

**Southern Rent Assessment Panel and Leasehold Valuation Tribunal**

Case No. CHI/00ML/LIS/2008/0007

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
SECTION 27A and SECTION 20C of the LANDLORD AND TENANT ACT 1985**

**Property:** 7 Whippingham Street, Brighton BN2 3LL

**Applicant:** Latimer Properties Ltd (landlords)  
Represented by Craven Property Management

**Respondent:** Ms Dawn Evans (tenant)

**Appearances:** For the Applicant:  
Mr Rokach, Director of Craven Management

For the Respondent:  
Ms Evans in person

**Application:** 09 February 2008

**Pre-Trial Review:** 19 March 2008

**Hearing:** 10 July 2008

**Decision:** 09 October 2008

**Members of the Leasehold Valuation Tribunal**

Ms J A Talbot MA  
Mr N Cleverton FRICS  
Ms J Dalal

**Ref: CHI/00ML/LIS/2008/0007**

**7 Whippingham Street Brighton BN2 3LL**

### **Application**

1. This was an Application received on 13/02/2008 made by Craven Property Management on behalf of the landlord, Latimer Properties, of 7 Whippingham Street, Brighton BN2 3LL, pursuant to Section 27A of the Landlord and Tenant Act 1985 for a determination in relation to payability of service charges by the tenant of the ground floor flat, Ms D Evans, since 1991.

### **Background**

2. A Pre-Trial Review was held on 13/03/2008. Mr Rokach and Ms Evans attended in person. The Directions provided for the Applicant to produce a Statement of Case relating to the matters in dispute, and for the Respondent to produce a Statement in reply. Neither party complied with the Directions. Miss Evans added an application under Section 20C in relation to the landlord's costs.

### **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 payable by a tenant to a landlord for the costs of services, repairs, some improvements, maintenance or insurance or the landlord's costs of management, under the terms of the lease (S.18 LTA 1985). 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. The Lease is dated 9 March 1986 and is for a term of 99 years from 25 December 1985 at a ground rent of £50 per year for the first 25 years and rising thereafter.
5. The provisions relating to the calculation and payment of the service charge are to be found at Clause 7. The tenant's proportion of the maintenance charge is one half. By Clause 7(1) the tenant is to pay to the landlord on 25 December each year an advance maintenance charge in "*such amount as the lessor or his managing agents shall in their reasonable discretion specify on account of the moneys expended or to be expended by the lessor in maintaining and managing the building*".
6. Clause 7 also requires the landlord to prepare a certificate of account, which "*shall contain a fair summary of the expenses and outgoings incurred by the lessor for the period to which it relates*". The tenant is then liable to pay the balance within 14 days

of receipt, failing which interest is payable “at 14% per annum or 2% above Barclays Bank Limited base rate whichever shall be the greater”.

### Issues in Dispute

7. The service charges in issue, identified in Paragraph 1 of the Directions, relate to the liability to pay and the reasonableness of the costs of insurance, management and decorating work from 1991.

### Inspection

8. The Tribunal members inspected the property before the hearing. It comprised a mid-terrace house built in the early 20<sup>th</sup> century in 2 purpose-built flats with separate entrance, of rendered brick construction under an interlocking concrete tiled roof. The external decorations were in poor condition, the timber windows were rotting and the front garden neglected.
9. Internally the accommodation consisted of a 3 room ground floor flat with a kitchen and bathroom/WC. The small rear garden was shared with the tenants of the first floor flat. The flat had gas central heating installed by the tenant.

### Hearing

10. The hearing took place in London on 10 July 2008. It was attended by Mr Rokach and Ms Evans.

### Facts

11. On the basis of its inspection, the documents produced and submissions made by the parties at the hearing, the Tribunal found the following facts:
  - (a) Ms Evans purchased the ground floor flat in 1989. The property was structurally poorly maintained and had not been decorated externally for many years. Mr Rokach said that the property had been owned by his late mother and sold to Latimer Properties. He and his wife were sole directors of Craven Management and he managed the property personally.
  - (b) Neither Mr Rokach nor Ms Evans could adequately explain why they had failed to comply with the Directions. Apart from the lease, the only papers provided to the tribunal were copies of brief accounts of expenditure for the years from 1991 and some brief correspondence. It was the landlord's case that Ms Evans had not made any service charge payments since 1991. By the year ending 25/12/2007 the service charge arrears claimed were £19,645.24.
  - (c) The accounting year in the lease was to 25 December each year. Most accounts were supplied in January or February of the following year, but some not until May or June. Each set of accounts was marked as certified by Craven Management. The accounts for the years ending 25 December 2000 and 2004 were not provided until 2002 and 2006 respectively. In table form the relevant dates were:

