RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Residential Property TRIBUNAL SERVICE

S.27A LANDLORD & TENANT ACT 1985

DECISION

Case Number:	CHI/43UJ/LSC/2007/0006
Property:	45 James Road Camberley Surrey GU15 2RH
Applicants:	Mr P J Green Mrs J R Green
Respondents:	Accent Peerless Limited (formerly Surrey Heath Housing Association) rep by Ms Bhogal (counsel) and Coffin Mew & Clover (sols)
Members of the Tribunal:	Ms H Clarke Barrister (Chair) Mr D Lintott FRICS Miss J Dalal
Date of Hearing:	17 May 2007
Date of Decision:	4 June 2007

APPLICATION

1. This was an application by the Tenants for a determination of whether they were liable to pay service charges and/or whether those charges were reasonably incurred in respect of the years ending 1 April 2002, 2003, 2004, 2005, 2006 and 2007 "and all future years".

DECISION IN SUMMARY

2. The Tribunal determined that:

i) the Tenants were liable to pay for the items claimed by the Landlord whether they were described as service charges, management charges or management fees;

ii) the Tenants are liable to pay the amount charged for insurance;

iii) the annual estimated service charge figure (£50) was reasonable;

but

iv) the annual management fees claimed from the Tenants should be limited to £60 per annum for 2006/2007 and the increase to £70 was not supportable.

THE BACKGROUND

3. The Tenants are long leaseholders and occupiers of the ground floor flat at 45 James Road, Camberley. The property was sold under right-to-buy legislation in 1990 and the residue of the Lease was purchased by the Tenants in 1997.

4. The Landlord was formerly known as Surrey Heath Housing Association and changed its name in 2006 to Accent Peerless Limited. It acquired the freehold reversion on the Lease by a stock transfer in 1993.

5. In 2003 the Leasehold Valuation Tribunal determined that a management charge of £50 per annum was reasonable for the years ending April 1998 to April 2002 inclusive. Therefore the first year which the Tenants asked the present Tribunal to determine had already been the subject of a determination by a previous LVT which was not appealed. The Tribunal is not bound by that decision but would seek to ensure consistency where possible between decisions. The Tribunal had the benefit of reading the decision of the previous LVT at which Mr and Mrs Green had appeared in person.

6. The previous LVT found that the service charge statements and invoices were inaccurate and misleading. It expressed the hope that the parties could meet to clearly explain the current situation as regards service charges and the charge of £50 on account of possible future expenditure on repairs.

7. No such meeting or explanation had been arranged by either party since the previous Tribunal.

8. In 2006 correspondence was sent by the Landlord to the Tenants in connection with redecoration work to the exterior of various properties. The letters made reference to the Tenant's 'share' of the cost of works.

The Tenants told the Landlord they did not want work done to their property and objected to the charges on the basis that work done to other adjoining flats was too expensive. There had been no charge made under the service charge account for the redecoration work and no invoice had been issued to the Tenants.

9. The Tribunal has no jurisdiction in respect of the redecoration work, but in the light of the comments made below regarding the Lease and the parties' obligations, the Tribunal would hope that the parties could discuss the matter and clear up any misunderstandings.

THE ISSUES FOR THE TRIBUNAL

10. Mr and Mrs Green stated their concerns as follows:

i) that they were paying twice for one service because they were invoiced for 'management charges' as well as 'service charges';

ii) That they did not receive any services and consequently neither heading of charge was reasonable;

iii) That the landlord was liable to arrange insurance and consequently they did not see why they should pay for it;

iv) That they objected to paying an estimated charge.

11. On the Application form Mr and Mrs Green included 'insurance' and 'ground rent' in the list of items that are in issue, but in the course of the hearing it was clear that there was no dispute about the ground rent, and Mr and Mrs Green did not claim that the amount charged for insurance was unreasonable.

12. The issues for the Tribunal were therefore:

i) whether management charges/ management fees and service charges as claimed are payable by Mr and Mrs Green under the terms of their Lease:

ii) whether the amount claimed by their landlord was reasonable;

iii) whether Mr and Mrs Green are liable to pay for insurance under the terms of their Lease.

THE LAW

13. Section 18 of the Landlord and Tenant Act 1985 states:

(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 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.

