RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Ss 20C & 27A Landlord & Tenant Act 1985 (as amended)

Residential Property
TRIBUNAL SERVICE

DECISION AND REASONS

Case Number:	CHI/00ML/LSC/2007/0018
Property:	Flat 5 29 The Drive Hove East Sussex BN3 3JE
Applicants:	Keith Arthur Bentley, John Meyrick Bentley
Respondent:	Hamilton Property Holdings Limited
Date of Application:	2 March 2007
Hearing:	Documents only considered on 13 June 2007
Tribunal Member:	Mr B H R Simms FRICS MCIArb
Date of Decision:	28 June 2007

SUMMARY OF DECISION

As no demands for payment were made, either in accordance with the lease, or in accordance with Sections. 20B and 21 of the 1985 Act or Sections. 47 and 48 of the 1987 Act, no service charges are payable for the years in question, being years ended 24 March 2002, 2003, 2004 and 2005.

The Tribunal makes an **ORDER** that all or any of the costs incurred or to be incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants in these proceedings.

BACKGROUND

1. This is an application pursuant to S.27A of the Landlord & Tenant Act 1985 (the Act) for a determination on the payability of service charges for the accounting years 2001/02, 2002/03, 2003/04 and 2004/05. An application is also made under S.20C of the Act.

2. Directions were issued dated 9 March 2007 and notice was given under Regulation 13 of the Leasehold Valuation Tribunal's (Procedure) (England) Regulations 2003 as amended that the application would be heard on the basis only of written representations and without an oral hearing. Neither the Applicant nor the Respondent objected to this procedure. The case has been heard by a Chairman sitting alone having regard to statements and documents submitted by the parties as required by the Directions.

3. The Directions did not require a Statement of Rebuttal from the Applicants following receipt of the Respondent's statement. However the Applicants made such Statement of Rebuttal by way of a letter dated 4 June 2007 which has been read by the Tribunal. The decision has been based only on the first statement made by the Applicants and Respondent as required by the Directions. Following consideration of the papers by the Tribunal further correspondence was received from the Respondent. This further correspondence has not been considered,

RELEVANT LAW

4. The Tribunal has had regard to all the legislation applicable to this case but summarises some of the relevant parts here for the benefit of the reader.

5. S.27A provides that a Leasehold Valuation Tribunal may determine whether a service charge is payable and if it is, the Tribunal may also determine the person by whom it is payable, the person to whom it is payable, the amount which is payable, the date at or by which it is payable and the manner in which it is payable. These determinations can (with certain exceptions) be made for current or previous years and also for service charges payable in the future. In applying S.27A, the Tribunal has had particular regard to other sections of the Act.

6. S.20B provides that if any of the relevant costs taken into account in determining the amount of any service charge payable were incurred more than eighteen months before a demand for payment is served on the tenant, then the tenant shall not be liable to pay that part of the service charge. If notice of the demand was given within the period of eighteen months, then this is sufficient to satisfy this section.

7. S.21 provides that a tenant may require the landlord in writing to supply him with a written summary of the costs incurred when calculating the service charge due. The section is long and includes detailed requirements for the provision of this statement.

8. S.20C allows the Tribunal to limit all or any of the costs incurred by the landlord in connection with the proceedings being recovered by way of the service charge if it considers it reasonable so to do. In this case the Applicants made a request for a limitation of costs as part of their original application.

9. In considering this application, the Tribunal also has had regard to the Landlord & Tenant Act 1987 (the 1987 Act) and in particular Ss. 47 and 48.

10. S.47 of the 1987 Act requires any written demands given to a tenant to include the name and address of the landlord. If the name and address is not given in the way the section requires, then any amount demanded, which consists of a service charge, shall be treated as not being due at any time before the information is furnished by the landlord in a notice.

11. S.48 provides that a landlord shall furnish the tenant with an address in England and Wales at which notices may be served. If such notice with the relevant information is not given, then the amounts demanded as defined are not due at any time before the landlord complies with the section.

LEASE

12. The Tribunal was provided with a photocopy of a lease dated 31 January 1983 of Flat 5, 29 The Drive, between Chapelgate Securities Limited and WA and EJ Aitkenhead. It is for a term of 99 years from 25 March 1987 at an initial ground rent of £10 per annum, subject to fixed increases every 33 years. When coming to its decision, the Tribunal has had regard to all the terms of the lease but highlights here those clauses which it believes are specifically relevant to the payment of service charges.

