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

Residential Property
TRIBUNAL SERVICE

S.27A & S20C Landlord & Tenant Act 1985(as amended)("the Act")

Case Number:	**CHI/45UH/LIS/2008/0031**
Property:	**First Floor Flat 7 Boxgrove Parade The Strand Goring-by-Sea Worthing West Sussex BN12 6BR**
Applicant/Leaseholders:	**Mr Andrew Jack Miss Choy Yau**
Respondent/Landlord:	**Mr Joel Cohen Mr Sefton Cohen**
Appearances for the Respondent:	**Paul Taylor of Messrs Parsons Son & Basley (Managing Agents)**
Date of Inspection /Hearing	**18th November 2008**
Tribunal:	**Mr R T A Wilson LLB (Lawyer Chairman) Mr A MacKay FRICS (Valuer Member) Ms J Morris (Lay Member)**
Date of the Tribunal's Decision:	**26th November 2008**

THE APPLICATIONS

The applications made in this matter by the Applicants are as follows: -

1. for a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 of their liability to pay service charges for their flat covering the years 2001 to 2008 and

2. for an order pursuant to Section 20C of the Act that the Respondents' costs incurred in these proceedings are not relevant costs to be included in the service charge for the building in future years.

3. The Tribunal is also required to consider, pursuant to regulation 9 of the Leasehold Valuation Tribunal (England) Regulations 2003 whether the Respondents should be required to reimburse the fees incurred by the Applicants in these proceedings.

DECISION IN SUMMARY

4. The Tribunal determines for the reasons set out below that 50% of the following amounts are payable by the Applicants to the Respondents by way of service charge for the years in question: -

ITEM	2001	2002	2003	2004	2005	2006	2007	2008
INSURANCE PREMIUMS	£644.06	756.44	875.12	567.00	659.26	690.75	721.81	759.59
MANAGEMENT FEE					681.50	681.50	681.50	
REPAIRS							264.36	
ADMINISTRATION CHARGE							Nil	

5. An order under Section 20C of the Act is made restricting the total amount of costs recoverable by the Respondents in these proceedings to £300 plus vat as a contribution towards the costs of the managing agents Messrs Parsons Son & Basley.

6. No order is made in relation to the repayment of fees incurred by the Applicants in these proceedings.

PRELIMINARYS / ISSUES IN DISPUTE

7. The hearing took place on the 18th November 2008. The Applicants appeared in person and Mr Sefton Cohen appeared for himself and his co Respondent with Mr Taylor giving evidence in relation to his firm's charges.

8. Both parties had set out their respective positions in their statements of case and both parties had prepared and submitted a large bundle of evidence.

9. At the hearing the Tribunal established that the only matters in dispute over which they had jurisdiction were:-

   a) The insurance premiums for the years 2001 to 2008

   b) Management Charges for the years 2005 to 2008

   c) Minor Repairs carried out in 2007 together with an administration fee for £117.50.

   Each of these disputed items is considered below.

INSPECTION

10. The Tribunal members inspected the property before the hearing in the presence of the parties. Boxgrove Parade is located in a predominantly residential area, its main frontage being to The Strand. The property lies just to the north of Goring-by-Sea railway station. Goring-by-Sea is a residential area to the west of Worthing and just to the east of Ferring. The subject property comprises of a first floor self-contained purpose built flat situated above a small terrace of four retail shops. The flat is approached over an open staircase to the rear. The building is of brick construction with a flat roof. To the rear of the shops are a number of lockup garages and a service yard. The accommodation of the flat comprises a living room, two bedrooms, kitchen, a bathroom and combined w.c. A night storage heating system is provided to the principle room. Hot water is supplied from an immersion heater.

ISSUES IN DISPUTE AND DETERMINATION

A. INSURANCE

11. Mr Jack said that in his opinion the insurance premiums on a year-by-year basis were too high. For example in 2001 the cost of insurance amounted to a little over £644. In contrast an insurance premium obtained by Parson Son & Basley in 2006, some 5 years later, was less than £400 although this policy was later cancelled as the Respondents had already insured the building for that year. In Mr Jack's opinion this proved that a cheaper policy could be obtained in the open market. Moreover, Mr Cohen had made a number of errors in billing for insurance. Over two years Mr Jack had been charged for the whole premium for public liability insurance when under the terms of his lease he was only responsible for 50%. Apart from over charging he had on a number of occasions asked Mr Cohen for a full copy of the insurance policy and schedule and Mr Cohen had refused to supply this. In another year the whole building had been insured twice; once by Mr Cohen and another policy had been taken out by Parson Son & Basley. All this led him to believe that he was being charged too much for insurance.

