

RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL



Ss 20C & 27A Landlord & Tenant Act 1985 (as amended)

**DECISION AND REASONS**

Case Number: CHI/00ML/LSC/2006/0066

Property: 33a Old Shoreham Road  
Brighton  
BN1 5DQ

Applicant (Tenant): Martyn Sullivan

Respondent (Landlord): Mr M E Monfared  
Represented by PPS Management Ltd

Date of Application: 18 July 2006

Date of Hearing: 6 December 2006

Tribunal Members: Mr B H R Simms FRICS MCI Arb (Chairman)  
Mr R T A Wilson LLB (Legal Member)

Date of Decision: 19 February 2007

**SUMMARY OF DECISION**

The lease confirms that Flat 33a is to be responsible for 33⅓% of the total service charge cost for the building in each year.

The cost of insurance payable for the building in each year is reduced for the y/e 24 March 2004 to £529.18, y/e 24 March 2005 to £756.76, y/e 24 March 2006 to £500.40 and y/e 24 March 2007 to £540.44.

The management fees charged are reasonable and payable.

As the S.20 consultation procedure has not been followed charges in respect of the major works charged in the y/e 24 March 2004 are limited to £1,000.

An Order is made under S.20C.

## BACKGROUND

1. This is an application under S.27A of the Landlord & Tenant Act 1985 (The Act) for the Tribunal to decide whether service charges are payable in respect of the years ending 24 March 2003 – 2007. Specifically the insurance charges for the years ending 24 March 2004 – 2007, managing agent's fees for the years ending 24 March 2002 – 2004 and the charge made for major works in the year ending 24 March 2004.
2. The case was heard without a formal oral hearing and due notice was given to the parties in Directions dated 4 August 2006.
3. Having received the bundle of papers the Tribunal met on 6 December 2006 in order to decide the case. The papers were incomplete and the Tribunal wrote to the parties requesting further information in respect of the major works. The Respondents supplied further copies of documents and the Applicant made comment on these.

## RELEVANT LAW

4. The Tribunal has had regard to all the relevant legislation but summarises some of the relevant parts here for the benefit of the reader.
5. The Tribunal's jurisdiction derives from the Landlord & Tenant Act 1985 as amended (The Act). In coming to our decision we have had regard to the Act in full but include a summary here for the assistance of the parties.
6. S.18 defines the meaning of a service charge as being "*...an amount payable by a tenant ... in addition to the rent – (a) which is payable directly or indirectly, for services, repairs, maintenance, improvements, insurance, or the landlord's costs of management and (b) the whole or part of which varies or may vary according to the relevant costs*".
7. S.19 limits the relevant costs to be taken into account in determining the amount of service charge only to the extent that they are reasonably incurred and only if the services or works are of a reasonable standard.
8. S.27A provides that a Leasehold Valuation Tribunal may determine whether a service charge is payable and if it is, the Tribunal may also determine the person by whom it is payable, the person to whom it is payable, the amount which is payable, the date at or by which it is payable and the manner in which it is payable. These determinations can (with certain exceptions) be made for current or previous years and also for service charges payable in the future.
9. S.20C allows the Tribunal to limit all or any of the costs incurred by the landlord in connection with the proceedings being recovered by way of the service charge if it considers it reasonable so to do. In this case the Applicant made a request for a limitation of costs as part of his original application.

**LEASE**

10. The Tribunal was provided with a copy of the lease of Flat 33a Old Shoreham Road. The Tribunal has had regard to all the terms of the lease in coming to its Decision but highlights here those clauses which it believes are specifically relevant to the payment of service charges.
11. Clause 5 of the recitals in the lease defines the lessees' proportion payable under Clauses 3(B) and 4(B) as 33 $\frac{1}{3}$ %.
12. Clause 4(B)(i) requires the lessee to:
13. *"Pay and contribute in manner hereinafter provided the Lessee's proportion as defined in Recital (5) hereof of all monies expended by the Lessor in complying with its covenants in relation to property as set forth in Clause 6(B) and (D) hereof".*
14. Clauses 6(B) and (D) referred to are lengthy but generally require the lessor to:
15. *".....insure and keep insured comprehensively the property....in the full replacement value thereof....."* and to
16. *"....keep in good and substantial repair and condition throughout the term...the parts of the property not comprised in the flat or the other flats...."*
17. The clause goes on in detail to describe the specific works required to be undertaken by the Lessor. There is no dispute that the works undertaken fall within the landlord's covenants and are therefore recoverable by way of service charge.

