RESIDENTIAL PROPERTY TRIBUNAL SERVICE

Southern Rent Assessment Panel
Leasehold Valuation Tribunal

Case Number:	CHI/29UL/LIS/2009/0055
Property:	Flat 1, 103 Cheriton Road, Folkestone, Kent CT19 5HD
Applicant:	Mrs.J.E.Wilson
Respondent:	Southern Land Securities Limited
Appearances	
For the Applicant:	Mr.F.Wilson
For the Respondent:	Hamilton King Management Limited (Mrs Toson and Mr Taylor)
Date of Directions:	7th July 2009
Date of inspection:	21st October 2009
Date of Hearing:	21st October 2009
Date of Decision:	27th November 2009

Members of the Tribunal

C.H.Harrison Chairman
R.Athow FRICS MIRPM
T.J.Wakelin

BACKGROUND

1. On 2nd June 2009, the Applicant applied to the tribunal for a determination under section 27A of the Landlord and Tenant Act 1985 in respect of her liability to pay certain service charges under her lease of Flat 1, 103 Cheriton Road, Folkestone, Kent.

2. By Directions issued on 7th July 2009, following a pre-trial review held on that date, the issues raised in the application were identified as the seven issues which are more particularly described below.

3. The application included a request for an order under section 20C of the 1985 Act.

4. This application was heard in conjunction with three other applications by the Applicant or her husband raising substantially similar issues with the Respondent, under case references CHI/29UH/LSC/2009/0079; CHI/29UL/LIS/2009/0054 and CHI/29UL/LSC/2009/0081.

THE LAW

5. Section 27(A)(1) of the 1985 Act provides, so far as is material to this case, that an application may be made to a leasehold valuation tribunal to determine whether a service charge is payable and, if it is, the amount which is payable and the persons by and to whom it is payable.

6. Section 18(1) of the 1985 Act defines a service charge as an amount payable by a tenant of a dwelling as part of or in addition to the rent ... which is payable ... for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and the whole or part of which varies according to the relevant costs. Relevant costs are defined by section 18(2) as the costs or estimated costs incurred or to be incurred by or on behalf of the landlord ... in connection with the matters for which the service charge is payable.

7. Section 19(1) of the 1985 Act provides that relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
   a) only to the extent they are reasonably incurred, and
   b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and that the amount payable shall be limited accordingly.

8. Section 20C of the 1985 Act provides that a tenant may apply to a leasehold valuation tribunal for an order that costs incurred, or to be incurred, by a landlord in connection with proceedings before the tribunal are not to be regarded as relevant costs for the purpose of determining the amount of any service charge.

9. Section 21B of the 1985 Act provides, so far as material to this case, that with effect from 1st October 2007 a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges and that, if it is not, the tenant may withhold payment. The section also regulates liability under a lease provision relating to non or late payment of a service charge payment which is so withheld.

INSPECTION

10. The Tribunal inspected the outside of the property during the morning of the hearing day. The Respondent did not appear.

11. The property is part of a semi-detached house built about 100 years ago. The building has brick and colour-washed elevations and a tiled roof. The condition of the building is poor. It is situated between ¼ and ½ a mile from the town centre, but is adjacent to the main railway station which has fast links to London. Opposite the building is Radnor Park, a public open space. The external communal parts are the footpath and gardens both of which were in an unkempt and derelict condition at the time of the inspection. Doors and external fenestration had been boarded up.

THE ISSUES BETWEEN THE PARTIES

12. <u>The reasonableness of the insurance premiums charged to the Applicant for the service charge years from and including 2004/5.</u>

13. The Applicant's lease, which was made on 1th January 1988 between (1) M.W.Beauchamp and (2) C.D.Thompson, requires the tenant to make payments equivalent to 20% of the landlord's expenditure on insuring the building. Such payments are service charges for the purposes of the Landlord and Tenant Act 1985.

14. The Applicant disputed the overall cost of the insurance in terms of the rate of premium (net of insurance premium tax) per £1,000 of cover. Those costs and rates for the under mentioned years are:

Year	Cover	Premium (net ipt)	£ rate (net ipt) per £1,000
2005/2006	**£446,250**	**£658.75**	**1.4761**
2006/2007	**£470,794**	**£696.98**	**1.4761**
2007/2008	**£499,041**	**£736.67**	**1.4761**
2008/2009	**£519,003**	**£766.14**	**1.4761**

15. The Applicant considered that the rate is too high and produced a quotation for 2008/2009

from AXA insurance for a portfolio of houses and flats at £0.63 per £1,000 of cover (total building cover in excess of £31.74 million). The Applicant also evidenced other quotations at about £1 per £1,000 (from Norwich Union for a period when the Applicant owned the freehold interest in the building of which the property forms part) and, from the same broker, at £0.98 per £1,000 in respect of a block of flats owned by Mr.Wilson.

