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

Residential Property TRIBUNAL SERVICE

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

Case Number:	**CHI/00ML/LSC/2009/0032**
Property:	**Flat 1** **76 Goldstone Villas** **Hove** **BN3 3RU**
Applicant/Freeholder:	**Richard Bunning**
Respondent/Leaseholder:	**Mark Mueller**
Appearances for the Applicants:	**The Applicant appeared in person**
Appearances for the Respondent:	**The Respondent appeared in person**
Date of Inspection /Hearing	**29th May 2009**
Tribunal:	**Mr R T A Wilson LLB (Lawyer Chairman)** **Lady J Davies FRICS (Valuer Member)** **Ms J Dalal**
Date of the Tribunal's Decision:	**19th June 2009**

THE APPLICATIONS

1. This application was for a determination pursuant to Section 27A of the Act of the Respondent's liability to pay service charge for the years 2001 to 2008 inclusive.

DECISION IN SUMMARY

2. The Tribunal determines for the reasons set out below that the only sums payable by the Respondent to the applicant for the service charge years 2003 to 2008 inclusive are the figures set out in this decision namely a total of £2,703.78 with an allowance being given to the Respondent for all amounts paid by him to the Applicant by way of service charge in the same period. The Respondent shall pay the amount due to the Applicant within 28 days of the date of this decision.

JURISDICTION

Section 27A of the 1985 Act

3. The Tribunal has power under Section 27A of the Landlord and Tenant Act 1985 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. A service charge is only payable in so far as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

4. By section 19 of the 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 had a copy of the lease relating to the property, which is dated the 29th October 1987 and is for a term of 99 years from the 29th September 1980 at a commencing annual rental of £40 rising to £80 per annum with effect from the 29th September 2005.

6. The lease provides for on account service charge payments to be made by the Respondent twice yearly on the 25th June and 25th December in each year. There is an obligation on the Applicant to prepare and serve on the Respondent annual service charge accounts certified by a qualified accountant detailing all costs incurred and monies expended by the lessor in complying with it obligations and showing the balancing amount payable by the Respondent giving him due credit for the on account payments made in the previous year. The respondents contribution towards the annual service charge is stated to be 17.5%

INSPECTION

7. The Tribunal inspected the property before the hearing. The subject property comprises a mid terrace building circa 1920 with four floors at the front and five floors at the rear comprising a ground floor shop with basement storage with access from the rear with three self contained flats over. The property is situated in a mixed residential and commercial area fronting a busy road close to Hove railway station with a taxi rank opposite. The property is of conventional construction of brick rendered to the rear elevation under an interlocking tiled roof. The external condition is fair to poor. We saw evidence of peeling paint work and leaking rain water goods to the rear. There is a large tree close to the front of the property taking day light from the flats and inevitably causing blockage to the gutters.

8. The common parts were very basic and poorly maintained with old lino on the ground floor entrance hall and staircase. Lino to the stairs was torn and looked to be in a dangerous condition. Lighting was provided by four ceiling lights and only one was working at the time of our inspection. It could not be turned off. We noted a smoke alarm on the first floor landing and cheap carpeting had been laid on the half and first floor landing, the carpet was threadbare.

9. A metal fire escape at the rear accessed from the top flat and the first floor landing showed evidence of severe corrosion.

PRELIMINARYS / ISSUES IN DISPUTE

10. Directions had been issued by the Tribunal on the 4th March 2009 providing for the Applicant to submit a written statement of case supported by accompanying documents and for the Respondent to file a reply including any documents on which he intended to rely. In the event the Applicant had failed to file a written statement but had submitted a large bundle of evidence, which included sundry copy correspondence going back to 2001 and copy invoices and other documentation. The Respondent had also failed to file a reply and had merely written in a letter to the Tribunal enclosing copy photographs of the property.

11. Because of the parties' failure to comply with the directions, the Tribunal had great difficulty in establishing what elements of the service charge the Applicant was asking the Tribunal to deliberate on. The only document, which shed any light on matters, was the application form, which set out in barely legible handwriting a schedule of figures for each year in question. In the absence of a statement of case the Tribunal decided that it would proceed with its determination based on the list contained in the application.

12. The Tribunal was told that to save costs the Applicant had not gone to the expense and trouble of preparing annual accounts certified by a qualified accountant. Instead he had sent out demands on an ad hoc basis but usually twice a year depending on what had been spent or was to be spent on the building during that year. He contended that in this way the management costs were kept down to a minimum and this ultimately benefitted all the leaseholders including the Respondent.

13. Unfortunately the Applicant had not come prepared to lead his case and for many of the items appearing in the application he was unable to direct the Tribunal to supporting invoices or documentary evidence to show how the figures had been arrived at and what

work they related to. The Tribunal took the view that it was down to the Applicant to lead his case and to provide documentary evidence which supported the amounts claimed. Where documentary evidence could not be supplied or where there was ambiguity, then the Tribunal found in favour of the Respondent and disallowed the item.

