

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

In the matter of an Applications under Sections 20C and 27A of the Landlord &  
Tenant Act 1985

Case No. CHI/21UC/LSC/2006/0028

Property: Ground Floor Flat, 85 Dursley Road, Eastbourne, East Sussex BN22 8DH

**Between:**

Michael John Enticknap  
and  
("the Applicant")

Waterglen Limited  
(David Glass Associates)  
("the Respondents")

Members of the Tribunal: Mr J.B. Tarling, MCMI, Lawyer/Chairman  
Mr B.H.R. Simms FRICS MCIArb

Date of the Decision: 1<sup>st</sup> December 2006

**THE DECISION  
OF THE LEASEHOLD VALUATION TRIBUNAL  
In respect of matters that are not agreed**

**1. Insurance Premiums**

The Applicant shall pay to the Respondents the sum of £150.25 for his half-share of the insurance premium for the year 2004/5 and £202.57 for the year 2005/6

**2. Management Fees**

The Applicant shall pay to the Respondents the sum of £26.48 for his half-share of Management fees for the year 2004/5 and £35.70 for the year 2005/6

**3. Section 20C Application**

The Tribunal makes an order that any costs incurred by the Respondents in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by the tenant.

**4. Reimbursement of Fees**

The Tribunal hereby orders the Respondents to reimburse the Applicant the sum of £100, being the whole of the amount of the Application Fees which the Applicant has paid to the Tribunal. Such sum is to be paid to him within 21 days from receipt of this Decision.

## REASONS FOR THE TRIBUNALS DECISION

1. Background to the Application  
The Applicant made an Application to the Tribunal for a determination of the amounts of Service Charge payable in the years 2005 and 2006.
2. A Pre Trial Review Hearing took place on 16<sup>th</sup> May 2006 as a result of which a number of matters were agreed. Directions were given for the disclosure of documents in respect of the remaining matters in dispute. The Tribunal also gave notice to the parties that it proposed to deal with the remaining matters which had not been agreed by way of a paper determination. Neither party requested a hearing and the Tribunal proceeded to deal with the matter as a paper determination.
3. The following matters had been agreed at the Pre Trial Review Hearing:  
Year ending 25<sup>th</sup> December 2005

Item	Agreed	Not Agreed
Insurance		£510.15
Repairs	Nil	
Sinking Fund	Nil	
Risk Assessment	Nil	
Asbestos	Nil	
Management fee		£329.00

### Year ending 25<sup>th</sup> December 2006

Item	Agreed	Not Agreed
Insurance		£510.14
Repairs	Nil	
Sinking Fund	Nil	
Risk Assessment	Nil	
Management Fee		£329.00

The parties had also agreed that no service charges were yet payable in respect of the year ending 25<sup>th</sup> December 2007 as no annual Service Charge Accounts had yet been prepared in accordance with the terms of the Lease. Either party is at liberty to make another Application to the Tribunal in respect of that Service Charge year after those Accounts have been prepared if matters can not be agreed.

4. The outstanding matters in dispute were the items for Insurance and Management Fees for both years. Both parties had made written representations in respect of those items.
5. Insurance Premiums.  
In written Representations the Respondents, through their Solicitors, apologised to the Tribunal and to the Applicant for unintentionally misleading them about the insurance premiums. They explained that the mistake had been made by their Insurance Brokers and that the insurance certificates had the

incorrect premiums on them. They enclosed with their written representations copies of the actual invoices showing the following expenditure:

2004/5

Buildings Insurance Premium	£298.08
Terrorism Insurance Premium	£12.42
TOTAL	£300.50

2005/6

Buildings Insurance Premium	£405.14
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There was no terrorism cover for that year.

They confirmed that the standard rate of insurance for £1,000 cover was

£2.37 per £1,000 of cover for 2004/5

£2.92 per £1,000 of cover for 2005/6

The Respondents had also obtained through Hanover Park Commercial and Deacons comparative like for like quotes from other insurers based on the 2005 sum insured of £132,298 These quotes were:

£583.33 plus IPT from Zurich and

£416.67 plus IPT from NIG

The Applicant had not provided any alternative quotes, but merely said the amounts claimed were excessive.

