RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL LEASEHOLD VALUATION TRIBUNAL

In the matter of Section 27 and Section 20C of the Landlord & Tenant Act 1985

CASE No: CHI/00ML/LSC/2007/0065

B E T W E E N :-

MR B WOULD
AND
MR C BEYERMAN

Applicants/Lessees

AND

TARGETWAY LIMITED

Respondent

PREMISES:	16 St Aubyns Hove East Sussex BN3 2TB ("the Premises")
TRIBUNAL:	Mr D Agnew LLB, LLM (Chairman) Mr R Wilkey JP FRICS Ms T Wong
HEARING:	12th December 2007

DETERMINATION AND REASONS

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1. Application

1.1 On the 9th July 2007 the Applicant Mr B Would of Flat 1 at the premises made an application to the Tribunal under Section 27A of the Landlord & Tenant Act 1985 (hereinafter referred to as "the Act") for a determination by the Tribunal as to the reasonableness of certain service charges levied by the landlord in respect of the premises for the service charge years 2002/3, 2004/5, 2005/6 and 2006/7. There was also an application under Section 20C of the Act that the landlord be prevented from adding the costs of the application to the Leasehold Valuation Tribunal to any future service charge.

1.2 As a result of Directions given on the 24th August 2007 Mr Beyerman was added as a second applicant to the proceedings.

1.3 Mr Would is the long lessee of Flat 1 and Mr Beyerman the long lessee of Flat 2 at the premises.

1.4 Mr Would, in addition to the matters set out in his application, submitted a further statement of case relating to the service charge year 2006/7 dated the 17th September 2007. Mr Beyerman also submitted a statement of case (undated) and the Respondent's newly appointed managing agent, Mr Rothfeld of Goldspring Management Limited filed a statement of case (also undated).

2. Inspection

2.1 The Tribunal inspected the premises immediately preceding the hearing on the 12th December 2007. They comprise a large Edwardian terraced property now converted into 5 flats over 5 floors (including the basement). Steps lead up from the pavement to the front door to the premises and there is then a communal hallway and staircase. At the top of the staircase is a lantern window providing light to the staircase. There was evidence of some water ingress from this glass lantern area down the walls at the top of the staircase. The Tribunal was shown where there had been a leak from the bathroom of the flat above into Flat 2 causing damage to the walls of the bathroom. The Tribunal observed some cracking and dampness to the plaster work around the front bay window of the ground floor flat. The Tribunal observed the outside bin store at basement level and the adjacent storage cupboard.

3. The hearing

3.1 This took place at Maritime House, Basin Road North, Hove on the 12th December 2007. Present were the Applicants. There was no appearance from the Respondent or Respondent's representative.

4. The Leases

4.1 By Clause 4(4) of the Leases in respect of both Flats 1 and 2 which are in similar terms the tenant covenants to "pay the interim charge and the service charge at the times and in the manner provided in the Fifth Schedule ... "

4.2 The Fifth Schedule to the Leases provides that:-

"1.(1) "Total expenditure" means the total expenditure incurred by the landlord in any accounting period in carrying out its obligations under Clauses 5(5) and (6) of this Lease and any other cost and expenses reasonably and properly incurred in connection with the building including without prejudice to the generality of the foregoing:-

(a) the landlord's reasonable administration costs

(b) the cost of employing managing agents and

(c) the cost of any Accountant and/or Surveyor employed to determine the total expenditure and the amount payable by the tenant hereunder.

(2) "The service charge" means such percentage of total expenditure as specified in paragraph 8 of the Particulars ... "

(3) "The interim charge" means such sum to be paid on account for the service charge in respect of each accounting period as the landlord or his managing agents shall specify in their reasonable discretion to be a fair and reasonable interim payment.....

(4) If the service charge in respect of any accounting period exceeds the interim charge paid by the tenant in respect of that accounting period together with any surplus from previous years carried forward as aforesaid then the tenant shall pay the excess to the landlord within 28 days of service upon the tenant of the certificate referred to in the following paragraph and in case of default the same shall be recoverable from the tenant as rent in arrear.

