THE RESIDENTIAL PROPERTY TRIBUNALSERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Residential Property
TRIBUNAL SERVICE

S.20C and S.27A of the Landlord & Tenant Act 1985 (as amended) ("the 1985 Act")

Case Number:	**CHI/21UD/LSC/2010/0118**
Property:	**Flat 5** **21Carisbrooke Road** **St Leonards on Sea** **East Sussex** **TN 38 0JN**
Applicants:	**Stephanie Ball,** **Barry Ferns and** **Daniel Taylor**
Respondent:	**Adelaide Homes (Sussex) Limited**
Appearances for the Respondent:	**Mr. Scrivens**
Date of Inspection/ Hearing	**12th October 2010**
Tribunal:	**Mr. R T A Wilson LLB (Lawyer Chairman)** **Mr N Robinson FRICS (Surveyor Member)**
Date of the Tribunal's Decision:	**19th October 2010**

THE APPLICATION.

1. This was an application pursuant to section 27A of the 1985 Act for a determination of the liability of the applicants to pay service charges in respect of their flats at the property for the years ending 31st December 2007, 2008, and 2009 and advance service charge for 2010.

THE DECISION.

2. The tribunal determines that all the 2007, 2008 and 2009 service charges as disclosed by the annual accounts filed with the tribunal, are payable by the applicants save for the items identified in this decision at paragraphs 16, 25, 29, 31, 32, 36 and 38

JURISDICTION.

3. The tribunal has power under Section 27A of the 1985 Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when service charge is payable.

4. By section 19 of the 1985 Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

THE LEASE.

5. The tribunal was provided with a copy of the lease relating to flat 5 belonging to Ms Ball. The applicants do not contend that the service charge expenditure is not contractually recoverable as relevant service charge expenditure under the terms of their lease and therefore it is not necessary to set out the relevant covenants in the lease giving rise to their liability to pay a service charge contribution.

INSPECTION

6. The tribunal inspected the property prior to the hearing in the presence of the parties' representatives. The property comprised a pair of large late Victorian houses on five stories including basement / garden level with rendered bay fronted elevations under a tiled roof. The original entrance to No. 20 gave exclusive access to Flat 3 with Flats 4 - 11 accessed from No. 21. The two basement / garden level flats (1 & 2) had their own external entrances. The exterior of the building was considered to be in fair condition but in need of redecoration to avoid further deterioration. Access to the common way staircase was obtained. The common way was fairly basic with papered and painted walls and carpet to the floors and stairs. The decorations were fairly poor and the common parts generally would benefit from minor repair together with redecoration and, in due course, new floor coverings. The landlord advised that this was under consideration but after various fire precaution works, including provision of a fire alarm, had been completed. No consultation with the lessees has yet commenced for this. Some damp staining was also noted to the top landing ceiling at the north flank wall abutment and this will require investigation if it is not already in hand.

7. The rear of the property could not be accessed but was inspected by standing in Rothsay Road, just to the south. The rear elevation is also rendered with two sets

of bay windows. Attention was drawn to the area between the two bays at the ground floor flat floor level. At this point, it was explained that there was previously a landing and staircase giving Flat 3 access to its demised rear garden. The landing and staircase had been removed by the current lessee and making good to the wall, including provision of supports ready for re-instatement of a new staircase, had been undertaken by the freeholder. These supports were just visible from Rothsay Road and were pointed out to the Tribunal.

8. The Tribunal also inspected the flat owned by Ms Ball on the first floor and noted where damp penetration had occurred in the living room previously.

BACKGROUND AND PRELIMINARY MATTERS.

9. Ms Ball had set out her position in the most general of terms in a statement of case and had annexed to it a number of service charge invoices letters and annual statements of account generated by the respondent. The other two applicants had been joined into the proceedings and had not submitted any evidence. At the hearing Ms Ball sought to particularize her case. Mr. Ferns attended the hearing but gave no evidence and Mr. Taylor did not attend and was not represented. The respondent company had submitted a statement of case which had annexed to it invoices to support the challenged sums and their bundle also included copy statements of account as served on Ms Ball. Mr Scrivens, a director of the respondent company, attended the hearing to represent the respondent and he also gave evidence.