14. Bearing in mind the test supplied above, significant sums of money, which were claimed by the Applicant, were found to be irrecoverable by the Tribunal.

THE TRIBUNAL'S DELIBERATIONS

15. The Tribunal first considered a number of recurring items for each of the years in question namely insurance, management charges and electricity for the common parts. In respect of insurance, after considerable delays the Applicant was able to produce an insurance policy covering the building for the years 2003 to 2008 inclusive and was also able to find receipts for the premiums paid. The Tribunal considered that the amounts paid for insurance were in line with the rates that it would expect to find for the years in question and that the amounts insured were reasonable. Although the Respondent challenged the amounts payable he was not able to articulate the challenge with any clarity and in particular did not come to the Tribunal with any evidence of more competitive quotations. In these circumstances the Tribunal upholds the following insurance premiums for the years in question:-

2003	£1,158.26	x	17.5%	=	£202.71
2004	£1,218.50	x	17.5%	=	£213.24
2005	£1,323.32	x	17.5%	=	£231.58
2006	£1,455.65	x	17.5%	=	£254.74
2007	£1,553.16	x	17.5%	=	£271.80
2008	£1,475.54	x	17.5%	=	£258.22

Insurance total payable by Respondent = £1,432.29

16. In respect of management fees the Applicant confirmed that they were his own fees and had been assessed according to the work carried out by him personally in each year. Fees charged were as follows:-

2003	£550
2004	£400
2005	£400
2006	£400
2007	£200
2008	£300

17. The Applicant relied on clause 6 (D)(v)(b) to support his claim for fees. This clause reads as follows "*to employ such persons as should be reasonably necessary for the due performance of the covenants on its part contained in the lease, and without prejudice to the generality of the foregoing, to employ a firm of chartered surveyors or other professional mangers of property to handle the management of the property and the fees of such firms shall be added to the other expenses incurred by the lessor under the provisions of clause 6 of this lease*".

18. The Respondent led no evidence challenging these fees and it was left to the Tribunal to decide if they were recoverable. The Tribunal came to the conclusion that the clause referred to by the Applicant was intended to cover the fees of a third party employed to manage the building and not the fees personally charged by the freeholder for work carried out by him. The Tribunal concluded that there was no clause in the lease allowing the freeholder to charge for its own management time and on these grounds it determines that none of the fees charged by the freeholder for management between the years 2001 and 2008 are recoverable as a service charge item.

19. In respect of the electricity, widely different figures for each of the years had been included on the application form and the Applicant merely produced a pile of original electricity statements not all of which appeared in the hearing bundle. The Respondent accepted that he should have to pay for the electricity supplied to the common parts but he considered that the amounts charged were too high and the invoices did not support the amounts demanded.

20. The Tribunal accepted the points made by the Respondent but considered that it was fair and reasonable that the Respondent contribute a figure towards a service, which had been supplied. In the circumstances the electricity bills provided were added up and then the total divided by 6 (the number of years in challenge) which gave rise to a yearly charge of £36 which the parties both confirmed was acceptable. The Tribunal therefore determines that the proportion of common way electricity payable by the Respondent between 2003 to 2008 inclusive is £35 per annum

<u>Electricity total payable by Respondent for the years 2003 to 2008 = £210.00</u>

21. Having dealt with these three recurring items the Tribunal then considered individual charges made in each year. As stated above, because the Applicant had not produced certified annual statement of accounts it proved difficult for him to satisfy the tribunal that the amounts claimed was recoverable. In most cases invoices were not available to support the amounts claimed and in the event only the items set out below were found to be recoverable, being adequately supported by documentation available to the tribunal at the hearing.

2003	Repairs to shop front	£175
	Equipment hire	£12.17
	Re-decoration	£61.69
2004	Fire alarm work	£44.19
	Repairs to rendering including Scaffolding and repairs to roof	£217.22
2005	Roof repairs and erection of scaffolding	£142.19

2006	Firewall repairs	£250
2007	No service charge recoverable save for insurance and electricity	
2008	Scaffolding and roof repairs	£159.03
	Total payable by Respondent	**£1,061.49**

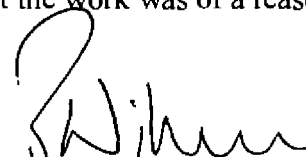
All other items conceded.

22. It should be noted that the figure of £175 (17.5% of £1000) for the 2003 repairs to the shop front is the maximum recoverable amount where qualifying works have not been subject the consultation requirements of Section 20 of the Landlord and Tenant Act 1985.This was the applicable law bearing in mind when the work was commissioned. Section 20 (4) of this Act provides: -

    a) At least two estimates for the works shall be obtained one of them from a person wholly unconnected with the landlord
    b) A notice accompanied by a copy of the estimates shall be given to each of those tenants
    c) The notice shall describe the works to be carried out and invite observations on them and on the estimates and shall state the name and address to whom the observations may be sent and the date by which they are to be received
    d) The dates stated in the notice shall not be earlier than one month after the date on which the notice is given or displayed as required by paragraph b.

