



Sections 27A and 20C Landlord & Tenant Act 1985

DECISION & DETERMINATION

Case Number: CHI/21UD/LSC/2007/0009

Property: Flats 2 & 4
Brittany Road
St Leonard's on Sea
East Sussex TN3 0RD

Applicant: Mr J C Wright (landlord)
Per Remus Management Ltd (managing agents)

Respondents: Coastal Investments Ltd (tenant of Flat 2)
Mr L Lozano (tenant of Flat 4)

Application: 8 February 2007

Directions: 13 February 2007

Hearing: 11 May 2007

Appearances: Mrs F Barnett of Remus Ltd
Mr B Dobson and Mr N Stonard of Remus Ltd in
attendance as observers

Mr A Williams of Coastal Investments Ltd
No attendance for Mr L Lozano

Decision: 2 July 2007

Tribunal Members: Ms J A Talbot MA
Mr B H R Simms FRICS MCI Arb
Mr T W Sennett MA MCIEH

Case No. CHI/21UD/LSC/2007/0009

Flats 2 & 4, 12 Brittany Road, St Leonard's on Sea, East Sussex TN3 0RD

Application

1. This was an Application dated 8 February 2007, made by Remus Management Ltd ("Remus") on behalf of the landlord Mr J C Wright. It was made pursuant to Section 27A of the Landlord and Tenant Act 1985 for a determination on the payability of service charges for the years ending 31 December 2004, 2005 and 2006 by the tenants of Flats 2 & 4 at 12 Brittany Road, St Leonard's on Sea, East Sussex TN3 0RD ("the property").
2. Directions were issued on 13 February 2007 and provided for the Applicant to produce a Statement of Case together with all relevant documents, and for each of the Respondents to produce a Statement in reply. The Applicant and Mr Williams, Director of Coastal Developments Ltd ("Coastal"), tenant of Flat 2, complied with the Directions. Mr Lozano, tenant of Flat 4, did not comply. The Tribunal was informed at the hearing that he had recently paid the amounts demanded and therefore no determination was required in respect of Flat 4. Accordingly the Tribunal did not consider Flat 4 further.

Jurisdiction

3. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (S.18 Landlord and Tenant Act 1985). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

Lease

4. The Tribunal had a copy of the lease of Flat 1 at the property. Both parties confirmed that the lease of Flat 2 was in the same form. The lease is dated 20 June 1989 and is for a term of 99 years from 4 May 1989 at a ground rent of £75 and rising thereafter. The Building is defined as the block of flats. The Flat is defined at Part 3 of the First Schedule to include ceiling plaster, floors and internal walls.
5. The provisions relating to the calculation and payment of the service charge are to be found at Clause 3(d). The lessee covenants "*to pay to the lessor from time to time on demand as a contribution towards the costs charges expenses and management fees from time to time incurred by the lessor in carrying out their obligations under the Fifth Schedule hereto (hereinafter called" the maintenance charges" ... and on the execution of this lease to deposit with the lessor the sum of two hundred pounds as a reserve towards making good any default by the lessee in paying such contributions"*.
6. The lease further provides at Clause 3(d)(iii) that "*all such contributions are payable by the lessee in full notwithstanding the sum so deposited"* and at

3(d)(iv) that *"the lessor shall be entitled to retain the sum so deposited until the expiration or sooner determination of the term hereby granted and such sum or so much thereof as shall then remain shall be repayable without interest to the person who shall then have been the lessee"*.

7. The proportion of maintenance charges payable by each tenant is stated at Part 5 of the First Schedule to be *"the proportion that the rateable value from time to time of the flat bears to the aggregate of rateable values of all the flats in the building"*. For Flat 2 the proportion is 9.11%.
8. The lessor's repairing obligations are to be found in the Fifth Schedule. In summary these are to maintain and repair the exterior and structure of the building, subject to the tenant's contribution to the maintenance charges. The lessor is also obliged to produce audited accounts on 31 December each year certifying the total amount of the *"costs, charges and expenses incurred since ... the date of the last preceding account"*.

