CHI/24UD/LSC/2009/0013

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL

FLAT 34B HILLFIELD ROAD SELSEY WEST SUSSEX PO20 0LB

Applicant:	Mr D Picking (Tenant)
Represented by:	In person
Respondent:	Sinclair Gardens Investments (Kensington) Ltd (Landlord)
Represented by:	Helen Pugh of counsel instructed by P Chevalier & Co
Date of Hearing:	15 May 2009
Date of application:	12 January 2009

Members of the Leasehold Valuation Tribunal:

Mr M Loveday BA(Hons) MCIArb
Mr B Mire BSc (Est Man) FRICS
Ms J Morris

1. This is an application for a determination of liability to pay service charges under s.27A of the Landlord and Tenant Act 1985 ("LTA 1985") in respect of Flat 34b, Hillfield Road, Selsey, West Sussex. The applicant is the lessee under the terms of a lease dated 21 July 1987.

2. The application is dated 12 January 2009 and names the respondent as Jewel Baron Ltd. Directions were given on 25 February 2009 which identified the issues for determined at a hearing to be the liability for costs incurred *"for the years 2007, 2008, and to be incurred for the current financial year"*. In fact, it is common ground that the application relates to the relevant costs incurred in the service charge year ending 25 March 2008 and interim charges for the service charge year ending 25 March 2009.

3. A hearing took place on 15 May 2009. The applicant appeared in person. The respondent was represented by Ms Helen Pugh of counsel who relied on evidence from Mr Mark Kelly of Hurst Management, managing agents for the property.

INSPECTION

4. The Tribunal inspected the property before the hearing. 34/36 Hillfield Road is located on a busy bus route in Selsey close to the town centre. The property is adjacent to a run down secondary parade of shops which is in poor decorative order. The building is a two storey purpose built block of six flats in brick under pitched tile roofs. The external walls are half rendered. The building lay on a plot approx ¼ acre with the gardens mainly comprising gravel car parking surfaces, grass and shrubs. The boundaries with adjacent properties were largely formed by post and 6ft larch lap link fencing panels. To the left hand side (viewed from the front) were a number of slipped panels and three were entirely missing. The right hand boundary included two 6ft panels and a run of replacement 2ft lap link panels which were evidently of more recent vintage than the rest. The grass areas were well tended, although parts were little more than trimmed moss and weeds. The gravel had some moss growth but these were not extensive. The building itself was in good condition, although there was some staining to the rear elevation and a door missing form a meter cupboard.

THE RESPONDENT

5. The 1987 lease named the freeholder as Jewel Baron Ltd. The respondent has produced office copy entries in respect of the freehold reversion of the property which indicates that Sinclair Gardens Investments (Kensington) Ltd was registered as proprietor of the freehold reversion on 19 April 1989. The Tribunal invited the parties to agree that the present landlord should be substituted as the proper respondent to the application and the parties agreed to this. No prejudice has been caused to the landlord as a result of the former landlord being named as respondent. The Tribunal therefore directs under regulation 6 of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 that Sinclair Gardens Investments (Kensington) Ltd should be added as respondent in substitution for Jewel Baron Ltd.

THE APPLICANT'S CASE

6. The applicant's statement of case was included in a bundle of documents served before the hearing and is headed "*Summary of Specific Costing Items to be addressed at the hearing*". The application related to the landlord's Statement of Service Charges dated 25 March 2008. This statement gave figures for both actual service charge expenditure in 2007/08 and estimated costs for 2008/09. The applicant sought a determination in respect of the following relevant costs included in the statement for the 2007/08 service charge year:

   (a) Repairs and maintenance 29 May 2007: £1,446.00

   (b) Gardening 27 March 2007 to 22 February 2008: £4,603.50

   (c) Management fees 24 June 2007 to 25 March 2008: £9,940.50

   The application also sought a determination in respect of similar matters included in the landlord's estimate of anticipated service charge costs for 2008/09.

