unpaid maintenance charges alleged to relate to the period commencing 18 December, 2002 up to and including the accounting year to August 2008. The claim is disputed by the Applicant as defendant in those proceedings.

7. The Tribunal's jurisdiction to deal with matters transferred by the court relates only to consideration of the reasonableness and payability of service charges under the terms of Section 27A of the Landlord and Tenant Act 1985 (the Act). The Applicant did raise other issues but they were either matters over which the Tribunal has no jurisdiction at all or in respect of which (e.g. Lease variation) no formal application had been made.

Inspection

8. The Tribunal inspected the internal and external common parts of the property in the presence of the Applicant and Ms Howe on behalf of the Respondent.

9. The property is detached and is laid out in garden grounds. There is a driveway leading to 7 garages to the rear of the property. The original property was built over 100 years ago of brick

under a slate roof and has very much more recently been substantially extended to the rear to form 4 flats on the ground floor and 3 flats on the first floor. The common internal areas comprise a hallway to which there is access from the front door and the side door, and a staircase to the first floor. These internal areas are carpeted throughout.

10. Both internally and externally the property appears to be in reasonable condition for its age and character although there are indications of some repair work and decoration being needed. All the garage doors are decorated save that belonging to the Applicant. Part of the brick and boundary wall on the East side has fallen. There is wood fencing to the front boundary.

Hearing & Representations

11. A hearing was held the same day, those attending being noted above. So far as relevant to our consideration and decision we noted the case papers and the evidence and submissions which we summarise as far as necessary below.

12. The law.

13. The following statutory provisions are relevant to our consideration and are either summarised below or set out in full as necessary.

14. Section 27A of the Act. The Section enables the Tribunal to determine what items of service charge are reasonable and payable.

15. Consultation procedures.

    a. Section 20 of the Act. This was amended with effect from 30 October, 2003. Until that date the provisions so far as relevant to our consideration provided that service charge contributions are limited in respect of qualifying works unless statutory consultation requirements have been complied with or dispensed with so that for work done or more after 1 September 1988 the costs recoverable as service charge was limited to the greater of £1000 or £50 multiplied by the number of dwellings let to tenants liable to pay.

    b. Since 30 October, 2003:

        i. Service charge contributions are limited to £250 per lessee in respect of qualifying works or £100 per annum for qualifying long term agreements unless statutory consultation requirements have either been complied with or dispensed with by a Leasehold Valuation Tribunal.

        ii. Section 20ZA of the Act defines "qualifying works" to mean works on a building or any other premises, and "qualifying long term agreement" an agreement entered into by or behalf of the landlord for a term of more than 12 months.

16. Section 20B of the Act:

    a. (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

    b. (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

17. The Lease. The Respondent's lease of Flat 4 is dated 24 September, 1990. So far as material to the issues in this case there are provisions which may be summarised as follows: --

    a. The Respondent is liable to pay a service charge calculated in accordance with the provisions of the Fourth Schedule to the extent of 14.28% of the costs incurred by the landlord as set out in paragraph 6 of that schedule. There is no issue before us as to whether certain service charges claimed relate to items not covered by paragraph 6 which includes the cost of providing services described in the Fifth Schedule.

    b. Provision for the tenant to pay service charge on account on 25 March and 29 September in advance in each year;

    c. Provision for the landlord at the end of each year to prepare and certify accounts; to send a copy to the tenant with a statement showing the sum payable by the tenant and the amount paid on account by the tenant; further that any difference due from the tenant should be paid within 14 days and any balance due to the tenant allowed against his next payment on account. There is no requirement in the lease or in current statute law for the annual statement of account to be checked, certified or audited by an independent accountant.

18. Non-certification of accounts. The Respondent accepts that there are no certified accounts for any of the years in question. The consequence of this is that, until they are duly certified, the Respondent is unable to identify whether, for each year, further payments on account of service charge are due from the Applicant and is therefore unable to issue appropriate valid service charge demands.

19. Items marked in the table as not being payable by reason of Section 20B of the Act. In respect of each of the accounting years 2004/05, 2005/06 and 2006/07, the Applicant says that he is not liable to contribute towards expenditure incurred in those years (save as regards Electricity and Insurance) as he has not been provided with accounts for those periods or demands within the 18 months limit set by Section 20B of the Act.

20. In relation to annual statements of account for service charges the Applicant says that he did not receive any for these years until late in 2009 but has not received demands at all. The Respondent says that in common with other residents, copies of the accounts year by year were left in the entrance hall for the Applicant and there is no reason why he would not have received. They accept that demands had not been made at all for any of the years in question.