16. Mr. Wilson submitted on the Applicant's behalf that both AXA and Norwich Union offered one rate across the board for houses and flats in his portfolio of properties, being about 95% houses and 5% flats.

17. The Respondent, through Hamilton King Management Limited, considered the premium rates are reasonable in the circumstances and, as Mr. Taylor put it, at least on a like for like basis as the indication of cover put forward by the Applicant. Mr Taylor explained the Respondent follows the usual procedure of obtaining quotations (copies of which were not held by Hamilton King Management Limited):- quotations are sought before the insurance expiry date, a meeting is held with the broker. The amount of insurance cover is index-linked.

18. The tribunal considers it is not incumbent on a landlord, who procures insurance on a normal basis, to seek to obtain the lowest quotation. The tribunal notes that the Applicant's lease obliges the Respondent to place insurance with insurers of repute. The tribunal considers that the insurance renewal process, described by the Respondent and not challenged by the Applicant (notwithstanding the clear challenge on the premium rate) appears to be reasonable and normal. In *Berrycroft Management Co. Ltd. V. Sinclair Gardens Investments (Kensington) Ltd.* [1996] 29H.L.R. 444, CA, there had been a change in the freehold ownership of a block of flats held under leases which allowed the landlord to select insurers 'of repute'. The new landlord placed insurance with insurers whose premiums were higher than those charged by the former landlord's insurers. The tenants argued that the new more expensive insurance had been unreasonably incurred. The Court of Appeal considered that the new premium should be regarded as having been reasonably incurred so long as the insurance was procured in the normal course of dealing, even though the premium was higher than other insurers might charge.

19. The tribunal disclosed to the hearing that, in its own general experience, a rate of £1.47 (net of ipt) for premises such as the subject property is not out of normal range. The tribunal also explained to the hearing that, having regard to its own general experience, the Applicant might be able to secure a competitive single rate for the portfolio he had described in the context that approximately 95% of it comprises houses which typically command lower rates of premium than flats.

20. In all those circumstances, the tribunal had no evidence before it that the insurance cost was unreasonably incurred. On the basis of the rates which are actually charged, which are in line with the tribunal's own experience (disclosed to the hearing, as above), the insurance cost appears reasonable for the years tabled at paragraph 14 above.

21. Accordingly, the tribunal determines that the premiums set out in that table, being the costs incurred by the Respondent, plus insurance premium tax, for the applicable years are relevant costs. No evidence was adduced in respect of the years 2004/5 to the tribunal, which makes no determination in respect of that year.

22. The reasonableness of the amounts that the Applicant has been charged for the supply of electricity for the service charge years from and since 2004/5.

23. The landlord's costs to which the Applicant is required by her lease to contribute a service charge include the cost of keeping the passageways and other common parts of the building reasonably lighted (clause 7(2)(a)).

24. The Respondent has demanded service charges in respect of electricity supply from the Applicant in respect of the service charge accounting periods (which end on 24th March in each year), as follows:

Year	Electricity supply costs	Related service charge
2006/2007	£47.12	£9.42
2007/2008	£93.66	£18.73
2008/2009	£82.82	£16.56

25. The Respondent evidenced the costs by producing copies of the supply company's bills. They show electricity bills totalling the relevant amounts. Most of the bills are based on estimated meter readings but the penultimate bill was calculated from a customer reading, fractionally in excess of the previous estimate. The most recent bill, based on estimated consumption since the customer reading, was for £0.45p, excluding the standing charge. Consequently, although the tribunal considers that utility bills based exclusively on estimated consumption may not, arguably, be reasonably incurred, it is not possible to make that argument in this case.

26. It was common ground between the parties that the building's current state of dereliction had begun to come about in the late autumn of 2008 but that it was not entirely boarded up until the end of February 2009. In that context, the tribunal notes that the final electricity bill is calculated until 6th February 2009 which appears unexceptional in the circumstances.

27. Consequently, although the tribunal anticipates that there ought to be no further electricity bills for so long as the building continues in its current state, the tribunal determines that the electricity costs tabled in the second column of the table at paragraph 24 were reasonably incurred and that the Applicant is liable to pay a service charge towards those relevant costs, as set out in the third column of that table.