(5) As soon as practicable after the expiration of each accounting period there shall be served upon the tenant by the landlord or his agents a certificate signed by such agents containing the following information:

(a) the amount of the total expenditure for the accounting period

(b) the amount of the interim charge paid by the tenant in respect of that accounting period together with any surplus carried forward from the previous accounting period

4.3 By paragraph 8 of the particulars of the Lease the tenant's share of total expenditure is expressed to be 25%.

4.4 By Clause 5 of the Lease the landlord covenants with the tenant as follows:-

"(5) to insure and keep insured the building ... against such risks as are usually covered by a flat owner's comprehensive policy and to insure against third party claims made against the landlord in respect of management of the building and in the event of the building or any part thereof being damaged or destroyed subject to the landlord at all times being able to obtain all necessary licences consents and permissions from all relevant authorities in this respect ...

(6) subject to and conditional upon payment being made by the tenant of the interim charge and the service charge at the times and in the manner hereinbefore provided:-

(a) to maintain and keep in good and substantial repair and condition:-

1. The structure of the building including the principal internal timbers and the exterior walls and the foundations and the roof thereof with its main water tanks main drains gutters and rain water pipes (other than those included in the demise or in the demise of any other flat in the building).

5. <u>The Law</u>

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.

6. The evidence

6.1 The Applicants' case.

6.1.1 For the year 2002/3 the Applicants challenged the following items of expenditure:-

Internal redecoration specification - £250.00

Insurance re-valuation fee - £125.00

6.1.2 With regard to the internal re-decoration specification, Mr Would made enquiries and he believed that the fee of £250 should have contained an element of supervision for the work set out in the specification.

6.1.3 With regard to the insurance re-valuation it was the Applicant's case that this has been carried out in 3 out of 4 years. The re-valuation carried out in 2002/3 was the first of the series. Mr Would accepted that the re-valuation fee for 2002/3 might have been reasonably incurred but if it was then it would not have been necessary to have carried out further re-valuations in 2004/5 and 2005/6. The sum assured is now index linked and he maintained that this should have been the case from the outset.

6.2 In respect of the year 2004/5 the items of expenditure in dispute were as follows:-

First floor windows - £306.50

Electricity charge common parts - £161.05

6.2.1 When Mr Beyerman sought details of the expenditure of £306.50 said to be for work to first floor windows he ascertained that it was in fact work done to his bathroom walls as a result of a flooded cistern from the bathroom in the flat upstairs. This should not have been charged to the maintenance account according to Mr Bayerman and indeed the landlord had agreed to refund this sum to the tenants.

6.2.2 With regard to electricity charges it would appear that the wiring for the communal parts has been routed through the meter to Flat 2 such that the meter reading for the consumption of electricity for the communal parts includes an element of the electricity charges for Flat 2 as well. The Applicants are endeavouring to sort this out with the various electricity suppliers and it was accepted by them that insufficient evidence was available for the Tribunal to make any specific determination on the point but the Applicants asked the Tribunal to determine in principle whether, if a refund was due from the electricity supplier and was refunded to the landlord that the landlord should credit the two lessees with the amount of that refund.

6.2.3 With regard to the insurance re-valuation, the same comments apply as to the charge for the year 2002/3.

6.3.1 For the year 2005/6 the following items were challenged:-

Managing Agent's fees - £1,175.00

Insurance re-valuation - £ 175.00

Asbestos report - £ 450.00

Repairs to bin store area - £ 618.41

Repairs to ground floor flat - £ 387.75

Major works, internal decorations - £5,310.67

Managing Agent's fee for major works - £ 780.00

6.3.2 With regard to Managing Agent's fees the Applicants had established that the Agent was charging £200 per flat. The 2 long lessees were in fact paying £250 each as their contribution according to the Lease was 25% of the cost of service charges. The Applicants said that the Managing Agents at the time did not do their job properly. If they had been doing it properly they would have realised that the electricity charges were too high for the communal areas of a building of this nature, they would not have required 3 letters from Mr Beyerman to remedy matters resulting from the defective cistern and then charge the cost of the work to the service charge account incorrectly. The Applicants conceded that there was a large amount of correspondence with the Managing Agents but that was largely as a result of the Managing Agents putting off dealing with their legitimate enquiries.

