

Southern Rent Assessment Panel and Leasehold Valuation Tribunal

Case No.CHI/45UH/LSC/2008/0019

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
Section 27A and Section 20C of the LANDLORD AND TENANT ACT 1985**

Property: 1 Cowper Road, Worthing, West Sussex BN11 4RD

Applicants: Mr Russell Harding (1) (Flat 2) (tenants)
Mr Marshall Peach (2) (Flat 1)
Mr Robert O'Neill & Ms Jennifer Roper (3) (Flat 3)

Respondent: Adelaide Homes (Sussex) Limited (landlord)

Appearances: For the Applicant:
Mr Harding and Mr Peach in person

For the Respondent:
M A J Scrivens, Director
Ms J Smith

Application: 09 February 2008

Directions: 29 February, 4 May & 23 May 2008

Hearing: 23 June 2008

Decision: 14 July 2008

Members of the Leasehold Valuation Tribunal

Ms J A Talbot MA
Mr R A Wilkey FRICS
Mrs J Morris

Summary of decision

The tenants are liable to pay the following service charges to the landlord for the accounting years ending 28 September 2006 and 2007:

Mr Peach (Flat 1)	£ 1071.22	£1,798.97
Mr Harding (Flat 2)	£ 717.14	£1,199.32
Mr O' Neill & Ms Roper (Flat 3)	£ 595.13	£ 999.43

Case No.CHI/45UH/LSC/2008/0019

1 Cowper Road Worthing West Sussex BN11 4RD

Application

1. This was an application made by Mr Harding, tenant of Flat 2, under Section 27A of the Landlord and Tenant Act 1985 (The Act) for a determination of his liability to pay service charges for the accounting year ending 28 September 2007, and for an order under Section 20C of the Act that the Respondent's costs in these proceedings are not relevant costs to be included in future service charges.
2. Directions were issued on 29 February 2008 for the parties to provide written statements of case together with documents they wished the tribunal to see in support of their case. Both parties complied with the Directions. By further Directions dated 4 April and 23 May 2008, the other tenants, Mr Peach of Flat 2 and Mr O'Neill & Ms Roper of Flat 3, were joined as applicants.
3. At the hearing the tribunal with the agreement of the parties extended the scope of the application to include the year ending 28 September 2006 as the accounts were available for that year and the tenants wished to challenge the expenditure. The tribunal explained that it was not possible to determine service charges for future years where there was no specific evidence on costs likely to be incurred.

Jurisdiction

4. The Tribunal has power under Section 27A of the Act to determine whether a service charge is payable, and if so, the person by whom and to whom it is payable, the amount, and the time and manner in which it is payable. Under Section 19 of the Act the Tribunal must also consider whether the service charges in dispute have been reasonably incurred and whether the works or services to which they relate are of a reasonable standard.

Lease

5. The Tribunal had a copy of the lease of Flat 2. The lease is dated 21 December 2005 between J&K Property Developments Limited (the lessor) and Mr Harding (the lessee) and is for a term of 99 years from 29 September 2005 at a ground rent of £250 per year and rising thereafter. Although this is a recent lease the property had already been converted into flats some years previously and refurbished at the time of the grant of the new leases by the property developer.
6. The lessee's obligation to pay service charges is to be found at Clause 4(4) and is "to pay the Interim Charge and the Further Interim Charge (as appropriate) and the Service Charge at the times and in the manner provided in the Fifth Schedule". That Schedule provides that the interim charge means "such sum to be paid on account of the service charge in respect of each Accounting Period as the Lessors or their Managing Agents shall specify at their discretion to be a fair and reasonable interim payment", payable in advance on 29 September and 25 March each year.
7. The service charge is defined as the tenant's percentage share of the landlord's total expenditure, which means "the Total Expenditure incurred by the Lessors in the Accounting Period in carrying out their obligations under Clause 5(4) of this Lease and any other costs and expenses reasonably and properly incurred in connection with the Building". The accounting period ends on 28 September each year. The percentage proportions payable by each tenant are: Flat 1, 45%; Flat 2, 30%; Flat 3, 25%.

8. At Clause 5(4) the lessor covenants to "maintain and keep in good and substantial repair and condition" the main structure of the Building" including the exterior walls, roof and foundations and common parts and to insure the Building. This obligation is conditional upon the tenants paying their service charges.

