

**SOUTHERN RENT ASSESSMENT PANEL &  
LEASEHOLD VALUATION TRIBUNAL**

**Case Number**                      **CHI/43UG/LSC/2006/0121**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON  
APPLICATIONS UNDER SECTION 27A AND 20C OF THE LANDLORD  
AND TENANT ACT 1985**

**Re:**                                      **Glen Court, The Glen, Addlestone, KT15 1AH**

**Applicant:**                            **Glen Court Residents Association Limited**

**Respondent:**                        **Mr D Johnston**

**Date of Application:**            **6 November 2006**

**Date of Consideration:**        **4 June 2007**

**Venue:**                                **Chertsey Hall, Heriot Road, Chertsey**

**Appearance  
For the Applicant**                **None**

**Appearance  
For the Respondent**              **None**

**Members of the Tribunal:**      **Mr J H S Preston JP FRICS  
Mr D Agnew LLB LLM  
Mr P D Turner-Powell FRICS**

**Date of Decision:**                **22 June 2007**

**SOUTHERN RENT ASSESSMENT PANEL  
RESIDENTIAL PROPERTY TRIBUNAL**

In the matter of Sections 27A and 20C of the Landlord and Tenant Act 1985  
and in the matter of Glen Court, The Glen, Addlestone, Surrey, KT15 1AH

**BETWEEN**

Glen Court Residents Association Limited Applicant

**AND**

Mr D Johnston Respondent

The matter was dealt with by the Tribunal on 4 June 2007 on consideration of written representations and without a hearing.

**Decision**

Issued: 22 June 2007

**Tribunal**  
Mr J H S Preston JP FRICS (Chairman)  
Mr D Agnew LLB LLM  
Mr P D Turner-Powell FRICS

## **Decision**

1. The Tribunal has determined, for the reasons that appear below, as follows: -
  - (a) That for the years 2003, 2004 and 2005 there should be a refund of a total of £822.50 by the respondent to the applicant in respect of management charges.
  - (b) That an order is made to prevent the landlord from recovering any costs in connection with these proceedings as part of the service charge.

## **Background and the Applicant's Case**

2. The Property. The Tribunal inspected on 4 June 2007 and found the property to be in fair condition. It is a two-storey block with five flats on each floor, constructed of brick walls with concrete tile roof. Access to the first floor is by staircase at each end leading to an open balcony. Minor items of disrepair were apparent, including rotting to timber bargeboards, flaking paintwork and a missing canopy to the door to flat 8. The lawns to the gardens to the front and rear of the block had recently been mown and generally the area was tidy.
3. The Lease. The sample lease provided by the applicant is dated 15 October 1985, between David Johnston and David Guy Patterson in respect of Flat 4. It is for 99 years from 24 March 1984. Clause 2 provides for the tenant "to pay to the lessor...a proportionate part of the expenses and outgoings incurred by the lessor in the repair maintenance renewal and insurance of the said building the provision of services therein and the other heads of expenditure as the same are set out in the fourth schedule hereto such further and additional rent (hereinafter called the "service charge") being subject to the following terms and conditions: (including)

- (a) The amount of the service charge shall be ascertained and certified by a certificate.... signed by the lessor's auditors or accountants or managing agents...acting as experts.....
- (b) The financial year shall mean the period from 29 September in each year to the 28 September of the next year...
- (c) A copy of the certificate ....shall be supplied by the lessor to the tenant and without charge to the tenant;

The fourth schedule includes the following relevant provisions:

- (1) The expense of maintaining repairing redecorating and renewing.....the said building.....
- (2) The cost of periodically inspecting maintaining.....the water systems....
- (3) The cost of insuring....the said building....
- (4) The cost of cleaning decorating and lighting the passages landings staircases....
- (5) All charges assessments and other outgoings....payable by the lessor....
- (6) The fees of the lessor's Managing Agents for the collection of the rents of the flats in the said building and for the general management thereof provided that such fees shall at no time exceed the maximum therefore allowed by the scales authorised for the time being by the Royal Institution of Chartered Surveyors
- (7) All fees and costs incurred in respect of the annual certificate and of accounts kept and audits made for the purpose thereof
- (8) The upkeep of the gardens....
- (9) The cost of taking all steps deemed desirable or expedient by the lessor for complying with....any legislation or orders ....

