

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**

In the matter of Applications under Sections 27A and 20C of
the Landlord & Tenant Act 1985

Case No. CHI/45UC/LSC/2007/0032

Property: Flats 1 & 2, Guildersfield, Norfolk Square, Bognor Regis, West Sussex,
PO21 2JA

Between:

Mrs Cheryl Powell (Flat 1) &
Mr Michael F. Betteridge (Flat 2)
("the Applicant/Lessees")

and

Canda Copying Limited
("the Respondent/Landlord")

Attendances:	The Applicants:	Mrs Cheryl Powell (Flat 1) Mr Michael F. Betteridge & Mrs Hargreaves (Flat 2)
	The Respondent:	No attendance

Members of the Tribunal: Mr J.B. Tarling, MCMI, Lawyer/Chairman
Mr R.A. Wilkey, FRICS FICPD
Ms J.K. Morris

Date of the Decision: 10th August 2007

**THE DECISION
OF THE LEASEHOLD VALUATION TRIBUNAL**

- 1. The Tribunal determines under Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") that the following items of Service Charges are legally payable by Applicants to the Respondent :**
 - (a)The items that the parties have agreed themselves as set out in the "agreed" column in Paragraph 10 of this Decision.**
 - (b)The Interim Charges for 2005 and 2006 as set out in Paragraph 15(b) of this Decision.**

- 2. The Tribunal makes an Order under Section 20C of the 1985 Act that any costs or expenses incurred by the Landlord in connection with these proceedings shall not be chargeable through the Service Charge Account.**

REASONS FOR THE TRIBUNAL'S DECISION

1. Background to the Application

In April 2007 the Applicants made two Applications to the Tribunal:

- (a) Under Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of the liability of the Applicants to pay to the Respondent certain Service Charges in the years 2005, 2006 and 2007 under the terms of the Flat Leases.
 - (b) Under Section 20C of the 1985 Act for an Order that any costs of expenses incurred by the Landlord in connection with these proceedings shall not be chargeable through the Service Charge Account.
2. On 17th May 2007 the Tribunal made Directions as to the preparation and exchange of various documents with a view to preparing for a full Hearing of the Applications. The parties had prepared their own Bundles of documents and these had been exchanged and copies had been forwarded to the Tribunal prior to the Hearing.

INSPECTION

3. (a) The Tribunal carried out an Inspection of the Property on the morning of 31st July 2007 accompanied by Mrs Powell and Mrs Hargreaves (the partner of Mr Betteridge). The Landlords did not attend the Inspection nor were they represented. The Building is a terraced house in Norfolk Square which is a tree-lined road near the Seafront at Bognor Regis. The Building called "Guildersfield" is a four-storey house built in about 1870 which had been converted into four self-contained flats. The lower ground floor flat (Flat 1) had its own separate access from the front communal pathway. The other 3 Flats shared a communal front door which was accessed up some steps. Inside the communal front door were hallway, stairs and landings leading to the three Flats. The front of the Building appeared to be in a good decorative condition. The Tribunal members inspected the rear elevation by obtaining access through Flat 1. This elevation was also in a good decorative condition. The common parts inside the building were also clean and tidy with carpet on the stairs and in the hallway and landings. There were electric lights in the common parts operated by push time-switches.
- (b) Immediately adjoining Guildersfield to the West was a two-storey self-contained Building called "The Lodge" It was understood that this Building was freehold and did not participate in the management or service charge arrangements with Guildersfield. On the fore-court immediately in front of The Lodge were six wheelie-bins, four of which were used by the four Lessees of the Flats in Guildersfield in which to deposit their rubbish.

4. HEARING

A Hearing took place at the Tribunal's offices at Chichester on 31st July 2007. Mrs Cheryl Powell (Flat 1) and Mr Michael Betteridge and Mrs Hargreaves (Flat 2) attended the Hearing. No-one from the Respondents attended the Hearing nor were they represented.