7. A number of admissions made during the hearing should be noted.

   (a) At the outset of the hearing, the applicant accepted that the proper apportionment of the total relevant costs attributable to his flat was one sixth.

(b) The applicant stated that he did not rely on any allegation that the relevant costs were not recoverable under the terms of the lease of the flat.

(c) During cross examination of the agent, Mr Kelly, Mr Picking accepted that the landlord had no legal obligation to repair the fence to the left hand side of the property as one views it from the highway.

(d) Towards the end of the hearing, the applicant informed the Tribunal that he was not objecting to the individual items included in the estimate of 2008/09 service charges. The interim charge for 2008/09 was therefore no longer in dispute, although Mr Picking reserved his position about whether he might in due course object to these items if they were included in the final 2008/09 service charge accounts.

8. The applicant produced a copy of the 1987 lease which included service charge provisions at clause 1(2). The lessee's obligation was to pay one sixth of defined relevant costs incurred by the landlord in any service charge year.

9. Mr Picking referred to the various gardening costs which appeared in the statement of property expenditure attached to the 2007/08 service charge statement. These showed a figure of £767.25 which suggested total relevant costs of £4603.50 for the whole building. The applicant stated that although he did not live at the property, he visited it on a regular basis. His statement of case observed that the garden had always been weed infested and he referred to photographs taken in December 2008 and on 8 March 2009 which showed the "appalling" condition of the garden. Over the years that Hurst Management had been charging for gardening and repairs, practically nothing had been done. For a time, there had been mattresses dumped in the garden which were not removed and the grass had not been mown. Recently, the agents had rectified the problems, but this effectively recognised the historic situation. The agents employed a gardening and fencing contractor, Mr J Blackman (who also traded under the name of Dryad Fencing) to carry out work at the property. The sums charged by Mr Blackman were reasonable, but the gardening was not done. The services provided for gardening were therefore not of a reasonable standard under s.19 of the Landlord and Tenant Act 1985.

10. The applicant next referred to repairs and maintenance costs. The total for flat 34B in the statement of property expenditure attached to the 2007/08 service charge statement was £240 - which suggested a total relevant cost of £1,446 for the whole building. The item dated 27 May 2007 is described as "*remove 2 old panel & 3 rotten posts erect new & repair 1 panel*". The applicant stated that this work was for repairs to the panels in the right hand fence (which the Tribunal had seen on inspection). The applicant was not arguing that this relevant cost was not reasonably incurred, but he took issue with the failure to repair the left hand fence. Initially, Mr Picking submitted that it was commonly thought that a landowner was legally responsible for repairs to the left hand boundary when viewed from the highway. Having made the concession referred to above, the applicant adopted a fallback position. He submitted that even if the landlord was not obliged to repair the left hand fence, the agents nevertheless should have been proactive in pursuing the repairs to the fence. A note of an inspection in the landlord's papers dated 13 March 2008 showed that the agent was ell aware of the damaged and missing fence panels.

11. The applicant objected to the management fee charged by Hurst Management. The figure for these costs was given in the statement of property expenditure as £1,656.75 – which suggested a relevant cost for the whole property of £9,940.50. Mr Picking did not object to this figure as having been reasonably incurred, but the services provided by the agent were not of a reasonable standard.

12. When cross examined, the applicant stated that he had taken over responsibility for the flat in 2008 after the death of his sister. The first time he wrote to Hurst Management was on 17 February 2008. However, he agreed he had not raised the issue of the gardening before the application was issued. He had telephoned the agent about two months before the hearing and had been told that the fence was not the responsibility of the landlord. He lived in the Republic of Ireland and the flat was unoccupied most of the time. However, whenever he had visited the property it was in a similar state to the photographs. In particular, the state of repair in June 2008 was similar to the condition in the photographs. When taken to the photographs, Mr

Picking pointed to one photograph showing the old mattress, several which showed broken fence panels and others which showed overgrown shrubs. He agreed that these had all now been dealt with. When questioned by the panel, Mr Picking stated that the condition in June 2008 was the same as in the photographs – except that the grass was a little more verdant. The garden was in extremely poor condition. Mr Picking had regularly visited his sister when she was alive and she had been concerned about the condition of the garden. The flower bed behind the house was knee high with weeds and it was obvious it had not been maintained. When he visited on 25 March 2009 there were a lot of workmen on site combing the gravel and removing rubbish. They were making a huge effort to tidy up.

