THE RESIDENTIAL PROPERTY TRIBUNALSERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Residential Property TRIBUNAL SERVICE

S.27A & S.20C of the Landlord & Tenant Act 1985 (as amended) ("the 1985 Act")

Case Number:	**CHI/21UC/LIS/2009/0098**
Property:	**Flat 3 Compton Grange 63 Silverdale Road Eastbourne East Sussex BN20 7EY**
Applicant:	**D Fowler**
Respondents:	**Compton Grange Management Company Ltd Jon Vine E Rennie-Thom D Smith R Thompson P August R Smith**
Appearances for the Respondent:	**Carol Pearce & Gavin Lewis of Stredder Pearce**
Date of Inspection/ Hearing	**18th January 2010**
Tribunal:	**Mr R T A Wilson LLB (Lawyer Chairman) Miss C D Barton BSc MRICS (Surveyor Member) Miss J Dalal (Lay Member)**
Date of the Tribunal's Decision:	**5th February 2010**

THE APPLICATION.

1. This was an application pursuant to section 27A of the 1985 Act for a determination of the liability of Mr Fowler to pay service charges in respect of works carried out to the property by Compton Grange Management Company Limited in 2009.

2. The tribunal was also required to determine, pursuant to Schedule 12 of the Commonhold and Leasehold Reform Act 2002, whether Mr Fowler should be required to pay the costs incurred by the respondents in these proceedings.

THE DECISION.

3. The tribunal determines that all the 2009 service charges challenged by Mr Fowler are payable in accordance with the payment provisions in his lease without deduction or set off.

JURISDICTION.

4. The tribunal has power under Section 27A of the 1985 Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when service charge is payable.

5. By section 19 of the 1985 Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

THE LEASE.

6. The tribunal was provided with a copy of the lease relating to flat 3. Mr Fowler does not contend that the service charge expenditure is not contractually recoverable as relevant service charge expenditure under the terms of the lease. It is therefore not necessary to set out the relevant covenants in the lease giving rise to his liability to pay a service charge contribution.

INSPECTION.

7. The tribunal inspected the property prior to the hearing in the presence of the parties' representatives. Compton Grange is a purpose built 4 storey block of flats constructed by Berkeley Homes approximately 10 years ago. Its construction is of brick walls under a pitched, tiled and part flat roof. The block stands in a slightly elevated position above Silverdale Road and on it's South Western side. The site is accessed from Silverdale Road via a private driveway serving parking spaces and garages to the front and rear of the building. There are surrounding gardens comprising lawned areas, planted beds and semi mature trees and shrubs. Boundaries comprise mainly flint and brick walls. Part of the rear of the site is at a higher level to the rest.

8. There is a lift serving the block and entrances both to the front and rear. Flat 3 is at ground level to the rear of the building and overlooks the gardens, lawned areas and periwinkle bed.

BACKGROUND AND PRELIMINARY MATTERS.

9. At the hearing applications were considered and granted for the following lessees to be joined into the proceedings as respondents: J. Vine, E. Rennie-Thom, D. Smith, R. Thompson, P August and R. Smith.

10. At the hearing the issues in dispute were identified as:-

    a. Garden maintenance contract budget £2,700.

    b. Provision for tree maintenance £500.

c. Managing Agents fee £2,300

d. Provision for repairs and renewal budget £1,000.

e. Reserve fund £2,400.

11. Both parties had set out their positions on the issues in their statements of case and both parties had submitted bundles containing their evidence. At the hearing the parties expanded upon the points made in the statements and each of the disputed items is considered below.

a. Garden Maintenance Contract Budget £2,700 Actual Cost £2,531

The applicant's case.

12. The first issue raised by Mr. Fowler was that the lawns at the property had not been properly fed or looked after in 2009. This was the case even though he had written to the directors on several occasions reminding them of their contractual obligations and of his concerns. He alleged that the directors had simply ignored his letters and in so doing had caused the company to be in breach of its obligations. Secondly there was a garden schedule, which had not been properly followed, and the failure to follow this schedule had resulted in a breach of the lease and in particular paragraphs 8.4 and 8.5.

13. Mr Fowler further alleged that the gardener's time had been diverted to carry out work to the front of the building at the expense of work to the rear. This was not satisfactory.

