

**THE SOUTHERN AREA RENT ASSESSMENT COMMITTEE
AND LEASEHOLD VALUATION TRIBUNAL**

Case Number:

CHI/45UC/LS1/2004/0006

BETWEEN:

Mr J G ANTHONY

Applicant

- and -

SINCLAIR INVESTMENTS (KENSINGTON) LTD

Respondent

Premises:

**Flat 3, Manora, 3 High Street,
Bognor Regis, West Sussex**

Tribunal:

**Mr D Agnew, LLM (Chairman)
Mr B H R Simms, FRICS, MCIArb
Ms J K Morris**

DECISION

1. Introduction

1.1 On the 24th April 2004 the Applicant applied to the Tribunal under Section 27A of the Landlord & Tenant Act 1985 for a determination as to the liability to and reasonableness of service charges in respect of Flat 3 Manora, 3 High Street, Bognor Regis, West Sussex ("the premises") for the years 1998-2004 and for services charges for future years.

1.2 On the 19th July 2004 the Tribunal, at a preliminary hearing, decided that the Applicant was precluded from seeking a determination with regard to the years prior to 2003. Thus, the Tribunal had to decide the reasonableness of the services charges for 2003 and 2004 and the advance service charge for 2005.

2. Inspection

2.1 The Tribunal inspected the premises on 17th September 2004. They comprise a semi-detached house divided into three flats (one on each floor) situated on the High Street in Bognor Regis, very conveniently situated for both the town's shops and the sea front.

- 2.2 The premises are constructed of brick and flint and have cement rendered or colourwashed elevations under a pitched, slate-covered roof. The windows are wooden framed and the guttering is plastic.
- 2.3 There is a small garden area to the front with a crazy paved path and shrub beds. The tenants were permitted to park up to four cars in the car park at the rear of the adjoining property which was also in the landlord's ownership.
- 2.4 The premises were only in a fair condition. The Tribunal was told that exterior decoration was imminent. The communal hallway and stairs were adequately clean and carpeted.

3. The Hearing

- 3.1 This took place at Bognor Regis Town Hall on 17th September 2004.
- 3.2 Present were the Applicant and Mr Goodman of Hurst Managements, the landlord's managing agents.
- 3.3 Although the Applicant had been directed to complete the schedule produced by the landlord to indicate which items of expenditure were in dispute, he had not done so. The Tribunal had the benefit of a statement of case submitted by Mr Goodman.
- 3.4 The Tribunal went through each and every item of expenditure to ascertain the parties' case in respect thereof. This is set out briefly in the Schedule hereto.

4. The Law

- 4.1 Section 19(1) of the Landlord & Tenant Act 1985 provides:-

"(1) Relevant costs shall be taken into account in determining the amount of a service charge for a period –

- (a) only to the extent that they are reasonably incurred
- (b)

and the amount payable shall be limited accordingly."

- 4.2 Section 27A of the 1985 Act as amended by the Commonhold and Leasehold Reform Act 2002 states that:-

- (1) An application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is reasonable 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.

5. The Lease

- 5.1 By clause 6(b) of the lease of the 1st September 1976 between Arthur Dean (Builders) and Peter Mark Leslie and Rosemary Ann Leslie the lessor covenanted with the lessees:-

"to insure and keep insured the Block against loss or damage by fire and such other risks (if any) as the Lessor thinks fit in some insurance office of repute in the full replacement value thereof and whenever required produce to the lessee a copy of the policy".

By clause 6(d)(i) of the said lease the lessor covenanted amongst other things to:

"Remedy all defects in and keep in good and substantial repair and condition throughout the term hereby granted the parts of the Block not comprised in the flat or any of the flats in the Block including

- (a) the roofs and the gutters pipes drains and other services for conveying rainwater from the Block
 - (b) the main structure of the Block including the foundations and exterior walls and balconies thereof ...
 - (c) the passages staircases landings entrances and all other parts of the Block enjoyed or used by the lessees
 - (d) the gas water pipes conduits ducts sewers drains and electric wires and cables
 - (e) the parking spaces driveways paths and boundary walls and fences
- (iii) (a) keep the entrance, entrance halls, passages, stairs, landings and other communal parts of the Block reasonably lighted

- (iv) employ such person or persons as shall be reasonably necessary for the due performance of the covenants on its part herein contained and for the proper management of the Block and in particular to employ a firm of Chartered Surveyors or other professional managers of property to handle the management of the Block and the fees of such firm shall be added to the other expenses incurred by the lessor under the provisions of clause 6 of this lease”.