(3) For this purpose—

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

14. Section 19 states:

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

(2A) A tenant by whom, or a landlord to whom, a service charge is alleged to be payable may apply to a leasehold valuation tribunal for a determination—

(a) whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred,

(b) whether services or works for which costs were incurred are of a reasonable standard, or

(c) *whether an amount payable before costs are incurred is reasonable.*

15. Section 27A 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.

THE LEASE

16. Under clause 3 of the Lease the Tenants are obliged to pay to the Landlord:

"*such annual sum as may be notified to the Lessee by the Lessor from time to time as representing the due proportion of the reasonably estimated amount required to cover the cost and expenses incurred or to be incurred by the Lessor in carrying out the obligations or functions contained in or referred to in this Clause and Clauses 4 and 6 hereof and in the covenants set out in the Ninth Schedule hereto*".

17. The "*obligations or functions*" of the Landlord may be paraphrased and summarised as;

i) to manage the property in a proper and reasonable manner;

ii) and to manage the property for the purpose of keeping it in the condition it was in when let;

iii) to keep the main structure of the property in good repair and condition, including foundations, exterior walls, all party walls and structures and all roofs and chimneys;

iv) to keep in good repair and condition all cisterns tanks sewers drains gutters pipes wires cables ducts and heating (except where solely installed or used for any particular flat).

v) To insure the property;

vi) To keep common parts lighted and clean and tidy;

vii) To periodically repaint and redecorate any common parts and all parts of the exterior of the property as were painted when the Lease

was made, and to clean out and repair or replace gutters, repair or replace roofs chimneys and brickwork.

18. The "*cost and expenses*" incurred by the Landlord in carrying out its obligations are referred to under the Lease as the Management Charges.

19. The Lease further provides for the annual sum to be payable by the Tenants half-yearly in advance.

20. Under Schedule 2 to the Lease the Property is defined by reference to a plan, which clearly indicates 45 James Road and the other flats in the block, but also by reference to flats 'known as Nos 40, 42, 44, ands 46 James Road'. Most of the Landlord's obligations to maintain refer to the Property. The "due proportion" of charges payable by the Tenants is not clearly defined but appears to be one-quarter of the sums incurred by the Landlord in relation to the Property.

INSPECTION

21. The members of the Tribunal inspected 45 James Road before the hearing. It comprised a two-bedroomed ground floor purpose-built flat in a small block of 4 similar properties. Above No 45 is No 47 James Road, which remains in the ownership of the Landlord. The other two flats in the block are Nos 1 and 3 Wood Road. There are no communal walkways, halls, stairs or other similar parts, each flat having its own entrance door. 45 James Road has its own garden to front and rear. The block was generally in a reasonable condition but the attention of the Tribunal was drawn to some plant growth in the rain gutters at the top of the building.

PARTIES' SUBMISSIONS AND EVIDENCE

22. The Tribunal read the statements of Deborah Viljoen for the Landlord and the annotations and written comments prepared by Mr Green, and all the documents submitted by the parties. The Tribunal heard evidence and submissions from Mr and Mrs Green, and submissions from Ms Bhogal for the Landlord and evidence from Ms Viljoen. Also present was Mr Reed, a Credit Controller for the Landlord.

23. Mrs Green said that the statements and invoices were very confusing. She was unable to see whether items were credits or debits, whether she owed money or was being asked to pay it. Management fees and service charges were supposed to be one and the same, but one was an estimated fee and the other was a regular amount. They had been in occupation for 10 years and had never seen anybody from the Landlord at the property. There was one exception, about 2 years ago the front wall was damaged and they reported it and it was repaired quite promptly. The person who did that job also noted that the gutter was blocked. It is still blocked. Nobody has been to inspect. She and Mr Green did not feel it should be necessary for them to make complaints, they were supposed to be paying for inspections. There are no common areas of the block

containing the property. Mrs Green repeatedly referred to the flat as a 'stand-alone' property. They were aware that there is an emergency out-of-hours phone line for reporting urgent matters and a daytime office number. They have never had occasion to use either save with regard to the wall.

24. In reply, Ms Bhogal drew attention to the Tenant's Handbook. This explains why tenants under long leases have a duty to pay charges for maintenance. It describes 5 ways that tenants can report repairs which need doing, including the 24 hour hotline.