13. The lease is made up of various schedules and the Sixth Schedule contains covenants by the lessee. At paragraph 2 it states that the lessee shall pay a "basic maintenance charge" by two equal half yearly instalments in advance on 25 March and 29 September in each year. This "basic maintenance charge" is a contribution towards the expenditure incurred by the lessor in carrying out its usual obligations for the repair, maintenance, insurance and management of the building as set out in detail in the Eighth Schedule of the lease.

14. In each twelve month period, known as "the maintenance year", the calculation of the actual amounts expended, including a provision for reserve, is made and a balancing charge is to be demanded, or if an excess is recorded, the surplus is accumulated and applied to the next or future maintenance year. (2(c))

15. There is a provision for the review annually of the half yearly "basic maintenance charge" and specific details are provided for the arrangements in changing this amount. (2(d))

INSPECTION

16. The Tribunal did not inspect the property. The dispute relates to demands being out of time and the provision of notices in respect of the landlord's name and address. It was not necessary to make an inspection of the building.

17. There is no dispute regarding the actual service charge costs.

EVIDENCE

18. It is the Applicants case that the first written information regarding service charges due is dated 16 June 2006 and this was issued by Robert Gates & Co., (RG) valuers, estate agents and property managing agents, showing a list of alleged arrears listed at half yearly intervals starting on 25 March 2001 and ending on 25 March 2006, each half year charge being £500. In addition, the demand shows ground rent payable on 25 March 2001, 2002, 2003, 2004, 2005 and 2006, each year at £10 making a total demand of £6,100. The Tribunal noted that the mathematics was incorrect and the proper demanded amount should have been £5,560. In response to a request for further information, RG sent to the Applicant certificates of expenditure for the relevant years excluding 2006.

19. The Applicants acquired the flat on 28 March 2001 and did not receive any demand for service charges until the first demand dated 16 June 2006. The Applicants do not live at the property and Notice of Transfer dated 29 March 2001 gave the address of Keith Arthur Bentley at Barns Farm Lane, Storrington.

20. The Respondent's managing agent (RG) says that the service charge accounts are usually delivered by hand but the Applicants produce evidence from Mrs Haus, a tenant of the subject flat until 30 October 2004, that no service charge demands were left at the property between August 2001 and October 2004. There has been a succession of tenants since Mrs Haus departed and the Applicants, having made enquiries, have found no evidence of any correspondence addressed to them being received at the property.

21. The Applicants suggest that it is likely that all the certificates of expenditure were drafted at the same time in 2006. They are in the same form and appear to have been signed by the same person.

22. No enforcement action has been attempted to recover arrears since March 2001 and the conclusion must be that no demands were made.

23. It is the Applicants' case that because of the late notice of amounts due the relevant costs to be taken into account when calculating the service charge were incurred more than eighteen months before the demand for payment was issued. This would not apply to a proportion of the service charges relating to the year ended 24 March 2005 if the Tribunal decides that a proper demand has been made.

24. There was no early notice to overcome the eighteen month limitation, and accordingly S.27B of the Act applies and prevents the Respondent from claiming any service charges for the years ending 24 March 2002, 2003 and 2004.

25. In respect of the year ended 24 March 2005, the eighteen month period ending with the service charge demand on 16 June 2006 began on 17 December 2004. It is not possible from the information provided for the Applicants to know which part of the expenditure for that year was incurred before the date and therefore which part is due.

26. In respect of Ss 47 and 48 of the 1987 Act, the demand letter dated 16 June 2006 for the interim charges does not comply because it does not contain the name and address of the landlord. At that time, no notification had been given by the landlord of an address for service of notices pursuant to S.48. The notice given in January 2001 by the previous managing agents is no longer valid because they no longer manage the property. Accordingly, none of the sums set out in the letter of 16 June 2006 can be due.

27. Similar comments apply to the further letter dated 22 June 2006 enclosing the certificates of annual expenditure and as such none of the sums can be payable.

28. The Applicants contend that the certificates of expenditure produced do not comply with S.21 in that the summaries do not identify costs where a demand was received but no payment was made during the period in question.

