RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Residential Property
TRIBUNAL SERVICE

S.27A LANDLORD & TENANT ACT 1985

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case Number:	CHI/OOML/LSC/2007/0015
Property:	4 Burton Villas Hove East Sussex BN3 6FN
Applicants:	Mr & Mrs P West
Respondent:	Mr M Pellant
Members of the Tribunal:	Ms H Clarke (Chair) Barrister Mr R A Wilkey FRICS FICPD Ms J K Morris
Date of Hearing	9 May 2007
Date of Decision:	20 May 2007

APPLICATION

1. This was an application by the Applicants, who are the Tenants and reside at the Ground Floor Flat at 4 Burton Villas, Hove, to have their liability to pay service charges determined for each of the years ending 25 March 2004, 25 March 2005, 25 March 2006, and 25 March 2007.

DECISION IN SUMMARY

2. The Tribunal determined that the Lease does not permit the Landlord to charge the Tenants for his own time in managing the property.

3. The amount of outstanding service charges to 25 March 2007 is therefore nil.

THE ISSUES FOR THE TRIBUNAL

4. The Respondent is the Freehold owner and the Landlord of the property. He owns the upper flat in the same building at 4A Burton Villas and he resides elsewhere.

5. The Respondent also claimed to be entitled to recover from the Applicants the sum of £293.75 in respect of solicitor's costs for the preparation of a notice under s146 Law of Property Act 1925.

6. In the course of correspondence the parties made certain concessions and agreements which they confirmed at the hearing. The Applicants conceded that in the light of a Deed of Variation of their Lease the share of the service charges for which they are liable is 50% rather than 1/3rd. The Applicants have also agreed to pay the sum of £293.75 in respect of the s146 costs, and the Tribunal was told that this sum had been paid although no receipt had yet been sent.

7. The Respondent conceded that a portion of the charges he had asked for in respect of time which he had spent in managing the property was not recoverable as service charge, because it related to a breach of covenant by the Applicants which was determined by an earlier Leasehold Valuation Tribunal. The remaining portion of the charges which the Respondent claimed by way of service charge totalled £367.50.

8. The Respondent was asked by the Tribunal to specify whether there are any other items or charges which will form part of service charge demands for the years mentioned ie up to 25 March 2007. The Respondent stated that he reserved his position regarding time which he had spent in dealing with the renewal of the insurance premium in late 2006, and that he may wish to make a charge for this, which could amount to a few hours' work. Otherwise he stated that there are no further charges or amounts which have been or are yet to be demanded as service charges up to 25 March 2007. He confirmed that all insurance premiums have been paid.

9. The only amount upon which the Tribunal therefore needed to make a determination was the sum of £367.50. This wholly consisted of charges made by the Respondent Landlord for work which he had carried out himself in connection with the property, and which he had charged at an hourly rate.

10. The Tribunal observed that £367.50 was the total charge for the work carried out, and that the portion which the Applicants may be liable to contribute is 50%. Therefore the sum in dispute was £183.75.

11. The primary question for the Tribunal to determine was whether the Respondent is entitled under the Lease to charge the Applicant Tenants for his own time in managing the property.

THE LAW

12. Section 27A of the Landlord & Tenant Act 1985 states:

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

13. Section 18 of that Act states:

Meaning of "service charge" and "relevant costs"

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or 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.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

THE LEASE

14. The relevant sections of the Lease read as follows:

"1.b) There shall also be paid by way of further or additional rent a service charge (hereinafter called "The service charge") equal to one third part (NB now 50%) *of the amount which the Landlord may from time to time expend:-*
(i) in performing the Landlord's obligations as to repair maintenance and insurance hereinafter contained
(ii) in payment of the proper fees of the surveyor managing agent or agent appointed by the Landlord in connection with the carrying out or prospective carrying out of any or the repairs and maintenance or other obligation of the Landlord herein referred to.....(etc)
(iii) in providing such services facilities and amenities or in carrying out works or otherwise incurring expenditure as the Landlord shall reasonable deem to be necessary for the general benefit of the Building and its tenants whether or not the Landlord has covenanted to incur such expenditure...(etc)
(iv) in complying with any of the covenants entered into by the Landlord or with any obligations imposed by operation of law which are not covered by the preceding sub-clauses
PROVIDED THAT all such sums shall from time to time be assessed by the surveyor managing agent or agent for the time being of the Landlord and the Service Charge shall be paid by the Tenant within twenty-eight days of being demanded."

