

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

LEASEHOLD VALUATION TRIBUNAL

In the matter of 27A of the Landlord and Tenant Act 1985 ("the Act") and
Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

Case Number: CHI/00ML/LIS/2009/0033

BETWEEN

Mr M Wynne (Applicant/Landlord)

and

Park Avenue Estates Ltd (Respondent/Lessee)

**Premises: 12a Cross Street, Hove, East Sussex BN3 1AJ ("The
Premises")**

Date of Hearing: 31 July 2009

Representatives: Mr Packwood of PPS Management Ltd for the Landlord
and Ms K Mellor, Manager for the Respondent

Tribunal: Mr D Agnew BA LLB LLM (Chairman)
Miss C D Barton BSc MRICS
Mr R T Dumont

DETERMINATION

The Tribunal determines that the following service charges are reasonable for
the years indicated:-

2000/2001	-	£391.21
2001/2002	-	£449.25
2002/2003	-	£469.78
2003/2004	-	£473.56
2004/2005	-	£275.59

2005/2006	-	£431.68
2006/2007	-	£467.94
2007/2008	-	<u>£553.92</u>
		£3512.93

The Tribunal concludes that as at the date of the issue of the County Court proceedings the Respondent was £1592.11 in credit on its service charge account.

The Tribunal makes a determination in favour of the Respondent under Section 20C of the Act.

REASONS

1. Background:

1.1 On 8 April 2009 by order of the District Judge in Brighton County Court under case no 8BN03968 the question as to the reasonableness of certain service and administration charges claimed by the Applicant against the Respondent was transferred to the Leasehold Valuation Tribunal for determination. The service charge years in question spanned the years 2000/2001 to 2007/2008.

1.2 The Applicant's claim to the County Court was for a total sum of £1950.50 plus court fee of £75.00. This figure of £1950.50, however, was the balance of service charges and ground rent after payment of some amounts by the Respondent which had been applied by the Applicant to the oldest outstanding amount first.

1.3 At a pre-trial review on 27 May 2009 the following directions amongst others were made:-

(a) That by 12th June 2009 the Respondent shall confirm in writing to the Tribunal Office if it wishes to make an application under Section 20C of the Landlord and Tenant Act 1985 (the Act) to be heard at the

conclusion of the Section 27A application.

(b) That the Applicant shall file with the Tribunal and serve on the Respondent service charge accounts for the disputed years in question. Such accounts including a summary of annual expenditure on the property and all monies received from the leaseholders of the property by way of service charge for each of the years in question and the accounts were to show the aggregate amount standing to the credit of the Respondent at the beginning of each accounting year and at the end of each accounting year. This was to be done by 12 June 2009. The Applicant was also to serve on the Respondent a summary statement showing the actual amount demanded of the Respondent by way of service charge in each of the disputed years, together with the amount paid by the Respondent by way of service charge in each year identifying any credits allowed and concluding with a net figure showing the net amount alleged to be outstanding. The initial 'brought forward' figure contained in the year ending 29 September 2001 was to be supported by copy invoices, receipts and other documentation as may be necessary to support the figure claimed to be due. Again this was to be done by 12 June 2009.

- 1.4 The Respondent was then required to serve a full statement of case identifying each service charge item in dispute and the reason why by 26 June 2009.
- 1.5 Each party was to prepare their own hearing bundle and four copies sent to the Tribunal not less than 14 days prior to the hearing such bundles to be paginated indexed and numbered for easy reference.

1.6 Supposedly in compliance with the aforesaid directions the Applicant following the pre-trial review delivered to the Tribunal a jumbled assortment of accounts and documents in no logical order. There were no invoices in support of expenditure incurred or receipts for expenditure paid. When reminded that the Applicant was to provide a hearing bundle duly indexed and paginated his managing agent delivered to the Tribunal after the required date and at the last minute a meagre bundle containing only income and expenditure accounts for the years in question, the managing agent's cash book report and a copy service charge demand covering the period 20 March 2005 to 28 September 2007.

1.7 The Respondent did supply a hearing bundle as best it could in the circumstances and also confirmed that it wished to pursue an application under Section 20C of the Act.