#### THE TRIBUNAL'S DETERMINATION – Insurance Premiums

In view of the Respondents admission that the amounts originally charged for Insurance were excessive and that they were now prepared to reduce these to the amounts referred to above, the Tribunal was satisfied that the reduced amounts were fair and reasonable. The evidence of quotes from Zurich and NIG confirmed that the revised amounts now being charged were correct. Using their knowledge and experience the tribunal concluded that the rates per £1,000 quoted by the Respondents fell within the parameters of what is fair and reasonable in this residential sector of the market. Accordingly the Tribunal decided that the amounts payable for insurance premiums for the whole Building were £300.50 for 2004/5 and £405.14 for 2005/6. The Applicant's share of the Service Charges including the insurance premiums is one half. Accordingly his half share of the insurance premiums that are payable are **£150.25** for 2004/5 and **£202.57** for 2005/6.

#### 6. MANAGEMENT FEES

In their written representations the Respondents had agreed that these should be restricted to 15% of whatever amounts are expended by the Lessor as set out in Clause 3(3) of the Lease. As the only expenditure in the two years was the insurance premiums the calculations for Management Fees are as follows:

Year ending 25<sup>th</sup> December 2005

15% X £300.50	=	£45.08
Add VAT @ 17.5%	=	£7.89
TOTAL		£52.97

Half-share payable by the Applicant

$$\frac{1}{2} \times £52.97 = \mathbf{£26.48}$$

Year ending 25<sup>th</sup> December 2006

15% X £405.14	=	£60.77
Add VAT @ 17.5%	=	£10.63
TOTAL		£71.40

Half-share payable by the Applicant

$$\frac{1}{2} \times £71.40 = \mathbf{£35.70}$$

7. Section 20C Application

The Applicant had made an Application under section 20C of the Landlord and Tenant Act 1985 for an Order that all or any costs incurred, or to be incurred, by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant. The Tribunal reviewed the evidence and the written representations of the parties. The Applicant had generally succeeded in reducing the amounts of service charge he was liable to pay and his Application had generally been successful. The Respondent had conceded many matters at a late stage in the proceedings. If the Respondent had agreed those matters with the tenant when the issues were originally raised, the proceedings would have been avoided. In all the circumstances and for the reasons set out above it was fair and reasonable that such an Order be made. The Tribunal hereby orders that any costs incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by the tenant. In other words, none of the landlord's costs of these proceedings can be included in any future service charge account payable by the tenant.

8. Reimbursement of Fees paid by the Applicant to the Tribunal

In view of the late admissions by the landlord referred to above, the Tribunal wished to consider making an order under Regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 ("the Fees Regulations") requiring the landlord to reimburse the Fees which the tenant had paid to the Tribunal. Written Notice was given to the landlords informing them of the Tribunal's intention and inviting the landlords to send to the Tribunal any written representations they wished to make as to why such an order may not be made against them. No written representations were received from the landlord and accordingly the Tribunal considered the matter in the light of the papers before it. The tenant had attempted to raise the matters in dispute with the landlord before issuing these proceedings. As a result of the proceedings the tenant had succeeded in reducing the amounts of service charge that had been demanded from him. The tenant had little choice but to issue the proceedings and the proceedings could have been avoided if the landlords had dealt with matters before the proceedings had been issued. In all the circumstances and for the reasons set out above it was perfectly fair and reasonable that the tenant should be reimbursed for the whole of the fees he had paid to the Tribunal. Those fees comprised the Application Fee of £100 which the Tenant had paid and in accordance with its powers under Regulation 9 of the Fees Regulations the Tribunal hereby orders the landlords to reimburse the tenant in the sum of £100. Such sum is to be paid to him within 21 days from receipt of this Decision.

Dated this 1<sup>st</sup> day of December 2006

*J.B.Tarling*



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John B. Tarling, MCMI Lawyer/Chairman

A member of the Panel appointed by the Lord Chancellor