6.3.3 With regard to the insurance re-valuation the same arguments apply as to paragraph 6.1.3 above.

6.3.4 With regard to the asbestos report, a copy was produced to the Tribunal. The Applicants said that this was a most unsatisfactory report and that it was vague and superficial and therefore of no use. It had not been carried out by an NAICS qualified person. Another company had quoted £250 plus VAT to carry out such a report and they were accredited.

6.3.5 The Applicants maintain that the repairs to the bin store were carried out at an excessive cost. They estimated that £350 maximum would be an appropriate charge for the work done. They also thought that it was unnecessary for the door of the paint store to be renewed. They said that the money would have been better spent on replacing the rotting door to the bin store.

6.3.6 The landlord's builder had hacked off the plaster around the front bay window of the ground floor flat and had replaced the same without treating the outside of the property in any way. The problem has now reappeared. The landlord is now saying that the problem is due to water ingress from outside. If that is the case then the remedial work should have been done to the outside when the repair work was carried out. If the landlord's agents have been correct in thinking that the problem was not originally due to water ingress but from salts within the brick work then the work that was done was not satisfactory to cure the problem.

6.3.7 With regard to major works and internal decoration a quotation had been obtained to redecorate the internal parts and a Section 20 Notice had been served. The landlord's agents then decided that works should be done to attend to the damage caused by water ingress through the roof lantern at the same time. The cost of this extra work the Applicant's had established was £716.81. They said that it appears that all that has been done for this money is that the walls have been painted over. There was already a £250.00 contingency contained within the quotation. The charge of £716.81 was too high for the work that was done and should have been covered by the contingency fund.

6.3.8 With regard to the supervision fee of £780.00 in respect of the internal decoration work the Applicants maintain that they should not have to pay for supervision on the extra sum of £716.81 which was not included in the specification. Also the 12.5% supervision fee has been

charged on the gross amount of the redecoration cost including VAT whereas it should only have been calculated on the net figure.

6.4.1 With regard to the service charge 2006/2007 the following items were in dispute:-

Insurance - £2,687.05

Retention fee - £531.60

6.4.2 With regard to insurance, this was transferred from NIG to Zurich in November 2006. The sum assured is £937,925.00 (day 1 declared value £811,239.00). The Applicants produced evidence that for a sum assured of £985,000.00 for a nearby similar property at number 3 St Aubyns a premium of £877.00 was being charged. They said that they had obtained a quotation from a broker that for the same sum assured as covered by the Zurich he could obtain cover from NIG for a premium of £1,019.60. The Applicants were suspicious about the insurance premiums demanded of them as they had asked for a copy of the renewal notice which would have set out the premium being demanded of the landlord. This had not been supplied by the landlord's agent. The Applicants thought that £1,019.60 was a reasonable premium to have to pay for insurance. It was not clear whether they were being asked to pay the premium for 1 or 2 years in the sum of £2,687.05.

6.4.3 With regard to the retention fee. This had been the amount retained by the Managing Agents from the sum that had been paid in respect of the internal decorations and to cover any snags that subsequently arose. It was 10% of the cost. However the full amount of the internal decoration cost of £5,310.67 had been paid over to the contractor. The contractor then subsequently sought payment of the retention again and this was paid to the contractor in the year 2006/2007. Consequently the retention had been paid twice according to the Applicants.

6.5 In addition to an order under Section 20C of the Act the Applicants asked for an order that the Respondent refund the fees they had paid to the Tribunal. Power to do so is contained in paragraph 9 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003.

