

**Southern Rent Assessment Panel and Leasehold Valuation Tribunal**

Case No. CHI/00ML/LIS/2009/0066

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
SECTION 27A of the LANDLORD AND TENANT ACT 1985**

**Property:** Ground Floor Flat, 154 Milner Road, Brighton BN2 4BQ

**Applicant:** Oasis Properties Limited (landlord)  
Represented by Osler Donegan Taylor

**Respondent:** Ms Erin Wood (tenant)  
represented by Mr P V Wood)

**Application:** 14 July 2009

**Directions:** 31 July 2009

**Consideration:** 14 October 2009

**Decision:** 16 November 2009

**Members of the Leasehold Valuation Tribunal**

Ms J A Talbot MA  
Mr R Wilkey FRICS

**Summary of the tribunal's decision**

Ms Wood is not liable under the terms of the lease to pay any further service charges for the years 2007, 2008 and 2009. The legal costs claimed by the landlord are disallowed.

Case No. CHI/00ML/LIS/2009/0066

GFF, 154 Milner Road, Brighton BN2 4BQ

### Application

1. This was an application made on 14 July 2009 made by the landlord, Oasis Properties Ltd, for a determination of service charges payable by Ms E Wood, tenant of the ground floor flat, 154 Milner Road, Brighton BN2 4BQ, in respect of service charges for the years ending 24 December 2007, 2008 & 2009.
2. Directions were issued by the Tribunal on 31 July 2009, proposing that the matter should be dealt with on the papers without an oral hearing. Neither party requested a hearing. Accordingly, the matter was determined by a tribunal on the consideration of documents.
3. The Directions provided that the applicant should provide a statement of case and all documents in support of the application, and for the respondent to provide a statement of case in reply. Both parties complied with the Directions.

### Jurisdiction

4. 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 uncertainties. The tribunal determines by whom, to whom, how much and when a service charge is payable. A service charge is only payable where it is reasonably incurred and where the works and services to which it relates are of a reasonable standard.

### Lease

5. The tribunal was provided with a copy of the lease of the property dated 21 April 1987 for a term of 99 years from 24 June 1985 at an initial ground rent of £30 and rising thereafter.
6. Insofar as is material to the application, the lease provides for the tenant to pay one half of the maintenance charge. This is payable as a payment in advance on account on 25 December each year at the landlord's discretion, with any balancing charge due after service of a certificate of account. The items included in the maintenance charge are the expenses and outgoings incurred by the lessor in maintaining and managing the building as set out at clause 7(7). These include "*all fees charges and expenses payable to any solicitor accountant surveyor valuer or architect whom the lessor may from time to time reasonably employ in connection with the management or maintenance of the building*". The landlord's repair and maintenance obligations are to be found at clause 5(4) and the obligation to insure at clause 5(3).

### Inspection

7. The tribunal members inspected the property on 14 October 2009 accompanied by the parties' representatives. It comprised a ground floor flat in a mid terrace house converted into two flats. It was built probably in the 1920's of part pebbledash render, part painted brick construction under a pitched slated roof. Deteriorating paintwork was noted to the upper gable and first floor windows. The tile hung lean-to roof above the porch was in poor condition. The small front garden was overgrown. Internally a small lobby gave access to the ground floor flat which comprised two rooms, kitchen and bathroom/WC. The flat had been renovated internally by the tenant to a good

standard including re-wiring and the installation of central heating. The demise included part of the rear garden.

