

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

CASE No: CHI/OOML/LSC/2007/0011

B E T W E E N :-

AUDREY MURIEL CHESTERTON

Applicant/Landlord

AND

MR JAMES BOUGHTON

Respondent/Lessee

PREMISES: Ground Floor Flat,
13 Westbourne Villas, Hove,
East Sussex BN3 4GQ ("the Premises")

TRIBUNAL: Mr D Agnew LLB, LLM (Chairman)
Mr A O Mackay FRICS
Ms J K Morris

HEARING DATE: 10th May 2007

DETERMINATION AND REASONS

1. The Application

- 1.1 On 16th February 2007 the Applicant, through her solicitors George H Coles & Co, applied to the Tribunal for a determination as to whether certain service charges in respect of the Premises were reasonable and therefore properly recoverable from the Respondent. This application was made under Section 27A of the Landlord & Tenant Act 1985.
- 1.2 At the hearing the Respondent asked for an order that the Landlord's costs of the Tribunal proceedings should not be added to any future service charge claimed, under Section 20C of the said Act.
- 1.3 The service charges in question were as follows:-
- 1) Year ending 20th February 2003:-

	£
Heasman Scaffolding	973.26
Higgins Joinery	117.44
Higgins Joinery	50.00
R & AC Maintenance	800.00

Materials	352.86
Sussex Building	1,540.00
Insurance	576.60
Disbursements	25.31
Bank charges	17.08
Management fee	300.00
Accounting fee	90.00
Legal fees	699.12
	=====
	£5,541.67

2) Year ending 20th February 2004:-

Insurance	£ 646.86
Disbursements	£ 12.74
Bank charges	£ 6.68
Management fee	£ 450.00
Accounting fee	£ 150.00
	=====
	£1,266.28

3) Year ending 20th February 2005:-

Insurance	£ 653.28
Disbursements	£ 3.51
Bank charges	£ 6.64
Management fee	£ 450.00
Accounting fee	£ 150.00
	=====
	£1,263.43

4) Year ending 20th February 2006:-

Insurance	£ 661.50
Disbursements	£ .96
Bank charges	£ 4.80
Management fee	£ 450.00
Accounting fee	£ 150.00
	=====
	£1,267.26

3. The Premises

3.1 The Tribunal inspected the Premises immediately prior to the hearing on 10th May 2007. They comprise three flats in a three-storey terrace of Victorian houses. There is a vacant basement to the property. There were bay windows to the ground and first floors at the front. The condition of the Premises was quite good, particularly the external decoration. The property had been re-roofed at some time in the recent past. It was situated in a pleasant wide residential road just off the sea front in Hove.

4. The Lease

4.1 By Clause 7 of the lease dated Twentieth of August 1980 the tenant covenanted as follows:-

"(2) On the Twentieth day of March or as soon thereafter as is possible in each year the Lessors or their Managing Agents shall send to the Lessee an account (hereinafter called 'the annual account') showing the amount spent on maintaining and managing the building and the amounts actually received in that period from the Lessees in respect of all the flats upon receipt of the annual account the Lessee shall pay to the Lessors one third of the deficiency (if any) shown therein and any surplus shall be carried forward as part of the reserve for subsequent years.

5. The Law

5.1 Section 27A of the Landlord & Tenant Act 1985 ("the 1985 Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

- (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
- (e) the manner in which it is payable.

5.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

5.3 By Section 20B(1) of the 1985 Act it is provided that:-

6. The Hearing

6.1 This took place at Maritime House, Hove on 10th May 2007. Present were Mr T Deacon of George H Coles & Co, solicitors for the Landlord and Mr Nicholson, the Landlord's managing agent, and the Applicant. The Landlord's daughter, Mrs Bajmaloo attended as an observer.

7. A Preliminary Issue

- 7.1 The main thrust of the Respondent's case was that he had received no annual statements of account in respect of service charges and no demand for payment of service charges for the years 2003, 2004, 2005 and 2006 until 20th May 2006. Consequently, it was the Respondent's case that the Landlord could only recover service charge expenditure incurred within the 18 months preceding 20th May 2006, under Section 20B of the 1985 Act.
- 7.2 The Applicant maintained that the end of year Accounts and demands would have been sent out some time during the year following the 20th February 2003 and 2004 respectively and that the 2005 and 2006 Accounts and demands were sent out on 17th May 2006.
- 7.3 The Tribunal decided to treat this point as a preliminary issue because if it were to find in the Respondent's favour on this point it would be unnecessary to consider the reasonableness of expenditure incurred prior to 20th November 2004.