4. The Application. Mr J Hewetson as secretary of the Glen Court Residents Association Limited submitted this. It is dated 6 November 2006. It relates to service charges for the years 2000 – 2005 inclusive. It includes an application under section 20C.

5. The Applicant's Statement of Case. This is dated 29 November 2006. Essentially the case is that the respondent does not employ Managing Agents within the context and meaning of the lease and that the sums charged as "Management Fees" are not recoverable. The lessor's wife, Mrs P L Johnston who claims to be "employed" by the lessor, handles management of the property. The Applicant submitted that this does not constitute an outgoing that is a recoverable expense under clause 6 of the fourth schedule. In the alternative, it is submitted that the amounts charged for management are excessive, arbitrary, and bear no relation to the time expended by the lessor and his wife, or to the extent of work or services provided.
6. Service Charges. A summary of the charges raised and of management and administration charges was provided for the six years. The total of service charges was £39,900. The total of management charges was £5,166.83. The total of administration charges was £1,576. These were supported by annual "statements of outgoings" presumably provided by the lessor. The applicant seeks recovery of "£5,166.81" or a proportionate part.

### **Consideration and Reasons**

7. There is no requirement in clause 2 (2) or in the fourth schedule of the lease for the landlord's managing agents to be professionally qualified, Chartered Surveyors or to have any similar accreditation. Mrs Johnston is a separate legal entity from her husband. She has been managing the property since around 1987 when she took over from the firm Curchod and Co, who had managed it from 1984 to 1987. The tribunal finds that Mrs Johnston's employment as managing agent is not at variance with the terms of the lease.
8. The Royal Institution of Chartered Surveyors no longer prescribes scales of professional fees for such work.

9. With regard to the applicant's assertions as to Mrs Johnston's shortcomings as managing agent, the tribunal finds that she did not fully comply with the terms in the lease for such matters as provision of a certificate and that she did not consult in accordance with the prescriptions set out in the Service Charge Residential Management Code, which has statutory backing in section 87 of the Leasehold Reform Housing and Urban Development Act 1993.
10. Mrs Johnston's letter to Mr Hewetson dated 11 July 2005 evidences the lack of consultation. But the tribunal has not been asked to make a determination on this.
11. With regard to Mrs Johnston's management and administration charges, the tribunal notes that the former equate to about 13.4% of the gross service charge for each of the past four years (2002-5) and that the latter equate to a further 2.6% to 3.9%. Given that the service charges raised did not equate to the costs incurred, these management and administration charges could be said to be somewhat arbitrary.
12. On the service charge statements provided the tribunal noted that there were no adjustments made at the end of the year and the balances were carried forward. There was no evidence of auditing or of a certificate having been provided in accordance with section 21 of the 1985 Act, notwithstanding that there is provision in clause 7 of the fourth schedule of the lease for recovery of the costs of this.
13. In the experience of the tribunal the level of management charges charged by firms of Managing Agents are currently in the range of £100 to £120 per flat for management of similar properties. This would include administration charges. This implies a gross charge of £1,000 to £1,200 per annum for Glen Court. In the event of there being a need for on-site supervision of major works, the tribunal would expect an additional charge to be made for this; however the tribunal had no evidence before it that any such works had been undertaken at Glen Court in the years in question.

14. Taking the lower figure of £1,000 per annum to reflect the standard and level of management provided, the tribunal's conclusion is that for the years 2003, 2004 and 2005 there should be refunds totalling £822.50 in respect of management and administration. This sum should be repaid by the landlord to each of the tenants in equal proportions.
15. On the section 20C application the tribunal noted the apparent lack of provision in the fourth schedule of the lease for recovery by way of service charges of costs incurred in proceedings. For the avoidance of doubt and taking account of their findings, the tribunal determined that it would be just and equitable to order that any costs incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant.

Signed.....J H S Preston (Chairman)

Dated 22 June 2007