14. Mr Fowler also alleged that the stone structure to the rear of the periwinkle border beds was being allowed to fall into disrepair. The result was unsightly, and in his opinion possibly dangerous. It was his view that the failure to carry out proper repairs to what he considered to be a wall of the property, constituted a breach of the lease.

15. These matters, together with the failure by the directors to obtain quotations for ad-hoc projects that had been sanctioned by the Board, had resulted in an unreasonably high service charge.

16. Mr Fowler's statement of case did not quantify what he considered to be a reasonable amount to pay for garden maintenance in 2009 but when pressed by the tribunal he stated that a 10% reduction should be applied to the actual figure for the failures referred to above.

The respondents' case

17. Mrs Pearce responded on behalf of all the respondents. She pointed out that the gardens to the property both front and rear had been considerably improved since the development had been handed over to the Management Company. In 2000 the rear garden of the block comprised in part of a densely wooded area on a steep bank which concealed a dilapidated outhouse on the grounds. The grounds had not been extensively landscaped at that time and her clients did not accept that they had fallen into disrepair due to the neglect on the part of the management company. The reverse was the case. The gardens had been considerably improved. This was particularly relevant with regard to references in the applicant's statement of case to the rubble wall/rockery (as she called it) to the rear of the periwinkle bed. It was her contention that there had been no significant deterioration to this structure since the development had been handed over to the management company.

18. She told the tribunal that it was Mr Fowler who had organised the planting of the periwinkle bed when he had been a director of the management company and it had never been the intention of the Board of directors to carry out major work to this part of the garden. Maintenance of the garden was an on going project and it was the intention of the directors to move onto the rear of the garden in due course. She denied that inadequate attention had been given to the lawns and maintained that the lawn had been dressed with fertiliser in May 2009.

19. She told the tribunal that the current gardening contract had been awarded following a competitive tender process and the work was carried out on the basis of a gardening schedule, but this was amended from time to time according to what the directors felt necessary. She told the tribunal that the gardener came with his assistant on average every two weeks and carried out about two hours of work. At one point the gardener was to charge VAT but the directors had negotiated that the VAT would be retained and absorbed by the gardener in 2009. In addition members of the board had purchased some plants at wholesale prices and overall she contended that the final price of the garden maintenance contract namely £2,531 was competitive and represented good value for money. In these circumstances she invited the tribunal to uphold the final amount without deduction.

The tribunal's deliberations.

20. On the day of inspection the tribunal considered the grounds of the property to be in relatively good heart and showed every sign of being properly maintained as a whole. The flower beds were well stocked and maintained to the front. At the rear, the gardens were less well-stocked and generally the appearance was less satisfactory although adequate, bearing in mind the wooded nature of the same. The lawns to the front, side and rear of the property all appeared to be in reasonable condition for the time of the year.

21. The tribunal noted that the gardening contract had been awarded following a competitive tender process and drawing on its own experience and knowledge of gardening contracts, considered that the final figure of £2,531 was reasonable and represented fair value for money. The tribunal accepted Mr Fowler's comments that the periwinkle border does not look particularly attractive and also agreed that attention should be given to the stone structure at the rear of the periwinkle border. This appears to have been a wall at some point in time but has deteriorated to the extent that it can hardly be called a wall anymore. The tribunal was presented with conflicting evidence as to whether or not there has been recent deterioration and was not presented with precise enough evidence to make a determination on this issue.

22. Having regard to all the evidence before it the tribunal concluded that the garden maintenance in 2009 was adequate and that reasonable value for money had been obtained. There was no evidence before it to justify a reduction of 10% as suggested by Mr Fowler.

b. Tree Maintenance: Budget £500 actual cost £621

The applicant's case.

23. Mr Fowler alleged that the board of directors had ignored his letters concerning this item. Logs had not been removed from the site and tree limbs had been left to lie where they fell after being cut. Furthermore the directors had failed to carry out tree work which had been identified at least 12 months previously. At that point the work was being carried out by one contractor but his contract had ended prematurely. This resulted in the directors failing to get value for money and that at some stage there would be duplicate work involving the lessees in more expense.

24. On being questioned by the tribunal, Mr Fowler accepted that with the exception of the point made above the tree work had been of a reasonable standard. His main complaint was that the earlier tree contract had been prematurely ended as a result of which some self seeded trees had not been removed. He considered that a 5% reduction should be awarded to take into account the failures identified above.