2. Inspection:

2.1 The Tribunal inspected the Premises immediately prior to the hearing on 31 July 2009. They comprise a maisonette on the first and second floors of a three storey Georgian style building in a side road close to the seafront in Hove. The brickwork is rendered. The windows are wooden framed single glazed sash units. There is plastic guttering. The rendered façade to the building has recently been decorated and the exterior seems to be in good condition. Inside a narrow hallway and stairs leads to a reasonable size living room which has an electric heater. A small kitchen leads off the lounge. There is also a bathroom on this floor containing a dated suite in pink. Stairs lead up to a double

bedroom which has a low ceiling and electric heater. This room houses a hot and cold water cylinder. The building does have a small courtyard garden to the rear. This cannot be accessed from flat 12a and the garden space can only just be seen from the windows of that flat.

3. The Hearing:

3.1 The Hearing took place at Brighton Racecourse on 31 July 2009. Present were Mr Packwood of Park Avenue Estates Ltd on behalf of the Landlord Mr Wynne, and Ms Kirsty Mellor a manager of the Respondent company who appeared for the Respondent.

4. The Applicant's Case:

4.1 Mr Packwood stated that he relied on the service charge income and expenditure accounts to show what service charges had been incurred for the years in question and that he would be contending that all those charges were reasonable.

4.2 The amounts claimed by way of service charges for the building, 50% of which were payable by the Respondent in each year were as follows:-

In the year 2000/2001

Buildings insurance	£429.91
Management fees	£300.00
VAT thereon	£ 52.50
Repairs and maintenance	Nil
Set up charges	Nil
Total	£782.41

4.3 In the year 2001/2002

General expenses	£ 58.75
Buildings insurance	£940.13
Management fees	£300.00
VAT thereon	£ 52.50
Repairs and maintenance	Nil
Total	£1351.38

4.4	In the year 2002/2003	
	Buildings insurance	£587.07
	Management fees	£300.00
	VAT thereon	£ 52.50
	Repairs and maintenance	£480.00
	Administration costs	£ 8.00
	Total	£1427.57
4.5	In the year 2003/2004	
	Buildings insurance	£594.63
	Management fees	£300.00
	VAT thereon	£ 52.50
	Repairs and maintenance	Nil
	Total	£947.13
4.6	In the year 2004/2005	
	24 hour emergency service charge	£ 23.50
	Accountancy fees	£250.00
	Buildings insurance	£198.68
	Management fees	£300.00
	VAT thereon	£ 52.50
	Total	£824.68
4.7	In the year 2005/2006	
	Buildings insurance	£510.86
	24 hour service charge	£ 23.50
	Management fees	£300.00
	VAT thereon	£ 52.50
	Accountancy fees	£210.00
	Total	£1096.86
4.8	In the year 2006/2007	
	Buildings insurance	£558.74
	24 hour service charge	£ 23.50
	Management fees	£377.14
	Accountancy fees	£360.00
	Total	£1319.38
4.9	In the year 2007/2008	
	Buildings insurance	£546.60
	Gardening	£150.00
	24 hour service charge	£ 23.50
	Management fees	£500.04
	Accountancy fees	£360.00
	Total	£1580.14

5. The Respondent's Case

Ms Mellor queried the following items of expenditure

- 5.1 In the year 2001/2002 General expenses £58.75. She said that she had seen no invoices for this sum. The Respondent's cash book showed that this had been incurred in respect of a roof inspection. There was no explanation as to why the roof inspection was required and she therefore asked that that item be disallowed. With regard to the Buildings insurance (£940.13) this was considerably higher than the previous year's insurance premium and also considerably higher than subsequent years' buildings insurance premiums. Even if the cost of rebuilding had been revalued that did not justify such a large increase in premium and did not explain why the premium went down again for subsequent years. The Applicant had not produced a copy of the receipt for insurance and she therefore challenged that the amount claimed was reasonable.
- 5.2 2002/2003 Ms Mellor challenged the figure for repairs and maintenance in the sum of £480.00. In actual fact her company had carried out the repair at Mr Packwood's request at a total cost of £885.00. The managing agent had reimbursed her company that amount but seemingly had only recovered £405 leaving a balance deficit of £480.00. As the Applicant had given no explanation as to why there was such a shortfall she asked that that item be disallowed. She also challenged the Administration costs (£8.00) which Mr Packwood had stated had been incurred in respect of the ownership of the property in contemplation of proceedings which were not taken at that time.