5.2 By clause 4(b)(i) of the said lease the lessees covenanted with the lessor:

“to pay and contribute in manner hereinafter provided the lessee’s proportion of all moneys expended by the lessor in complying with its covenants in relation to the Block as set forth in clauses 6(b) and (d)”.

5.3 The Applicant’s objections to the service charges and the landlord’s agent’s response is summarised on the Schedule attached hereto.

5.4 The following items of expenditure deserve particular mention:-

- (a) Insurance premium. Mr Anthony had obtained an alternative quotation from Worrell Fry & Co Ltd in the sum of £816.17. Mr Goodman’s response was that such a quote was probably obtained without receipt of a proper proposal form where the claims history of the property would be disclosed. There had been claims on the policy in the last three years and this would affect the premium. Mr Anthony confirmed that he was unaware of the claims history for the building. Mr Goodman’s witness statement sets out how the landlord effects insurance. The landlord is not obliged to insure with the cheapest insurer although in the case of the landlord’s portfolio of properties only one of the major insurers was prepared to quote.
- (b) Terrorism insurance. Mr Goodman told the Tribunal that up to 2003 terrorism cover was included in the normal insurance policy for the building. As from 2004 terrorism was excluded and therefore this had to be purchased separately. The premium was in line with the quote obtained by Mr Anthony.
- (c) Management fees.

These were £165 per flat for 2003 and £185 per flat for 2004. Mr Anthony did not know whether or not this was reasonable and asked the tribunal to decide.

6. The Determination

- 6.1 The following expenditure had been incurred for which the landlord sought payment under the service charge provisions of the lease:-

To 24th June 2003:

M Fowler Roofing – to fix downpipe and hopper	105.75
Rose Green Hardware – for key	2.00
United Fire Protection Co – annual service of fire extinguishers	41.13
W Bond – to refix balustrade	50.00
Hurst Management – Risk Management fee	58.75
Southern Electricity – electricity account	60.74
Spofforths – Accountancy fees for reviewing service charge statements	50.05
Surveyor's report	352.50
Insurance premium	1,191.83
Hurst Managements – management fee	581.62

To 24th June 2004:

Bradley Electrical – re repair door entry system	34.66
United Fire Protection Co – annual service	41.13
Southern Electricity – electricity account	68.50
Spofforths – accountancy charge	50.05
Terrorism insurance premium	43.18
Insurance premium	1,248.56
Hurst Managements – management fees	652.12

To 24th June 2005 (advance service charge):

Maintenance	300.00
Accountancy	70.00
Electricity	50.00
Terrorism insurance	43.00
Insurance	1,249.00
Management	652.00
Reserve fund (for exterior and interior painting)	2,017.00

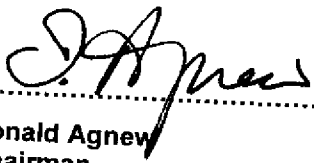
7. The Decision

- 7.1 Having carefully considered each item of expenditure and the parties' representations in respect thereof the Tribunal found that every item charged to the service charge account as set out in paragraph 6.1 hereof was reasonable. The landlord's agent had shown that the landlord adopted a reasonable procedure in effecting insurance and fixing the premium and in any event was not required to insure with the cheapest provider. The Tribunal was satisfied that the quotations provided by the Applicant were not on a like-for-like basis with the insurance actually effected. From the Tribunal's own experience it was able to confirm that the managing agent's charges were in line with the "going-rate" and were reasonable. The Tribunal also found that the estimated service charge payable in advance for the year ended 24th June 2005 was reasonable as it was in line with past expenditure. The provision required for imminent painting inside and outside was prudent and reasonable.