The respondents' case

25. Mrs Pearce told the tribunal that the tree work carried out on the property had been based on advice from reputable contractors and it was the management company's contention that they were complying with the lease. It had been agreed between the directors and the tree maintenance contractor that the logs could be left on site to be personally cleared by one of the directors in return for a 10% discount on the costs of the contractor's work. She reminded the tribunal that the property occupied a wooded site and there remained a fair quantity of fallen wood within the grounds that had been there for many years and which the directors were gradually removing. It was her contention that the directors had obtained value for money and that no reduction should be given.

The tribunal's deliberations.

26. The tribunal noted that during the course of 2009 tree surgeons had felled two sycamores and two elder trees at a cost of £138 and carried out other crown reduction and tree felling work at a cost of £483. In the tribunal's experience this was not an unreasonable sum of money to pay for the work and bearing in mind Mr Fowler's acceptance that, duplication of work aside, the work carried out was to a reasonable standard, was not persuaded to agree any reduction.

c. Managing Agent's Fee. £2300 exclusive of vat.

The applicant's case.

27. Mr Fowler was critical of the service provided by the managing agents and in particular considered that the managing agent had failed to monitor the garden contract. Rather the agent had overseen the collapse of the contract, which had resulted in the management company being in breach of the lease covenants, in particular clauses 8.4 and 8.5. Mr. Fowler contended that the agent had directly contributed to the collapse of the contract and was therefore responsible for the unsatisfactory work to the rear garden in 2009.

28. The agent had also failed in its responsibility to resolve disputes arising between the lessees and in connection with enforcement of the lease covenants.

29. Mr Fowler also alleged that the managing agents had ignored the points made in several of his letters and had failed to reply to one of his letters in which he had identified a number of concerns.

30. In short the managing agents had not provided a satisfactory service and in these circumstances it followed that they should not be entitled to their entire fee. In his opinion a 20% reduction should be applied to compensate for the failures identified above.

The respondents' case.

31. Mrs Pearce told the tribunal that her firms fee had been agreed on the basis of a flat fee of £166 per annum per flat exclusive of VAT. In return her firm carried out all day-to-day administration, organised AGMs of the company, dealt with general enquiries and general correspondence enquiries in connection with the sale of flats. On the accounting side, her firm dealt with collection of service charge and the payments to suppliers and also prepared the accounts for submission to the accountants. Her firm also had a surveying department which carried out periodic inspections of the property and prepared any necessary schedules and agreed a programme of cyclical maintenance with the directors. The firm also advised the directors on budgets, health and safety issues, buildings insurance and fire risk assessments. She contended that a figure of £2300 for all this work was competitive and that both the Residents Company and every lessee other than the applicant was happy with the service offered by her firm and considered that her fees represented good value for money.

The tribunal's deliberations.

32. The tribunal has considerable experience of the level of fees charged by managing agents in the Eastbourne area and drawing on this is satisfied that a flat fee of £166 per annum per flat exclusive of VAT is competitive. Furthermore it is satisfied that the scope of work carried out by the managing agents justifies the fees charged. All the lessees, with the exception of the applicant, appear happy with the work carried out by the managing agents and also with the fees charged.

33. The tribunal has some sympathy with Mr Fowler that the rear garden does not appear to receive the same attention as the front. On the other hand the tribunal accepts that gardening is a process and priorities have to be agreed and budgets adhered to. The tribunal had before it a number of excellent photos of the garden taken in November 2009 and also photos of the garden going back to 2000. It is clear that the garden overall is in a much better state now than back in 2000 although work still needs to be done and it is hoped that in due course the rear garden will be of a similar standard to the front.

34. Even if Mr Fowler's allegations, that breaches of the lease have been committed are correct, (and the tribunal makes no such findings), the tribunal does not consider that the appropriate remedy for these breaches constitutes a reduction in the managing agents' fee. The jurisdiction and remedies for these matters lie with the County Court. On the evidence before it the tribunal considers that the managing agents fee is reasonable and that during the course of 2009 it gave a high level of service to the management company. The figure of £2300 is therefore upheld in full.

d & e Provision for Repairs and Renewals Budget £1,000 and Reserve Fund Budget £2400.

Applicant's case.

35. Mr Fowler contended that £1000 had been reserved to carry out repairs to the stone structure to the rear of the periwinkle border but no repairs had been carried out. He maintained that the agent had had a quotation for the stabilisation work since March 2009 but had failed to move the contract forward. As the stabilisation work had not taken place in 2009 he had been left with a continued eyesore outside his window and yet another year of delay. In the circumstances he contended that the £1,000 should be returned.