28. The Applicant's liability for and the reasonableness of interest that the Respondent has sought to charge the Applicant on unpaid service charges from and since the service charge year 2004/5.

29. A statement of account delivered on the Respondent's behalf to the Applicant refers to interest due from the Applicant to the Respondent. Clause 3(h)(2) of the lease provides for payment of interest at a specifically defined rate which is set out in that clause. Even if, which the tribunal considers is not the case, such amounts of interest are service charges for the purposes of the Landlord and Tenant Act 1985, under section 27A(4)(a) of that Act the tribunal has no jurisdiction to determine a matter which has been agreed by the tenant. Consequently, as the lease sets out an agreed rate of interest and provides for the circumstances in which that interest is payable, there is no issue of liability or reasonableness which the tribunal can determine under section 27A of the 1985 Act. If interest has been charged contrary to clause 3(h)(2), that is not a matter for the tribunal.

30. The liability of the Applicant for any service charges to date due to the alleged non-service of statutorily prescribed information required to be served with service charge demands.

31. The Applicant submitted that no Summary of Rights and Obligations, under the Service Charges (Summary of Rights and Obligations, and Transitional Provision)(England) Regulations 2007 had accompanied the service charge demands from 1st October 2007. Mr Wilson drew attention to the statutory consequences of that failure under section 21B of the 1985 Act. He referred the tribunal to the originals of certain specimen service charge demands and accompanying covering letters received from Hamilton King Management Limited which he had earlier sent to the tribunal's office from which, the Applicant asserted, the Summary of Rights and Obligations were absent.

32. Hamilton King Management Limited, on the Respondent's behalf, stated that they were non-plussed by the Applicant's assertions. They were confident that the Summary of Rights and Obligations had been pre-printed on the reverse side of the demands, notwithstanding that the reverse side of the demands copied in the Respondent's bundle did not include the Summary.

33. The tribunal examined the original papers which had been sent earlier on the Applicant's behalf. From them, it was clear that the Summary of Rights and Obligations had been pre-printed on the reverse side of the managing agents' covering letter which, itself, enclosed the service charge requests for payment.

34. Accordingly, the tribunal determines that the relevant demands for the payment of service charges were accompanied by the Summary of Rights and Obligations. (The tribunal queried during the hearing whether the Summary was in fact printed in at least 10 point, as was stated on the Summary and as is required by the 2007 Regulations. The Respondent so confirmed and the Applicant provided no evidence to the contrary.)

35. The reasonableness of the service charges claimed from the Applicant in respect of cleaning/gardening

36. The landlord's costs to which the Applicant is required by her lease to contribute a service charge include the cost of keeping the passageways and other common parts of the building clean and of keeping the pathways tended and tidy (clause 7(2)).

37. The Respondent has demanded service charges in respect of "cleaning and/or gardening" from the Applicant in respect of the service charge accounting periods (which end on 24th March in each year), as follows:

Year	Cleaning and/or gardening costs	Related service charge
2005/2006	£165	£33
2006/2007	£330	£66
2007/2008	£330	£66
2008/2009	£330	£66

38. The Respondent evidenced the costs by producing copies of the contractor's bills which do not vary in amount of £27.50 per month from September 2005 (in respect of that month) until February 2009 (in respect of that month). The tribunal notes, in the context of the service charge year end at 24th March, that the costs for 2005/2006 were calculated on the basis of six months of bills taken up to and including the end of February 2006, the effect of which is carried forward so that each accounting period reflects twelve monthly bills ended February.

39. It was not clear to the tribunal whether the costs were incurred in connection with the internal common parts or with keeping the garden pathways tended and clean, or both. It was common ground between the parties that it was the latter.

40. The tribunal stated to the hearing that, in its general experience, a monthly rate of £27.50 for this type of work appears, of itself, reasonable. The Applicant did not disagree. The current derelict condition of the property is no guide to whether the gardening work, prior to March of this year, had or had not been done to a reasonable standard. In the absence of such evidence, there is no basis on which the tribunal could safely limit the relevant costs.

41. Consequently, the tribunal determines that the cleaning and/or gardening costs tabled in the second column of the table at paragraph 37 were reasonably incurred and that the Applicant is liable to pay a service charge towards those relevant costs, as set out in the third column of that table.

42. The reasonableness of amounts proposed to be charged to the service charge account for the year 2009/10

43. The Respondent stated that there has been no formal proposal and Mr.Wilson confirmed on the Applicant's behalf that this is not an issue between the parties.

