

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

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

**DECISION & ORDER**

Case Number:	CHI/00ML/LIS/2005/0033
Property:	Basement Flat 11 Lansdowne Place Hove East Sussex BN3 1HB
Applicant:	Mr Kevin Paul Lydford
Respondent:	11 Lansdowne Place (Hove) Ltd
Date of Application:	15 July 2005
Date of Hearing:	9 December 2005
Date of Decision:	20 December 2005
Tribunal Members:	Mr B H R Simms FRICS MCI Arb (Chairman) Mr J N Cleverton FRICS (Valuer Member) Ms J K Morris (Lay Member)

**SUMMARY OF DECISION**

The Tribunal has no jurisdiction to determine service charges paid prior to the Applicant's purchase of the property. The Tribunal has no jurisdiction to decide the service charge apportionment on two new flats constructed at the property. The Tribunal determined that all service charges were payable except the cost of replacing the railings and this charge was reduced to £450, 30% of which would be payable by the Applicant.

## **INTRODUCTION**

1. On 15 July 2005 the Applicant applied to the Tribunal under S.27A Landlord & Tenant Act 1985 for a determination of his liability to pay service charges on the property for the years 2001, 2002, 2003 and 2004 and whether the estimate for service charges for the year 2005 was reasonable.
2. A pre-trial review was held on 9 September 2005 and directions issued for the conduct of the case dated 14 September 2005.

## **INSPECTION**

3. The Tribunal inspected the property prior to the hearing in company with the Applicant and the Respondent.
4. 11 Lansdowne Place is a basement flat with its own separate entrance. The building is a semi-detached, Victorian villa with cement rendered and painted elevations. The building was originally a basement with three upper floors but recently an additional storey has been added on top.

## **LEASE**

5. The flat is held under the terms of a lease dated 30 August 2001 acquired by the Applicant in May 2002.
6. The parties have agreed that the lease exhibited to the application is for all purposes relating to this application in the same form as those under which the other dwellings currently at the property are held, although it is conceded that two new leases will be created by the construction of two flats at the top of the building.
7. The lease is for a term of 125 years from 30 August 2001. A ground rent of £125 is payable during the first 25 years with increasing ground rents at 25 year intervals thereafter.
8. An interim charge is paid on account of the service charge in respect of each accounting period and this amount is estimated by the lessor or his managing agent. At the end of each accounting period, an account is drawn up to show whether the interim charge has been sufficient to cover the expenditure and if there is any excess, this is carried forward in order to compute the service charge in succeeding accounting periods but if there is any shortfall the tenant pays the balance.
9. Part of the expenditure for which the lessor can charge includes an amount set aside to meet future costs as the lessor shall reasonably expect to incur in replacing, maintaining or renewing items which might need to be replaced, maintained or renewed in the future.

**THE LAW**

10. The application is brought under S.27A of the Landlord & Tenant Act 1985 (as amended). The purpose of the application is for the Tribunal to determine whether a service charge is payable and if it is as to:
  - a) The person by whom it is payable;
  - b) The person to whom it is payable;
  - c) The amount which is payable;
  - d) The date at or by which it is payable; and
  - e) The manner in which it is payable.
11. When considering whether a service charge is payable, the Tribunal will have regard to all relevant sections of the Act but in particular S.19 which says, amongst other things, 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 that 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.
12. S.20C allows the Tribunal to make an Order preventing a landlord from recovering costs incurred in connection with the proceedings before the LVT as part of the service charge if the lease allows recovery of this sort.

**JURISDICTION**

13. The Applicant purchased his flat in May 2002 but disputes service charge items raised in the account for 2001. The Tribunal clarified the position and the Applicant confirmed that when he purchased his flat in May 2002 there was a settlement between vendor and purchaser to take account of service charges up to the date of purchase. The Applicant agreed that the Tribunal had no jurisdiction to determine service charges prior to the date of his purchase of the flat.
14. In submissions made both parties refer to the two additional flats constructed at the top of the building. The Applicant is concerned that the provision of the new flats should result in a different share of the total costs being paid by each of the lessees but nothing has been done to vary these percentages. The Respondent asks the Tribunal to comment as it sees fit with regard to the apportionment of charges in respect of all the flats.

the administration of the building. However, in his view the management had been carried out to a proper standard. The charge made was in line with charges made by other managing agents in the city.