Inspection

9. The Tribunal members inspected the property before the hearing, accompanied by Mr Dobson of Remus and Mr Williams of Coastal. It comprised a substantial detached corner property, situated on sloping ground in a residential area of St Leonard's on Sea, probably constructed in the 19th century as a private residence and converted into 12 flats in the 1980's. The building is of brick construction under a pitched tiled roof with flat roof additions. Several cracks and some mould were visible to the rendered painted elevations. A gravel driveway gives access to parking spaces at the rear. Externally the building is in need of redecoration and renovation.
10. Internally the common parts were in fair condition, basic but serviceable with an entryphone, push button lighting and carpet. The entrance hallway and top floor front landing exhibited damp staining and some perished plasterwork. The Tribunal members did not inspect any flats internally.

Hearing

11. The hearing took place in Hastings on 11 May 2007. It was attended by Mrs F Barnett of Remus, on behalf of the Mr J C Wright, accompanied by Mr B Dobson and Mr N Stonard also of Remus. Mr A Williams attended for Coastal.

Facts

12. On the basis of its inspection, the documents produced and submissions made by the parties at the hearing, the Tribunal found the following facts:
 - (a) Remus were appointed as managing agents for the property in October 2003 by their client Mr J C Wright. He purchased the freehold at auction in the summer of 2002 when Coastal was already the tenant of Flat 2. Coastal did not receive any Notice under the Landlord & Tenant Act 1985 giving it the right of first refusal to purchase the freehold at that time.
 - (b) The former managing agents were Simon & Co of 43 Cambridge Road Hastings. Mr Williams produced an account from Simon & Co dated 24 June 2002 addressed to Coastal showing income and expenditure at the property, showing a total due of £805.84, including an entry marked "building fund on account June

02 – 1/12 of £3600 - £300". Mr Williams contended that Coastal had paid the full £805.84 and that when Remus took over, Coastal's account was not credited with the £300 payment on account.

- (c) The first contact from Remus to Coastal was by letter dated 7 April 2004. Remus could not explain why there was no contact by either Mr Wright or themselves before that date. The letter referred to a Remus brochure and enclosed a "statement of expenditure for the six months ended 31 December 2002" of £2,324.97 with a "reserve fund at 31/12/2003 £3,600" certified by Derek Evans Chartered Accountants, and a "statement of income and expenditure for the period 1 January 2003 to 7 October 2003" showing "excess expenditure for period £4,585.38".
- (d) The next communication was a letter dated 26 May 2004, headed "final notice", demanding payment of £920.79 due to Remus within 10 days. The letter referred to a "date of commencement of legal proceedings: 7 June 2004" with the wording: "should payment not be received by the above date your file will be collated and forwarded to our collection agency for recovery of this debt. A charge of £40 will be added to your account at that time for the additional administration costs incurred. Interest of 8% will also be added to your account". In response Coastal wrote to Remus on 15 June 2004 stating "we will be dealing with the matter in the near future" and that no brochure had been enclosed.
- (e) On 11 August 2004, Wilton Finance Limited ("Wilton") wrote to Coastal: "we have been appointed to act for ... Remus Management Ltd in the recovery of outstanding debts ... we are instructed to arrange for forfeiture of this lease on the grounds of a breach of covenant ... namely the non-payment of arrears of service charges now standing at £1323.90 ... our client shall shortly be issuing legal proceedings claiming possession of the above premises subject to the provisions of Section 81 of the Housing Act 1996".
- (f) The charges alleged to be due at this point were: service charges of £211.75 to 31/12/2002 and £417.62 to 07/10/2003, plus "debt reminder fee" of £18.00, a "service charge on account" at 01/01/2004 and 01/07/2004" of £291.42 each, a "case preparation fee" of £40, interest of £53.69, and "our client's further legal and administrative costs to date" of £47.
- (g) Coastal sent a cheque for £629.37 under cover of a letter dated 8 September 2004 to Remus, being the total of £211.75 plus £417.62 service charges as demanded. Coastal disputed the other amounts and also wrote: "from our records we note that you are holding £300 on account for our flat", and asked for copies of the insurance documents and invoices for the period "so that we can look to make a payment". Wilton acknowledged receipt on 29 September 2004 but no copy documents were sent.
- (h) On 24 November 2004 Wilton wrote to say that their client (Remus) had no record of the disputed £300 and enclosed the brochure. Coastal continued to dispute the additional administrative costs. Once Remus had instructed Wilton, they refused to communicate directly with Coastal or to deal with any of their queries. Coastal received no further service charge demands.
- (i) On 25 February 2005 Coastal received a letter dated 18 January 2005, from Remus "re: External Repairs and Redecoration at 12 Brittany Road, St Leonard's on Sea. It was headed "without prejudice". It was addressed not to Coastal but to Wilton, and started "dear leaseholder". It stated that external works were due at