44. The reasonableness of the Managing Agents management fee for each of the years in question aforesaid

45. One of the items of landlord's costs which the Applicant's lease provides for a service charge, at paragraph 3 of the second schedule, is ***The reasonable fees of the Landlord's Managing Agents for the collection of [rent] of the Building and for the general management of the Building.***

46. The Respondent, acting through its managing agents, has demanded annual management fees as part of the service charge from the Applicant. The annual amounts range as follows:

Year	Management fee (inc vat)	Related service charge
2005/2006	£518.30	£103.66
2006/2007	£593.38	£118.68
2007/2008	£634.50	£126.90
2008/2009	£652.18	£130.44

47. The Applicant admitted that the management fees were not unreasonable in amount for fees which might be charged for proper management, but that was as far as it went. The Applicant submitted that no fees should be allowed at all because the managing agents have a very bad record of attending the building and because they do no management work, apart possibly from being involved with insurance.

48. On being pressed by Mr.Wilson, Mrs Toson told the tribunal that the agents had visited the building in March 2009. Her evidence was, the tribunal thought, sketchy. She was not able to evidence precisely when the managing agents made the visit or with what result; and she confirmed there is no diarised evidence of attendance. The Respondent's evidence was that the managing agents believed that they had visited the building in previous years but, again, could not state when.

49. Mrs Toson admits that the agents have not caused any physical works to be carried out to the building because, although they have been aware that repair work is necessary, the tenants have not paid their service charges and, consequently, the landlord denies its responsibility to execute works of maintenance and repair. There is, as Mrs Toson put it, a stalemate.

50. The tribunal has no truck with any suggestion of stalemate. If, as to which the tribunal expresses no opinion, the condition of the Respondent's maintenance and repair obligation concerning payment of rent and service charge is an enforceable condition, it nevertheless strikes the tribunal that it is entirely irresponsible of the parties to allow this building to have fallen into its current condition. It ought to be possible, on any reasonable approach, for the parties to agree a way forward so that the building may make a contribution to the local housing stock. If agreement does not prove possible, it would, for example, be open to the Respondent to seek a leasehold valuation tribunal's determination about anticipated service charge expenditure under section 27A(3) of the 1985 Act.

51. Nevertheless, the tribunal considers that, on the evidence before it, the managing agents have, until the end of the 2008 service charge accounting period, discharged some basic administrative functions in respect of the building which comprises five flats; and that the overall fees charged for the relevant years down to and including 2007/2008 are not unreasonable. Accordingly the tribunal determines that, for each of the years 2005/06; 2006/07; and 2007/08, the fees listed in the second column of the table at paragraph 46 above are relevant costs for the purposes of the 1985 Act and that, for each of those years, the respective service charges referred to in the third column of that schedule are due from the Applicant to the Respondent.

52. However, the management function broke down during the year 2008/09, to the point where any management service was provided, if it was provided at all, to an entirely unreasonable standard. General management carries with it an obligation to visit the building at reasonable intervals. Had the Respondent caused this management function to be discharged properly, it is reasonable to expect that serious attempts would have been made to rectify the building's condition which has rendered the flats uninhabitable.

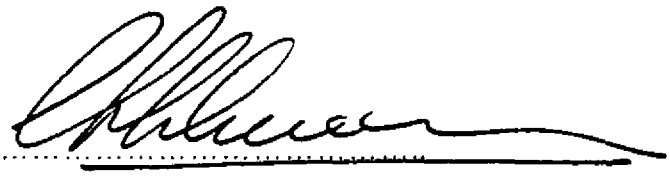
53. Consequently, the tribunal determines that the management service for the year 2008/2009 was not provided to a reasonable standard, so much so that no service charge is payable in respect of it for that period.

SECTION 20C

54. In considering whether or not to make an order in this case, the tribunal must be guided only by what is just and equitable in the circumstances. The Applicant has not been successful on many of the issues in the application. However, the tribunal cannot avoid the strong impression it has from the evidence as a whole that much cause of the application, going to the substance of the justice and equity of the overall position, lies in the circumstances about which the tribunal has the concerns expressed in paragraph 50 above. The tribunal, accordingly, orders that none of the Respondent's costs in connection with these proceedings should be regarded as relevant costs to be taken into account for determining the amount of any service charge payable by the Applicant. The tribunal so orders. In doing so, the tribunal emphasises that it has not considered whether the Applicant's lease

would, but for the order which has been made, enable the Respondent to treat its costs in these proceedings as relevant costs for any service charge recovery.

Dated 27th November 2009



C.H.Harrison Chairman.