### **Consideration**

8. The matter came before the tribunal on 14 October 2009. The tribunal carefully considered the written evidence and submissions from both parties. The landlord sought a determination for service charges for past years 2007 and 2008, and interim charges for the current year ending 24 December 2009.
9. Ms Wood was the lessee of the ground floor flat. According to the office copy entry of the Land Register she purchased the property on 21 December 2006. She took up occupation in March 2007 after completing the renovations (her leasehold interest was registered on 26 March 2007). The landlord's managing agents are Parsons Son & Basley ("PSB") and their solicitors are Osler Donegan Taylor ("ODT").
10. The landlord's case was set out in supporting statement of case and witness statements from solicitor Ms Mari Knowle and property manager Ms Caroline Chapman. Both were lacking in detail and gave very limited information about the service charges claimed to be due from Ms Wood. In particular Ms Chapman's witness statement consisted of general background information about PSB's management system, a cursory reference to the accounts, a general submission that all expenditure was reasonably incurred, and a submission that PSB's management fee of £180 plus VAT per flat was reasonable. There was no information on any service charge demands sent to Ms Wood, no explanation of sums claimed to be due from her, no chronology of correspondence or contact with Ms Wood and her father, and no attempt to address the issues raised by Mr Wood in his statement of case. Ms Knowles' witness statement was basically an attempt to justify her legal costs.
11. The tribunal had before it the annual accounts for the years ending 24 December 2007 and 2008 certified by PSB together with supporting invoices, and a budget statement of projected costs for 2009. The 2008 account showed a reserve fund of £2,341.34. These accounts were presumably also prepared by PSB. There was no evidence of any independent accountancy or audit.
12. The landlord's expenditure for insurance, maintenance & repairs and management fees for 2007 was £838.35. The listed items of expenditure were building insurance maintenance & repairs, and management fees. For 2008 the expenditure under the same headings was £892.08. Service charges receivable were stated to be £1,485 for 2007 and £950 for 2008. The budget estimate for 2009 was £1,071.
13. The evidence produced by Mr Wood, including a ledger statement of the property account from PSB and a receipted PSB invoice date-stamped 7 January 2008, showed that cheques were received by PSB on 19 January 2007 for £772.50, and 7 January 2007 for £505. These represented 50% of the service charges receivable plus ground rent. Hence, the tribunal concluded Ms Wood had paid the sums demanded. As at 28 April 2008, the balancing charge was £0.00 indicating that Ms Wood's account was clear.
14. For 2009, Ms Wood's 50% share of the budget estimate of £1,071 was £535.50, and this was the amount demanded from Ms Wood in ODT's letter of 1 June 2009. The tribunal accepted Ms Wood's evidence that this letter was the first demand she had received for this sum, that she had not received any previous demands or telephone

calls from PSB reminding her that the sum was overdue. She paid the service charge in August 2009 but on her father's advice withheld all additional charges.

15. Those additional charges related solely to ODT's fees. PSB instructed ODT and subsequently refused to deal direct with either Ms Wood or Mr Wood. Hence his requests for a breakdown of sums due were dealt with by Ms Knowles, who has sought to charge her fees for the ensuing letters, emails and telephone calls. The amount claimed in the application was £1,045.71, including costs incurred in preparing the application to the tribunal and supporting documents. Ms Knowles submitted that these were payable under clause 7(7) and reasonably incurred. As Mr Wood pointed out, these were the only outstanding sums incurred and sought in respect of the application.
16. Mr Wood raised four issues in his submission which have not been addressed by the applicants: whether competitive quotes were obtained for insurance, what work was done to justify the management fees, why PSB did not try to contact Ms Wood or demand payment before referring the matter to solicitors, and what amount was held against the costs of future works.
17. The tribunal had no direct evidence on any of these points. It was not known whether PSB obtained any competitive quotes, or how the sum insured was arrived at. Mr Wood did not produce any alternative quotes. However, the tribunal calculated that the premium was £2.45 per £1,000 insured cover. This was within the usual and acceptable range of £1 – 3 per £1,000, albeit on the high side of that range. The tribunal concluded that the insurance premiums were not unreasonable.
18. Regarding a reserve provision, the account for 2007 referred to a reserve and "surplus for the period" of £2,341.35. The balance brought forward for 2008 was for some reason adjusted to £2,341.34. For the year ending 2008 the figure was £2,399.30 and this would appear to be the current reserve.
19. Regarding management fees, the tribunal again had no specific evidence of work done in relation to this property, which judging from the minimal expenditure would appear to relate mainly to procuring insurance and arranging minor repairs. PSB claimed to manage in accordance with the RICS Code of Management though the tribunal did not see evidence of a management contract with Oasis Properties. That said, the tribunal found from its collective knowledge and experience that £185 plus VAT per flat was not unreasonable for this type of property.
20. On the question of legal costs, the tribunal regarded these as excessive and unreasonably incurred. Just because the lease contains a provision for service charges to include solicitors' fees, this does not give the landlord or managing agent *carte blanche* to instruct solicitors and expect to recover all legal costs from the tenant. In this case, the tribunal was satisfied that Ms Wood had not received any prior demand for the 2009 interim charge, and also that PSB had failed to contact Ms Wood or Mr Wood and failed to discuss matters with them before prematurely instructing ODT. It was clear that in previous years Ms Wood had paid service charge demands promptly and in full. She was not, and had never been, in arrears. It was disproportionate and unnecessary to instruct solicitors, or indeed to make the application to the tribunal without PSB attempting to deal with the matter as managing agent and responding to Mr Wood's reasonable enquiries(as required by the RICS Code).

21. For these reasons the tribunal had no hesitation in finding that the legal costs were unreasonably incurred and were not payable by Ms Wood.

**Determination**

For each and every reason given above, the tribunal determines that Ms Wood is not liable under the terms of the lease to pay any further service charges for the years 2007, 2008 and 2009. The legal costs claimed by the landlord are disallowed.

**Dated 16 November 2009**

**Signed**

**"JANE TALBOT"  
Ms J A Talbot  
Chairman**