### Fire Alarm Contract

24. Mr Lydford said that the lease does not provide for the recovery of this charge. There is only a reference to fire extinguishers in the lease. The fire alarm was not being maintained or tested and no one has visited his flat since 2002.
25. Mr Martin identified clause 5(5)(n) in the lease which requires the landlord "*...to do or cause to be done all such works ... as in the absolute discretion of the lessor may be considered necessary or advisable for the proper maintenance, safety, amenity and administration of the building.*" This clause clearly requires a landlord to maintain a proper fire security system and to make sure that it is in working order. Every house in multiple occupation should have a fire alarm system and contract in place. The contract has been carried out and charged by a contractor, Ian Clarke & Son., and a statement to this effect was shown in evidence.
26. As far as Mr Martin is aware there would be no need to visit Mr Lydford's flat in order to maintain the system. The fire call point within Mr Lydford's flat is no longer required by the modern fire alarm system.

### Replacement of Railings

27. Mr Lydford showed the Tribunal the old railings that had been removed as these were still on site. He pointed out that they were rusty but they could have quite reasonably been returned to a reasonable surface and then redecorated. His estimate of the cost of redecoration was £100.
28. Mr Martin was surprised that the railings were still on site as they had been removed in 2002. He believed that the railings that the Tribunal had inspected were not the railings that had been removed prior to the replacement. The railings that were at the property were seriously rusted and could not have been retained and redecorated. The charge was legitimately made.

### Insurance

29. An estimate for the year ended 31 December 2005 in the sum of £1,037 had been made. Mr Lydford did not consider that this was an appropriate charge as there had been two additional flats constructed at the property and the total insurance premium should be apportioned between all the flats in the building and not as provided by the lease.
30. Mr Martin exhibited the insurance documentation which relates to the original building and not to the building with the two additional flats. The premium for the previous year to 30 November 2004 had been £978.56 and the cover purchased to 30 November 2005 had a premium of £1,036.29 which would be the figure charged in the year end accounts. He confirmed that this insurance did not include the two newly constructed flats for which a separate arrangement had been made. It was therefore quite reasonable for an estimate of £1,037 to be included in the schedule on which to base the interim service charge account.

### Electricity Estimate for Year Ended 31 December 2005

31. Mr Lydford pointed out that although an amount of £50 had been included in all recent annual estimates, there had still been no charge for electricity. It therefore seemed inappropriate to continue to include an amount of £50 each year.
32. Mr Martin pointed out that there were still difficulties in identifying the correct charge and discussions continued with the Electricity Board. There would be a charge for commonway electricity at some time and it seemed prudent to make an allowance for this in the estimates.
33. Mr Lydford considered that if a contribution to the commonway lighting had to be made then it was unfair that he should have to do so as he had no access to that part of the building because his flat had a separate entrance. Mr Martin pointed out that although this may be the case, the lease provided that Mr Lydford should share in the cost of electricity.

### Temporary Aerial

34. Mr Lydford was looking for a reimbursement of the cost (£24.96) of his supplying a temporary television aerial when the communal arrangement was not functioning. Following questioning from the Tribunal Mr Lydford decided that he would not pursue this claim.

### Reserve Fund

35. Mr Lydford was convinced that the monies in the reserve fund had not been properly dealt with and were not being held in a separate interest bearing account.
36. The landlord had not produced any estimates of future work required in order to justify the collection of an amount to be reserved. Because of the construction of the additional flats, the apportionment was unfair.
37. Mr Martin exhibited evidence of the account in which the money was held and this was with the Nationwide Building Society and interest was paid. Mr Lydford's service charge account was in arrears and as soon as a credit balance was shown then interest would be paid.
38. The reserve account is set up for future works as required under the terms of the lease. No formal estimates can be obtained as the work is required to be carried out in the future. The reserve is based on a reasonable proportion of future costs to cover the exterior and interior redecoration. Although the exterior of the property had been completely redecorated during the course of the construction work, there would be no charge made to the service charge account.

### **CONSIDERATION**

39. It was clear that two additional flats had been constructed at the property and although this in itself would understandably cause disruption at the building, there was no charge made to the lessees for any of the general repair work or external decoration which were carried out at the same time as the new construction. Also the building had been provided with a brand new roof which would reduce future maintenance costs.