Inspection

9. The members of the tribunal inspected the property before the hearing accompanied by Mr Peach and Mr Scrivens. It comprised a substantial late Victorian end of terrace corner property converted into 3 flats, one on the ground floor and two on the first floor, of brick construction under a multi-pitched slate covered roof. The exterior paintwork was serviceable but deteriorating in parts to the original timber double-hung sash windows. The cast iron rainwater goods were in reasonable condition. The property was surrounded to the north and east by gravel gardens planted with shrubs.
10. The tribunal members inspected Flat 1 internally and found it to be in excellent decorative order throughout but affected by an area of severe spreading damp in the bathroom, which appeared on brief inspection to be possibly connected to a redundant chimney stack directly above. There was some new plaster following a leak from the flat above, the cost of repair to which was covered by an insurance claim.
11. The common parts consisted only of a small entrance hall leading to the doorway to Flat 1 and a carpeted staircase giving access to a small landing and the entrance doors to Flats 2 and 3. There was no electric power source serving the common parts.

Hearing

12. A hearing took place at the tribunal offices in Chichester on 23 June 2008. Mr Harding and Mr Peach attended in person for the applicant tenants. Mr Peach purchased Flat 1 in November 2005, Mr Harding purchased Flat 2 in December 2005, and Mr O'Neill and Ms Roper purchased Flat 3 in February 2006. Mr Scrivens and Ms Smith attended for the respondent landlord. Mr Scrivens confirmed that he was the sole director of both Adelaide Homes Sussex Limited and Adelaide Property Management, the freeholder and managing agents respectively.
13. Mr Harding and Mr Peach presented the case for the tenants, who were all in agreement. Essentially their case was twofold: that the service charges were too high in relation to the type of property and the services received; and that Adelaide had consistently failed to respond to their queries and provide copies of documents when requested. Mr Harding cited a letter sent from all 3 tenants on 13 April 2007 raising 15 numbered points. It appeared that he did not receive Mr Scrivens' detailed reply dated 30 May 2007. Mr Harding had expected to pay £500 per year and been given this information by his solicitor at the time of purchase.
14. Mr Scrivens presented the case for the landlord which essentially was that all the expenditure for the years in question was reasonably incurred and could be evidenced (the tribunal allowed a short adjournment for Mr Scrivens to obtain certain documents such as invoices and receipts in support of general repairs and insurance). His firm took over management in March 2006 when Adelaide Homes (Sussex) Ltd acquired the freehold from the developer, J&K Developments, who had not carried out any maintenance but simply insured the property. Mr Scrivens stated that all the tenants were in arrears of service charges and that as the landlord's repairing obligations were conditional upon payment of service charges there were no funds available to carry out further work.
15. In response to questions from the tribunal Mr Harding and Mr Peach went through the items of expenditure in the accounts for the years ending 28 September 2006 and 2007.

Insurance

16. Mr Harding and Mr Peach believed that the insurance premiums were too high and disproportionate. They had not been provided with copies of the buildings insurance certificates or details of cover. They produced an alternative written quotation obtained by Mr O'Neill for £337.60. However, this gave no information about the sum insured, claims history or exclusions/excess and was stated to be "specifically designed for owners of tenanted domestic property where there is a tenancy agreement in place between the landlord (or his representative) and tenant". A verbal quote had been given to Mr Peach by managing agent David Fitness of £2,000 to manage the property including £900 for insurance which appeared to be given on the basis of a brief visual inspection only.
17. Mr Scrivens explained that the premium charged in the 2006 accounts covered an 18 month period and was broken down accordingly at £504.55 from 3 March 2006 to 31 August 2006 and £858.94 for the year 1 September 2006 to 31 August 2007. The cost in the 2007 accounts of £1,192.03 was for the period to 31 August 2008. The property was included in a Norwich Union block policy covering some 40-50 properties owned by Adelaide across the south coast.
18. Mr Scrivens thought the property may have been previously under-insured and therefore obtained a valuation report from local property consultants firm Vail Williams on 27 June 2006 which gave a reinstatement valuation sum of £374,000, for which the building was currently insured. The fee for that report was £293.75 (£250 plus VAT) and was included in the service charge account for that year. It was Mr Scrivens' practice to obtain valuation reports every 5 years and he instructed his broker, Bennett Dawes, to test the market every 3 years. Mr Scrivens submitted that the insurance cost was reasonably incurred and not too high. He had sent a copy of Bennett Dawes invoice showing the premium and the sum insured (but no other details) with his letter of 30 May 2007.

Cleaning

19. The cleaning costs were £285 for 2006 and £600 for 2007. Mr Harding and Mr Peach submitted that the cleaning was inadequate as there was no electrical power to the common parts so all the cleaners could do was sweep the lobby and carpeted stair and landing. This took about 15 minutes per visit and they did not come every week. The tenants would prefer to carry out the cleaning themselves. Mr Scrivens objected to this as the lease required the landlord to maintain the common parts. He said that the 2 cleaners were directly employed by his management company at an hourly rate of £11 and were contracted to clean at the property for 1 hour per week, to include sweeping the common parts and the garden path. This cost was rounded to £50 per month. He submitted that the standard was satisfactory and that he personally monitored this.

