

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**Southern Rent Assessment Panel
Leasehold Valuation Tribunal**

Case Number: CHI/29UH/LSC/2009/0079
Property: 39a Randall Street, Maidstone, Kent ME 14 2TB
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 18th May 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 39a Randall Street, Maidstone, Kent. In fact, the application also refers to other flats within the building of which number 39a forms part; but Mr. Wilson confirmed to the tribunal on the Applicant's behalf during the hearing that only 39a is relevant to the application.
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 six 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/29UL/LIS/2009/0054; CHI/29UL/LSC/2009/0081; and CHI/29UL/LIS/2009/0055.

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, in the presence of Mr Wilson. The Respondent did not appear.
11. The property is part of a double fronted mid-terraced Victorian building on three floors with brick elevations under a slate roof. The block is situated very close to the town centre. The only communal area within the building is the ground floor entrance corridor.

THE ISSUES BETWEEN THE PARTIES

12. The reasonableness of the insurance premiums charged to the Applicant for the service charge years from and including 2004/5.
13. The Applicant's lease, which was made on 6th August 1990 between (1) S.B.Katz and another and (2) G.D.Hinman, requires the tenant to make payments for insurance. The lease requires that the amount of any such payment, which the tribunal interprets as meaning the proportion payable by the tenant towards the whole, is to be determined by the landlord's surveyor. 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
2006/2007	£339,823	£585.65	1.7234
2007/2008	£356,474	£614.36	1.7234
2008/2009	£377,863	£651.21	1.7234
2009/2010	£396,756	£683.78	1.7234

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] 29 H.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 £1.72 (net of ipt) for premises such as the subject property is not out of a normal range. The tribunal also explained to the hearing that, having regard to the tribunal's own general experience, Mr. Wilson 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 – 2005/6 to the tribunal, which makes no determination in respect of those years.

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. It was common ground between the parties that that were no such charges. Consequently, there was no issue for the tribunal to determine.
23. 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.
24. A statement of account delivered on the Respondent's behalf to the Applicant refers to certain items of interest due from the Applicant to the Respondent. Such amounts of interest are not service charges for the purposes of the Landlord and Tenant Act 1985. Consequently, there is no issue which the tribunal can determine. It was, in any event, acknowledged on the Respondent's behalf during the hearing that the lease does not provide for interest and that, consequently, the references to interest in the service charge statement of account were unfounded.
25. 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.
26. 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.
27. 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.
28. 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.

29. 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.)
30. The reasonableness of amounts proposed to be charged to the service charge account for the year 2009/10
31. 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.
32. The reasonableness of the Managing Agents management fee for each of the years in question aforesaid
33. The Respondent, acting through its managing agents, have 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	£298.74	£55.27
2006/2007	£470	£86.95
2007/2008	£470	£86.95
2009/2009	£460	£85.10

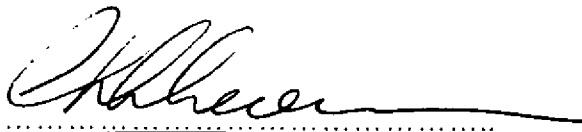
34. The Applicant asserted that the management fees were unreasonable because the Respondent has done nothing to justify any fee. The Respondent's statement of case argued that the fees were reasonable and had been charged as a landlord's outgoing.
35. The tribunal invited Mr Taylor to indicate which provision of the Applicant's lease provides for a management fee service charge payment, because the tribunal had been unable to find one in the lease. Mr Taylor, having checked, confirmed on the Respondent's behalf with apology that there was no such provision.
36. The Applicant's lease not containing any provision which obliges her to pay towards them, the tribunal determines that none of the management fees referred to in paragraph 33 above are relevant costs in respect of which a service charge is payable.

SECTION 20C

37. The tribunal is conscious that it was necessary for the Applicant to come to the tribunal for its determination on the management fee issue in the face of the Respondent's demands for those fees, whereas (as was admitted on the Respondent's behalf during the course of the

hearing) none of those charges are due under the Applicant's lease at all. Consequently, the Respondent's service charge demands were materially wrong from the outset. In all the circumstances, the tribunal considers that it is just and equitable 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

A handwritten signature in black ink, appearing to read 'C.H. Harrison', written over a horizontal dotted line.

C.H.Harrison Chairman