5. **The Applicant's Case**

The Tribunal started the Hearing by asking the Applicants to tell the Tribunal exactly what it was that they were asking the Tribunal to decide. The Application Form itself had merely said "All aspects of the Service Charge are in question. As the Freeholder is unable to provide an accurate breakdown." Whilst the Applicants had substantially complied with the Tribunal's Directions and provided a Bundle of documents, the Applicant's Summary and the attached documents did not specifically identify which items of Service Charge were being challenged. Mr Betteridge on behalf of the Applicants said that no audited accounts had ever been produced by the previous Landlord's Managing Agents, Havelock Estates of Brighton. Despite several requests in writing for information as to what they were being asked to pay for, Havelock Estates had been unable to provide the details of what had been paid and what the expenditure had been for. Mrs Powell said that the current Landlord, the Respondents, had said that they had not received any paperwork from the previous Landlords and had been unable to supply the information requested. In respect of the Demands for Interim Service Charge payments Mrs Powell complained that the Managing Agents had demanded she pay the sum of £400 without explaining what it was for and how it had been calculated. She was under the impression that the Service Charge for her Flat was £600 per annum and she did not understand why she was being asked for £400 for a half-year Interim payment. The Tribunal reminded her of the provisions in the Lease which allowed the Landlord to decide the amount of the Interim payments.

6. **The Respondents Case**

No-one from the Respondents attended the Hearing. Shortly before the date set for the Hearing the Respondents has sent a letter saying that no-one was going to attend and enclosing a "Summary of the Statement of the Respondent" and an "Additional Statement of the Respondent." Copies of those documents had been received by the Applicants prior to the Hearing commencing. In addition the Respondents had sent in a Bundle of documents including a "Statement of the Respondent." This last document summarised the history of the matter. In brief the Respondent purchased the Freehold reversion at public auction with completion of the transfer of the Freehold taking place on 1st September 2006. It was a term of the contract that on completion the Respondent would pay to the previous Freeholder a sum of money in respect of an apportionment of the ground rents and the arrears of service charge that were alleged to have been owing by the four Lessees. The purchase price for the Freehold reversion was £6,750 and the additional money in respect of the alleged arrears of service charges was as follows:

Flat 1	£1,603.98
Flat 2	£1,054.83
Flat 3	£792.55
Flat 4	<u>£1106.05</u>
	£4,557.41

The Respondent claims to have paid this amount to the Vendor under the terms of the sale contract.

7. In Paragraph 13 of the Respondent's Statement they said "it is not possible for the Respondent to provide a more accurate breakdown of the Service Charges for 2006 and 2005 as the Respondent was not the Lessor and did not benefit from these charges." In respect of 2007 the Respondent said "the Respondent has not yet set the Service Charge for 2007 as it is not yet known what the costs will be."
8. In view of the contents of the Respondents Statement, the Applicants were asked if they agreed that they would not require the Tribunal to deal with the Service Charges for the year 2007, and they all agreed. The Tribunal confirms that it has made no determination on any Service Charges for the year ended 24th June 2007 and it is open for the Landlord or any of the Lessees to make another Application to the Tribunal under Section 27A of the 1985 Act, if matters can not be agreed.
9. The Tribunal then turned its attention to the two Service Charge years ending 24th June 2005 and 24th June 2006. The Applicants helpfully conceded that they quite agreed that they should contribute to the recurring service charge items such as Buildings Fire Insurance Premiums, Electricity for the common ways (apart from Flat 1) and the annual service contract for smoke and fire alarms in the common ways (apart from Flat 1). They were unable to agree the amounts of those items, or any other items, as they had not been provided with sufficient information as to what the amounts represented. In the Bundles of documents supplied by the parties were various Service Charge "Applications for Payments (Document D3 for Flat 2 and D8 for Flat 1). These were merely a "cash account" showing various items debited and credit to each Lessees Account.
10. The Tribunal then went through the Applications for Payment in respect of each of the two Flats and the following items were agreed and not agreed:

Flat 1 (Document D8)

Date	Amount	Agreed	Not Agreed
25/12/2004 Interim S/C	£400.00		-£400.00
24/06/2005 Ditto	£239.50		-£239.50
2/9/2005 Credit Entryphone	£81.37	+£81.37	
26/9/2005 Credit BFA	£27.61	+£27.61	
17/10/2005 Credit Pyrotech	£23.79	+£23.79	
24/12/2005 Interim S/C	£239.50		-£239.50
24/6/2006 Excess S/C	£774.02		-£774.02

Flat 2 (Document D3)

25/12/2004 Interim S/C	£400.00		-£400.00
24/6/2005 Credit Excess S/C	£139.68	+£139.68	
24/6/2005 Interim S/C	£256.17		-£256.17
2/9/2005 Entryphone	£27.12	-£27.12	
24/12/2005 Interim S/C	£256.17		- £256.17
24/6/2006 Excess S/C	£780.12		- £780.12

As the parties had agreed the items listed in the "Agreed" column above, the Tribunal was not asked to make any further determination as to those items.