- 5.3 2004/2005. Ms Mellor challenged the claim for £23.50 for the emergency service charge. This was a charge introduced by the managing agents to enable tenants to call an out of hours helpline if they required to contact them when the office was closed. Ms Mellor said that on 27 January 2003 she had written to the managing agents to say that they did not require that service and so it should not have been charged to them. Mr Packwood agreed not to pursue the emergency service charge for this year and the subsequent years in which it was charged. Ms Mellor also challenged the fee for accountancy in this year. No receipt had been produced for the accountancy charge. These were simple accounts and Ms Mellor could not see why it was necessary to go out to an external firm to produce the accounts.
- 5.4 2005/2006. Again Ms Mellor challenged the accountancy fee of £210 on the same grounds as before. The accountancy charge of £360 was also challenged for the year 2006/2007.
- 5.5 2007/2008. Again the accountancy fees of £360 were challenged on the same basis as before, as was the 24 hour service charge of £23.50. For this year there was a gardening charge of £150 which Ms Mellor challenged. She said that the Respondent had no access to the garden and had no benefit from it. Mr Packwood explained that the charge of £150 had been incurred in removing ivy which had become very invasive on the garden wall.
- 5.6 For all the years in question Ms Mellor challenged the management fees. She stated that they were too high for the service that was

provided by the managing agents. They never responded to her requests for information in a satisfactory manner. Their accountancy procedures were confusing and she had received conflicting statements of account. When repairs were required the managing agents left them to have the work carried out. All they seemed to do for their money was to arrange buildings insurance and have the accounts drawn up. They felt that they had received no satisfactory service for management of the building. Mr Packwood responded that his company is responsible for the building. They pay the insurance, arrange for the accounts to be carried out and collect the ground rents and service charges. If repairs are needed to be done they are the first point of contact. He considered that the fees they charge for that service are reasonable. In 2000/2001 it was £150 per flat plus VAT and this did not rise for several years.

- 5.7 There were two final matters that Ms Mellor was concerned about. This dated back to the situation which applied when Mr Packwood's firm took over the management of the building from the previous landlord. Ms Mellor produced a statement from the previous landlord showing that her company was £262.50 in credit as at September 2000. However, in the first statement received from Park Avenue Estates Ltd it had been claimed that the Respondent was £200 in arrears. Mr Packwood was unable to explain how the figure of £200 had been arrived at and he was prepared to withdraw the claim that the Respondent was £200 in arrears at that time. He was not in a position to say whether the statement showing a credit to the Respondent of

£262.50 was correct or not as his company was not responsible for managing the building at that time.

6. The Lease

- 6.1 The Lease is dated 1st June 1987 and is made between Frank Beeching-Kidd and Edith Muriel Beeching-Kidd (1) and Ian Maxwell Huzinga (2).
- 6.2 By clause 4(B)(i) the lessee covenants "to pay and contribute in manner hereinafter provided the Lessees' proportion ... of all monies expended by the Lessor in complying with its covenants in relation to the building as set forth in clauses 6(B) and (C)" of the lease.
- (ii) "to pay to the Lessor or its agents for the time being ... the first sum described in recital (6) hereof or such greater sum as the Lessor or its agents shall in their reasonable discretion deem appropriate but provided such greater sum is fair and reasonable (hereinafter called "the Estimated Sums") on account of the Lessees liability for the next half year under sub-clause (1) hereof ..."
- 6.3 The Lease provides that the Lessor shall serve as soon as practical after 29 September in every year a notice in writing duly certified by the Lessors' chartered accountants of the actual amount of the Lessees liability for the previous year. The Lessee is required within fourteen days to pay the balance if any by which the amount of the estimated sum falls short of the actual expenditure and that any surplus may at the option of the Lessor be applied in or towards the payment of the estimated sum for the next period.

