

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



**Residential
Property
TRIBUNAL SERVICE**

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

Case Number:	CHI/45UC/LIS/2009/0079
Property:	Flat 1 214 London Road Bognor Regis West Sussex PO21 1AX
Applicant:	Contactreal Limited
Respondent:	Mr. M Shepherd
Appearances for the Applicant:	Mr. N Stonard and Jemma Wood of Remus Management limited Managing agents
Date of Inspection/Hearing	1st March 2010
Tribunal:	Mr. R T A Wilson LLB (Lawyer Chairman) Mr. N Robinson FRICS (Surveyor Member) Mrs. Jan Morris (Lay Member)
Date of the Tribunal's Decision:	31st March 2010

THE APPLICATION.

1. This was an application pursuant to section 27A of the 1985 Act for a determination of the liability of Mr Sheppard to pay service charges in respect of flat 1 at the property for the years ending 31st December 2003 to 2008 inclusive.

THE DECISION.

2. The tribunal determines that all the service charges for the years 2003 to 2008 inclusive, as set out in the annual service charge accounts filed with the tribunal, are payable by Mr Sheppard in accordance with the payment and rateable apportionment provisions contained in his lease save for the amounts identified below.

JURISDICTION.

3. 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.

4. 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.

5. The tribunal was provided with a copy of the lease relating to flat 1, the subject property. There is no suggestion that the service charge expenditure is not contractually recoverable as relevant service charge expenditure under the terms of the lease and therefore it is not necessary to set out the relevant covenants in the lease giving rise to the respondent's liability to pay a service charge contribution.

INSPECTION.

6. The tribunal inspected the property prior to the hearing. The property comprises a two storey mid terrace Victorian house converted into two self-contained flats. The ground floor flat has exclusive use of the original main front door to the house off London Road with the first floor flat being accessed from Richmond Road North via the rear courtyard garden and an external metal spiral staircase. The small front garden area and entrance pathway were noted to form part of the ground floor demise together with a small courtyard area to the rear. This courtyard contained a shed and was generally inaccessible due to the number of items stored there. The rear courtyard garden was noted to belong to the first floor flat although the ground floor flat does have a right of access across it.
7. There were no landlord's retained common parts either internally or externally. The elevations to the property were rendered and painted under a slate roof. The windows to the ground floor flat and front of the first floor flat were of timber with the rear windows to the first floor flat being replaced in PVCu. The decorations to the timber and render were generally poor. One of the sashes to the ground floor flat front bay window had been boarded up. The sill to this window had been replaced in PVCu to a very poor unfinished standard.

BACKGROUND AND PRELIMINARY MATTERS.

8. The case had been the subject of a pre-trial review on the 3rd November 2009. The directions given following the review, provided for the respondent to file a written statement setting out his reasons for opposing the application. Mr. Sheppard had not done so; he did not attend the inspection; nor did he attend the hearing. The application was therefore brought to the tribunal unchallenged.
9. The applicant had set out its position on the issues in their statement of case and had submitted a hearing bundle containing their evidence. At the hearing Mr. Stonard addressed the tribunal on each item of service charge demanded in each year. He directed the attention of the tribunal to the relevant clause in the lease giving rise to the contractual requirement of the respondent to contribute and he also addressed the tribunal, when requested to do so, as to the quantum and reasonableness of the charges raised. In this way the tribunal was able to consider each item of expenditure and form a conclusion as to whether or not the sums demanded were both contractually recoverable and reasonable in amount.
10. The tribunal decided that it would be satisfied that each item of expenditure had been incurred where evidenced by an invoice contained in the hearing bundle. In this way the tribunal was able to conclude on the balance of probabilities that the

majority of items in each year were recoverable as service charge. The sums demanded were adequately supported by evidence consisting of receipted invoices. However in some cases invoices were not available and or the work carried out was, in the opinion of the tribunal, outside of the scope of the landlord's contractual responsibilities. In these cases the sums have been disallowed for the reasons set out below.