23. The applicant was not able to demonstrate to the tribunal that the formalities of this section had been complied with and the tribunal has no dispensing power. The statutory maximum is therefore recoverable but no more.

24. The same consultation issue applies to the 2006 firewall repairs save that the regime to be followed is the one implemented by the Commonhold and Leasehold Reform Act 2002; this act introduced a more stringent consultation procedure and increased the prescribed limit to £250. Once again the Applicant was not able to demonstrate to the tribunal that he had complied with this new consultation procedure. Therefore the maximum recoverable for this work is £250. The tribunal was satisfied that the Applicant had carried out work to this value and that the work was of a reasonable standard.

Chairman 
R.T.A.Wilson

Dated 19th June 2009

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

APPLICATION FOR PERMISSION TO APPEAL
SECTION 175 of the COMMONHOLD AND LEASEHOLD REFORM ACT 2002 ("the Act")

Case Number: CHI/00ML/LSS/2009/0032

Property: Flat 1,
76 Goldstone Villas
Hove
East Sussex

Applicant: Richard Bunning

Respondent: Mark Mueller

DECISION AND REASONS

BACKGROUND

1. By a letter dated the 29th June 2009 the Applicant has applied to the Tribunal for permission to appeal the decision of the Leasehold Valuation Tribunal dated the19th June 2009.

GROUNDS FOR APPEAL

2. In summary the grounds for appeal are that the Respondent has admitted that he owes the money claimed and therefore the Tribunal has no jurisdiction to determine the service charge by virtue of the provisions of Section 27(4) of the Commonhold and Leasehold Reform Act 2002 (Landlord and Tenant Act 1985 as amended?) ("the Act")

DECISION

3. Permission to appeal is refused.

REASONS

1. The application for appeal recites that "By the respondents E-mail sent to Kathy Brewer (of the Tribunal office) on the 1st May 2009 the Respondent makes the statement " I do not dispute I owe this money "

2. The Applicant submits that by virtue of this statement the Respondent has admitted that he owes the service charge claimed and therefore section 27 (4) of the Act applies. The Applicant contends that the consequence of section 27 (4) of the Act applying is that no application could be made to the LVT in respect of this matter. The Respondent has admitted that he owes the money and the Tribunal therefore has no jurisdiction.

3. The Tribunal agrees with the Applicant that effect of Section 27 (4) of the Act is that the Tribunal has no jurisdiction to determine a service charge, which has been agreed or admitted by a tenant.

4. However on the facts before it Tribunal rejects that Section 27(4) has any application in this case. The full text of the relevant part of the email referred to by the Applicant reads as follows:
"I do not dispute I owe the money, however I do dispute the cost of his services. They are appalling and not worth it. Please see attached photographs as evidence Further more, Mr Bunning does not give all the statutory details when he sends his bills."

5. The Tribunal was briefly referred to this email at the hearing and it considered if the email amounted to an acceptance of the monies claimed .The Tribunal formed the initial view that the email did not amount to an acceptance of the service charges claimed. It formed this view because of the words "*however I do dispute the cost of his services. They are appalling.*" The Tribunal took the view that the clear intention of this wording was to place on record that the Respondent did not accept that the works had been carried out to a reasonable standard. If this was the correct interpretation of the words then it could not properly be said that the tenant had agreed the matter thus ousting the jurisdiction of the Tribunal.

6. The Tribunal referred the email to the Respondent for comment. The Respondent stated that he disputed that the standard of the services. Ie he challenged the reasonableness of the services charges claimed by the Applicant. He also claimed that the Applicant had failed to follow the correct statutory procedures for recovering the money.

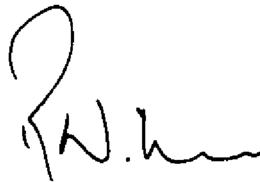
7. Having heard form the Respondent in these terms the Tribunal concluded that the services charges demanded were still in dispute and had never been agreed and accordingly it had jurisdiction to determine the application brought by the Applicant.

8. In coming to this conclusion the Tribunal bore in mind that the Applicant's primary submissions at the hearing did not include the contention that the Tribunal had no

jurisdiction. It is not surprising that this line of argument did not feature bearing in mind the application had been brought by the Applicant himself.

9. The Tribunal considers that for Section 27 (4) of the Act to apply there must be compelling evidence before it demonstrating a clear and unequivocal agreement or admission of the matter by the Tenant and no such evidence has been provided in this case.

10. The Tribunal in reaching its decision made careful findings of fact and applied the law on the basis of all oral and written evidence presented to it whether referred to or not in its written decision. Having giving careful consideration to the application and the points made in, the Tribunal is not persuaded that a different body presented with the information that was before it at the hearing and in the written submissions would have reached a different conclusion on the facts and law and so cannot accept that the Applicant has established proper grounds for appeal. His request is therefore refused.

Signed 

R T A Wilson LLB Chairman

Dated 15th July 2009