Management Charges

20. The management fees were £540 basic management fees and an additional £90 for general administration for 2007 and £270 plus £75 for 2006. No VAT was added. Mr Harding and Mr Peach submitted that this seemed high and they did not know what services were provided for the fee. They had obtained alternative quotes of £800 basic charge per year from local firm Hobsons and approximately £1,000 from David Fitness (who quoted £2000 apparently inclusive of insurance, gardening and cleaning). Neither gave a price per flat.
21. Mr Scrivens said that his firm charged a basic management annual fee of £180 per flat. There was a contract in place between the freehold company and the management company, both of which he was sole director, but the contract was 12 years old, pre-dated the RICS Code of Management and probably needed updating. He was aware of the Code but had not recently referred to it. He did not have a written menu of items covered by the basic charge to show

the tribunal but submitted that it included 3 inspection visits per year and all routine day to day matters, including for this property, effecting insurance, cleaning, minor repairs and investigating the damp problem in Flat 1.. As the basic charge was low there was an additional flat rate administration charge of £25 per flat for 2006 and £30 for 2007 but he was unable to explain what this was for apart from copying and distributing documents.

Accountancy Fees

22. A provisional figure was given in the accounts of £105.75 for 2006 and £141 for 2007. Mr Scrivens explained that the actual figures as invoiced by Victor Booman & Co were for the same amounts and covered preparation of the service charge accounts, and examining receipts and documents in support. Once Mr Harding and Mr Peach heard the explanation and saw the invoices they accepted the sums as reasonable.

AKD Consulting Report

23. This report appeared in the 2007 accounts at a charge of £433.69 (£400 plus VAT). Mr Scrivens said that it was prepared on his instructions by chartered surveyor Mr K Woudman on 10 March 2007 to investigate the cause of damp inside Flat 1. In Mr Woudman's opinion the likely cause was water ingress through a projecting string brick course to the external wall. He recommended remedial works to check the integrity of the T connector to external waste pipes and inserting a new flashing to the brick course and then to inspect again in 6 months to see if the damp had dried out. Unfortunately this did not solve the problem and the damp continued to spread. A copy was sent to Mr Peach but he was not satisfied with the outcome and did not see why the cost of remedying the damp could not be met by an insurance claim. However, the tribunal accepted that this would not be an insured risk as it was a matter of general maintenance.

General Repairs 2006 & 2007

24. A substantial part of the 2007 charges, totaling £1,391, was headed "Repairs" and followed by a list which was not supported by invoices until Mr Scrivens obtained them on the date of the hearing. He was then able to itemize the works. In 2006 there were 2 repairs totaling £205 both by PM&M.
25. PM&M's invoices were all for clearing hoppers and drains and gutter repair. This company was owned by Mr Scrivens and such work maintenance was carried out about twice a year.
26. Fiesta Garden Services 2 invoices of £40 and £15 were for 2 visits, the first for an "initial tidy" and the second a first monthly visit for maintenance (though no further charges, and presumably no further visits, were made). Mr Peach did not believe that any work had been carried out and thought the garden was neglected.
27. Southern Property Maintenance supplied 3 invoices. The first was for £399.50 to rebuild the small garden wall and right hand pier which had been damaged. The tenants disputed the cause of the damage to the pier and thought the cost should have been covered by an insurance claim. Mr Scrivens had decided not to pursue a claim as he regarded the cost attributable to the pier repair (about half the total) as too low given the insurance excess and the fact that it would affect the claims history. However, there was no dispute as to the need for the work and the standard of the repair.
28. The second invoice was for £211.50 for work to remove trellis, nails and brackets from the external wall and apply water seal. This was not challenged. The third invoice was for work done in accordance with Mr Woudman's recommendations to attempt to remedy the damp (see paragraph 23). Mr Peach was unhappy that although costs had been incurred the damp problem had not yet been solved.