**INSPECTION**

18. The members of the Tribunal inspected the property on 6 December 2006 in company with Mr Sullivan. No representative of the Respondent was present. The property has a generally run down appearance and would appear to be neglected.
19. The building is inner terrace situated on a steep hill leading out of the centre of Brighton. The house is converted into two flats with accommodation on the basement, ground and first floors. The subject premises are on the basement and rear garden floor. The roof is of pitched design covered with concrete tiles and there is a flat roof area at the rear used as a terrace for the first floor accommodation. Part of the exterior is rendered and the guttering has been replaced with plastic units.

**EVIDENCE**

20. The Tribunal has relied upon the documents submitted to it by the parties both in response to the original Directions and subsequently in response to the request for further information following the Tribunal's consideration of the case.
21. The Applicant questioned the level of insurance premium charged and complained of a lack of response from the managing agent to requests for detail.
22. Alternative quotations for insurance were not provided but copies of correspondence and certificates from the insurance brokers were included.
23. The Tribunal managed to extract from the numerous documents provided details of the premiums to be charged for insuring the whole building for 2004 at £629.18, 2005 at £856.76, 2006 at £600.40 and 2007 at £615.44. These figures were supported by confirmation letters from Crawford Davis Insurance Consultants Ltd. In each of the first three years there is an amount of £100 included in the total premium identified as "fee" and for 2007 an amount of £75.
24. The Applicant used the ABI/BCIS House Re-building Costs calculator for a terraced house of 151 m<sup>2</sup> and arrived at an approximate rebuilding cost of £194,000. The sum insured varied with indexation but was between approximately £288,000 and £343,000. The Applicant therefore felt that the rebuilding cost was too high.
25. A further item in the sum insured is listed as rent. An explanation provided by the insurance brokers (letter 25 August 2006) is that this sum is to provide alternative accommodation for the occupiers if the building were destroyed by fire.
26. The Applicant had obtained advice from the College of Law Legal Advice Centre and incorporated their advice and findings into his evidence.
27. When dealing with the managing agent's fees the College of Law solicitor advised that the average management fees locally are between £150 to £185 per year (presumably per flat) and went on to say that as the Applicant was paying £400 this was excessive. There had been difficulties in the past where the managing agent had incorrectly calculated the proportion of service charges payable by the Applicant as 50% rather than 33 $\frac{1}{3}$ % as stated in the lease, but it is understood that this has now been rectified.
28. No further evidence was offered in respect of managing agent's fees.
29. With regard to the major works carried out at the property it was unclear to the Applicant the extent of the work involved or the date it was carried out. The Applicant had purchased his property after the work had been completed.

