RESIDENTIAL PROPERTY TRIBUNAL SERVICE

Southern Rent Assessment Panel
Leasehold Valuation Tribunal

Case Number:	CHI/29UL/LIS/2009/0054
Property:	Greengates, Marine Parade, Littlestone, New Romney, Kent TN28 8QG
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 2nd June 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 Greengates, Marine Parade, Littlestone, Kent.

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 seven issues which are more particularly described below. An eighth is referred to in paragraph 44 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/29UH/LSC/2009/0079; 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. The Respondent did not appear and Mr.Wilson was prevented from attending because of traffic conditions.

11. The property comprises the first and second floor maisonette in a four storey terraced house built about 150 years ago. The building has colour-washed elevations and a slate roof and is situated within 50 metres of the seafront at Littlestone, with very few facilities close to hand. New Romney town is about one mile away. The only communal parts are the footpath and steps to the front door and the ground floor hallway and staircase to the small first floor landing.

12. The tribunal observes from its inspection of the property and from a study of the Applicant's lease that clause 1 of the lease mistakenly refers to the premises demised by it as being located on the lower ground floor of the building, whereas the lease plans show the premises at first and second floor levels. The parties so confirmed during the hearing. The tribunal also notes that the Applicant's lease is noted on the freehold register of title in respect of those floors.

THE ISSUES BETWEEN THE PARTIES

13. <u>The reasonableness of the insurance premiums charged to the Applicant for the service charge years from and including 2004/5.</u>

14. The Applicant's lease, which was made on 1st May 2002 between (1) the Applicant and (2) the Applicant and T.J.Wilson (the Applicant is a former freeholder of the property), requires the tenant to make payments equivalent to 50% of the landlord's expenditure on insuring the building. Such payments are service charges for the purposes of the Landlord and Tenant Act 1985.

15. 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
2005/2006	£353,528	£803	2.2714
2006/2007	£374,740	£945.77	2.5238
2007/2008	£393,477	£1,217.90	3.0952
2008/2009	£417,086	£1,290.98	3.0952

16. 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.

17. 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.

18. 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.

19. 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] 29H.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.

20. The tribunal queried the claims history under the insurance. The Respondent confirmed that there had been no claims since their involvement with the property. The Applicant also confirmed she was not aware of claims during her former ownership beginning in 1994.

21. The tribunal also disclosed to parties after the hearing that:

    a) from its own general knowledge and experience, based on a mesne average rate of premium of £1.50 per £1,000 of insurance cover, net of insurance premium tax, the rate which might typically be achieved in the insurance market for the subject property, being seafront premises within a designated flood risk area, would exceed the mesne average rate but by no more than one third; and
    b) accordingly, a likely rate of premium per £1,000 of insurance cover which might typically be achieved in the insurance market for premises of the type and in the locality of the subject property would be no more than £2 per £1,000, net of insurance premium tax; and
    c) from its own general experience, it might be possible to secure a single competitive 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.

22. The Applicant, noting the evidence of the tribunal's own experience, has made further submissions concerning cheaper rates which he has been able to obtain. In particular, Mr.Wilson on the Applicant's behalf states he has been able to "buy" cheaper rates through a trading discount via Mortgages for Business and, by discussions with other brokers, yet cheaper still.

23. The Respondent does not disagree with the tribunal's own evidence on the matter.

24. The tribunal is not persuaded by the Applicant's evidence. It is not incumbent on a landlord, owing tenants insurance obligations, to shop around to obtain the lowest quotation which might be available. Different proposals may be made for different properties or, indeed, different parties; and the fact that the Applicant might have been able to secure a lower quotation for the subject building does not mean, in the tribunal's opinion, that the Respondent's expenditure was necessarily incurred unreasonably.

25. Nevertheless, the tribunal cannot dismiss the evidence of its own general experience, not refuted by the Respondent. In all the circumstances, the tribunal determines that relevant costs on insurance in respect of the service charge accounting periods stated in the left column of the table below should be limited to the amounts stated in the third column of that table and that the consequential related service charges payable by the Applicant to the Respondent are as stated in the right column of that table. No evidence was adduced in respect of the years 2004/5 to the tribunal, which makes no determination in respect of that year.

Year	Cover	Relevant Costs (premium inclusive of 5% ipt @ £2 net of ipt per £1,000)	Applicant's service charge liability
2005/2006	£353,528	£742.40	£371.20
2006/2007	£374,740	£786.95	£393.47
2007/2008	£393,477	£826.30	£413.50
2008/2009	£417,086	£875.88	£437.94

26. 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.

27. 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.