10. Each of the disputed items is considered below.

Insurance premiums for 2007 2008 and 2009

The Applicants case

11. The applicant's case was simply that she considered the amount charged in each year to be too high. However, she was not able to point to any comparable quotations obtained by her and was not able to tell the tribunal what she considered would be a reasonable premium. No evidence was presented to substantiate a lower figure for any of the years in question.

Respondent's case

12. Mr. Scrivens, defending the premiums for each of the years, said that the broker had arranged the insurance of the property as part of a block policy on a three-year cycle. The broker charged no fee for his service. Whilst the broker had not formally tested the market in 2007, the insurance was with a blue-chip company for each of the years and had been obtained on the open market. The property had a poor claims record and this was one factor leading to a higher than normal premium.

Tribunal's consideration

13. The tribunal concluded that whilst the premiums for each of the years was high, the respondent had led no credible evidence demonstrating that the premiums exceeded the threshold of rates reasonably obtainable in the open market for the years in question. As a consequence, the tribunal was not persuaded that the premiums should be reduced. Moreover, insurance cases suggests that the landlord is not obliged to obtain the cheapest quotation; their duty is to ensure that they obtain cover in the open market with an insurer of repute. In this case we are

satisfied that the respondent has done all of these things and for these reasons the tribunal upholds the buildings insurance for each of the years 2007, 2008, and 2009.

The Management Fees for 2007 2008 and 2009

The Applicants' case

14. The applicants' case was that there was no evidence of any management activity and no evidence of any work being done to the building. While she had not obtained any comparable or alternative figures for the management, she considered that the fees charged were too high. She was not able to tell the tribunal what she would consider to be a reasonable fee.

The Respondent's case.

15. Mr Scrivens told the tribunal that his company charged a basic fee of £1,980 for managing the subject property for each of the years plus an additional £275 in 2007 and £330 in 2008 and 2009. These fees covered standard management work carried out in a year. It included carrying out inspections, arranging insurance for the property, preparing annual service charge figures for submission to external accountants, collecting ground rent and service charge, organising programmes of works and attending to health and safety issues. This fee also included their time in dealing with leaseholders' enquiries and other routine management matters. He submitted that these charges were reasonable bearing in mind the amount of work carried out.

The Tribunal's considerations.

16. The tribunal has considerable experience of the level of fees charged by local managing agents for routine management work and are not satisfied that the figures mentioned above, which equate to an average of £205 per unit in 2007 and £210 per unit in 2008 and 2009, are reasonable for a building of this kind bearing in mind the scope of work undertaken. However there was clearly evidence of some management activity, for example the preparing of service charge demands submitting annual accounts, arranging for buildings insurance and the collection of service charge contributions. Overall the tribunal considered that the building was being managed to a reasonable standard but that the charges should be limited to the basic fee of £1,980 (£180 per unit) for each of the years 2007, 2008 and 2009. In arriving at this figure the tribunal relied upon its collective experience of the level of management fees chargeable by local managing agents for a property of this type.

Cleaning of the Common Ways for 2007, 2008 and 2009

The Applicant's case.

17. Ms Ball told the tribunal that she did not accept that a cleaner attended the premises on a regular basis. On the rare occasion when a cleaner turned up they spent a maximum of ten minutes hoovering the common ways. £5 per week was more than enough to pay.

The Respondent's case.

18. Mr Scrivens told the tribunal that the current cleaner attended the property once a week charging £30 per visit. There was a cleaning schedule and the cleaners stayed on average 45 minutes at the property undertaking the tasks set out in the schedule. He denied that the common ways were neglected and told the tribunal that whenever he visited the property the hall way was satisfactory. He had received no complaints from anyone else and maintained that the charge was a reasonable one. He confirmed that the cleaning was undertaken by a small family team employed by the freeholder to clean the subject property and a number of other properties in the freeholder's portfolio.

The Tribunal's consideration.