The respondents' case.

36. Mrs Pearce told the tribunal that the budget for the year ending 31 December 2009 contained a general provision for repairs and renewals of £1000 and a contribution to the reserve fund of £2400. The repairs provision of £1,000 was to cover all routine repairs arising out of the property. The actual costs would be in the order of £625 covering 16 minor repair items.

37. The reserve fund contribution was an amount agreed annually for transfer to the reserve fund to meet or provide a substantial contribution to any major project work, which arose on an unforeseen or cyclical basis. As at 31 December 2008 the reserve fund stood at £14,400 and it had been agreed by the directors that an annual reserve of £2400 should be demanded. In her opinion this was the very minimum figure that was needed bearing in mind the size and complexity of the building and grounds and the fact that it had a lift. The figure should be upheld.

The tribunal's deliberations.

38. The tribunal is satisfied that the lease enables a reserve fund to be built up and an annual figure of £2400 is not an unreasonable sum bearing in mind the likely expenditure on the building going forward. The £1000 reserve for repair work will be carried forward to 2010 if the work has not been carried out and the fact that the work was not carried out in 2009 does not justify the sum being returned. If fluctuations in the service charge from year to year are to be smoothed out as far as possible it is necessary for a reserve fund to be built up and in the opinion of the tribunal £2400 for 2009 is a reasonable figure based on the work scheduled to be carried out to the property in the foreseeable future. It is therefore upheld.

SECTION 20C APPLICATION

39. The legislation 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 wide discretion to make an order that is just and equitable in all the circumstances.

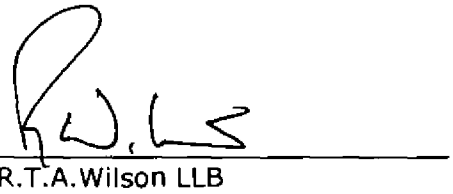
40. In arriving at its decision the tribunal had regard to not only the conduct of the parties but also the outcome of the case. Both parties have given every assistance to the tribunal and fully complied with its directions. The conduct of the parties is therefore not at issue. However, the tribunal bears in mind that the respondents have successfully defended each allegation made against them. Bearing in mind the respondents are a resident management company owned collectively by the lessees the making of a section 20C order would result in the respondents having to make a call to each lessee in its capacity as a member or face the possibility of becoming insolvent. Having regard to both the conduct of the parties and the outcome of the case the tribunal does not consider that this would be a desirable outcome. In the circumstances it considers that the just and equitable solution is that no order be made under section 20C of the Act.

41. The respondents made an application that the applicant should pay its costs pursuant to schedule 12 paragraph 10 of CLARA 2002. This legislation enables the tribunal to determine that a party to the proceedings shall pay the costs incurred by another party in connection with the proceedings where in its opinion that party has acted frivolously, vexatiously abusively, disruptively or otherwise unreasonably in connection with the proceedings.

42. Mrs Pearce alleged that the conduct of Mr Fowler has been both unreasonable and that he had also acted frivolously in bringing the application. She contended that his application had no merit and he had simply brought it because he had failed to convince the directors of his case and had been left with no other forum in which to vent his concerns.

43. Mr Fowler told the tribunal that his application could have been avoided if the board of directors had taken note of what he had to say and had engaged with him in a constructive way. Instead they had ignored his letters and had presided over a complete failure of the garden contract. The managing agents had also failed to engage with his concerns in a constructive way and as a result he had been left with no alternative but to bring the application. He denied that he had acted either frivolously or vexatiously and believed that he had every right to bring his case.

44. Taking all the evidence into account the tribunal does not believe that Mr Fowler has acted frivolously, vexatiously, disruptively or in any way unreasonably in connection with the proceedings. Although the service charges complained of have been upheld, the tribunal can see why Mr Fowler is concerned about the state of both the periwinkle border to the rear of the property and also the stone structure. The evidence does suggest that Mr Fowler's concerns are not being addressed and that to date more attention has been given to the front garden than to the rear. That said the tribunal has no jurisdiction to dictate the program of works to be carried out to the garden. As a consequence the tribunal is not persuaded that the applicant should make any contribution to the respondent's costs and no such order is made.

Chairman 

R.T.A.Wilson LLB

Dated 5th February 2010