7.2 Having determined that the said service charges are reasonable the Tribunal decided not to make an order under Section 20 of the Landlord & Tenant Act 1985. Consequently, the Landlord's costs in respect of the Applicant's applications to the Tribunal may be added to the service charge account for 2005. The Tribunal did consider inviting written representations as to the amount of those costs so that a determination could be made as to their reasonableness but decided that as this expenditure would not be claimable and payable until the 2005 service charges are rendered and as the Tribunal was not strictly charged with determining this, it would not invite representations as to costs for determination with the current applications but that if a tenant objected to the level of those costs when charged to the service charge account, this would have to be the subject of a fresh application in the future.

Dated this 17th day of September 2004

Signed:


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Donald Agnew
Chairman

A. Service Charge expenditure year ending 24th June 2003

Ref	Expenditure	Doc No in bundle	Amount of Claim	Amount Admitted	The Grounds of Objection or Other Comments	Landlord's Response
	Service Charge Account	1				
	Repairs & Maintenance		257.63			
1.	M Fowler	2	105.75		Was it an emergency?	At front above second floor flat. Over front entrance. Loose. Could fall on visitors.
2.	Rose Green	3	2.00		Accept.	
3.	United Fire Protection	4	41.13		Accept.	
4.	W Bond	5	50.00		Expensive. Could have been done with other builders. Bit loose but not dangerous.	Risk assessment required that it be re-fixed. Unlikely to get it done for less than £50.
5.	Risk Assessment	6	58.75			Plan to do risk assessment every 3-4 years. Gives Landlord a bargaining point when discussing insurance renewal premium.
6.	Electricity	7/10	60.74		Not paid in time to take advantage of prompt payment discount or direct debit £0.47p. Time delay lights on for 2 hours plus so use more electricity.	Anything received before 20 th of the month is paid by month end. Lighting is tested at each visit. First time raised as a problem.
7.	Audit	11	50.05		No comment.	

Ref	Expenditure	Doc No in bundle	Amount of Claim	Amount Admitted	The Grounds of Objection or Other Comments	Landlord's Response
8.	Surveyor	12	352.50		Loft in a state and full of rubbish. Looked and found large slates from roof and rubble. Unsafe. Reported to landlord. Told not to go in the roof but the only entrance is in my flat. No need for survey. I removed timbers with woodworm.	He did tell us about materials in loft but the loft space is not part of his flat. Other residents said he was taking roof timbers, slates. Concerned he had removed structural timbers. Concern from flat below that ceiling sagging. Internal walls don't seem to conform to lease plan. Complaints of hammering and taking down partitions.
9.	Insurance	13	1,191.83		Showed them the certificate. Told them three-storey building, semi-detached, listed. Landlord's policy designed for more luxurious building. Swimming pool, garages, etc. Over-insured.	See witness statement. No proposal form. Limited information provided. May be possible to obtain cheaper insurance but landlord not obliged to insure with cheapest.
10.	Management	14/17	581.62		Don't know if reasonable.	Less than competition. Don't charge disbursements.

B. Service Charge expenditure year ending 24th June 2004

Ref	Expenditure	Doc No in bundle	Amount of Claim	Amount Admitted	The Grounds of Objection or Other Comments	Landlord's Response
	Service Charge Account	18				
	Repairs and Maintenance		75.79			
11.	Door Entry	19	34.66		Not worked since soon after moved in. Don't think working now.	Reported by lessee of ground floor flat. Malfunction. Will check again. Not reported malfunctioning.
12.	Fire extinguisher	20	41.13		Same as last year.	
13.	Electricity	21/23	68.50		Same as last year.	
14.	Audit	24	50.05		Same as last year.	
15.	Terrorism	25	43.18		No challenge.	
16.	Insurance	26	1,248.56		Same as for last year.	
17.	Management	27/30	652.12		Reasonable?	Increased in line with market conditions. Legislation has increased burden on main agents.