Decision

- 29.** The tribunal considered the submissions made by both the landlord and the tenants. The most contentious aspect appeared to be the fact that the tenants felt their requests for information had not been dealt with. It was somewhat unfortunate that Mr Scrivens' letter of 30 May 2007 had not been received as this could have opened a dialogue. It is to be hoped that future communication will be more successful.
- 30.** In general the tribunal accepted that most of the landlord's expenditure was necessary and reasonably incurred. It was also unfortunate that Mr Harding had been led to believe on purchase that his service charges would only be £500 per year; this could not be guaranteed as the level of service charge depends upon the landlord's expenditure in maintaining and repairing the property in accordance with the lease.
- 31.** Looking at the individual items of expenditure the tribunal was satisfied that the insurance premiums were reasonable. It accepted Mr Scrivens' explanation that the 2006 account in fact covered an 18 month period and the insurance premium was effectively paid a year in advance as the insurance year ran from 1 September to 31 August each year. The landlord was entitled to insure under a block policy, the insurer was reputable and the reinstatement figure was properly obtained under a recent professional valuation. The tenants' alternative written quote was not on a like-for-like basis, being for a buy-to-let property and without giving a reinstatement value. The tribunal was unable to give any weight to the verbal quote which appeared to be a rough estimate only. Although Mr Scrivens could have sent copies of the insurance certificates earlier, the reinstatement value was clear from the broker's invoice included in the papers supplied before the hearing.
- 32.** Even if the tenants had obtained a cheaper like-for-like quote, it does not follow that the landlord's premium was unreasonably incurred. It is settled law that a landlord can recover by way of service charges the cost of insurance provided it has acted in accordance with the lease and arranged the insurance in the normal course of business with reputable insurers, unless the premium is excessive and out of line with the market range. The tribunal therefore allowed the insurance premiums in full.
- 33.** The tribunal also allowed in full the accountant's fees, insurance valuation fee, and chartered surveyor's fee for investigating the damp as these were all reasonably incurred. The landlord was entitled to instruct these professionals and to rely on the surveyor's advice by following his initial recommendations. Unfortunately the damp problem has persisted and will doubtless require further investigation the cost of which may also be passed to the tenants as service charges, provided that the cost is reasonably incurred and the works or services to which it relates are of a reasonable standard.
- 34.** The tribunal further accepted that the repair works charged in 2007 were necessary as ongoing maintenance to the property, and that the cost was reasonable having scrutinised the invoices and heard Mr Scrivens' explanation for each item.
- 35.** The tribunal considered however that the cost incurred for cleaning was excessive. Without a power source it was not possible to vacuum the stairway and landing, and mere sweeping with a dustpan and brush was in the tribunal's opinion unlikely to be satisfactory in the long term. Given the very limited area of the common parts it was also unlikely that the cleaning could realistically take one hour per week. The tribunal allowed £142.50 for 2006 and £300 for 2007 as a reasonable charge.
- 36.** With respect to management charges, the tribunal accepted that Mr Scrivens' basic annual charge per unit was not unreasonable at £180 per year, albeit at the top end of the market range for properties of this size and type. The tribunal had some concerns about the fact that there was no recent management contract in place and no clear menu of items covered by

the basic charge in line with the RICS Code, to which all managing agents are required to have regard (and regularly consult) when carrying out their functions. The tribunal did not accept that an additional flat rate per flat for general administration fees was justified over and above the basic charge and Mr Scrivens somewhat vague explanation that this was to cover unspecified copying charges was unsatisfactory. It therefore disallowed £75 and £90 administration charges.

Section 20C

37. The tenants applied for an order under Section 20C that the costs incurred by the landlord in connection with the proceedings before the tribunal should not be included in any future service charges payable by them. The 1985 Act provides that the tribunal may make such order as it considers just and equitable in the circumstances. The tribunal is concerned with the merits rather than the amount of these costs. The tenants submitted that it would be unfair for them to pay the landlord's costs as their requests for information had been ignored. The landlord submitted that a reply had been sent to the tenants' letter asking for information and that the tenants were unreasonably withholding payment of service charges. Taking all the circumstances into account, including the fact that it had found in favour of the landlord in its determination of the majority of the service charges in dispute, the tribunal decided not to make an order under Section 20C.

Determination

The sums payable by way of service charges by each tenant as determined by the tribunal are as follows. The service charges having been validly demanded are payable within 14 days of the date of this decision.

Y/e 28 Sept 06	Cost allowed	Flat 1 @ 45%	Flat 2 @ 30%	Flat 3 @ 25%
Insurance	£1,363.49			
Cleaning	£ 142.50			
Management	£ 270.00			
Accountancy	£ 105.75			
Surveyor	£ 293.75			
Repairs total	£ 205.00			
Total	£2,380.49	£1,071.22	£714.14	£595.13

Y/e 28 Sept 07	Cost allowed	Flat 1 @ 45%	Flat 2 @ 30%	Flat 3 @ 25%
Insurance	£1,192.03			
Cleaning	£ 300.00			
Management	£ 540.00			
Accountancy	£ 141.00			
AKD Consulting	£ 433.69			
Repairs total	£1,391.00			
Total	£3,997.72	£1,798.97	£1,199.32	£999.43

Dated 14 July 2008

Ms J A Talbot MA
Chairman

