RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

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

Residential Property TRIBUNAL SERVICE

DECISION of the Leasehold Valuation Tribunal & ORDER

Case Number:	CHI/21UD/LSC/2006/0063
Date of Application:	7th July 2006
Property:	35 Cambridge Gardens Hastings TH34 1EN
Applicant:	Ms M V Robinson Ms H J Legg Lee Benton
Respondent:	Mr A Stradis
Date of Hearing:	30th November 2006
Venue:	The Committee Room Horntye Park Sports Complex Bohemia Road Hastings
Appearances:	
For the Applicant:	Mr B Collins of Messrs Butters, David Grey & Co solicitors
For the Respondent:	Mr A Stradis
Tribunal Members:	Mr R T A Wilson LLB (Lawyer Chairman) Mr N. Cleverton FRICS (Valuer Member) Ms J Morris (Lay Member)
Date of Decision:	12th December 2006

THE APPLICATION

1. The Application made in this matter by the lessees is for:-

   i) A determination of their liability to pay service charges for the property covering the years 1994 to 2006 inclusive and

   ii) an order pursuant to Section 20C of the Act of the landlord's costs incurred in these proceedings are not relevant costs to be included in determining the service charge for future years.

   iii) The Tribunal is also required to consider, pursuant to regulation 9 of the Leasehold Valuation Tribunal (England) Regulations 2003 whether the Respondent should be required to reimburse the fees incurred by the Applicants in these proceedings.

DECISION IN SUMMARY

2. The Tribunal determines for the reasons set out below that:-

   i) No service charge is payable for any of the years 1994 to 2006 inclusive

   ii) An order is made under section 20C of the Act

   iii) No order is made in relation to the reimbursement of the fees incurred by the Applicants in these proceedings.

INSPECTION

3. The Tribunal inspected the property on the day of the hearing in the presence of the Applicants and the Respondent. The property is a four storey Victorian terraced house arranged as three self contained flats; a garden flat, a ground floor flat and a maisonette on the upper floors. The flats have all been sold on long leases and a copy of the lease relating to flat 2 was included in the hearing bundle. The building had the appearance of being neglected with the rear elevation in need of painting and repair. The guttering looked blocked with weeds and other detritus and the front elevation also showed signs of neglect. The Tribunal inspected the maisonette and the leaseholder pointed out a hole to the rear elevation and stated that the flat suffered from damp / water penetration. The common parts were in need of decoration.

THE CASE FOR THE APPLICANTS

4. Mr Collins opening the case for the Applicants referred the Tribunal to his clients' statement of case which set out the history of the matter. In November 2005 his clients had applied under section 24 of the Leasehold Reform, Housing and Urban Development Act 1993 to

acquire the freehold interest in 35 Cambridge Gardens, Hastings, East Sussex. On the 27th February 2006 the Tribunal determined that the price payable by the lessees to the freeholder for the freehold interest in the premises should be £3,960. Since then the Respondent had refused to transfer the freehold on the grounds that substantial service charges were outstanding. It was for this reason that his clients had brought the application. He invited the Tribunal to consider all the years in dispute namely 1994 to 2006. Mr Collins maintained that no service charges whatsoever were owed by his clients not least of all because the Respondent had failed to serve any valid service charge demands upon his clients. Furthermore it was his clients' case that the Respondent had not carried out any management, had failed to carry out any maintenance and had not insured the building. All repairs, maintenance, cleaning and decoration to the interior and the exterior of the building had been carried out by his clients collectively since 2002.

5. Mr Collins then called his clients individually to give evidence as follows:-

   i) Mr Benton indicated that he had occupied the building as a tenant from 1996 and then as a leaseholder from 2003 to 2006. During this time he had never received a single service charge demand from the Respondent and had only seen him once. He confirmed that all maintenance and repair work during this time had been carried out collectively by the lessees.

   ii) Simon Wilson, a former leaseholder from 2002 to 2006 also confirmed that he had carried out all the maintenance himself and that he had not received any communication or service charge demands from the Respondent. Mr Wilson said that when he had purchased the flat in 2002, his solicitor had advised that there was an absentee freeholder and that it would be necessary for him to take out insurance to cover the situation. This he had done. He confirmed that no service charge information had been available from his then vendor who had also confirmed that there was an absentee freeholder.

   iii) Ms Legg, the leaseholder of the garden flat confirmed that she had purchased her flat in 2002. At the time her solicitor had also confirmed that there was an absentee freeholder and that she would have to take out a 25 year indemnity insurance which she did. She too confirmed that she had received no service charge demands from the Respondent and that the Respondent had never visited the property or carried out any work to it. She confirmed that shortly after she had purchased the flat, Mr Stradis had written to her Building Society claiming £10,000 by way of arrears of service charge. She had promptly written back to the Building Society denying that the sum was owing and requesting the Building Society not to pay any money to the Respondent. After this letter she had heard nothing further from the Respondent and there has been no further dialogue in relation to the alleged arrears or any other management issue.