12. When questioned by the Tribunal Mr Jack accepted that he was not able to provide any comparable insurance quotations showing a lower premium and he did not have in mind what an acceptable premium might be. He was happy to rely upon the Tribunal's own knowledge and expertise to decide the issue.

13. Mr Cohen began his evidence by drawing the Tribunals attention to clauses 5.3 and 8.2 of the lease relating to the subject property dated the 31st March 2000. The effect of these two clauses was to make the Applicants liable for one half of the costs of insuring the building such sum to be paid within 14 days of written demand. These clauses constituted the contractual liability of Mr jack to make his 50% contribution. Mr Cohen asserted that it was not open to the Tribunal to question the percentage which had been freely negotiated between the parties and recorded in a lease executed by the Applicants and the Respondents.

14. As to the amounts, Mr Cohen confirmed that following advise from his brokers the insurance had been placed with the Norwich Union and renewed on an annual basis. He asserted that he had obtained a competitive premium. He accepted that there had been an unusually high premium in 2004 but this had been caused by a poor claims history, which had resulted in the premium being loaded. In the subsequent year when Parsons Son & Basley had obtained insurance for £400 they had in fact failed to mention the claims history to their insurers, which resulted in a lower premium than otherwise would have been the case. This policy was subsequently cancelled as mentioned in paragraph 11 above.

15. The Tribunal found that there was no dispute between the parties as to the appropriate sum to be insured and the Applicants had not questioned the standing of the current insurers preferred by the Respondents. The issue therefore is whether the current policy affected by the Respondents involved the payment of excessive premiums between the years 2001 to 2008. On the one hand the Applicants argue that the question should be answered in the affirmative because the cover obtained by Parson Son & Basley was significantly lower than that obtained by the Respondents. On the other hand, the Respondents argue that their insurance arrangements are reasonable and although cover may have been available at a lower cost, the reason for this was that the insurance company was not aware of the adverse risk history. Had it been so aware then the premiums quoted would have been higher.

16. We have come to the conclusion that the insurance premiums obtained by the Respondents in each of the years in questions are reasonable and the premiums claimed are recoverable in full. Firstly the lease provides for the Applicants to reimburse the Respondents with 50% of the annual premium in each year. It is not open to the Tribunal to substitute a different percentage. Secondly we accept Mr Cohen's assertion that an adverse claims history does adversely affect the cost of insurance. The poor claims history mentioned by Mr Cohen could explain why the premium in 2003 was significantly higher that the figure obtained in the following and subsequent years. We also accept Mr Cohen's submissions that the premiums were negotiated at arms length with insurers of repute. In arriving at its decision the Tribunal has had regard to the case of, *Berrycroft Management Company Limited and Others v Sinclair Gardens (Kensington) Investment Limited 1997.* In that case it was held that a landlord is not obliged to obtain or arrange the cheapest cover available in the market. Provided a landlord can demonstrate that premiums have been negotiated at arms length with insurers of repute and that the premiums themselves fall within a range that one would expect in the open market, then they are not subject to challenge. In this case, apart from 2003, the premiums range from £3 per thousand pounds of cover to £3.84 per thousand pounds of cover. Whilst these figures are at the high end of the scale we consider that they are within the range that we would expect for a building of this kind being a mixed use development (commercial on ground floor and residential on upper floor) and experience tells us that mixed use often has the effect of increasing the premium payable. Furthermore we noticed that one of the shops in the parade operates as a take-away kebab

shop. In our experience this could also have an adverse effect on the premiums payable for the subject property because of the perception of a greater than average fire risk associated with cooking hot food on the premises.