30. The College of Law solicitor pointed out that there was a need for a consultation notice and procedure in accordance with S.20 of the Landlord & Tenant Act 1985 if the total works exceeded £1,000. If no consultation was carried out then the landlord would only be able to recover £50 from each lessee.
31. The Respondent provided a brief statement of case dealing with the points raised by Mr Sullivan.
32. It was suggested that because of the claims history at the property the insurance charge for the year ending 2005 was higher.
33. The Respondent provided a large number of documents including detailed printouts of what is headed Lessees Accounts Listing. The Tribunal could find no reason for including these cash book summaries.
34. The Respondent highlights that the ABI/BCIS calculator states that it should not be used for setting the sum insured. The calculator takes no account of professional fees and the Respondent believes that the insured value is correct and in line with a number of other buildings in the locality but no evidence was provided.
35. With regard to managing agent's fees the Respondent confirmed that the figure quoted by the College of Law as being charged to the Applicant refers to the charge for the whole building and therefore the charge made to Mr Sullivan being  $\frac{1}{3}$  of this is reasonable.
36. Turning now to the cost of work, the Respondent attempted to address the matter by providing copies of invoices and confirmed that none of the work was covered by an insured risk. The Tribunal had difficulty extracting information from the large volume of copy documents provided which were not indexed or summarised in any way by the Respondent.
37. The Tribunal wrote to the parties identifying its difficulty regarding the major works and explained the restrictions that would apply if S.20 Landlord & Tenant Act 1985 were not satisfied. Answers to specific questions raised with the Respondent were not provided.
38. Instead in response the Respondent supplied photocopies of its works file. The Respondent apologised if some of the paperwork was not relevant and inferred that the documents provided satisfied the consultation procedure. The Respondent did not identify the date the works started or supply a copy of the notice that had been served under The Act.
39. In response the Applicant identified the fact that the managing agents had just sent a random pile of correspondence which failed to answer any of the questions directed by the Tribunal. The Applicant was therefore unable to comment in any detail other than to say his frustration continued in view of the managing agent's unprofessional and incompetent behaviour.

## CONSIDERATION

40. The Tribunal found itself in some difficulty with regard to the documents in this case. The Applicant asserted several points without submitting supporting evidence. In particular, however, we found the Respondent's submissions mostly unhelpful and the Tribunal found itself spending a great deal of time in endeavouring to unravel the circumstances of the case from copy correspondence provided.
41. Although the Applicant provided no alternative quotations for the insurance premium he did attempt to calculate a rebuilding cost. As pointed out by the Respondent the calculator used is not appropriate for a house occupied as two flats and takes no account of additional items that would have to be allowed in the rebuilding costs such as surveyors' fees, demolition, common parts, additional services or fittings etc. Without a detailed reinstatement cost assessment the Tribunal did not feel able to challenge the sum insured.
42. With regard to the premium charged the Tribunal was concerned to find that as part of the sum insured there was a provision for rent of between £57,750 and £68,627 each year. It might be reasonable for the landlord to insure for the loss of ground rent, although this is not mentioned in the insurance covenant, but this would only be a modest figure of £20 or so per flat. The Explanation given that the figure is to cover re-housing the tenants would not be applicable in the case of long leases. The landlord has no obligation to re-house the lessees if the building is destroyed.
43. The insurance covenant states that the cover should be for the full reinstatement value of the building and nothing else. There is no mention of the loss of rent or the provision of alternative accommodation.
44. It is unclear why the insurance brokers need to charge a fee of £100 (or £75 in 2006/2007). The managing agent's on behalf of the landlord is responsible for arranging the insurance and no explanation was given why a further fee is chargeable. It would be usual for a broker to receive commission from the insurance company in order to cover its costs.
45. In the absence of any alternative quotation the Tribunal was unable to adjust the insurance premiums to take account of the incorrect additional cover for rent. We believe, however, that this would be a relatively modest part of the premium. The managing agent is encouraged to check the details of sums insured in the future.
46. However, we see no reason why the lessees should be responsible for a fee paid to the insurance broker for dealing with the landlord's insurance and this figure is deducted from the amounts payable in each case.
47. There is little to consider with regard to the managing agent's charges. There have been no substantial increases and the amounts charged are considered to be reasonable and payable and are confirmed by the Applicant's advisors.