the property and that access would be needed for a report and schedule to works to be prepared.

- (j) At the hearing Mr Williams produced the original of a later letter, from which it was clear that although it was headed "dear leaseholder", the original addressee was Wilton Finance Limited. A handwritten sticky label addressed to Coastal had been stuck over the Wilton address and the letter later forwarded to Coastal. Copies of letters attached to Remus's Statement of Case, purporting to be consultation notices pursuant to Section 20 of the 1985 Act, dated 3 June 2005 and 22 November 2005, either had the addressee blanked out or were addressed to another lessee. The same applied to other copy letters relied on by Remus in connection with the proposed major works.
- (k) Mrs Barnett's explanation for this practice was that if a lessee raised any questions over service charges, they were treated as being "in litigation", apparently meaning, in dispute (legal action not having been started). After this Remus refused to contact the lessee directly, but passed the file to Wilton, a debt collection agency. Remus then used Wilton as a post box, sending all communications for the lessee to Wilton, which Wilton were then expected to forward to the lessee. Remus did not have a system for recording mail sent out.
- (l) Mrs Barnett further admitted in reply to questioning from the Tribunal that once Wilton was involved Remus did not send service charge demands direct to any lessee, including in this case to Coastal. In the Tribunal's papers were computer generated copies of "invoices" in relation to Flat 2 Brittany Road, addressed to Wilton, plus some others with Coastal's address.
- (m) Mr Williams stated that Coastal had not received many of the communications attached to Remus's Statement. He had not received service charge demands since August 2004. In particular he had no knowledge of invoices dated 24/11/2004 and 25/05/2005 for "service charges on account" stated to be due on 1 January 2005 and 1 June 2005 for £386.22 each, addressed to Wilton, and a further invoice dated 12/12/2005 for "interim service charge in advance" stated to be due on 01/01/2006 and 01/07/2006 for £1,162.44 each.
- (n) The next demand Mr Williams received was dated 30/11/2006 for £5,178.96 stated to be due on 01/01/2006 and including arrears plus "interim service charge in advance" on 01/01/06 and 01/07/06. He wrote to Remus on 12 December 2006 "having looked through our file [we] can find no demands for money since out payment in September 2004.
- (o) In May 2005 Remus produced an inspection report and Schedule of works indicating that extensive external and renovation works were required, a copy of which was sent to the lessees in the manner described above. Tenders were received ranging from £41,375.83 to £66,680.73 which were higher than expected. Remus planned to phase the works over several years. The first phase was costed at a range of £20,762.25 to £40,206.15.
- (p) In an estimated service charge budget statement for the period 01/01/2006 to 31/12/2006, Remus included £25,520 as total anticipated costs for what they termed "schedule 1" of the works. Contractors costs were listed as £15,000 and surveyors/professional fees at £5,500.
- (q) Coastal wrote on 6 February 2006 stating that "the lowest quote from Packham Construction at £41,875.83 is acceptable to us". Mr Williams said that this was a

clerical error and that Coastal did not in fact agree any figures for the cost of the works. The works have not yet been commenced.