B. MANAGING AGENTS FEE

17. Mr Jack said that in 2005 without any notice, the Respondents instructed managing agents Parson Son & Basley to manage the property. The yearly management charge made by this firm amounted to £580 plus vat in the years 2005 to 2007. He considered this figure to be too high because in his opinion no management had been carried out. He believed that he was being asked to pay for the neglect of the common parts over many years and he felt it unreasonable that he should have to pay for managing agents who did not manage. When pressed by the Tribunal to say what he thought would be a reasonable charge, he said that he had ascertained that a two bedroom flat managed by another local firm had a service charge of £800 in total which included buildings insurance, gardening and window cleaning services.

18. In reply Mr Cohen said that until 2005 he had managed the building himself. However, in 2005 because of mounting criticism by the leaseholders he decided to appoint a local agent. He had gone to the market and found that most of the local agents were unwilling to take on management of the building because it was too small and not cost effective. Eventually Parson Son & Basley agreed to take the building on at a charge of £290 per unit plus vat. Mr Cohen said that clause 5 (21) and the first schedule of the lease gave him the authority to employ a managing agent and that the costs of the managing agent would be a service charge item. He believed that he had negotiated a reasonable fee with Parson Son & Basley which he invited the Tribunal to uphold.

19. The Tribunal accepts that the lease contains charging provisions enabling the Respondents to employ a managing agent and recover the managing agents' fees by way of service charge. Furthermore the Tribunal considers a fee of £290 plus vat to be a reasonable sum. The Tribunal is aware that commercial agents are often reluctant to take on small investments such as this one as they are time consuming to manage and there can be difficulties in providing a cost effective service. Having regard to this reluctance we consider that a fee of £290 per unit is a fair figure and in line with the market rates.

20. The Tribunal accepts Mr Jack's evidence that the management to the building since 2005 has not proceeded smoothly. The lease provides for the Respondents to produce annual service charge accounts as soon as possible after the end of each financial year which in this case is the 31st December. Even though Parson Son & Basley were instructed in the middle part of 2005 it was not until March 2008 that they produced annual service charge accounts. This delay is unfortunate and should not be repeated. The Tribunal also accepts Mr Jack's evidence that the interim service charge demands made by Parson Son & Basley have not been adequately supported by itemized budgets. Overall there has been a failure on the part of the Respondents to comply with the service charge mechanics in the leases. We believe this failure has contributed towards a breakdown in communication between the parties. That said service charge accounts have now been prepared and the evidence before us suggests that Parson Son & Basley have now rectified the earlier shortcomings and management is now on a more compliant basis. Whilst we have identified shortcomings in management, we do not believe these shortcomings merit reductions in the managing agents' fees, which we uphold for each of the years 2005, 2006 and 2007.

C. REPAIRS

21. Mr Taylor on behalf of the Respondents said that the charge of £264.36 was the cost of repairs carried out by the freeholder of the whole block to the service yard to the rear of the building. Work had been done and the lease provided the Applicants to contribute towards the cost of that work.

22. Mr Jack did not advance any argument as to why the charge should not be payable. He merely made a general assertion that he was being asked to pay for the neglect of the common parts over many years. In effect he did not challenge the evidence put forward by the Mr Taylor.

23. The Tribunal is satisfied that the charging provisions of the lease enable the Respondents to recover sums, paid to the freeholder for repairs to the service yard. In the absence of an effective challenge from the Applicants, the Tribunal concludes that the whole of the sum of £264.36 is recoverable by way of service charge.

D. ADMINISTRATION FEE

24. Mr Taylor said that this was a charge made by his firm and in view of the small amount involved he was prepared to waive it. In these circumstances there was no need for the Tribunal to consider this item of expenditure.

SECTION 20C AND REIMBURSEMENT OF FEES

25. Both of these matters can be taken together as the Tribunals considerations in relation to both are largely the same. The section gives the Tribunal discretion to disallow in whole or in part the costs incurred by a landlord in proceedings before it. The Tribunal has a very wide discretion to make an order that is, 'just and equitable' in the circumstances.