25. Ms Viljoen's statement explains the system of statements and invoices, which derives from the way that the Lease is set out. There is an annual statement dated in around August each year for the previous financial year. This shows sums actually spent on repairs, if any, plus ground rent and insurance and management fees. Figures in brackets refer to a credit entry, either paid in that year or carried forward from a previous period. On 1st April each year there is an invoice for the first half-year's charges and on 1st October there is an invoice for the full year's charges, including the amounts shown on the April invoice. Each year this includes a charge of £50 against any minor repairs which may come up during the year, charged in 2 instalments of £25 . This is called 'estimated service charges'. If no repairs in fact need to be done during the year, then the amount of £50 is re-credited to the account at the end of the year and carried forward. The same amount of £50 is then charged the next year, and again, if no repairs are done, £50 is credited back to the account and carried forward again. This means that the Landlord is in funds to do any repairs which may be needed over the year. The Landlord submitted that it would be expensive and inconvenient to actually pay out the 'unused' £50 and then ask for it to be paid again each year. No repair work had been charged to this property in any of the years under consideration.

26. Management fees were set by the previous Tribunal at £50 per year in 2003. Since that date they have increased by £10 in 2005/2006 and £10 again in 2006/2007. The work done which is covered by management fees is described at paragraph 23 of Ms Viljoen's statement. She said it would be much more expensive to provide management services individually to each block of flats or each property, and the Tenants benefit from economies of scale by sharing these costs. In response to questions from the Tribunal Ms Viljoen was unable to state what services had been provided to 45 James Road specifically. She asserted that properties on long leases could take a fair amount of time to manage, even if they had no common parts to maintain, eg dealing with repairs because there was no standard protocol to follow if a repair was reported. The Landlord dealt with 308 properties. Some were sheltered accommodation. These have a manager and a designated individual to turn to so they did not consume a disproportionate share of management costs. Likewise shared ownership properties, which have a management company and a caretaker, and hence do not use up a greater share of the

Landlord's general management costs. The Tribunal observed that this evidence was not consistent with the documents which showed that the division of management charges between different sorts of property was currently weighted with a greater charge being made to shared ownership and sheltered accommodation. In particular this emerged from a document headed "Analysis of management fees chargeable 2006/2007" at page 16 of Section 3 of the bundle.

27. The Tribunal asked why the management fees had been increased from £50 to £60 and then £70. The Respondent relied on a letter dated 11 April 2005 which asserted that the 'true costs' of providing services to the leaseholders was £165 per annum, and that accordingly the fees were being increased in increments of £10 each year until the 'true cost' was reached. The Tribunal observed that the figure of £165 did not appear anywhere on the document previously referred to headed "Analysis of management fees".

28. Ms Viljoen stated that the Chief Accountant deals with the lessees. The Finance team dealt with the previous LVT and the relevant staff had left. She did not know whether any discussions had taken place between the Landlord and Mr and Mrs Green. She would assume that the Chief Accountant had taken the terms of the Lease into account and could offer no assistance on the definition of 'the Property'.

29. Ms Viljoen stated that 'Walk-by' inspections are done quarterly by Housing Officers and she receives feedback. Recently she has started to accompany them on estate inspections, on foot. Additional inspections are undertaken from time to time when more major works are being planned. For example prior to starting redecoration there would have been a more detailed survey of the condition of the property. Ms Viljoen knew nothing about blocked gutters at the property. She suggested that these would only be noticeable when it was raining and therefore there was an obligation on an occupier to let the landlord know.

DECISION

30. The Tribunal determined that:

i) the Tenants were liable to pay for the items claimed by the Landlord whether they were described as service charges, management charges or management fees;

ii) the Tenants are liable to pay the amount charged for insurance;

iii) the annual estimated service charge figure (£50) was reasonable;

but

iv) the annual management fees claimed from the Tenants should be limited to £60 per annum for the year 2006/2007 and the increase to £70 was not supportable.

REASONS FOR DECISION

31. The Tribunal decided that Schedule 2 of the Lease could and should be read by reference to the plan so that the Property refers to the block of 4 flats containing 45 James Road. Consequently all the Landlord's obligations to maintain, insure and manage which refer to "the Property" relate to that block of 4 flats.

32. The Tribunal agreed that the Property does not contain any common parts such as walkways, halls or gardens, but it observed that as a block of 4 flats the Property has a common roof, shared external and structural walls, drains, gutters, and so forth, which the Landlord is obliged to maintain. During the hearing Mr Green agreed that he understood that the Landlord had a responsibility to repair the shared parts of the building (which he broadly characterised as 'the outside') and that the Tenant had an obligation to pay a share of the Landlord's costs of doing so.