6.4 By clause 6 of the Lease the Lessor covenants amongst other things to insure the premises and to keep the main structure in good and substantial repair and condition "and to employ such person or persons as shall be reasonably necessary for the due performance of the covenants on its part contained in the Lease and the for the proper management of the building and in particular but without prejudice to the generality of the foregoing employ a firm of chartered surveyors or other professional managers of property to handle the management of the building and the fees of such firms shall be added to the other expenses incurred by the Lessor under the provisions of clause 6 of the Lease." Finally the Lessor is required to "keep or cause to be kept proper books of account of all costs charges and expenses incurred in carrying out its obligations under the Lease and of all contributions received by the Lessor or its agents for the time being in accordance with the covenants in that behalf contained in their respective leases and to permit the Lessee upon appointment to inspect such books and all receipts and vouchers and to take copies thereof".

7. The Law

7.1 By Section 27A of the 1985 Act it is provided that:-

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.

7.2 By Section 19(1) of the Act the amount payable in respect of service charges shall be limited to the extent that they are reasonably incurred.

7.3 By Section 158 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("CLARA"), paragraph 5(1), an application may be made to a leasehold valuation tribunal for a determination whether an administration 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.

7.4 By paragraph 2 of Schedule 11 of CLARA a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

8. Determination

8.1. Management Fees.

In general the Tribunal thought that the management fees charged by the Applicant's managing agent were reasonable for what they do. It is true to say that they do not have to do a lot of management at this building but they do arrange and pay the insurance for the building and they keep records. In the earlier years they produced the accounts. In later years they arranged for external accountants to produce the accounts. They have collected in service charges and ground rents.

8.1.2 The Tribunal considers, however, that the Respondent's complaints about the managing agents' failure adequately to respond to requests for information and copy documentation is well founded and had their fees not been at the lower end of the scale of reasonable managing agents' fees then the Tribunal would have considered any higher charge to have been unjustified. The Tribunal does find, however, that for the year 2001/2 where the Respondent was expected to take on the responsibility for the roof repair that the managing agents fee should be reduced.

8.1.3 The Tribunal therefore determines that the management fees payable by the Respondent for the years in question are as follows:-

2000/2001	£150.00 plus VAT
2001/2002	£100.00 plus VAT
2002/2003	£150.00 plus VAT
2003/2004	£150.00 plus VAT
2004/2005	£150.00 plus VAT
2005/2006	£150.00 plus VAT
2006/2007	£188.57 (inclusive of VAT)

8.1.4 The Tribunal considered that the management fees for the building for 2007/2008 are excessive at £500.04 where the managing agents put the production of the accounts out to an external accountancy firm. The Tribunal considers that a charge of £350.00 plus VAT for management fees for the building are reasonable for that year. The Respondent is liable to pay one-half of this sum, namely £201.25.

8.2 With regard to other items of expenditure for the years in question the Tribunal made the following determinations:-

a) 2000/2001 The Tribunal considers that the buildings insurance of £429.91 is reasonable.

b) 2001/2002 General expenses of £58.75 will be disallowed. There

was no proper explanation as to why this cost had been incurred, what it had covered and there was no receipted invoice before the Tribunal in support of that expenditure. The buildings insurance of £940.13 seemed excessive and was completely out of line with the premiums for previous and subsequent years. The Tribunal calculated that the average premiums for the period in question was £546.00. The Tribunal considered that that would be a reasonable amount to pay for buildings insurance for 2001/2002 and so determines.

c) 2002/2003 The repairs and maintenance shortfall of £480.00 was totally unexplained by Mr Packwood and he had no documentation to explain how that figure had been arrived at. The Tribunal therefore disallowed that expenditure. With regard to the administration costs of £8.00 again these had not properly been explained by Mr Packwood and there was no invoice or receipt to substantiate the payment. If indeed it was the contemplation of legal proceedings that were not taken the Tribunal does not consider that it is reasonable for the Respondent to have to pay for such an exercise. The £8.00 will therefore be disallowed.

d) 2003/2004 The only challenge in this year was to the management fees which have already been dealt with above.

e) 2004/2005, 2005/2006 and 2006/2007 The challenge in these years, other than the management fees was to the accountancy fees. These were not certified accounts as required by the Lease. There were no invoices in support of the expenditure. The accounts were not onerous. In previous years they had been prepared by the managing

agents and there seemed to the Tribunal to be no good reason why these accounts had been prepared by an external accountancy firm.