28. A statement of account delivered on the Respondent's behalf to the Applicant refers to interest due from the Applicant to the Respondent. Clause 4(2)(d) of the lease provides for payment of interest at a specifically defined rate which is set out in that clause. Even if, which the tribunal considers is not the case, such amounts of interest are service charges for the purposes of the Landlord and Tenant Act 1985, under section 27A(4)(a) of that Act the tribunal has no jurisdiction to determine a matter which has been agreed by the tenant. Consequently, as the lease sets out an agreed rate of interest and provides for the circumstances in which that interest is payable, there is no issue of liability or reasonableness which the tribunal can determine under section 27A of the 1985 Act. If interest has been charged contrary to clause 4(2)(d), that is not a matter for the tribunal.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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.)

34. <u>The reasonableness of the service charges claimed from the Applicant in respect of gardening</u>

35. The Respondent stated that there have been no such charges and Mr.Wilson confirmed on the Applicant's behalf that this is not an issue between the parties.

36. <u>The reasonableness of amounts proposed to be charged to the service charge account for the year 2009/10</u>

37. 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.

38. <u>The reasonableness of the Managing Agents management fee for each of the years in question aforesaid</u>

39. The Applicant's lease contains service charge provisions requiring the payment of 50% of the costs incurred by the landlord in respect of, at paragraph 4 of the fourth schedule to the lease, employing ***such person or persons as shall be reasonably necessary for the proper management of the Building and in particular but without prejudice to the generality of the foregoing*** **[of employing]** ***such secretarial managerial and professional as may from time to time be necessary.***

40. The Respondent, acting through its managing agents, has 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

2004/2005	£238.54	£119.27
2005/2006	£370.13	£185.07
2006/2007	£423	£211.50
2007/2008	£416.23	£208.12

41. The Applicant submitted that the management fees were unreasonable because the managing agents have a bad record of attending the building and because they do no management work, apart possibly from being involved with insurance. The Applicant would not object to the amounts charged if there had been proper management; but, as there has effectively been none, she considers no fees are due at all.

42. The Respondent submitted that the managing agent's fees are reasonable because the agents have to do so much administrative work in response to the Applicant's complaints. In response to the Applicant's questions, Hamilton King Management Limited confirmed they visit the property on a programmed basis once a year but they do not have a diary of visits which have been made.

43. The tribunal considers that, on the evidence before it, the managing agents do discharge basic administrative functions in respect of the building comprising three flats and that the overall fees charged for the relevant years are not unreasonable. Accordingly the tribunal determines that the fees listed in the second column of the table at paragraph 40 above are relevant costs for the purposes of the 1985 Act and that the service charges referred to in the third column of that schedule are due from the Applicant to the Respondent.

44. A further issue was raised at the hearing concerning the cost of some external repairs during the service charge accounting period ended 25th December 2007. The Respondent had no objection to the matter being considered by the tribunal.

45. The Applicant referred to a landlord's cost of £334.93, inc vat, incurred by the use of Dyno-Rod in clearing what its bill described as a blocked foul drain between inspection chambers in the rear yard area behind the building, following receipt of what the Applicant considers is a standard form of drain blockage clearance notice from the local authority. The Applicant submits that the cost was unreasonably incurred because the managing agents should have been aware that the typical procedure on receipt of such a notice would have been to seek confirmation from the local authority that it would deal with the necessary work as it related to a sewer. The Applicant further considers that the Council would have carried the work out for about £60 which would have been recoverable from Southern Water. The Applicant argues no charge is recoverable by the landlord because its agents acted in haste in respect of a cost which could have been recovered from a third party.

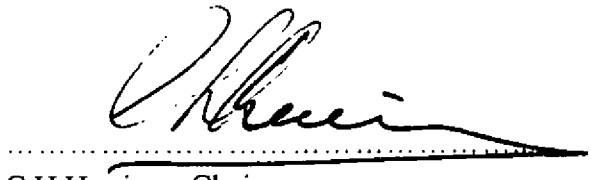
46. The Respondent submits that the managing agents' former employee who had handled the matter had acted in good faith and did what she thought was right on receipt of the notice.

47. The tribunal believes that the Applicant's evidence on the matter carries considerable weight. It does appear that the former employee acted with too much haste, not least in engaging the services of a franchised contractor. However, there was no certain evidence before the tribunal about precisely how much the Council might have charged or whether the charge would certainly have been recovered from the water company. Consequently, the tribunal determines that the costs of £334.93 were unreasonably incurred and that, in the circumstances, relevant costs should be limited to a total of £100 of which the proportion payable by the Applicant to the Respondent is £50.

SECTION 20C

48. Despite the relatively modest limitations on relevant costs which the tribunal has determined on a minority of issues within the section 27A application, in all the circumstances of this case the tribunal considers that it would not be just and equitable to make an order under section 20C. In coming to that decision, the tribunal emphasises that it has not considered whether the Applicant's lease enables the Respondent to treat its costs in these proceedings as relevant costs for any service charge recovery.

Dated 27th November 2009



C.H.Harrison Chairman