11. In respect of the items that were not agreed it was clear that these related to the amounts of Interim and Excess Service Charges demanded each half-year. The Applicants were asked why they thought the Interim and Excess Service Charge Demands were not payable. They replied that they considered them to be unreasonable as the Landlord had not explained what these amounts were for and how they had been calculated.
12. The Tribunal then asked the Applicants to say what items they considered they were liable to contribute towards under the terms of the Lease.

Buildings Fire Insurance Premiums

Although the Tribunal had not been asked to deal with the Service Charges for the year ended 24th June 2007, the Applicants agreed that the premium of £1,359.09 which the Respondents claim to have paid to Allianz Cornhill in October 2006 in the sum of £1,359.09 was fair and reasonable. However they were unable to agree that the premiums of £2,672.52 and £2,867.59 alleged to have been paid by the previous Landlords to Royal and Sun Alliance in 2004 and 2005 were reasonable. The reason for this was that from the details supplied it appeared that the Royal and Sun Alliance Policy covered the adjoining property know as "The Lodge" as well as Guildersfield. Neither the Applicants nor the Respondents had provided the Tribunal with any evidence of what might be a reasonable proportion of these premiums for cover on Guildersfield alone.

Common Ways Lighting - Electricity Accounts

Mrs Powell's Lease did not require her to pay anything towards the electricity for the lighting of the Common Parts. Mr Betteridge and Miss Hargreaves agreed that the modest amounts of £107.99 and £118.32 for the years 2005 and 2006 were fair and reasonable and these amounts were divided between the Lessees of Flats 2, 3 and 4.

Management Fees

Havelock Estates had charged Management fees of £395.50 and £767.66 for the years 2005 and 2006 respectively. The Applicants did not agree that these items were reasonable as they claimed that Havelock Estates had carried out no effective management. They had failed to resolve a problem about the location of the wheelie-bins which had resulted in County Court proceedings having been issued against the Applicants by the owners of "The Lodge" The Managing Agents had failed to reply fully to letters requesting information about the amounts of Service Charges demanded. No "Certificate" of Service Charges had been issued by them as required by the Leases. The Service Charge Accounts had not been audited as required by the 1985 Act.

13. Section 20C Application

(a) In support of their Application under Section 20C of the 1985 Act the Applicants said they had incurred the cost of taking legal advice to bring this Application. They had also had written letters and made phone calls in an effort to resolve the matter. They claimed that the Respondents had not done enough to resolve the matter which had been caused mainly by their failure to recover the Service Charge papers from the previous Landlord at the time he completed the purchase of the freehold. The Respondent had not attended the Hearing to explain the position and answer the many unanswered questions. The Respondents had not sent a solicitor or other representative to the Hearing to represent them.

(b) The Respondents in their Statement at paragraph 1 say that they will not employing solicitors and will not incur any legal costs.

14. **THE TRIBUNAL'S CONSIDERATION**

Following the conclusion of the Hearing the Tribunal retired to consider its decision. First of all it reviewed the relevant law relating to Service Charges. The Application had been made under the provisions of Section 27A of the 1985 Act. This provides that an application may be made to an LVT for a determination whether a service charge is payable and if it is, as to:

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

Section 19(1) of the 1985 Act

Section 19 (1) of the 1985 Act provides that relevant *service charge* costs shall be taken into account (a) only to the extent that they are reasonably incurred and (b) only if the works are of a reasonable standard.

15. The Tribunal then applied the provisions of both these Sections of the 1985 Act to the facts and made the following determinations.

(a) In respect of the Service Charge Year ending 24th June 2007 the Tribunal makes no determination at all in respect of any of the items referred to. This is because the Respondents have not yet concluded the Annual Account and no "Certificate" required under Paragraph 2 of the Sixth Schedule of the Leases. As the Tribunal makes no determination in respect of this accounting year it is open for the Respondent or any Lessee to make another Application under Section 27A of the 1985 Act to the LVT if matters can not be agreed.

(b) In respect of the Interim Charges for the years 2005 and 2006 the Tribunal determines that the following amounts are fair and reasonable:

Year ended 24th June 2005

	Flat 1	Flat 2
24/12/2004	£400.00	£400.00
24/6/2005	£239.50	£256.17

Year ended 24th June 2006

24/12/2005	£239.50	£256.17
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The reason for this is that (i) Clause 4 of the Leases contains a covenant by the Lessees to pay the Interim Service Charges on demand and (ii) paragraph 1 of the Sixth Schedule to the Leases says that "the Interim Service Charge shall be such amount as the lessor or its managing agent shall from time to time reasonably specify as payable on account of their estimate of the Service Charge for the Financial Year to which it relates." This gives a complete discretion to the Lessor or its managing agent to decide how much the Lessees shall pay. In addition, for the year ended 24th June 2005, the two amounts of

£400 plus the balancing amount of £239.50 and £256.17 each make a total of just over £600 per annum which is what the Applicants themselves said that they were expecting to pay.