The case for the landlord

External works

13. Mrs Barnett, for Remus, based her case on the annual accounts produced for the property for the years ending 31 December 2004, 2005 and 2006. The accounts for 2006 were not attached to Remus's Statement of Case. A copy of draft accounts was produced at the hearing which had only just been prepared, despite the accounting date being 31 December. No satisfactory explanation for the delay was forthcoming. Mrs Barnett informed the Tribunal that these were accurate year end accounts and that she expected them to be signed off shortly. Copies of invoices and receipts in support of actual expenditure were provided for 2004 and 2005.
14. The total sum actually claimed as due by Remus for which a determination was sought, was unclear. The Application simply asked for the service charge accounts for the years 2004 and 2005, and service charge budgets for years 2006 and 2007, to "be adjudged".
15. The accounts, in addition to expenses actually incurred, had other entries which were not self-explanatory. For example, the 2006 accounts showed a "total transfer to reserve fund" of £11,965.10, but according to Mrs Barnett this did not actually mean that this sum was held on reserve. It appeared to include actual cash plus a notional debtors figure. The actual amount held in reserve was apparently only £3,600.
16. Remus's standard practice was to prepare a service charge budget in advance for the calendar year. Hence the estimated sum for the year 2006 from Flat 2 was calculated at £2,324.88, being 9.11% of £25,520, the total anticipated costs for the year. This equated to the two interim service charges on account claimed of £1,162.44 for January and July 2006. Mrs Barnett said that this represented the amount required from Coastal towards the anticipated cost of the first phase of the external works, without which the planned work could not proceed.
17. In reply to questions from the Tribunal, Mrs Barnett claimed to have read and understood the lease terms in relation to service charges, and said that Remus was managing the property in accordance with the lease terms at Clause 3(d). However, she was unable to justify why, in light of the reference to "*costs charges and expenses ... incurred by the lessor in carrying out its obligations*", the lessee was under any liability to make payments on account in advance. She was also unable to explain where, under the lease terms, the landlord was entitled to demand a reserve towards future expenditure.

Other expenditure

18. On actual expenditure for the years in question, the Tribunal questioned Mrs Barnett on professional fees of £4,364.66 appearing in the accounts for 2005.. She said this included surveyor's costs plus Remus's costs in connection with the external works. In the papers was an interim account of £2,026.88 (inclusive of VAT) dated 30 April 2005 from McConvilles Surveying, for "visiting site, preparation of schedule and submission of report". Mrs Barnett contended that the balance of £2,337.78 (including VAT) related to Remus's charges at £55 per

hour additional to their management fee. It was put to Mrs Barnett that this suggested 36 hours work had been carried out when only a few relevant letters appeared in the papers. Mrs Barnett claimed that Remus's work involved 64 different stages and 22 letters to lessees but was unable to substantiate this.

19. On gardening costs, Mrs Barnett said that gardeners attended fortnightly at the property but was unable to explain why the cost had increased from £578 in 2005 to £1,112.50 for 2006. On the "out of hours" service, she said that Remus used an organization called "Homeserve" who had a reasonable call-out fee. She could not explain an increase in accountancy fees from £199.75 in 2003 to £300.80 for 2006, as the same firm was retained.

Management fees

20. Mrs Barnett submitted that Remus had a standard rate of fees for specific items. At the hearing she produced a copy of Remus's brochure and a sheet showing the standard fees from 1 January 2007 together with an explanation of fixed management fees. The basic fee was based on the number of units in the building. For the years in question at the property the rates were: £118.74 for 2004, £130 for 2005, £140 for 2006 and £155 for 2007. Remus's charge for work beyond the scope of the fixed fee was £55 per hour.
21. The basic charge at the property covered 2 visits per year by a property manager, organization of cleaning and gardening, sending out bills and collecting payments, and dealing with minor repairs. Works costing above £250 per unit were classed as major works and the additional hourly rate applied.
22. On questioning from the Tribunal Mrs Barnett claimed that Remus managed the property in accordance with the RICS Code. When put to her that Remus, by sending its file to Wilton at an early stage, was failing to "deal reasonably with enquiries from leaseholders and tenants" as required by the Code, she said that once Wilton was instructed, a lessee had to deal through Wilton, who passed information to Remus. This could go on for some time. It was her understanding on legal advice that if Remus liaised directly with the lessee the landlord would not be able to take forfeiture action. To her knowledge there was no link between Remus and Wilton.

