RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

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

Residential Property
TRIBUNAL SERVICE

DECISION

Case Number:	CHI/21UD/LSC/2009/0166
Property:	Flat 1, 66 Warrior Square, St Leonards On Sea East Sussex TN37 6BP
Applicant:	Mr Matthew Taylor (tenant)
Respondent:	Mr Nicholas Deverell-Stone (landlord)
Application:	30 November 2009
Directions	07 December 2009
Hearing:	25 February 2010
Appearances:	For the Applicant: Mr M Taylor in person For the Respondent: Mr Deverell-Stone (in person) Miss Burlington (new managing agent)
Decision:	26 March 2010

Members of the Tribunal

Ms J A Talbot MA, Chairman
Mr N Robinson FRICS
Mr P Gammon

Case No. CHI/21UD/LSC/2009/0166

Flat 1, 66 Warrior Square, East Sussex TN37 6BP

Application

1. This was an Application made by Mr. M Taylor, tenant, against Mr. Stone, landlord, in respect of service charges of £2,554.54 for the accounting year ending 25 March 2009.

2. Directions were issued on 07/12/2009 and provided for the Applicant to produce a full Statement of Case together with all relevant documents, and for the Respondent to produce a Statement in reply. Both parties complied with the Directions.

Jurisdiction

3. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable by a tenant to a landlord for the costs of services, repairs, maintenance or insurance or the landlord's costs of management, under the terms of the lease (s18 Landlord and Tenant Act 1985 "the 1985 Act"). Under s27A, the Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar 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.

Lease

4. The Tribunal had a copy of the lease of the ground floor flat (Flat 1) at the property. It is dated 1 January 1978 and is for a term of 99 years from 7 December 1979 at a ground rent of £20 for the first 33 years and rising thereafter. The proportion of service charges attributable to Flat 1, was one sixth. The accounting year runs to 25 March each year.

5. At Clause 4(1) the lessee is to pay an interim service charge of £30 payable on 25 March and 29 September each year, with a balancing exercise if the landlord's total costs exceed the interim payment after the annual account is served. The service charge is payable "in respect of items of maintaining and managing the building" as set out at Clause 4(5). This includes at (a) "the cost of and incidental to" the performance of the landlord's covenants at Clause 5, and at (b) to (d), the cost of professional fees and managing agents.

6. The landlord's covenants Clause 5(2) are to "maintain repair ... redecorate and renew" the roof, gutters & rainwater goods, main structure & exterior, common parts, sewers, drains and wiring, excluding those exclusively serving the flat.

7. The lessee is responsible for maintaining and repairing the demised premises, i.e. the flat, as defined at Clause 1 (a)-(f) to include the entrance door, internal doors, windows frames, ceilings and floors. Clause 3(4) provides that the lessee at his own expense must carry out any works in relation to the demised premises required "by any Act of parliament or bye-law of the Sanitary Local or other competent Authority".

Inspection

8. The members of the Tribunal inspected the property before the hearing accompanied by Mr. Taylor and Mr. Stone. It comprised a ground floor flat in a mid-terraced Victorian house converted into 6 flats, with rendered and painted elevations under a mansard roof. There were replacement UPVC windows and cast-iron balconies to the front. Exterior decorations were in fair condition.

9. Internally Mr. Taylor gave the Tribunal members access to the ground floor flat. It comprised three rooms, kitchen, bathroom & WC, and was in good condition and decorative order. There were fire sprinklers in all rooms except the bathroom but no smoke detectors. The original paneled doors had been treated with fire-resistant material and paint.

10. The common parts had been recently repainted. A fire sprinkler system, smoke detectors and emergency lighting had been installed throughout and the pump serving the sprinkler system was housed in a small room off the top landing.

Hearing

11. A hearing took place in Hastings on 25 February 2010. Mr. Taylor attended in person. Mr. Stone attended accompanied by Miss Burlington, recently appointed as managing agent for the property.

12. Mr. Taylor purchased the flat as a buy-to-let property which was sub-let. He wished to challenge the sum of £2,554.54 which had been demanded on 30 September 2008 as an interim service charge by the then managing agents, Countrywide Estates. The accounts for the year ending 25 March had not yet been prepared, as Countrywide had so far failed to provide the necessary information to Miss Burlington.

13. The basis of the interim charge had not been explained but the Tribunal calculated on the evidence of the second stage Section 20 Notice dated 21 August 2008 that it related to the proposed charge for fire precaution works: the quote from Triangle Fire Systems of £12,690 inclusive of VAT, and £2,000 contract administration and £270 property management fees plus VAT. This totaled £15,357.25 of which one sixth was £2559.54 divided by the 6 flats in the building. Mr. Stone directly owned 3 flats and the remaining 2 were owned by lessees who did not take part in the proceedings.