INSPECTION

15. The Tribunal inspected the Ground Floor Flat at 4 Burton Villas, Hove on 9 May 2007. The property was a flat converted from a semi-detached house, comprising 2 bedrooms, bathroom, a sitting room leading to open-plan kitchen, patio doors onto a decking terrace area and a landscaped garden. The exterior of the property showed some flaking and peeling paintwork and want of decoration. The interior of the flat was fitted out in a modern style and was well kept and maintained. The kitchen area had a flat roof above which had on it an area of decking and a balustrade/ windbreak erected from wire and canvas. Access appeared to be obtainable from the upper flat 4A Burton Villas onto the flat roof. The Applicants stated that the Respondent's tenants of the upper flat used the roof as a terrace.

PARTIES' SUBMISSIONS

16. The Tribunal heard evidence from Mrs (Dr) West and from Mr Pellant in person, and read the documents and submissions presented by the parties.

17. The Applicants denied that the Respondent could claim for his own time under the Lease. They felt that the best way forwards for the parties was for an agent to be appointed. Following a previous case between the parties which went to the Leasehold Valuation Tribunal the Applicant thought that all the matters had been laid to rest. The Applicants wondered what was round the corner. The Respondent had not conceded that he could not claim some of the charges until very late on. The Applicants said that the charges which the Respondent sought to recover were in any event excessive. He was charging for an hour or more's work for letters which were a few lines long. A professional agent would not take so much time and would not make the mistakes in the figures which the Respondent made. They had never received proper or full statements of service charge accounts. Each time an 'account' was produced the figures were different. The Respondent had threatened to deduct the charges for the s146 Notice from the maintenance account. He had refused to accept a ground rent payment. The Respondent had promised since 2005 to arrange for the exterior of the building to be painted but it had not been done. He could not be contacted if there were questions or issues about the building or the upstairs tenants because he only gave his address as the property in question.

18. The Respondent said that he relied on the items in his letter dated 30 March 2007 page 5 as being the items which he could claim as service charges from the Applicants under the Lease. All of the issues had used up a lot of his time, and he had a duty to deal with them and to respond. By reference to the wording of the Lease, the Respondent submitted that he had 'expended' his time and could bring himself within the provisions in that way. If an agent had been appointed, they would have been recompensed, and it would be fair that he should get the same. Time spent on matters relating to breaches of the Lease was work done for the 'benefit of the Building' and therefore recoverable.

19. The Respondent further said that he had managed the building fairly and correctly and to the best of his ability for more than 20 years. He had intended to save everyone's time and money by managing it himself instead of incurring professional fees. He kept being asked for accounts but there had only been 4 transactions since the Applicants moved in. He had found it impossible to live

and work above the Applicants so had tried to sell his flat after they moved in, but had not sold and now had tenants in the flat. They would reliably forward all post on to him if it was posted to the property, and he would prefer not to give his home address to the Applicants. The Applicants should never have challenged the split of charges as 50:50 under the Variation of Lease. This had been a waste of time and money. The property had been maintained as the Respondent felt it needed to be, the render did not need repainting as often as the timber, and scaffolding would be a huge cost if incurred every 5 years. The Respondent had not ruled out appointing a managing agent and his own company would be put forward as agent.

DECISION

20. The Tribunal determined that the Lease does not permit the Landlord to charge the Tenants for his own time in managing the property.

21. The amount of outstanding service charges to 25 March 2007 is therefore nil.

REASONS FOR DECISION

22. Under s27A and s18 (quoted above) a service charge consists of what is payable by the Tenant under the Lease in question. If the Lease does not provide for the charge then it is not payable.

23. The Tribunal felt satisfied that the clear wording of the Lease did not extend to recompensing the Landlord for his own time. The Lease allows for a service charge which is "equal to" a share (now 50%) of "the amount which the Landlord may from time to time expend". It would strain the natural meaning of this clause too far to ask it to bear the interpretation which the Respondent sought. The Tenant is liable to contribute to an amount of money actually expended by the Landlord, not to pay some notional charge attributable to the Landlord's acts of management.

24. The fact that the service charge can include fees for a surveyor or agent does not affect this conclusion. If a surveyor managing agent or agent is appointed by the Landlord, their proper fees will form part of the service charge. If no such person is appointed, then no such fees or charges arise.

25. Moreover, it has no bearing on the matter whether or not the correspondence about breaches or alleged breaches of covenant was 'necessary for the general benefit of the Building', because the

Landlord did not in any case "expend" any "amount" in dealing with such correspondence.

26. It was consequently unnecessary for the Tribunal to consider whether the demands for service charges had been made within time, as there was no item which was payable as a service charge.

COSTS OF THE PROCEEDINGS

27. The Respondent stated that he would not seek to recover his costs of these proceedings under the service charge. This was noted by the Tribunal. Relying on that statement, the Applicants did not pursue their application and the Tribunal did not make any determination under s20C Landlord and Tenant Act 1985.

Chair ----------

H M Clarke

Dated 20 May 2017