8. Evidence in respect of the preliminary issue

- 8.1 On 20th May 2006 the respondent said that he received a card from the Post Office asking him to collect an envelope. This he did. The reason why he had to collect it from the Post Office was that there was insufficient postage paid and he was required to pay a charge of £1.18. On opening the envelope he found the Accounts for the four years in question together with a letter from Nicholsons & Company the Landlord's Managing Agent. Amongst other things this letter stated:-
- "In the meantime please find enclosed herewith the end of year maintenance statements for the years ending 2003, 2004, 2005 and 2006 together with an account for the end of year deficit for which I shall be pleased to receive your cheque in settlement."
- 8.2 In support of the contention that he did not receive these documents the Respondent referred to the disbursement sheets produced by the Applicant's Managing Agent in respect of which 10p per sheet was charged for photocopying. The only charge made in respect of the ground floor flat in the year 2003/4 was £4.60 on 14th October 2000. The Respondent produced a copy of insurance documentation sent to him at this time by the Managing Agent running to 46 pages which would account, he said, for the £4.60 photocopying charge. A similar disbursement was incurred in respect of the first floor flat on the same day. No other disbursements were incurred in sending items to the Respondent's flat, so he deduced that the Accounts which always ran to 6 pages, could not have been sent to him during that year.
- 8.3 In response Mr Nicholson's evidence was that the service charge accounts and demands for 2003 and 2004 were prepared shortly after the end of the respective years and sent out to the lessees of both ground floor and first floor flats. He could not say when they were sent because there was no covering letter which have indicated this. He accepted that the 2005 Accounts and demands were not sent out in 2005 but were sent with the 2006 Accounts and demand on 17th May 2006. At the same time, as he had received a request from the father of the lessee of the first floor flat for copies of the 2003 and 2004 Accounts, he included those with the letter of 17th May 2006 and sent a copy of all of them to the Respondent too. Mr Nicholson said that he

was continually being asked by the father of the lessee of the first floor flat for copies of documents that he had already sent. He said he would have put the 2003 and 2004 Accounts and demands in the envelope himself and posted them. He accepted that, in view of the claims that documents had not been received, it would have been wise to have sent them by recorded delivery. He accepted too, that he had not chased up payment or done anything about collecting the moneys owed to the Landlord until recently because he did not consider the expense of so doing was justified in relation to the amount owed. His solicitor asked the Tribunal to accept his client's evidence that the documents had been sent and take into account the fact that no Managing Agent would allow a situation where accounts were not prepared and sent to lessees where substantial sums were owed to the Landlord and needed to be recovered.

9. Determination of the preliminary point

- 9.1 The Tribunal was not satisfied that the Respondent had received any annual service Accounts and demands for 2003, 2004, 2005 and 2006 prior to 20th May 2006. There was no evidence as to when they were sent out other than on 17th May 2006: there was no covering letter, no chasing up of payments that would have been outstanding, no checking that the demands had been received, no expression of surprise when asked to provide the information in May 2006 and an acceptance that the Accounts and demand for February 2005 was not sent out until May 2006. The Tribunal also found it more than coincidental that the disbursement charge for the year 2003/4 for items sent to the ground floor flat corresponded precisely with the number of pages of insurance information dispatched which would not have included a sum to cover photocopying of the Accounts as well. The Tribunal decided therefore that in all the circumstances it was more likely than not that the Accounts and demands for February 2003 and February 2004 were not received before 20th May 2006.
- 9.2 The consequence of this is that service charges incurred prior to 20th November 2004 cannot now be recovered from the lessee. The Tribunal could therefore ignore in its totality the expenditure incurred during the years to 20th February 2003 and 20th February 2004.
- 9.3 As far as the year to 20th February 2005 is concerned it was necessary to look at when the various items sought to be charged were incurred. Those incurred before 20th November 2004 would not be recoverable. Mr Deacon argued that the whole of the year to February 2005 might be recoverable as the Accounts were not made up until after the end of the year in February 2005 and that date was within the 18 month period prior to May 2006. The Tribunal decided, however, that the critical date was that when the liability to pay the service charge item was incurred by the Landlord because the mischief which the legislation seeks to address is where a tenant is not asked reasonably promptly to pay for expenditure that is incurred on its behalf. To hold otherwise would mean that time would not start to run until such time as the Landlord got round to preparing accounts or serving a demand, which could not be right.
- 9.4 Mr Deacon also argued that as far as insurance payments were concerned, these were paid by the Landlord monthly and so although not all instalments would have been made within the 18