7. <u>The Respondent's case</u>

7.1 The current Managing Agents, Goldspring Management, had only taken over the management of the premises on 20th July 2007 following the resignation of the former Managing Agents. The Respondent's statement of case to the Tribunal therefore was understandably lacking in detail and, as has been previously noted, no-one attended the Tribunal hearing to be able to augment the evidence comprised in the Respondent's statement of case.

7.2 With regard to insurance premiums, the Respondent's agent stated that premiums had risen steadily and that the insurance was changed to Zurich as the NIG renewal cost was very high.

7.3 With regard to the retention fee for the internal decoration, the Respondent's agent confirmed that this would be reimbursed to the lessees if it had not already been done as this was the result of an accounting error.

7.4 With regard to electricity costs the landlord's agent confirmed that any adjustments that need to be made in future accounts will be carried out so that the long lessees are reimbursed and any sums recovered from the electricity supplier.

7.5 The Respondent's Managing Agents considered that £250.00 for a specification being approximately 5% of the total of the works is less than the RICS guidelines for fees and would not cover the cost of attendance in addition to the specifications.

7.6 The Respondent's Managing Agent confirmed that £306.50 charged for the repairs to the first floor windows which was in fact as a result of the cistern overflow from the flat above, that too would be refunded to the Applicants.

7.7 With regard to the asbestos report, the Respondent's case was that the Act only required a competent person to check and advise on the presence and/or removal of asbestos. Mr Barley, who was instructed by the previous Managing Agents, had apparently been involved in asbestos for 40 years having run an asbestos removal company for many years, and was a consultant to East Sussex County Council for 10 years. He is an Associate of the Chartered Institute of Building.

7.8 The current Managing Agents felt that the charge of £200.00 per flat for management fees was justified particularly in view of the large volume of correspondence generated by the Applicants.

7.9 The current Managing Agents felt that the charge for the cost of replacing the doorframe to the bin store was reasonable and that the paint store should not have been left open as the Applicants had suggested.

7.10 The Respondents current Managing Agents considered that 12.5% was a reasonable fee for administering tenders, payments and discussions with lessees on minor projects such as the internal decorations involved in this case.

8. The determination

8.1 With regard to the year 2002/2003 the Tribunal did not consider that £250.00 for the production of a specification such as the one involved in this case is unreasonable and that the Tribunal would not expect that fee to include any inspection. The Applicants had accepted that the insurance valuation fee for that year was reasonable.

8.2 There was no challenge to the service charge for the year 2003/2004.

8.3 With regard to the year 2004/2005, it has already been noted that the landlord has agreed to refund the total sum of £306.50 (25% of which was due to each applicant) wrongly charged to the service charge account. The Tribunal was unable, for the reasons previously stated, to deal with the charge for communal electricity which was being sorted out by the Applicants but if a refund is made by the electricity supplier to the landlord then this should be passed on to the Applicants. With regard to the insurance revaluation carried out in that year, the Tribunal agrees that it would be unusual for a revaluation to be done as often as had been done in this case. The Tribunal considered therefore that the fee charged in this respect for the year 2004/2005 of £150.00 was unreasonable and that 25% (£37.50) should be refunded to each Applicant.

8.4 With regard to the year 2005/2006 the Tribunal, from its own experience of such matters, considered that £250.00 per flat would have been too high at that time. £150.00 would have