33. The Tribunal consequently would not agree with Mr and Mrs Green's description of their flat as a 'stand-alone' property, because the Lease places an obligation on the Landlord to do work to the whole building containing the Flat and on Mr and Mrs Green to contribute to those costs.

34. Insurance:
    The Tribunal further had no difficulty in deciding that Mr and Mrs Green are liable to pay the charge for insurance demanded from them. The Lease clearly makes the Landlord liable to arrange insurance and the Tenants liable to pay their fair share of the cost. In the expert view of the Tribunal the insurance represented good value for money, but the Tribunal was not asked to make a determination as to whether the charge was reasonably incurred.

35. Management Charges:
    The Lease uses the expression "Management Charges" to refer to all of the costs and expenses incurred by the Landlord in carrying out its obligations, including repairing and maintaining, keeping the property insured, as well as managing the property in a general sense. It has therefore been confusing for the Tenants to see 'Management Fee' appearing on the invoice and statements as distinct from 'Service Charge' which also appears on the invoices and statements. Neither of these expressions appears in the Lease. However, that in itself does not mean that they are not payable, and the Tribunal looked at what the charges were intended to cover to see whether they are payable.

36. Whether Management Fees are payable:
    The Tribunal accepts that the Lease places the landlord under an obligation to manage the Property. The Tribunal also accepts the evidence from Ms Viljoen that management includes the provision of a repairs response service (including the out-of-hours line), the preparation and administration of service charge and rent accounts, as well as arranging for insurance.

37. The Lease clearly requires the Tenants to pay their due proportion of the Landlord's costs of providing these management services for the Property, irrespective of whether the Tenants have made use of any particular part of the service.

38. Estimated service charges:
It is plain on the words of clause 3 of the Lease that the Landlord is entitled to make a charge based on an estimate of the costs that will be incurred. The Tenants are obliged to pay this charge (subject to the Tribunal's determination of its reasonableness). If the estimate proves to have been too high, so there is an overpayment, the Lease requires the Landlord to carry the excess amount over to the next year as a credit.

39. The Tribunal accepted that the Landlord used a common practice of showing that a sum of money was a credit by putting brackets round it on the invoices and statements. This had not been understood by Mr and Mrs Green but as a result of the hearing hopefully this had become clear.

40. The Tribunal considered that the system used by the Landlord was still extremely confusing and difficult to follow. In particular, the Tribunal took the view that demanding a £50 service charge annually with no indication of whether that sum was paid or how it was used was very undesirable. There surely must be a simpler way to reflect the contingency charge for repairs on the statements and invoices. Moreover, although the Tribunal decided that both Management Fees and Estimated Service Charge are payable, it is undesirable that the Landlord has not used the words Management Charges which appear in the Lease.

41. Reasonableness of Management fees:
The Tribunal considered that it had no evidence of the real cost of managing the property as opposed to the sums spent on management of the housing stock as a whole. It did not appear that the Landlord had considered the implications of the definitions section of the Lease, which limits the liability of the Tenants to contribute only to the costs of managing the Property. Apart from general headings of management tasks, no evidence was advanced about management services provided specifically to the Property let alone to the flat occupied by Mr and Mrs Green. The evidence disclosed that even if inspections had been carried out, they had failed to notice the plants growing in the gutter of the Property, and so the quality of the service was in considerable doubt. Nobody from the Landlord had attempted to explain to the Tenants how the invoice system worked nor what the entries meant, in spite of the previous Tribunal's comments. However the Tribunal accepted that management services such as the provision of insurance and the running of a repairs hotline were provided to the Property and must incur a cost; moreover, that general price inflation indicates that such costs would increase over time.

42. In the circumstances the Tribunal did not find it unreasonable for there to have been an increase to £60 per annum in 2005/2006 but did not see any justification for the further annual increase of £10 in 2006/2007. The

Tribunal determined that the management fee should be limited to £60 per annum for the year 2006/2007.

43. The Tribunal is unable to make any determination as to what will be reasonable in future years, and has no jurisdiction to do so.

COSTS OF THE PROCEEDINGS

44. The Tribunal determined that the Lease does not provide any authority for the Landlord to add the costs of these proceedings to the service charge/ management charges. No decision under s20C of the Landlord and Tenant Act 1985 was therefore required.

H Clarke, Chair

4 June 2007