29. In response, Mr Hamilton for the Respondent states that it is usual practice for the managing agents to hand deliver service charge accounts to each of the flats. They did not know of the correct address for Mr Bentley and the Notice of Transfer was not a document in his company's possession as it was sent to agents for the former freeholders.

30. The demands are addressed either to the tenant or the leaseholder in each of the respective flats, so it is not surprising that Mrs Haus received no post addressed to Mr Bentley.

31. The Respondent says that it is not surprising that the certificates of expenditure all look similar. They are in a normal format for a large number of properties managed by RG. A letter from Kinnear & Co. dated 21 May 2007, signed by Mr John Kinnear, states that each year he signed the annual certificate of expenditure for 29 The Drive, Hove, and on each occasion the certificate was signed by him on or shortly after the date shown on the certificate. The Respondent produced accounts for other properties showing that they are all in a similar format.

32. The letters issued on 16 and 22 June 2006 are not to be regarded as formal demands for service charges. They were issued to provide detail of formal demands served earlier.

33. The Respondent is satisfied that the accounts show expenditure all of which has been incurred during the relevant period. The only exception would be the fee paid to the accountant.

34. Vouchers were produced in support of specific items of expenditure included in the 2005 accounts.

CONSIDERATION

35. In this case there is a clear dispute on the facts. The Applicants say that no demands for payment of a service charge or supporting accounts for the years in question were sent to the Applicants.

36. The Respondent states that appropriate demands and certificates of account were sent. However, rather surprisingly, no evidence has been given to the Tribunal by way of copy demands, either in respect of the basic half yearly maintenance charge or the balancing end of year charge. All that the Tribunal has seen is the certificate of expenditure for each year together with a blank standard demand which is undated and without the lessees name and address. The landlord or the landlord's managing agent would be in a good position to provide detailed evidence of the demands sent. If the Tribunal was faced with that evidence, the Applicants' case would be in some difficulty, but that evidence is not available.

37. The conclusion must be that the first proper demand for the interim service charge was the letter from RG to Mr Bentley at his Storrington address dated 16 June 2006. The lease describes at clause 2(a) of the Sixth Schedule this "basic maintenance charge" as being a contribution towards the expenditure incurred by the lessor in carrying out its obligations under clause 3 of the lease. It is therefore an advance payment of service charges and as such is subject to any of the requirements of the Act and the 1987 Act.

38. Rather surprisingly at paragraph 10 of the Respondent's statement, he says that neither of the managing agent's letters of 16 June or 22 June 2006 are to be regarded as formal demands for service charges. They merely provide detail of formal demands served earlier. The only conclusion that can be drawn is that, as there is no evidence of the earlier demands having been sent, then as yet the landlord has not made any proper demand for service charges. Until such proper demand is made the Tribunal cannot see that service charges are payable.

39. The incomplete draft demand from RG is intended to satisfy S.47 of the 1987 Act by referring to the landlord as being stated on the service charge account attached to it. The name of the service charge account is not identified in the demand, the address of the landlord is not given and in this particular case the document that was alleged to have accompanied the demand is headed "certificate of expenditure" and not service charge account. The Tribunal would initially consider that S.47 had not been satisfied by this imprecise arrangement for preparing the demand.

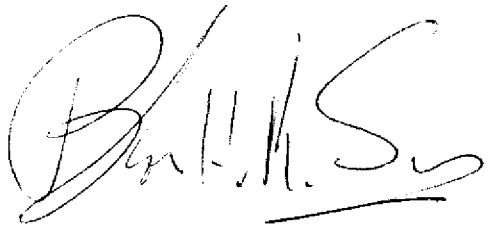
48. The Applicant should not be penalised by the Respondent being able to recover its costs for dealing with the application by way of the service charge even if the lease permits.

DECISION

49. As no demands for payment were made either in accordance with the lease or in accordance with Sections. 20B and 21 of the Act and Sections. 47 and 48 of the 1987 Act, no service charges are payable for the years in question, being years ended 24 March 2002, 2003, 2004 and 2005.

50. The Tribunal makes an **ORDER** that all or any of the costs incurred or to be incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants in these proceedings.

Dated 28 June 2007



Brandon H R Simms FRICS MCIArb
(being a member appointed by the Lord Chancellor)