been more realistic. However, the Tribunal thought that the service provided by the former Managing Agents of the Respondent had been poor. They have been evasive and difficult and in the circumstances the Tribunal decided that a reasonable fee for the service they provided would have been £120.00 per flat plus VAT. The total for the building would therefore be £600.00 plus £105.00 VAT of which the Applicants' proportion is £176.25 each. The Applicants are therefore entitled to a total refund of £117.50 each. The Tribunal considered that the charge for insurance revaluation of £175.00 for that year was unreasonable for the reasons already given. The Tribunal consider that the asbestos report was of poor quality lacking in substance and had not been provided by a qualified specialist. The Tribunal determined that a fee of £250.00 plus VAT would have been reasonable for such a report. The Applicants are therefore entitled to a refund of a total of £39.06 each. The Tribunal considered that the cost of repairs to the bin store doorframe was excessive at £618.41 and would allow £300.00 plus VAT. This results in a refund of £66.47 to each Applicant. It was reasonable for the Respondent to replace the door on the paint store as there had been one there originally. As far as the repairs to the plasterwork to the bay window area of the ground floor flat were concerned, either the problem was internal and therefore not a service charge item or the problem was caused by the water ingress from outside in which case that problem had not been addressed by the work done. The Tribunal therefore considered that the charge was not reasonable and that none of the £387.75 charged should be allowed. This results in a refund of £96.93 to each Applicant. As far as the MGM internal decoration costs is concerned, the Tribunal considered that the additional charge for the work to the top of the staircase wall was unreasonable at £716.81. The cost of this additional work should have been covered by the contingency fee of £250.00. The Tribunal therefore considered that the charge of £716.81 was unreasonable and should be deleted in full and a refund of 25% should be allowed to each Applicant. As far as the supervision fee for the internal decoration work is concerned, the Tribunal is prepared to allow 12.5% as being a reasonable supervision fee but only on the base cost of £3,942.50 making a reasonable charge of £579.05. There would therefore be a refund to each of the Applicants of £50.23.

8.5 With regard to the service charges for 2006/2007 it is clear that the retention fee of £531.60 had been charged to the service charge account twice and the Applicants are therefore entitled to a refund of £132.90 each. With regard to the insurance premium for that year, the landlord is not obliged to arrange insurance at the cheapest price obtainable. The actual premium charged for 2006/2007 was £1,361.67. The alternative quotation obtained by the Applicants from NIG was £1,019.60. The Tribunal did not consider that the difference was such as to prove that the cost of the insurance actually arranged by the landlord was unreasonable high. There can be a number of factors which affect premiums and it is not uncommon for insurers to seek new business by pitching initial premiums at a low introductory figure. It is also difficult for the Tribunal to be certain that premiums are being compared on a like for like basis. Whilst it appeared that some of the cover being offered by the NIG was more generous than some items under the Zurich policy. It was not clear whether the NIG quotation had taken into

account for example the claims history. Without detailed evidence from brokers expert in the field the Tribunal was not convinced that the Applicants' evidence was sufficient to prove that the current premium was unreasonable. The Tribunal was satisfied that the figure of £2,687.05 included in the service charge account for the year 2006/2007 was in fact for two years from November 2005 and that there had not been an element of double charging of insurance premiums by the landlord.

9. Summary

9.1 The Tribunal therefore determined that the following items were unreasonable and should be either refunded to each of the Applicants or alternatively credited to them in respect of the service charge for the year 2007/2008. They are as follows:-

MG Mitchell repairs (FFF Windows) -	£76.63
Insurance revaluation 2004/5 -	£37.50
Management fees 2005/6 -	£117.50
Insurance revaluation 2005/6 -	£43.75
Asbestos report -	£39.06
Repairs to store area -	£66.47
Repairs to ground floor flat -	£96.93
Internal decoration costs -	£179.20
Agents supervision fees -	£50.23
Retention fee -	£132.90
Total -	£840.17

9.2 The Tribunal acceded to the Applicants' application for an order to be made under Section 20C of the Act as they had successfully challenged a number of the service charge items many of which they would not have been able to achieve had they not brought their application to the Tribunal. With regard to the application for refund of fees the Tribunal understands that the Applicants had paid £100.00 for the Application fee but had not yet paid the hearing fee of £150.00 as at the date of the hearing as they had not received a request for payment from the Tribunal Office. The Tribunal determines that on condition that the Applicants pay the hearing fee of £150.00 within 21 days of the date of receipt of these reasons the Respondents shall pay to the Applicants the sum of £250.00 in respect of the fees the Applicants have paid for the Tribunal proceedings.

Dated this 2nd day of January 2008

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D Agnew LLB, LLM
Chairman