All the accountancy fees for these years would therefore be disallowed.

f) 2007/2008 Again the accountancy fees would be disallowed for the reasons given above. The gardening fee of £150 would be allowed.

The boundary walls are included within the definition of the building in clause 6C(i) (d) of the lease. It was not an unreasonable charge for the work done and would therefore be allowed.

8.3 In summary, therefore, the service charges which the Tribunal considers reasonable and payable by the Respondent are as follows:-

2000/2001	
Buildings insurance	£214.96
Management fees (incl VAT)	<u>£176.25</u>
	£391.21
2001/2002	
Buildings insurance	£273.00
Management fees (incl VAT)	<u>£176.25</u>
	£449.25
2002/2003	
Buildings insurance	£293.53
Management fees (incl VAT)	<u>£176.25</u>
	£469.78
2003/2004	
Buildings insurance	£297.31
Management fees (incl VAT)	<u>£176.25</u>
	£473.56
2004/2005	
Buildings insurance	£ 99.34
Management fees (incl VAT)	<u>£176.25</u>
	£ 275.59
2005/2006	
Buildings insurance	£255.43
Management fees (incl VAT)	<u>£176.25</u>
	£431.68
2006/2007	
Buildings insurance	£279.37

Management fees (incl VAT)	<u>£188.57</u>
	£467.94

2007/2008	
Buildings insurance	£273.30
Management fees (incl VAT)	£205.62
Gardening	<u>£ 75.00</u>
	£553.92

8.4 Mr Packwood conceded that the Respondent would not be debited with the £200 arrears which were said to have existed when his company took over the management of the building but that he could not substantiate. In addition the Tribunal had no reason to doubt the document produced by the Respondent as to the credit of £262.50 when the current Landlord took over the freehold.

8.5 The Tribunal has no jurisdiction to deal with ground rent and makes no determination in respect thereof.

8.6 From the Ground Rent and Service Charge Account produced by the Applicant at the hearing and from the accounts and bank statements produced by the Respondent the Tribunal could determine that the service charges demanded for the years 2000/2001 to 2007/2008 and on account for 2008/2009 and payments made by the Respondent were as follows:

Year	Demanded
2000/2001	£676.26
2001/2002	£626.26
2002/2003	£626.26
2003/2004	£626.26
2004/2005	£650.00
2005/2006	£750.00
2006/2007	£850.00
2007/2008	£1100.00
2008/2009*	<u>475.00</u>
	£6380.04

* (for which no formal accounts are yet available)

The total paid by the Respondent during this period (excluding ground rent) is £5105.04 (including the credit of £262.50 brought forward from the time of the previous landlord).

This means that the Respondent has paid £1275 less than demanded.

However, the amount the Tribunal has found as being reasonably

incurred during the period is £3512.93 This means that the

Respondent was £1592.11 in credit as at the date of the issue of the County Court proceedings.

8.6 The above figures do not take into account ground rent but for the assistance of the County Court the Tribunal comments that those figures are based on the fact that ground rent has been paid in addition as the Tribunal could see from the documents before it.

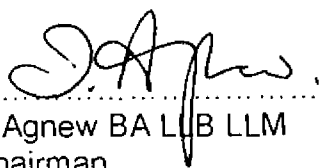
8.7 The amount claimed by the Applicant in the County Court proceedings included a number of items of £11.75 each. These were an Administration charge for "non payment of overdue charges". In view of the Tribunal's findings these charges were unreasonable and the Tribunal disallows them.

9. The Section 20C application

As the Respondent has succeeded in substantially reducing the amount reasonably claimable such that far from owing money to the Applicant it is actually in credit and in view of the fact that the Tribunal is of the view that the Respondent would never have succeeded in getting this dispute resolved without a determination from the Tribunal,

the Tribunal considers that it would be just and equitable to make an order under Section 20C of the Act.

Dated this 28th day of August 2009


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D Agnew BA LLB LLM
Chairman