- (c) In respect of the Excess Service Charge amounts of £774.01 (Flat 1) and £780.12 (Flat 2) demanded on 24th June 2006, the Tribunal determines that these amounts are not payable. The Tribunal has seen the figures prepared for the Completion Statement at Bundle B in the Respondents Bundle. That document is entitled “Notes to Accounts year ended 24th June 2006.” As the Tribunal has not seen any document which resembles an Annual Service Charge Account or a “Certificate” referred to in Clause 2.1 of the Leases it is impossible to say with certainty that these figures of £774.01 and £780.12 are actually Excess Service Charge amount that are payable by the Applicants. They may well represent balancing figures carried forward so far as the completion of the sale of the Freehold is concerned, but no document has been produced to the Tribunal to satisfy it that it represents wholly Service Charge money payable by these Applicants.
- (d) So far as the Buildings Fire Insurance Premiums are concerned, the Tribunal makes no determinations for either 2005 or 2006. Without having seen any evidence as to how the premium could be split as between The Lodge and Guildersfield, it is impossible for the Tribunal to make such a determination. There could be a great many factors affecting the amounts of premium and without further information the Tribunal declines to make such a determination.
- (e) In respect of the Management fees, the Tribunal makes no determination for the years 2005 and 2006. No evidence has been received from either party as to the reasonableness of the amounts. The Applicants allege that no effective management was ever carried out by Havelock Estates. The Respondents say that they have no papers in their possession to enable them to justify these charges. In the circumstances and in the absence of any evidence the Tribunal is unable to make a determination.

16. Payability to the Respondents

The Tribunal reviewed the position regarding payability of these Service Charges which it had determined were payable. This was within its powers under Section 27A of the 1985 Act. The position had been complicated by the fact that the Service Charges up until 1st September 2006 (the date of completion of the sale of the freehold) had been legally payable to the previous Landlord, who was not a party to the current proceedings. The Tribunal considered that by virtue of the provisions of various Sections of the Law of Property Act 1925 (“the 1925 Act”) the right to collect Service Charges reserved under the Leases is likely to have passed from the previous Landlord to the Respondent at the time of the transfer of the freehold Title. In particular Section 62 of the 1925 Act includes a transfer of “all rights and advantages whatsoever.” Section 63 of that Act transfers “all estate right title interest claim and demand ... in to or on the property conveyed.” Section 78 of that Act transfers the benefit of covenants to a successor in title of the covenantee. For these reasons the Tribunal takes the view that the Respondent

has acquired the right to collect those items of Service Charge which the Tribunal finds are payable.

17. Time for payment

As the only amounts that the Tribunal has determined are payable are the Interim Service Charge amounts for 2005 and 2006, Clause 4.2 of the Leases provide for these to be paid "within 14 days of the date of each demand." As these amounts have been demanded some time ago, payment should be made by the Applicants without delay. Credit should of course be made for any payments made by the respective Applicants (or any credits which have been agreed) against the amounts that are payable.

18. Section 20C Application

The Tribunal hereby makes an Order under Section 20C of the Landlord and Tenant Act 1985. The reason for this decision is that despite the Respondents assertion that it has incurred no legal costs in connection with this application, Section 20C is not restricted purely to legal costs. It can cover any costs a Landlord may incur such as postages, telephones, correspondence, and costs payable to third party. The Applicants have largely succeeded in challenging the amounts being demanded by the Respondents and to that extent they should be entitled to some protection from any liability to pay for any costs incurred by the Respondents. The Applicants have also incurred their own costs and expenses and in the opinion of the Tribunal it would be inequitable for them also to have to risk having to contribute to the costs of the Respondent.