### Management Fee

40. Prior to the construction of the new flats there had been four flats at the property and the managing agent charge was initially £520 in 2002, rising to £560 per annum for the years 2003, 2004 and estimated for 2005. For four units this was £130 rising to £140 per unit. Mr Lydford did not give evidence that these charges were unreasonable, only that the management function had not been properly carried out during his occupation of the property.
41. The managing agent's duty is, we believe, to manage the building and make sure that minor repairs are dealt with and that complaints are dealt with promptly. Mr Martin was able to demonstrate in detail how the various complaints had been administered and the Tribunal is satisfied that these were dealt with satisfactorily.
42. Mr Lydford's main concern seems to be the disruption caused during the building work carried out for the construction of the two new flats but the Tribunal did not consider that this fell within the managing agent's usual responsibilities. There should have been a separate supervising or administering surveyor or project manager who should make sure that the contract was properly administered and who should deal with complaints. In this case there is some difficulty because Mr Martin tended to deal with both the construction work and also the managing agents function. The Tribunal is content that all efforts were made by the managing agent to satisfy their part of their duties in this regard.
43. The freeholder of the property is owned by a limited company and Mr Martin is a director. Mr Martin's wife operates HSD Property Management, which is a trading name for his wife's business and is not a limited company. Mr Martin assists his wife in the running of the property management company and therefore it is not surprising that Mr Lydford may have been confused by the separate functions of these two operations. The Tribunal is satisfied that there is a separate managing agent and therefore the requirements of the lease are satisfied and a charge can be made for the managing agent's costs.
44. Mr Martin told us that the fees that HSD Property Management charged were based upon his understanding of the usual charges made by managing agents in the city. From our own knowledge and experience of small blocks of flats of this type, we do not believe that the charges made are unreasonable.

### Fire Alarm Contract

45. A building of this type must have a proper fire alarm and evidence was produced that the management contract was fulfilled and a reasonable charge made for the work.
46. Mr Lydford could not persuade the Tribunal that anything other than proper maintenance had been carried out. The Tribunal is satisfied that the call point in Mr Lydford's flat which he believed should have been operated in order to undertake a test, is no longer part of the system. The Tribunal is also satisfied that if tests were carried out when Mr Lydford was not present, it is quite likely that he would not know that the contractor had visited the premises.

### Replacement Railings

47. The Tribunal was faced with a direct conflict of evidence in that Mr Lydford said that the railings left on site were the old railings that were removed and Mr Martin said they were not. The replacement of the railings was expensive but Mr Martin did not present any invoices or other evidence in support of the actual cost charged.
48. The Tribunal considered that Mr Lydford's estimate of the cost of renovating and then repainting the old railings at £100 was not sufficient for the work involved. The railings would have had to have been chipped back to bare metal, the surface made up and then a primer and several coats of top coat applied. It would also have been necessary to deal with the fixing points in the rendering and make good any damage that might occur.

### Insurance

49. Mr Martin presented evidence that the premium proposed for 2005 dealt only with the original block of flats and did not include the two new flats. Provided that a separate arrangement is made for the insurance of the two new flats, the Tribunal considered that the estimated premium was a reasonable sum.

### Electricity

50. The Tribunal is satisfied that there will need to be a charge for electricity in the commonways at the property and in the absence of any evidence to the contrary, £50 seemed to be a fair figure.
51. Although the arrangements in the lease for the charging of electricity in a commonway that Mr Lydford does not use may seem unreasonable, the Tribunal is only able to interpret the lease and not to amend it. Therefore the amount can be included in the service charge and apportioned in the way stated in the lease.

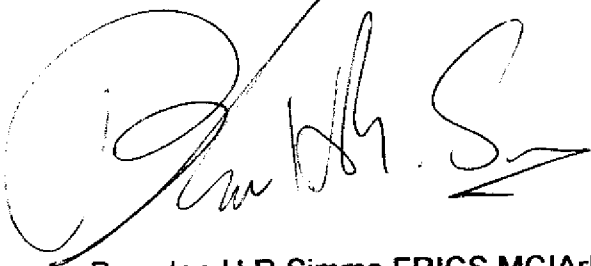
### Reserve Fund

52. The Landlord was able to demonstrate that the funds held in reserve were in a separate Nationwide Building Society account and that account earned interest. It was clear that there had been no credit to the service charge reserve fund for any interest received and this would be accounted for when payment was required for works for which the reserve fund had been allocated. The amounts involved are relatively small and although we can see no reason why interest should not be credited as an ongoing amount, the Tribunal could see no reason to upset the current arrangement.

## DECISION

53. Having regard to all the points raised both at the hearing and in writing, the Tribunal considers that the only item that requires adjustment in the service charges and estimates for the years in question is the cost of replacing the railings. All other items identified in the service charge accounts are payable.
54. The amount in the service charge account for the year ended 31 December 2002 in the sum of £900 for the replacement railings is to be reduced to £450 to reflect a proper charge for the renovation and redecoration of this item.
55. The parties were satisfied that the accounting procedure was clear and in particular Mr Lydford did not dispute the right for the landlord to charge generally a service charge based upon the terms of the lease. It should, however, be pointed out that the lease requires an annual account to be prepared and certified by the landlord's managing agent in order to recover a deficit in the annual account or to deal with a surplus. The Tribunal had no evidence that this procedure set out in the lease was being followed.

Dated this 20 day of December 2005

A handwritten signature in black ink, appearing to read 'Brandon H R Simms', written over a horizontal line.

Brandon H R Simms FRICS MCI Arb  
Chairman