13. In closing, Mr Picking submitted that the garden always looked a "shambles". As for the fence, despite the note of 13 March 2008, nothing had happened until the Tribunal hearing.

THE RESPONDENT'S CASE

14. The respondent relied on a skeleton argument which counsel expanded upon at the hearing. The respondent also called Mr Mark Kelly of Hurst Management to give evidence. Mr Kelly produced a detailed statement dated 31 March 2009 with extensive exhibits. On each of the relevant costs in dispute, Mr Kelly observed that the figures given in the "*Summary of Specific Costing Items to be addressed at the hearing*" dated 25 March 2008 were for the building, not flat 34B. It followed that the relevant costs in dispute were management fees of £1,656.75, repairs/maintenance of £240 and gardening costs of £1,028.11.

15. On the issue of the management fee, Mr Kelly set out a long list of services provided by the agent in return for its fee. These included collection of service charges, preparing statements for the landlord, collection of arrears checking tenant data and recording details of tenants, organising expenditure for which the landlord is liable, providing information to auditors, producing service charge accounts, maintaining records of the property, maintaining books of account, responding to correspondence and telephone calls, periodic inspections, maintenance, statutory reports , insurance

valuations and inspections, organising regular contracts for gardening, lifts etc and a range of other responsibilities. The management fee was calculated on a rate per flat (£235 in 2007/08 and £245 in 2008/09) in accordance with the RICS Residential Service Charge Management Code. No other fees were charged for management. All invoices were available for inspection but no request had been made to inspect vouchers under section 22 of the Landlord and Tenant Act 1985. The agent had responded to all correspondence promptly. When questioned by the Tribunal, Mr Kelly accepted that he would charge for any additional duties at the rate of £130 per hour – but that it had not done so in this case.

16. As far as the fence repairs were concerned, a tenant had telephoned on 7 March 2007 to say that panels on the right hand side of the rear garden had been damaged. The agent arranged for Mr Blackman to repair these panels at a total cost of £240. In his oral evidence, Mr Kelly stated that the landlord was not responsible for repairs to the left hand fence. He referred to a letter to the next door neighbour dated 19 March 2009 where the agent asked the neighbour to mend the fence. There had been no other complaints about the fence. When cross-examined, Mr Kelly stated that unless the tenants wanted the landlord to take further action against the neighbour, the agents would not do so.

17. As to the gardening costs, Mr Kelly stated that the agent's policy was to allow the tenants to choose the gardening contractors if they wished (provided the contractors had suitable insurance). Mr Blackman/Dryads gave a price for gardening of £35.00 per hour for a fortnightly visit. The contract price had not increased since 2005. There was a specification which provided for grass cutting and edge trimming in season, sweeping tarmac areas, hedge trimming (twice yearly) collecting leaves and litter, weeding parking areas and applying weed killer. An estimate and specification dated 30 August 2005 was produced.

18. When cross examined by the Tribunal, Mr Kelly accepted that there was a note of an inspection of the garden on 17 September 2008 which recorded that moss clearance

had been carried out, but that the *"shrubs need shaping up to the rear garden [and that] the bush by the back door is overgrown"*.