month period some would and it could be argued that these would be recoverable. The Tribunal rejected this argument also, because the Landlord's liability to pay was incurred on renewal of the policy which was in September or October of each year. Thus the premium payable in 2004 was due and the liability incurred prior to 20th November 2004.

9.5 As for management and accounting fees for the year ending 20th February 2005 were concerned, no invoices were ever sent by the Managing Agents to the Landlord but it was clear that the charges were levied at the year end. So the charges for 2003/4 were not recoverable but those for 2004/5 and 2005/6 could be recovered, subject to reasonableness.

9.6 That left disbursements of £3.51 and bank charges of £6.64 for the year to February 2005. After 20th November 2004 was 53p and the only bank charges after that date amounted to £1.87 which are recoverable.

10. Service charge year 2005/6

10.1 Having determined the preliminary issue and the items remaining which were recoverable, subject to reasonableness, from the Respondent, the Tribunal then heard evidence as to the reasonableness of the items which were left.

10.2 The Respondent did not challenge the insurance premiums sought to be recovered for 2005/6. Nor did he challenge the disbursements and bank charges for those years. He did, however, challenge the management fees and accounting fees for both years on the basis that the Managing Agent did very little to justify charging anything at all. He acknowledged that accounts have been prepared but they are not complex and would only justify a charge of about £50 per annum he thought. As for management, however, Mr Nicholson, he said, never visited the premises and it was in desperation to get something done that he took matters into his own hands to get the rear of the premises decorated because of years of delay and cancellations when the Managing Agents were supposed to be doing this.

10.3 Mr Nicholson said that he had to prepare two sets of accounts each year due to the fact that the service charge years are different for the first floor flat from that of the ground floor flat. He arranges the insurance cover and he does inspect the premises by visiting occasionally and regularly does a drive-by inspection. He considered his charges to be standard for the sort of management required for this type of property and was commensurate with what he charges generally.

11. Determination as to the reasonableness of the service charges

11.1 The Tribunal considered that £150 per flat was not an unreasonable charge for a managing agent to make for a property such as the Premises. It took into account the fact that the agent ensured that the insurance cover was maintained and accounts had been prepared. It considered that the management fees were in line with what would be expected for the management of this sort of property and took into account the responsibilities that a Managing Agent takes on. However, the Tribunal would expect preparation of Accounts and service charge demands, of the straightforward nature of those involved in this case, to be included in

the management fee of £150 per flat and not as an additional charge of £50 per flat. The Tribunal decided therefore that the management fees would be recoverable but not, in addition, the accountancy fees.

12. Summary

12.1 The service charge items recoverable by the Landlord for the years in question are as follows:-

2002/2003	nil		
2003/2004	nil		
2004/2005		Disbursements	£ 0.53
		Bank charges	£ 1.87
		Management fee	£450.00
			=====
			£452.40

of which the Respondent's share is £150.80

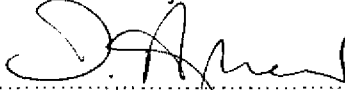
2005/6		Insurance	£ 661.50
		Disbursements	.96
		Bank charges	£ 4.80
		Management fee	£ 450.00
			=====
			£1,117.26

of which the Respondent's share is £372.42

12.2 Consequently the Respondent owes to the Applicant the sum of £523.22 which is payable forthwith.

13. As the Respondent has substantially succeeded in his arguments which were made prior to the application to be Tribunal being issued the Tribunal agrees that an order should be made under Section 20C of the 1985 Act so that the Landlord's costs of the Tribunal proceedings should not be added to any future service charge demands.

Dated this 4th day of June 2007



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D Agnew LLB, LLM
Chairman