26. In the Tribunals opinion the Applicants were right to make this application because over a long period of time the Respondents had failed to produce properly supported service charge demands or end of year accounts. We believe that if demands had been made in accordance with the lease then Mr Jack would have had a better chance of understanding what he was being asked to pay and this application may not have been necessary. We accept that the failure to produce annual statements coupled with unsupported demands for interim service charges has led Mr Jack to form the view that unfair service charges had been levied upon him. In these circumstances the Tribunal finds favour with the application and considers that it is just and equitable for an order to be made under Section 20C of the Act restricting the recoverable costs to £300 plus VAT as a contribution towards the fees of Messrs Parsons Son & Basley

27. The Tribunal makes no order in relation to the reimbursement of fees. Although the Tribunal has found fault with the standard of management in this case the Tribunal is satisfied that both the managing agents and the Respondents have made reasonable

attempts to justify the charges made and that both Mr Taylor and Mr Cohen have cooperated fully and have provided all reasonable assistance to the Tribunal.

Chairman_____
R.T.A.Wilson

Dated 26th November 2008

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3. The Tribunal is also required to consider, pursuant to regulation 9 of the Leasehold Valuation Tribunal (England) Regulations 2003 whether the Respondents should be required to reimburse the fees incurred by the Applicants in these proceedings.

DECISION IN SUMMARY

4. The Tribunal determines for the reasons set out below that 50% of the following amounts are payable by the Applicants to the Respondents by way of service charge for the years in question: -

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5. An order under Section 20C of the Act is made restricting the total amount of costs recoverable by the Respondents in these proceedings to £300 plus vat as a contribution towards the costs of the managing agents Messrs Parsons Son & Basley.

6. No order is made in relation to the repayment of fees incurred by the Applicants in these proceedings.

PRELIMINARYS / ISSUES IN DISPUTE

7. The hearing took place on the 18th November 2008. The Applicants appeared in person and Mr Sefton Cohen appeared for himself and his co Respondent with Mr Taylor giving evidence in relation to his firm's charges.

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19. The Tribunal accepts that the lease contains charging provisions enabling the Respondents to employ a managing agent and recover the managing agents' fees by way of service charge. Furthermore the Tribunal considers a fee of £290 plus vat to be a reasonable sum. The Tribunal is aware that commercial agents are often reluctant to take on small investments such as this one as they are time consuming to manage and there can be difficulties in providing a cost effective service. Having regard to this reluctance we consider that a fee of £290 per unit is a fair figure and in line with the market rates.

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C. REPAIRS

21. Mr Taylor on behalf of the Respondents said that the charge of £264.36 was the cost of repairs carried out by the freeholder of the whole block to the service yard to the rear of the building. Work had been done and the lease provided the Applicants to contribute towards the cost of that work.

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D. ADMINISTRATION FEE

24. Mr Taylor said that this was a charge made by his firm and in view of the small amount involved he was prepared to waive it. In these circumstances there was no need for the Tribunal to consider this item of expenditure.

SECTION 20C AND REIMBURSEMENT OF FEES

25. Both of these matters can be taken together as the Tribunals considerations in relation to both are largely the same. The section gives the Tribunal discretion to disallow in whole or in part the costs incurred by a landlord in proceedings before it. The Tribunal has a very wide discretion to make an order that is, 'just and equitable' in the circumstances.

26. In the Tribunals opinion the Applicants were right to make this application because over a long period of time the Respondents had failed to produce properly supported service charge demands or end of year accounts. We believe that if demands had been made in accordance with the lease then Mr Jack would have had a better chance of understanding what he was being asked to pay and this application may not have been necessary. We accept that the failure to produce annual statements coupled with unsupported demands for interim service charges has led Mr Jack to form the view that unfair service charges had been levied upon him. In these circumstances the Tribunal finds favour with the application and considers that it is just and equitable for an order to be made under Section 20C of the Act restricting the recoverable costs to £300 plus VAT as a contribution towards the fees of Messrs Parsons Son & Basley

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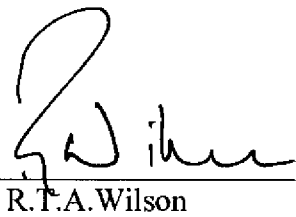
attempts to justify the charges made and that both Mr Taylor and Mr Cohen have cooperated fully and have provided all reasonable assistance to the Tribunal.

Chairman 

R.T.A.Wilson

Dated 26th November 2008