Accounting Year ending	Accounts dated
25/12/1991	24/02/1992
25/12/1992	04/01/1993
25/12/1993	04/01/1994
25/12/1994	07/01/1995
25/12/1995	15/01/1996
25/12/1996	14/01/1997
25/12/1997	08/04/1998
25/12/1998	02/05/1999
25/12/1999	26/01/2000
25/12/2000	Not provided until 20/01/2002
25/12/2001	20/01/2002
25/12/2002	12/02/2003
25/12/2003	09/05/2004
25/12/2004	Not provided until 19/06/2006
25/12/2005	19/06/2006
25/12/2006	27/02/2007
25/12/2007	17/01/2008

- (d) The tribunal first raised the question of limitation and whether the landlord was limited by any rule of law from claiming service charges back to 1991, which was a period of 17 years. This issue had been raised at the Pre-Trial Review but not followed up by either of the parties. Mr Rokach submitted that the tribunal could go back 6 years, but had no legal argument in support of this, had not sought advice, and left the matter to the tribunal. Ms Evans had not considered the point.
- (e) The tribunal further raised the fact that there were no accounts provided for the years ending 25/12/2000 and 25/12/2004, until 20/01/2002 and 19/06/2006 respectively. In answer to a question from the tribunal as to whether some expenditure could not be recovered if service charges were not demanded within 18 months of the relevant costs being incurred (under Section 20B of the 1985 Act), Mr Rokach said that he would leave this to the tribunal.
- (f) For each year, the main headings of expenditure were management fees and insurance renewal, together with interest on unpaid service charges. When serving each set of accounts Mr Rokach had also demanded £200 service charges in advance on account for each year, but was unable to explain how he had budgeted for this figure.
- (g) Interest was charged at a flat rate of interest for the period, which for most of the years was greater in amount than the other charges. Mr Rokach was unable to explain how he had calculated interest under the terms of the lease. He submitted that for each year he had used a figure which he thought was about 4% above base rate, which he said everybody knew, and applied it to the whole year. Each year he added interest in the same way on the accumulated arrears.
- (h) In relation to insurance premiums, Mr Rokach said the property was insured under a block policy and that he had taken over the insurance arrangements from the previous owner (his mother). After taking over management, he shopped around by telephone for the best quote. He had used brokers Fulgate

and Towergate at some point. There was no claims history for the property. The landlord had not taken any commission. He provided copies of a "flats policy insurance schedule" from Norwich Union for the years 4 July 2004-2008 inclusive showing the insured premises as "7-7a Whippingham Street" and the total premium payable which corresponded with the figures in the accounts for those years. He did not provide any further details of the cover or any policy documents. In relation to the other years, he asserted that the property had been adequately insured and that the sums claimed in the accounts were the actual premiums he had paid.

- (i) Ms Evans said she had asked Mr Rokach by telephone to send her copies of the insurance documents but he had failed to do so. She was unable to say when this was but it had been several years ago. She had not followed this up with any request in writing. She did not see why she should pay for something she had not seen a bill for. She thought the insurance costs were excessive, but was unable to present any evidence in support of this contention. She had not obtained any alternative quotes but had spoken to friends who paid less for their insurance. She had withheld payments of her service charges because of this. She found it hard to get any information from Mr Rokach but admitted on questioning that she could have been more pro-active.
- (j) In relation to management charges, Mr Rokach charged a flat rate for managing the building and divided this by 50%. The charges were £190 per year in 1991 rising to £200 in 1994, £220 in 1996, £240 in 1997, and £250 in 1998 onwards. He was unable to explain how this rate was set. He said the charges covered file keeping, paperwork and arranging insurance. He did not regularly visit the property, carry out routine maintenance or arrange regular repairs. In 2006 he had obtained some estimated for exterior decoration but the work was never carried out. His firm, Craven Management, did not have a management contract in place with the landlord Latimer Properties. He was unable to explain the basis of any agreement with Latimer, or what his duties or responsibilities were, other than general management. He was not aware of the RICS Code.
- (k) Against this background the tribunal asked both Mr Rokach and Ms Evans why this unsatisfactory situation had been allowed to drift for so long. Mr Rokach said he had sent a few letters to Ms Evans over the years but not followed them up. He had once contacted her mortgage lender but to no avail. He thought Ms Evans might be under financial or personal pressure and had not wanted to pursue her, but once the arrears reached £19,000 he felt he had to take action. Ms Evans said she realised she had a liability to pay some service charges but did not agree the charges were reasonable. She admitted that as the years went by she felt overwhelmed by the increasing arrears, especially the interest element. She was willing to abide by the tribunal's determination.