19. In closing, counsel submitted that the agent had responded to complaints from tenants about the condition of fences, and it was unreasonable for them to have done more. They were not on-site managers. The management fee charged was modest and documentation had been provided to show that they had a reasonable system for dealing with complaints from tenants. As for the fence repairs, the landlord was not responsible for repairs to the left hand fence panels. The issue was what service it was reasonable for the agent to provide. Absent any complaints from lessees, the agents could not reasonably incur the potentially major cost of pursuing the neighbour.

FINDINGS

20. The first issue is the amount of the relevant costs. The Tribunal is satisfied that the sums involved for the building are as stated by the landlord, namely management fees of £1,656.75, repairs/maintenance of £240 and gardening costs of £1,028.11. The statement of 25 March 2008 is not entirely clear to the untrained eye, but nevertheless it purports on its face to be a statement of service charge costs for Hillfield Road 34/36 rather than one individual flat. This is put beyond doubt by the supporting statement of property expenditure and the invoices and receipts provided by the landlord for the 2007/08 service charge year. For example, Hurst Management's fees appear in three invoices dated 29 September 2007, 25 December 2007 and 25 March 2008 – the three invoices totalling £1,656.75 as shown in the service charge statement.

21. The applicant accepts these three items of costs are contractually recoverable. Furthermore, he makes no objection under sections 20 or 20B of the Landlord and Tenant Act 1985. The complaint therefore falls under section 19 of the 1985 Act. This states:

> *"(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-*

(a) Only to the extent that they are reasonably incurred, and
(b) Where they are incurred on the provisions of services or the carrying out of works, only if the services are of a reasonable standard;
And the amount payable shall be limited accordingly."

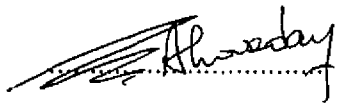
22. Here, the applicant does not suggest that any of the three items of cost were not reasonably incurred within the meaning of s.19(1)(a) of the Act. The contention is that the services provided by gardening contractors and managing agents were not of a reasonable standard under s.19(1)(b).

23. As to the £240 charged by Mr Blackman for repairs to the right hand fence, no complaint is made about the standard of work carried out. The gist of the complaint here is rather that failure to repair the left hand fence as well made the services provided by the managing agents not of a reasonable standard. As stated above, the applicant accepted part way through the hearing that the landlord was not under any obligation to repair the left hand fence. His fallback position was that the agents ought to have been more pro-active in pursuing the neighbours once they were aware that the fence was in disrepair. The Tribunal finds that the agent was or ought to have been aware of damage to the fence from at least December 2008, when the damaged sections of fence were clear from the applicant's photographs. It also finds that the agent acted reasonably in writing to the neighbour in March 2009. However, without any direct right to repair the damaged fence, the agent acted reasonably in not pursuing things further. To take more positive action than a letter to the neighbour would require a risk of substantial costs being incurred for which the agent would doubtless require an indemnity for costs. There is no evidence that the lessees had any appetite for such an indemnity or that the agent was being pressed to pursue the neighbour.

24. As to gardening costs, these are fairly modest, at £35 per fortnight. The garden is fairly extensive. The garden is a north facing, and evidently suffers from problems of moss which would make it difficult to maintain. The photographs and inspection notes show that the garden was not in perfect condition, and that from time to time there were problems with rubbish and moss on the gravel. However, the photographs show a

reasonable standard of gardening. The grass appears to be of a reasonable length and there is no sign of excessive weeds to borders or overgrown hedges. This evidence is supported by the inspection notes made by the agent. It was clear on inspection that the garden had been given attention shortly before the hearing, but the available evidence of the condition during the 2007/08 service charge year does not suggest that it was significantly worse than today.

25. The Tribunal therefore concludes that the management fees of £1,656.75, repairs/maintenance of £240 and gardening costs of £1,028.11 were reasonably incurred by the landlord in the 2007/08 service charge year. In accordance with s.27A of the Act, the Tribunal finds that one sixth of these sums is payable by the applicant, namely £276.12, £40 and £171.35.



Mark Loveday BA(Hons) MCIArb
Chairman
19 June 2009