19. The tribunal was faced with conflicting and irreconcilable evidence. On the one hand the respondent contends that the hallways are cleaned once a week at a cost of £30 per week and on the other hand the applicants allege that a cleaner does not attend regularly and when they do attend they spend a maximum of 10 minutes hoovering and accordingly no more than £5 per week is reasonable. On this matter we prefer the evidence of the respondent. The cost of £30 per visit is in the opinion of the tribunal a reasonable figure to pay on the basis that two cleaners attend and spend on average 45 minutes cleaning. On the day of inspection the common ways were reasonably clean and in the absence of any verifiable evidence that the cleaner is not attending the premises the tribunal feels bound to conclude that the cleaning charges for 2007, 2008, and 2009 are recoverable as service charge and reasonable in amount.

Dyno rod call out charge £323.13 (2007)

The Applicants' case

20. The applicants' case was that the call out had been caused by the failure of the lessee of flat 2 to maintain his garden with the result that roots from his garden had encroached into the drains. She considered that the respondent owed a duty of care to ensure that the lessee of Flat 2 kept the garden in good repair and prevented it causing damage to the communal drains. Because that duty of care had been breached the call out charge should not be billed to the service charge fund.

The Respondent's case

21. The respondent maintained that the callout could not be avoided as the drains had been blocked and under the terms of the lease the respondent was liable to maintain the drains whatever the cause of the blockage.

The Tribunal's consideration

22. The tribunal accepts the evidence of the respondent namely that it has contractual obligation to maintain the drains. The evidence as to the cause of the blockage was not clear and in the absence of this the tribunal is not persuaded that the charge of £323.13 should be disallowed.

Signage charge £75 (2007)

Applicants' evidence

23. The applicants' evidence simply put was that the charge of £75 for the supply and installation of one sign at the property was far too high. This was a simple case of overcharging.

The Respondent's evidence

24. The respondent denied that the figure was too high although they accepted that only one sign had been installed at the property and not two as suggested in the invoice. Mr Scrivens confirmed that it was an associated company which had undertaken the work, which meant in effect the work had been carried out in-house.

The Tribunal's consideration

25. On this point, the tribunal prefers the evidence of the applicants that a charge of £75 for the supply and installation of one sign is too high. It determines a reasonable figure to be £35.

Surveyors fee £235 (2007)

The Applicants' evidence

26. The applicants' challenged the surveyor's fee of £235 on the grounds that much of the work was carried out for the benefit of Flat 1 owned by a director of the freehold company. In the circumstances she considered that part of the charge should have been billed directly to Flat 1 whereas the whole amount had been billed to the service charge.

The Respondent's evidence

27. The respondent told the tribunal that damp had been identified partly in the basement flat and also under the entrance stairs. In the circumstances it was right and proper that the freeholders should carry out an investigation to find out the cause of the problem and the lease terms allowed the freeholders to charge the reasonable costs of the surveyors visit and subsequent report to the service charge account. Mr Scrivens referred the contents of the report of the tribunal and asked them to note that the report covered two flats at the property and also the common parts. He considered that the visit and report was within the scope of the lease and that the cost was reasonable.

The Tribunal's consideration

28. On this point the tribunal prefers the evidence of the respondent. Under the terms of the lease the freeholders are responsible for maintaining the structure of the building and the lease terms are indeed wide enough to cover the reasonable costs of surveyors engaged in investigations to reveal the reasons for the damp

penetration. The tribunal is satisfied that the cost of the report was reasonable bearing in mind the contents and upholds the figure of £235.

Administration charge (2007)

29. The tribunal noted that the respondent had in this year charged the applicant £10.21 in respect of an administration fee for late payment. The respondent was not able to point to a clause in the lease allowing such a charge and neither could the tribunal identify one. In the circumstances the tribunal determines that the charge of £10.21 should be credited back to Ms Ball. If the other applicants have been charged an administration fee for the same reasons then these sums should also be refunded.

2008

Applicants' evidence

30. The applicants confirmed that for the service charge year ending 31st December 2008 all items, other than as addressed above, were agreed save for the annual maintenance for the door entry system of £107.40 and also interest of £36.16.