£300 credit claimed by Coastal

23. Remus claimed via Wilton that they had no trace of the disputed £300. A ledger printout from Remus showed a nil "opening balance" on 31/12/2003 shortly after Remus took over. Mrs Barnett could not explain why the £300 was not credited. She said it had gone into reserve but could not substantiate this in evidence.

Extra administration charges

24. The amounts in dispute were first mentioned in Wilton's first letter dated 11 August 2004 under "schedule of arrears": debt reminder fee £18, case preparation fee £40, interest £53.69, and "our client's further legal and administration costs to date" £47. Mrs Barnett said that Remus had waited 14 days from a "debt reminder notice" sent 26 May 2004 before sending their file to Wilton. £18 was a standard reminder fee and £40 was Remus's fixed charge for preparing their file to send to Wilton. She was unable to explain the £47 costs or any basis for the calculation of interest.

25. Initially under questioning from the Tribunal Mrs Barnett claimed that all these costs were due and reasonable, but was completely unable to justify on what basis they were payable by Coastal under the terms of the lease, or even why they had been incurred at all, given the very brief time that had elapsed before instructing Wilton. Eventually she conceded that these charges were not due and withdrew the landlord's claim for payment.

The case for the tenant

External Works

26. Mr Williams at the hearing did not dispute the need for the external works and accepted that Remus had kept lessees informed about the planned works. Despite his firm's letter of 6 February 2006 he said he had not intended to approve the Packham quote. At the hearing, he accepted that the phasing of the works and the anticipated contractors costs of £15,000 were not unreasonable. However, he disputed Remus's professional costs as being too high given that a surveyor was also instructed.
27. Mr Williams' main concern over the service charges was the fact that he had not received any demands after his payment of £629.37 in September 2004. He also questioned whether service charges could be demanded on account in advance, but only once expenditure had been incurred, under the lease terms.
28. In general, Coastal was able and willing to pay service charges as and when properly demanded, but was not prepared to do so in the absence of requested information and proper communication.

Other expenditure

29. Mr Williams regarded the increased gardening and accountancy costs as excessive especially as Coastal's sub-tenants had complained about the standard and frequency of gardeners' visits. He did not dispute other items of expenditure for the years in question.

Management fees

30. On questioning from the Tribunal Mr Williams accepted that basic property management was being carried out, in that the property was insured, cleaning and gardening was done, and accounts were prepared. From his own experience, however, he considered that Remus did very little for their fee in that none of his queries, addressed to either Remus or Wilton, had been addressed, and he had not received service charge demands or many items of correspondence. Mr Williams therefore disputed Remus's management charges and additional costs. He did not suggest a figure which he regarded as reasonable but was content to leave that to the Tribunal.

£300 credit claimed by Coastal

31. Mr Williams' case was simply that Coastal had not been credited with the £300 paid to Simon & Co and recorded in their statement. He had raised this with Remus at an early stage and not received a satisfactory response. He contended that this sum should be credited to Coastal's service charge account and that there was no power to put it in a general reserve.

Extra administration charges

32. Mr Williams disputed Remus's entitlement to levy such charges, their reasonableness, and the fact that they had not been adequately explained.

Decision

33. In making its decision the Tribunal addressed the specific items in dispute but first of all considered the nature and extent of the tenant's liability to pay service charges under the terms of the lease. It was clear from the wording of Clause 3(d) that the tenant is only liable to pay service charges towards costs which have already been incurred by the landlord. The wording allows for flexibility in that the landlord can demand such a contribution "*from time to time*" towards costs "*from time to time incurred by the lessor in carrying out their obligations*".

34. However, this wording does not, in the Tribunal's view, entitle the landlord (or Remus on his behalf) to raise interim service charge demands in advance on account, neither is there any provision to build up a reserve or sinking fund, even where major works are concerned. The landlord is obliged to produce a certified account to the year end (31 December) and to keep proper books of account, with the purpose of recording the actual expenditure, to which the tenant must contribute, as and when validly demanded.