14. The fire precaution works became necessary when in late 2007 Mr. Stone decided to convert the top floor maisonette into 2 flats. He was aware that the fire precaution systems in the building were in need of updating to comply with current fire safety and HMO regulations. In the course of obtaining planning permission and building regulations consent from Hastings BC, he was verbally informed at a site visit that a sprinkler system, smoke detectors and upgraded emergency lighting were required. No notices were served under Housing Act 2004. Mr. Stone understood that the redevelopment would have to satisfy building control requirements before he could let the newly converted flats.

15. Mr. Stone was in charge of the redevelopment and worked together with Countrywide. It is not clear why there was a delay between December 2007 and May 2008, but the managing agents served a Notice of Intention as the first stage of consultation under Section 20 of the 2002 Act dated 21 May 2008 describing the proposed works as "fire precaution works" with no further details Written

observations were invited within 30 days. Mr. Taylor received this notice but did not respond to it.

16. A second stage Section 20 notice was served on 21 August 2008 along with copies of 3 estimates. Mr. Taylor said he had not received this notice and the first he knew about the works being carried out was around October 2008 when Countrywide contacted him wanting to gain access to fit the sprinklers to his flat. Mr. Taylor did not want the sprinklers and did not accept that they were necessary. He eventually agreed to give access but felt under pressure from Countrywide. The rest of the works had already been completed in the upper flats and common parts.

17. Mr. Taylor did however receive the service charge demand in issue. He did not respond to it or raise any query. He could not adequately explain why not, apart from to state that he could not afford it and just left it. His case was that he should not have to contribute towards the cost of the fire precaution works because they only became necessary as a result of Mr. Stone's conversion of the top flats. He raised no dispute about the actual cost or quality of the works.

18. Mr. Taylor further contended that he had recently at his own expense carried out work inside his flat to make the entrance door and internal doors fire resistant, having been advised to do so by Hastings BC. In September 2009 he had received an informal notice only from the local authority referring to fire hazards but no remedial notice under the Housing Act 2004.

19. Miss Burlington submitted that all the fire precaution works including the sprinklers were necessary and required by Hastings BC in relation to all buildings of this type. She referred to the LACORS guide as evidence of the required standards and submitted that as the systems were installed for the benefit of all 6 units in the property, each unit should bear its proportion of the cost.

20. At the hearing the Tribunal referred to the lease and asked the parties for their observations on whether, and if so why, the costs in issue amounted to service charges and related to works which the landlord had authority to charge under the lease terms. Neither Mr. Taylor nor Mr. Stone had looked at the lease, so the Tribunal adjourned to give them the opportunity to consider the point.

21. After the adjournment Miss Burlington submitted that under Clause 3(4), if a formal notice had been served on either Mr. Taylor or Mr. Stone under the 2004 Act, then Mr. Taylor would have been responsible had the works not already been carried out and paid for by Mr. Stone. Mr Taylor stressed that no formal notices had been served but had nothing further to add.

Decision

22. It appeared to the Tribunal that at no point during the process of the conversion works or the installation of the fire precaution systems had either Mr. Stone or Countrywide considered whether the cost of the works could be recovered from the lessees as service charges under the terms of the lease. It had simply been assumed that this would be possible.

23. However, in the Tribunal's opinion, the costs of the fire precaution works were not within scope of the landlord's authority to charge to the lessees under the terms of this lease. As set out in paragraph 5 above, the service charges are payable in respect of the items contained in the landlord's repair and maintenance

covenants at Clause 5(2). This is an exhaustive list which does not encompass the works in issue. There is no authority for the landlord to carry out or charge for improvements, nor is there any catch-all provision sometimes found in more modern leases for the landlord to charge for any works considered necessary for the benefit or better management of the property.

24. The Tribunal accepted Mr. Stone's evidence that he had installed the sprinklers, smoke detectors and emergency lighting in accordance with the verbal advice given by officers of the local authority as part of the conversion works, and that he recognised his responsibilities to comply with fire safety requirements at the property. Further, Mr. Taylor also had carried out necessary works inside his flat. However, as explained above, the liability for the cost of the works as between the landlord and tenants is governed by the terms of the lease.

25. The Tribunal concluded that there was no liability under the lease for Mr. Taylor to contribute to the costs of the fire precaution works and therefore the sum in issue of £2,559.54 was not payable by him.

Dated 26 March 2010

Signed

Ms J A Talbot MA

Chairman