Respondent's evidence

31. Mr Scrivens accepted that the door entry system cost of £107.40 was not payable because the cost had not been billed to the lessees within 18 months of the cost being incurred. He therefore accepted that the cost therefore was caught by section 208 of the 1985 Act and was not recoverable. The tribunal determines that the applicants should be credited with their share of this irrecoverable cost.

Tribunal consideration

32. The tribunal determines that the figure of £36.16 for interest is not payable because there is no provision in the lease for interest to be charged to a lessee for late payment.

2009

Applicants' evidence

33. Ms Ball confirmed that for the year ending 31st December 2009 all items, other than already addressed above, were agreed save for £75 for the replacement of a light switch, additional administrative fees of £155 for late payment, £73.10 interest for non-payment of service charge and £1,250 for the cost of making good the removal of the balcony to Flat 3.

34. As to the balcony charges the applicants considered that the charge of £1,250 was too high and in any event the cost of the work should not be charged to the service charge fund as it was for the exclusive benefit of Flat 3.

Respondent's evidence

35. Mr Scrivens accepted that the balcony itself did belong to the lessee of Flat 3 and therefore the cost of its removal should be borne by the lessee alone. However, the support system to the balcony was, in his opinion, a structural part of the building and therefore was the freeholder's responsibility and the costs of dealing with this element should properly be borne by the service charge fund.

Tribunal's consideration

36. On this point, the tribunal prefers the evidence of the applicants and determines that no part of the cost of the balcony support system should have been charged to the service charge account. In coming to this decision the tribunal had regard to the terms of the lease relating to Flat 3. Mr Scrivens had brought with him a copy of the counterpart lease for Flat 3, which is dated 23 November 1988. The tribunal reviewed this and noted that the demise of the flat includes the words *any balcony from the premises to which the tenant has an exclusive access.* The tribunal was told that there had at one time been a balcony for the exclusive use of Flat 3. The tribunal could find no reference in the lease to the support system to the balcony being excluded from the demise of the flat and in the opinion of the tribunal the whole of the balcony including the timbers/ironwork fixed to the wall of the outside of the building, which once formed part of the balcony, is repairable by the lessee of Flat 3 alone. For these reasons it determines that no part of the cost of making good the removal of the balcony should fall on the service charge fund and the applicants should receive a credit for their portion of this charge.

Light switch repair, additional administrative fees and interest

37. Mr Scrivens denied that the workmanship relating to the replacement of the switch had been shoddy and contended that the charge of £75 for the work was reasonable. He made no submissions in relation to the additional fees of £155 and interest of £73.14.

38. On these points the tribunal prefers the evidence of the respondent in respect of the light switch. There was no evidence to suggest that the workmanship had been faulty and no evidence to suggest that the cost of £75 for the work was unreasonable. In the circumstances it upholds this charge. For the same reasons as stated in paragraphs 29 & 32 the tribunal determines that the additional administrative fees of £155 and interest of £73.14 are not payable.

2010 on account payment of £535 half yearly

39. Ms Ball made only a half-hearted case that the twice-yearly demand of £534 as an interim on account service charge for the year was unreasonable.

40. Mr Scrivens contended that the figure if anything was too low based on previous actual annual expenditure.

41. On this point the tribunal prefers the evidence of the respondent. Having regard to the actual expenditure for 2007, 2008 and 2009 it is clear that if anything the half yearly figure of £534 is too low and it is reasonable to expect that a balancing charge will be required as and when the 2010 accounts are prepared. For these reasons the tribunal upholds the yearly on account charge of just under £1100 payable by two equal half yearly payments.

Section 20C Application

42. Mr Scrivens told the tribunal that as a gesture of good faith and in the hopes that the parties could move forward in a new spirit of conciliation that the respondent would not object to an order being made under section 20C of the 1985 Act. In the circumstances the tribunal makes such an order so that each of the parties will in effect be responsible for their own costs in relation to this matter and that no part of the costs incurred by the respondent will form part of the service charge cost in future years.

Chairman *Signed*
R.T.A.Wilson LLB solicitor

Dated 19th October 2010