21. The purpose of Section 20B is to ensure that lessees are kept up-to-date as far as possible with service charge expenditure and what liabilities they are likely to have to contribute towards in future. We noted that the Applicant has at all material times had internet access to view the service charge bank account of the Respondent so we cannot accept that he did not actually know what expenditure was being incurred to which he would have to contribute. Furthermore, on the balance of probabilities, we decided that the Applicant had received the accounts available to him in the hallway as the Respondent says and within the 18 month period, so that overall he has been kept fully in the picture as to service charge expenditure. However, we then have to consider Section 20B.

22. Subsection (1) provides for service charge demands to be served on a tenant not later than 18 months after expenditure has been incurred. As mentioned above, plainly the Respondent has not complied with that. Subsection (2) provides a means of the landlord overcoming non-compliance with the provisions of Subsection (1): it requires, within 18 months of costs being incurred, that

written notification is given to the lessee that costs have been incurred and that the lessee would subsequently be required to contribute towards them. By our finding that the Applicant had received accounts, albeit uncertified, within the requisite 18 months year by year, that constituted notification within the terms of subsection (2) that costs had been incurred. However, we could not find any evidence that he had been notified in writing that he would subsequently be required under the terms of his lease to contribute to them.

23. In our consideration of the effect of Section 20B, we have also considered the judgement in the case of Gilje v Charlegrove Securities (No 2) [2003] 3 EGLR 9. The decision in that case was that section 20B of the Act has no application where: (a) payments on account are made to the lessor in respect of service charges; (b) the actual expenditure of the lessor does not exceed the payments on account; and (c) no request by the lessor for any further payment by the tenant needs to be, or is in fact, made.

24. That may in summary be stated to mean that Section 20B does not apply if service charges on account had been made which results in no further demand being required by the lessor to the lessee. We have considered the accounts for these 3 years and it is evident that year by year the balance said to be due from the Applicant in terms of arrears increases. We can only conclude from that that a further request for payment by the Respondent would have been required so that the decision in that case does not enable us to ignore the provisions of Section 20B.

25. We are satisfied that the Applicant was at all times able to ascertain from accounts and Internet access what he is likely liabilities would be, but we have to apply Section 20B

26. 2001/02 Decorations £267.90.

27. The Applicant said that the charge is not reasonable because his doors were not painted; the work done was not done to a reasonable standard, the front and side door is being over painted; the carpets were not taken up so that work could not have been done properly. The Respondent referred to a dispute with the Applicant about how that work should be done so they had decided to omit his doors and the charge excluded that work. The decorations had lasted over 7 years.

    a. The Tribunal's jurisdiction extends to work done, rather than work not done, and whether it is done to a reasonable standard and at a reasonable cost. Noting also our inspection it appeared to us that the work had lasted well and the cost 7 years ago was reasonable.

28. 2001/02 sundry running expenses of £32.30.

    a. The Applicant does not know what this charge was because there were no receipts. The Respondent told us that it related to the purchase of light bulbs, smoke detector batteries and air freshener.

    b. We do not consider receipts to be essential, particularly for sundry items. We accept the Respondent's evidence and found the sum to be reasonable.

29. 2002/03 materials £25.90 and £150.64.

    a. The Applicant said these expenses related to 5 flats and so did not include his and he did not know what was done or to what standard. The Respondent told us that the materials were to varnish doors and stair rails. They thought the expenses may have been a total of several transactions. We accepted their evidence and found the sums to be reasonable.

30. 2002/03 Carpeting £1200.

a. The Applicant considered the carpet to be of lesser quality than previously and resulted in additional noise but did accept that the previous carpet needed replacing. There had been no consultation so the amount the Respondent could claim was limited. The Respondent told us that occupiers had decided on the carpeting; accepted that the stairs creak but that couldn't be completely controlled; and accepted the statutory consultation procedure had not been followed.

b. We considered the cost of the carpeting supplied and fitted to be reasonable but because of failure to comply with the consultation requirements applicable at the time (i.e. the cost is limited to the greater of £1000 or £50 multiplied by the number of dwellings let to tenants liable to contribute towards it) the payable sum is limited to £1000.

31. 2003/04 drain clearance £151.10.

a. The Applicant submitted that there should not have been 7 visits (4 of which were charged in the following accounting year) to carry out work on the one drain and the work was done by Mr Boswell's tenant who wasn't experienced in this sort of work. The Applicant had not seen any of the work being done. The Respondent confirmed it was the same drain from the top of the building to the back and that CCTV had finally identified the problem. Mr Boswell said that his tenant had rung him about the drain and offered to have a look at it as he had building experience. They had received significant reimbursement towards the cost through insurance.

b. With hindsight it may be considered that repeated visits to carry out work on the same drain should not be necessary, but in our experience it is often difficult to establish the nature of the problem with a drain and it may take several visits to resolve an issue. We did not consider the number of visits excessive or the overall cost anything but reasonable. Nor do we consider that it was inappropriate for Mr Boswell's tenant to carry out work in relation to the problem.