35. Despite Mrs Barnett's assertions, it was clear to the Tribunal that Remus was not managing this property in accordance with the lease terms. It was following a standard procedure of setting a budget estimate for the forthcoming calendar year and then raising an invoice for interim payments on account purportedly due in January and July each year. This procedure simply does not accord with the terms of the lease.

36. Furthermore, the Tribunal was not satisfied that even these service charges had been validly demanded. Unless service charges are validly demanded, they are not lawfully due. Apart from not being in accordance with the lease, the Tribunal accepted Mr Williams' evidence that Coastal had not received any service charge demands after payment was made in September 2004. In addition, the figures in the "invoices" in the papers provided by Remus were not self-explanatory, and many of them were actually addressed to Wilton, although they purported to be demands for service charges at the property. Plainly, Wilton is not the tenant of the property. The result is that these "invoices" cannot amount to valid service charge demands, even in relation to costs already incurred.

37. The Tribunal had serious concerns about Remus's use of Wilton as some kind of post-box for dealing with tenants on management issues. Wilton was a debt collection firm, not a managing agent. On the evidence, there was no basis upon which Remus could delegate its management functions to a debt collection agency, and the Tribunal regarded this practice as highly irregular. At best, breakdowns in communication could, and did, arise, as it was not certain whether, and if so, when, important documents were forwarded to Coastal. At worst, this irregular practice could be regarded as a failure of management by Remus. It made no practical or legal sense to address service charge demands, and indeed, statutory consultation notices, to Wilton. Although the point was not directly before the Tribunal in this Application, it appeared likely that by doing so the statutory consultation requirements had not been met.

38. The Tribunal found Mrs Barnett's explanation of this practice unconvincing. Although she did not use the term "waiver", this appeared to be what she had in mind. She seemed to think that any direct contact with a tenant who had raised any queries at all about service charges could amount to waiver of any possible breach of the lease. This is an extreme position to take in the circumstances of this case, where Mr Williams had raised reasonable queries in correspondence and asked for copies of documents to which he was entitled. He had paid some service charges and withheld payment of other items for which he requested an explanation. He had also indicated that he was able and willing to make payment subject to receiving answers to his questions, which were not forthcoming.
39. It appeared to the Tribunal that Remus had instructed Wilton prematurely and then effectively ignored Coastal's concerns. In doing so Remus failed to have regard to the RICS Code. The Tribunal considered that a tenant would find Remus's letter dated 24 May 2004 hostile and intimidating in tone, with its threat of imminent legal proceedings, risk to credit worthiness, additional charges and interest. In any event, forfeiture proceedings cannot of course be brought unless a Tribunal has determined under Section 168(4) of the Commonhold and Leasehold Reform Act 2002 that a breach of lease has occurred.
40. In the light of these general findings the Tribunal turned to the detailed issues of expenditure in dispute and the payability of service charges in relation to expenditure incurred in the years in question.

External works

41. For the reasons given above the Tribunal concluded that the landlord was not entitled to demand interim service charges on account. As a result, under the terms of this lease, his obligation is to fund and carry out the works and then recoup his expenditure, once incurred, from the tenants. How he funds the works is a matter for him, but the Tribunal observed that there is also no provision in the lease to charge bank interest on any loan to the maintenance account.
42. On the evidence, the only expenditure already incurred in relation to the external works totalled £4,364.66 being McConvilles Surveying fees of £2,026.68 (as shown on their invoice), and the balance of additional costs claimed by Remus of £2,337.78. The Tribunal concluded McConvilles' fee was not unreasonable but did not accept that all the additional work claimed by Remus was either necessary or justified. Most of the work involved could have been carried out by McConvilles at a more reasonable cost. On a total contract price of approximately £40,500, a reasonable total sum for costs for administration of the contract up to this stage was £2,500. This was the total amount allowed for this item.

Other expenditure

43. The Tribunal concluded that, even taking into account the fact that these were recently produced draft accounts, there was no good reason for the unexplained increase in the gardening and accountancy costs for the year 2006. It reduced the amount payable as follows: for gardening, £650 allowed; for accountancy fees, £235 allowed. The Tribunal further disallowed a provision amount of £50 at note 5 to the 2006 draft accounts for "trust tax returns and fees" as an unreasonable additional cost. A further £176.25 listed at note 3 under "general repairs" was disallowed as there was no explanation to identify the expenditure.