48. Turning now to the question of major repairs. Initially the Tribunal had difficulty identifying the costs disputed. The tenant refers to labour and materials costs of two amounts of £6,151.13 and £2,758.31. It is unclear from where these figures arise but on the basis that the Applicant is disputing them the Tribunal has considered a total amount of £8,909.44. Within the service charge expenditure account for the year ending 24 March 2004 there is an item for repairs and maintenance of £9,276.94. We have made the assumption that the amount in issue is contained within that total and the balance of £367.50 is not disputed.
49. Some invoices for repairs have been provided, however, there is no statement or final account in respect of any of the work. The Respondent was unable to clearly identify the work that was undertaken, or indicate when the work was started or completed.
50. In response to our request for further information PPS Management Ltd assert that they complied with the Landlord & Tenant Act provisions but have failed to supply a copy of a notice that may have been served or details of the consultation procedure that may have taken place.
51. Discussions with regard to the work commenced in 2001. The Tribunal specifically asked to be told when the work started but we have not been advised. An invoice for a deposit from Armstrong and Barnes is dated 18 September 2003 and the Tribunal therefore considers that it would be reasonable to deduce that the work would start at about that time. The Tribunal therefore determines that the work started before 31 October 2003 and the regime for consultation would be that which applied prior to that date. The revised procedures introduced by the Commonhold and Leasehold Reform Act 2002 do not therefore apply.
52. Amongst other things the landlord is required to issue a notice describing the works and providing a copy of at least two estimates. The lessees are to be invited to make observations on the works and a minimum period of one month from the service of the notice has to be given. The landlord must have regard to any observations made and must not start the work before the expiry of the one month response date. From the documents provided to it the Tribunal cannot see that a notice was given or any opportunity given for observations to be made. The amount recoverable is therefore limited to £1,000. The excess shall not be taken into account in determining the amount of a service charge.
53. As part of the correspondence between the parties prior to the consideration of this matter mention was made by PPS Management Ltd of making a charge of £25 per letter to deal with the lessees concerns. As we understand it this charge has not been made. In order to make such a charge the managing agents would need to consult the lease to see whether a provision allowing a charge of this type is included.
54. The Applicant also refers to the Supply of Goods and Services Act 1982. This Tribunal has no jurisdiction under that Act.

**S.20C**

55. In his application Mr Sullivan requires the Tribunal to consider limiting the landlord from recovering costs of these proceedings. He states that he has tried to obtain information from the managing agents and to deal with the outstanding issues directly, however, he had been unable to do so and was forced to apply to the Tribunal. He sees no reason why he should have to share in the cost of dealing with this case.
56. The Applicant's case has been found to be worthwhile in respect of two of the three headings brought to us. The Respondent has failed to adequately deal with the case or to respond properly to the Applicant's request or the Tribunal's Directions.
57. The Tribunal has not interpreted to the lease to see whether costs of this type would be recoverable under the service charge but in the circumstances it makes an Order restricting the landlord's ability to recover those costs if it is found that it could.

**DECISION**

58. The lessee is responsible for 33 $\frac{1}{3}$ % of the costs charged to the service charge.
59. In respect of insurance the recoverable amount in total for the building in respect of the following years shall be limited to:

|            |               |         |
|------------|---------------|---------|
| Year ended | 24 March 2004 | £529.18 |
|            | 24 March 2005 | £756.76 |
|            | 24 March 2006 | £500.40 |
|            | 24 March 2007 | £540.44 |

60. The total charge in respect of each year for management fees shall be:
- |      |      |
|------|------|
| 2003 | £300 |
| 2004 | £300 |
| 2005 | £315 |
61. The total recoverable costs for major building works in respect of the year ending 24 March 2004 shall be £1,000.
62. All other service charge costs for these years are payable.

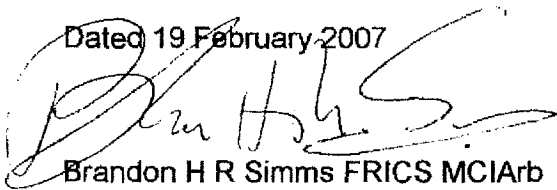


63. The Tribunal has no information identifying amounts paid by the lessee. The Applicant acquired the lease during the years in issue. The contract for the transfer will have detailed arrangements for the payment of service charges due at the date of transfer. Any refunds payable arising from this decision should be made to the appropriate person according to the terms of the contract.

**ORDER**

64. It is ORDERED that all or any costs incurred by the landlord Respondent in connection with these proceedings must not be recovered as part of the service charge.

Dated 19 February 2007

A handwritten signature in black ink, appearing to read 'Brandon H R Simms', written over a horizontal line.

Brandon H R Simms FRICS MCI Arb  
Chairman