11. The tribunal was told that the service charge demands are made on the basis that each of the two flats pays a one half share of all expenditure i.e. a 50/50 split. This is on the basis that the two flats are of similar size. The applicant sought to justify this arrangement on the basis that as rateable values were no longer in use when the applicant purchased the investment, they did not have the historical figures to confirm the rateable value of each flat. The tribunal does not accept that 50% is necessarily the correct apportionment for the subject property. The lease provides that the proportion of the total spend on the building payable by each leaseholder is to be based on the fraction that the rateable value of their flat bears to the total rateable value of the building as a whole. Even though rates are no longer in use other than for water charges, the rateable values of each property are still ascertainable from local councils and this information should be used to determine the respondent's actual liability rather than the arbitrary split of 50/50.

Year ending 31st December 2003

12. The sum of £140 is disallowed as the tribunal was informed that this expenditure related to the replacement of the door to the rear wall. The tribunal considers this cost to be outside of the scope of landlords repairing obligations as contained in the lease and is therefore irrecoverable.
13. The sum of £105.75 is disallowed as it related to the cost of a risk assessment carried out in 2002 and was therefore incurred more than 18 months from demand and is therefore irrecoverable under section 20B of the 1985 Act. The demand for this figure features in the 2003 accounts, which were dated 24th April 2004 and sent to the respondent shortly after this date. The demand thus came more than 18 months after expenditure.
14. The sum of £296.10 is disallowed because the expenditure related to professional fees for work never carried out. It was contended that a schedule of work had been prepared but there was no evidence of this schedule in the hearing bundle.
15. All other sums demanded in this year as listed in the annual statement of account filed with the Tribunal are recoverable.

Year ending 31st December 2004

16. The sum of £76.37 is disallowed as it related to health and safety work which was also carried out in the previous year. There should have been no necessity to carry out work of this kind two years in succession and therefore in the tribunal's opinion the charges were unreasonably incurred.
17. All other sums demanded in this year as listed in the annual statement of account filed with the Tribunal are recoverable.

Year ending 31st December 2005

18. All sums demanded in this year as listed in the annual statement of account filed with the Tribunal are recoverable.

Year ending 31st December 2006

19. The sum of £777.00 is disallowed as the expenditure related to the supply and the fitting of a new back door. In the opinion of the tribunal the back door to the property is not something which the applicant is obliged to maintain under the lease and therefore the cost is not contractually recoverable.
20. All other sums demanded in this year as listed in the annual statement of account filed with the tribunal are recoverable.

Year ending 31st December 2007

21. The sum of £334.87 is disallowed as this expenditure related to welding costs carried out to the iron spiral staircase serving the first floor flat. These entrance steps appear to be demised to the first floor flat and therefore the costs of repair should not fall on the service charge fund.
22. The sum of £446.50 is disallowed as this cost related to the replacing and painting of the back door gate something which the applicant is not contractually obliged to undertake and therefore the cost is not contractually recoverable.
23. The sum of £411.25 is disallowed as this cost related to a fire assessment which the tribunal considers unnecessary. There are no common parts to the building; the applicant was unable to produce the report itself; and in the opinion of the tribunal the work if done could not be justified.
24. All other sums demanded in this year as listed in the annual statement of account filed with the tribunal are recoverable.

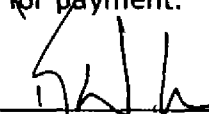
Year ending 31st December 2008

25. The sum of £11.00 is disallowed as this cost related to the cutting of keys and there is no provision in the lease for this work to be undertaken by the applicant at the respondent's expense.
26. The sum of £84.01 of professional fees was withdrawn by the applicant as being irrecoverable.
27. All other sums demanded in this year as listed in the annual statement of account filed with the Tribunal are recoverable.

CONCLUSION

28. For the reasons stated above the tribunal determines that save as to the items referred to above, all the service charges for the years 2003 to 2008 inclusive as revealed by the annual accounts filed with the tribunal are recoverable and reasonable in amount and are therefore payable by the respondent (in accordance with the payment provisions of his lease) within 21 days of the date of a revised valid demand for payment.

Chairman


R.T.A. Wilson LLB Solicitor

Dated 31st March 2010