Management fees

44. The Tribunal considered that the annual basic fee regime per unit as listed at paragraph 20 above was not unreasonable *per se*, and that basic management functions were carried out at 12 Brittany Road. However, during the accounting years in dispute, in relation to Flat 2, Remus had effectively abdicated its management responsibility to Wilton, and for the reasons already stated, Coastal had not received a satisfactory management service from Remus in accordance with either Remus's brochure or the RICS Code.
45. The Tribunal therefore concluded that the fixed management fees for the years in question were not reasonably incurred and reduced the amount payable to £100 plus VAT per unit for each of the years in dispute.

£300 credit to Coastal

46. The Tribunal was satisfied that Coastal had paid a total of £805.84 to the previous managing agents Simon & Co including £300 on account which Remus failed to credit to Coastal in their ledger when they took over management. There was no reserve fund provision in the lease and no evidence to support Mrs Barnett's contention that the £300 had been placed in reserve. The treatment of the reserve fund in the accounts was unsatisfactory in that it was impossible to tell how much money was actually being held.
47. As a result the Tribunal had no difficulty in concluding that a credit of £300 should be applied to the sum payable by Coastal for the following accounting year ending 31 December 2004.

Extra administration charges

48. For the sake of completeness it is noted here that these are not payable and this was conceded by Mrs Barnett. In the Tribunal's view there was no entitlement to charge these sums in the lease and it was unreasonable in any event to seek to charge them given the facts found in this case.

Year ending 31 December 2004

49. For the year ending 2004, the Tribunal noted that Mr Williams did not dispute any items. The Tribunal calculated that the total actual expenditure incurred by the landlord as listed in the accounts was £12,506.66 plus £500 insurance excess (listed at note 5 in respect of some drainage works costing £22,031.25 paid for by an insurance claim). The total included £1,410 as the amount including VAT for management fees allowed by the Tribunal.
50. Coastal's proportion of the expenditure incurred was 9.11% or £1,184.91, to which the outstanding credit of £300 is to be applied. Coastal also paid £629.37 in September 2004 which falls to be deducted. Therefore the service charge payable by Coastal for 2004 was **£255.54**.

Year ending 31 December 2005

51. For the year ending 31 December 2005 the Tribunal allowed all items of expenditure as listed, except for the reduction in management fees to £1,410 and a total of £2,500 inclusive of VAT for professional fees in relation to the external works, as explained above.

52. The total expenditure was therefore £8,072.09. The service charge payable by Coastal at 9.11% was **£735.37**.

Year ending 31 December 2006

53. For the reasons already explained the Tribunal allowed £650 for gardening and £235 for accountancy fees, £1,410 management fees, and disallowed £50 provisional tax trust fee.

54. The total expenditure was therefore £9,146.55. The service charge payable by Coastal at 9.11% was **£833.25**.

Determination

55. The Tribunal therefore determines in accordance with Section 27A of the 1985 Act that the total service charge for which Coastal is liable for the years ending 31 December 2004, 2005 and 2006 is **£1,824.16**.

56. This sum will be payable when a valid service charge demand has been properly and directly served on Coastal by Remus.

Section 20C

57. Mr Williams sought an order pursuant to Section 20C of the 1985 Act that the costs incurred by the landlord in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the tenant. The 1985 provides that the Tribunal may make such order on the application as it considers just and equitable in the circumstances. The Tribunal is concerned with the merits rather than the quantum of these legal costs.

58. Having carefully weighed the evidence the Tribunal concluded that it would not be just and equitable for the landlord to recover his costs in connection with the proceedings before the Tribunal through the service charge. Arguably the proceedings would not have been necessary had Remus communicated effectively with Coastal, answered their queries, and served valid service charge demands in accordance with the lease. Instead the Tribunal has found that Remus was not managing the property in accordance with the terms of the lease.

59. The Tribunal therefore makes the order under Section 20C as sought.

Dated 2 July 2007



**Ms J A Talbot
Chairman**