6. Mr Collins then referred the Tribunal to the revised schedule of arrears produced by the Respondent on the day of the hearing. A significant proportion of the items of expenditure claimed related to the period 1994 to 2002. Mr Collins had carried out a Land Registry search against the freehold title which revealed that Mr Stradis had only acquired the legal title of the property in 2002. That being the case it was his submission that Mr Stradis could not levy service charge for any period prior to his ownership. He therefore urged the Tribunal to discount all expenditure incurred prior to 2002.

7. The final challenge made by Mr Collins in relation to the service charge items related to legal costs. Mr Collins maintained that there was no provision in any of the leases allowing legal costs to be recovered by the freeholder as a service charge. In the circumstances all items of service charge which related to legal costs should be rejected by the Tribunal.

THE CASE FOR THE RESPONDENT

8. Mr Stradis opening his case said that all he had ever wanted to do was get back from the lessees all monies expended by him personally in relation to the building. He was not trying to make a profit from his management of the building but merely wanted to recuperate his expenses. Mr Stradis referred the Tribunal to a revised schedule of outstanding sums. These schedules showed alleged arrears for the garden and ground floor flats of just under £5000 per flat and alleged arrears for the Maisonette of just under £10,000. These schedules included management fees of 15% of the expenditure per annum, interest on outstanding payments and unpaid ground rents. Mr Stradis also produced two further schedules of his expenditure one relating to general expenditure of £9,562.60 and another relating to insurance and management fees of £7,443.69. It was these sums which he claimed were outstanding as service charge and due to him.

9. Mr Stradis strenuously denied that he had not served service charge demands on the leaseholders. He maintained that he had served annual service charge demands on each lessee in every year from 1994 to 2006. The demands had either been sent by post or by registered mail. In the case of the latter he produced photo copies of registered post envelopes which had been returned by the post office uncollected. Unhelpfully Mr Stradis had not kept copies of what was included in the envelopes although in his bundle there were a number of copy invoices relating to the ground floor flat only.

10. On being questioned by the Tribunal and Mr Collins, Mr Stradis confirmed that he had received no monies from any of the leaseholders since 1994. Notwithstanding this he had continued spending his own money on the upkeep and insurance of the building. On being questioned by the Tribunal, Mr Stradis accepted that he had not sent out service charge demands twice yearly in accordance with the provisions of the lease but only once in December of each year. Mr Stradis also admitted that he had not provided the lessees with an audited annual statement as required by the leases.

11. Mr Stradis then addressed the Tribunal on the points raised about his ownership. The background was that he had been appointed to manage the building in 1994 by the then owner Mrs Swallow. At the same time, Mrs Swallow had agreed to transfer the freehold to him but the title deeds could not be found and the transfer of the freehold did not take place until 2002. Mr Stradis confirmed that Mrs Swallow had died in 1997 but he had been unaware of this and continued to manage the building from 1997 until 2002 when he became the legal owner. He confirmed that since 1994 he had not been able to pay over any monies whatsoever to the freeholder as he had not been able to collect any.

12. On being further questioned by Mr Collins, Mr Stradis withdrew his demand for management charges of 15% per annum and also his claims for interest. This left just insurance, legal fees, surveyor fees and a small amount in respect of running repairs.

THE TRIBUNALS DELIBERATIONS

13. The Tribunal has been presented with conflicting evidence in relation to the preparation and service of service charge demands. On the one hand the three lessees of the building maintain that they have received no service charge demands whatsoever, whilst on the other hand the Respondent maintains that annual service charge demands have been sent to the lessees in every year since 1994. On this crucial point we prefer the evidence of the lessees. Two of the flats changed hands in 2002 and in each case solicitors appear to have advised their clients that there was an absentee landlord and that indemnity insurance should be taken out. We are of the view that solicitors would have carried out prudent inquiries and there was nothing to be gained by the sellers concealing the identity and existence of an active freeholder/management regime. Indeed it could be said that an 'absentee landlord' situation could have jeopardized a sale and therefore would not have been disclosed without extensive prior investigation. This points us to the conclusion that no effective management was being undertaken by the Respondent. In contrast Mr Stradis was not able to supply the Tribunal with comprehensive copies of the service charge demands for each flat and the miscellaneous copy invoices that he did supply did not contain the statutory statements required by the Landlord and Tenant Act 1985. We therefore find as a matter of fact that no valid service charge invoices were received by the lessees between 2002 and 2006.