Dated this 8th day of August 2007

J.B. Tarling



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John B. Tarling, MCMI Lawyer/Chairman
A member of the Panel appointed by the Lord Chancellor

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**

In the matter of an Application under Regulation 9 of the
Leasehold Valuation Tribunals (Fees)(England)Regulations 2003
(Application for a refund of the fees paid to the Tribunal)

Case No. CHI/45UC/LSC/2007/0032

Property: Flats 1 & 2, Guildersfield, Norfolk Square, Bognor Regis, West Sussex,
PO21 2JA

Between:

Mrs Cheryl Powell (Flat 1) &
Mr Michael F. Betteridge (Flat 2)
("the Applicants/Lessees")

and

Canda Copying Limited
("the Respondents/Landlord")

Members of the Tribunal: Mr J.B. Tarling, MCMI, Lawyer/Chairman
Mr R.A. Wilkey, FRICS FICPD

Date of the Decision: 23rd November 2007

**THE DECISION
OF THE LEASEHOLD VALUATION TRIBUNAL**

The Tribunal determines that the Respondents shall reimburse to the Applicants the sum of £125.00 in respect of the Fees that the Applicants have paid to the Tribunal

REASONS FOR THE TRIBUNAL'S DECISION

1. Background to the Application

Following the Tribunal's Decision dated 10th August 2007 in respect of an Application under Sections 27A and 20C of the Landlord and Tenant Act 1985, the Applicants made an Application under Regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 for an Order requiring the Respondent to reimburse the Applicants for the whole or part of the fees of £250 paid by the Applicants to the Tribunal in respect of the proceedings.

2. The Tribunal gave Directions on 7th September 2007 giving notice to the parties that it intended to deal with the matter on the paper track on the basis of written representations without an oral Hearing. It also directed the parties to exchange and file with the Tribunal written representations in support of their respective cases.

3. Neither party requested an oral Hearing and the Tribunal met to consider the Application based on the written representations received from the parties.
4. **The Applicants Representations**

The Applicants made joint written representations in which they referred to the Hearing held on 31st July 2007 and the Tribunal's written Decision on the original Applications dated 10th August 2007. No-one from the Respondents attended the Hearing and they were not represented. The Tribunal found that a significant amount of Service Charges being demanded by the Respondents were not payable. They requested reimbursement of the sum of £250 paid by the Applicants to the Tribunal in respect of the Tribunal's Fees.
5. **The Respondents Representations**

The Respondents made written representations saying that when the Applicants made their original application to the Tribunal the Respondents had not taken any action that necessitated the application being made. The Respondents had made representations to the Tribunal verbally and by telephone. The Tribunal ordered the Applicants to pay to the Respondents the sums of £912.34 and £879.00, but the Applicants did not have to pay the sums of £780.12 and £774.02. The Respondents contend that there was no "victory" for either side and that the costs should remain with the Applicants, who had no pressing need to make the Application. The Respondents said that one Applicant had paid the amounts ordered to be paid, but one had not. They maintain that the original application had come about through the mismanagement of a previous landlord and they request that the Application in respect of Fees should be refused.
6. **The Tribunal's consideration**

The Tribunal reviewed the written representations and also the actual Decision of the Tribunal on the original Application. The Tribunal noted that the Tribunal's previous Decision had indeed ordered the Applicants to pay the amounts set out by the Respondents in their written representations, and had also determined that the other amounts were not payable. In respect of the Respondents comments that they had not taken any action that necessitated the original Application being made, the Tribunal took the view that it is open to any landlord or any tenant to make an Application under Section 27A of the 1985 Act. The reason for the original Application is set out in Paragraph 5 of the Tribunal's previous Decision. The Tribunal had been asked to make determinations on a number of other matters as set out in Paragraph 15 of that Decision. To that extent there had clearly been a dispute as to what had been payable and it was entirely reasonable for the Applicants to have made the original Application as clearly there had been no agreement between the parties and a determination as to liability was required.
7. In respect of the Respondents claiming that the original application had come about through the mismanagement of a previous landlord, the Tribunal understands why the Respondents see it that way, but it was open to the Respondents to protect themselves from such problems by correctly obtaining all the relevant papers to support the Service Charges items at the time when they completed the purchase of the freehold. To that extent the Respondents

only have themselves to blame for not being able to support their claim for Service Charges with the correct paperwork.

8. After reviewing the matter carefully the Tribunal concluded that while the Applicants had achieved a reduction in the amounts they had been asked to pay it had not been a complete "victory". As the amounts that the previous Tribunal had ordered them to pay and the amounts which were not payable were very similar, the Tribunal decided that a fair and proportionate decision was to divide the Fees of £250.00 in half and hereby determine that the Respondents are **HEREBY REQUIRED** to reimburse to the Applicants the sum of £125.00. As they have both paid half the Fees, the Respondents should reimburse half the £125.00 (£62.50) to the First Applicant and the other half to the Second Applicant.

Dated this 23rd day of November 2007

J.B. Tarling

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John B. Tarling, MCMI Lawyer/Chairman
A member of the Panel appointed by the Lord Chancellor