32. 2003/04 insurance £804.78. The Applicant had initially challenged this item but accepted that it is reasonable.

33. 2003/04 company annual return £15. The Applicant considered that this item may be an accrual but not an actual payment; subject to that it would be payable and reasonable. We found the item to be necessary and reasonable whether a receipt is available or not.

34. 2007/08 Garden, guttering and other external maintenance £1370.00.

a. The Applicant says that all the work was carried out under a long time qualifying agreement on the basis that the contractor was asked to carry out work for more than 12 months so that consultation was required and in the absence of consultation the amount recoverable was limited. The Respondent told us there was no contract on a long-term basis and the contractor was simply asked from time to time to carry out work as and when necessary; he was not entitled to nor did he charge for anything except work actually done.

b. We accept the Respondent's evidence. For there to be a long term qualifying agreement there must be one ongoing contract for more than 12 months. We have no evidence at all of the existence of such a contract: the mere fact that the same contractor is asked from time to time to carry out work for more than 12 months does not in itself create a long term qualifying agreement. We accordingly found that consultation is not required and the total sums charged were reasonable for work done. If it is the case that any cheques are more than 6 months out of date, it is not relevant and does not affect our determination.

35. 2007/08 guttering, replacement of roof flashing repair £940; in the repointing £1880.

    a. The Applicant claims that as there was one contract completed by the same builder on the same day for these 2 different aspects of work, there was one contract so that these 2 items should be considered together and form one item of work to which consultation procedure should apply. The Respondent accepts that consultation did not take place but when they instructed work were unaware of additional scaffolding costs and the work having started they made the decision to continue without considering consultation.

    b. We accept that consultation should have taken place as the 2 items should be regarded as one contract. For want of statutory consultation the recoverable service charge is limited and the cost is capped at £250 per Lessee, a total for this property of £1750.

36. 2007/08 stairs repair £452.76.

    a. The Applicant says that there is no invoice to provide any information regarding the work done; that the stair rail needed a further visit to secure, some wallboard was left bare and should have been finished by now. The Respondent told us that the specified work was finished; the Council had said the work was fine but suggested that a wobble in the stair rail needed reinforcement. Replastering and repainting had not been done as it was not part of the contract.

    b. We were satisfied on the evidence that the charge relates only to the work actually carried out so far, that it was done to a reasonable standard, albeit that further work is now required by the Council and that the contract did not include replastering and repainting. We were satisfied the cost of the work was reasonable.

37. 2008/09 Garden guttering and other maintenance £1330.

    a. Again the Applicant submitted that this was a long term qualifying agreement to which consultation procedures should have applied.

    b. For the same reason as mentioned above, we did not accept that submission and found the cost of the work done to be reasonable.

38. 2008/09 repairs £154.55.

    a. The Applicant's case is that £80.55 is evidenced by an invoice but the balance of £74.00 is not evidenced so the un-evidenced part is not payable. The evidence for the Respondent was that there were 2 invoices which do exist but have not yet been found: one for £29.00 and one for £45.00.

    b. We accepted the Respondent's evidence on the balance of probabilities and accordingly found that the entire sum of £154.55 was reasonable.

39. 2008/09 Insurance £1425.35.

    a. The Applicant's case was that the premium was not reasonable and at page 82 of the case bundle produced a list of premiums paid on the property for all years from 2002 onwards. He also produced a quotation he had received from Residentsline quoting a premium of £1178.46 so considered the premium charged to be unreasonable. He queried whether the Respondent obtained other quotes or tested the insurance market. The Respondent told us that they use Bridles in Lyndhurst as their brokers; to their knowledge they shop around as a result of which Axa reduced their premiums and the premiums paid have not been

undercut up to now. In the light of the quote obtained by the Applicant they would now pursue that.

b. Plainly the quotation received by the Applicant is less than that charged by the Respondent. When considering all issues as to reasonableness, the decision does not rest necessarily on what is the cheapest. It is a matter of what is reasonable and that has a range. In our knowledge and experience the premium charged is within that range of reasonableness and we accordingly found that the premium charged is reasonable.

40. We made our decisions accordingly.

[Signed] M J Greenleaves

Chairman

A member of the Tribunal
appointed by the Lord Chancellor