14. It is also a matter of fact that the Land Registries entries show that Mr Stradis only acquired the freehold of the property in 2002. Notwithstanding this his service charge demands relate to a period starting in 1994. Mr Stradis was not able to produce any evidence or authority why he should be entitled to receive service charge monies for periods prior to his ownership in 2002.

15. We accept that Mr Stradis was appointed managing agent of the property in 1994 by the then owner Mrs Swallow. We also accept that Mrs Swallow died in 1997. It is our view that any management instructions held by Mr Stradis must have come to an end on the death of Mrs Swallow in 1997. We therefore consider that Mr Stradis is not entitled to claim and cannot give a valid receipt for monies due between 1997 and 2002. Furthermore any monies due and owing prior to 1997 would belong to the estate of Mrs Swallow and not Mr Stradis. Again Mr Stradis is not able to give a valid receipt for monies due as service charge prior to 1997.

16. We turn now to the service charge provisions contained in the lease. The service charge provisions are in the usual format and provide for the freeholder to be responsible for maintaining and insuring the fabric of the building with the ability to recover expenditure from the lessees; 25% from each of the garden and ground floor flats and 50% from the maisonette. The service charge provisions are contained in the second schedule of the leases and paragraph 2 states that the maintenance charge shall be paid:

    i) By payments on account of the sum conclusively estimated by the landlord as being the likely maintenance charge for the year in question by two equal payments on the 25th March and the 29th September in that year

    ii) The balance if any within 7 days of the service on the tenant of the certificate of the landlords auditors as to the total referred to in paragraph 1 of this schedule.

17. On Mr Stradis' own admission, he failed to issue service charge demands in two equal payments on the 25th March and the 29th September in each year and he also failed to produce a certificate of the landlord's auditors in respect of the usual balancing payment in each year.

18. We consider that a precondition of being entitled to recover service charge is the issue of valid demands twice yearly followed by the certificate of the landlord's auditors once per year. As none of these preconditions have been complied with it follows that no service charge is due.

19. Finally we turn to the items of individual expenditure contained in the revised schedule provided by Mr Stradis. A significant amount of this expenditure is made up of legal fees. In particular there is one account from Marsons solicitors for just under £6000. A copy of this account could not be provided by Mr Stradis and it was Mr Collins submission that much of the account related to the previous proceedings before the Leasehold Valuation Tribunal and also the proceedings currently being heard. He maintained that there was no charging provision in the leases providing for these legal costs to be recovered as service charge. We agree with this contention. Furthermore there is no provision within the leases enabling the freeholder to charge 15% management fees. In the circumstances we would have disallowed these charges had it not been for the fact that Mr Stradis had on his own accord withdrew his demand for management fees. This leaves relatively small sums of £275 for a surveyors report, £525 for scaffolding and £475 for running repairs. Unhelpfully Mr Stradis was not able to produce vouchers to support these payments and was not able to assist the Tribunal as to when the liability for these sums had been incurred. It is therefore possible that the sums are in any event time barred by virtue of Section 20B of the Landlord and Tenant Act 1985 which requires the demand to be made within 18 months of the expenditure.

20. For the reasons stated above we are of the view that the Respondent has been unable to substantiate any of the demands for service charge for the years 1994 to 2006 and so the Tribunal directs that no such charges are payable.

SECTION 20C AND REIMBURSEMENT OF FEES

21. Both of these matters can be taken together as the Tribunal considerations in relation to both are largely the same. This section gives the Tribunal discretion to disallow in whole or in part the costs incurred by landlord in proceedings before it. The Tribunal has a very wide discretion to make an order that is' 'just and equitable' in the circumstances.

22. The Tribunal noted that the service charge costs demanded by the Respondent could not be justified. At the hearing the Respondent made a number of further significant concessions on the majority of the disputed items. By failing to withdraw these items earlier on in the proceedings, the Respondent had acted unreasonably. The Tribunal also had regard to the fact that the Applicants case has been entirely successful in that the entirety of service charge demands has been disallowed. For these reasons the Tribunal makes an order under 20C.

23. However the Tribunal makes no order under regulation 9 relating to the reimbursement of fees as we are of the view that the Respondent maintained his defence in the genuine but mistaken belief that he had a legal right to the service charges in question.

Chairman Signed
R.T.A.Wilson LLB

Dated 12th December 2006