### **Decision**

12. The Tribunal first considered the question of limitation. The application was brought by the landlord and was an action to recover service charge arrears under the terms of the lease, which is a deed. This was in law an action on a specialty, therefore by virtue of Section 8 of the Limitation Act 1980, the time limit is 12 years from the date the cause of action accrued. Under this lease, the service charges were not reserved

by way of rent; if they had been, the time limit would have been 6 years (Section 19 of the 1980 Act). The tribunal therefore concluded that the landlord could go back 12 years from the date of the application, i.e. to 13/02/1996. The first service charge demand after that date was made on 14/01/2007 when the landlord demanded £200 on account of anticipated expenditure. The result was that the service charges for the years 1991 to 1995 inclusive were not recoverable.

13. Secondly the tribunal considered whether the landlord was prevented from recovering any service charges under Section 21B because he had not demanded them within 18 months of incurring the relevant expenditure. It decided that this statutory rule applied to the years ending 25/12/2000 and 25/12/2005 (as shown in the table above) and that therefore no service charges were payable by the tenant for those years.
14. Thirdly the tribunal considered whether the service charges had been demanded in accordance with the terms of the lease. It concluded that the terms were fairly straightforward and allowed the landlord to demand payments at its discretion on account in advance on 25 December each year. The advance demand for £200 each year was included with the accounts, complied with lease terms, and contained the necessary information of the landlord's name and address.
15. In relation to the insurance premiums, the tribunal accepted that the property was insured, and from its own general knowledge and expertise found that the premiums were reasonably within the market range for the area, size and type of property insured. The reinstatement figures on the schedules provided also appeared reasonable. Ms Evans offered no evidence of alternative premiums. Her only objection was based on the fact that Mr Rokach did not supply a copy of the policy when asked several years before, but this did not in the tribunal's opinion justify non-payment of service charges, and she raised no credible challenge to the insurance premiums.
16. In relation to management charges, the tribunal noted that the landlord was entitled to recover these under the terms of the lease, but subject to the statutory regime, so that the costs must be reasonably incurred and the services to which they relate must be of a reasonable standard. The tribunal had serious concerns about the nature and quality of Mr Rokach's management of this property. There was no routine maintenance, no regular inspections, and the exterior had been neglected for many years. There was no pro-active management at all other than to arrange insurance. He had a somewhat casual approach. He had not heard of the RICS Code to which all managers are required to have regard. In these circumstances the tribunal concluded that the charges demanded were unjustified and allowed £100 per year as a reasonable charge for managing the whole property.
17. Turning to the interest calculation, the tribunal was concerned to note that this had simply been allowed to add up over the years until it alone formed the bulk of the charges. It was clear that the interest had not been calculated in accordance with the terms of the lease, which require a careful calculation based on the appropriate interest rate, including all changes, and running from the appropriate date (14 days from the date of demand). There was no schedule or calculation, just a rough-and-ready assumption that one interest rate applied for the whole period between each

set of accounts. In these circumstances the tribunal concluded that the sums charged could not be justified at all, and disallowed all interest claimed.

18. The tribunal has set out in the attached Appendix its calculations of the service charges payable by Ms Evans to the landlord Latimer Properties via its agent Craven Management in accordance with the reasons set out above.

#### **Determination**

19. **The tribunal therefore determines** in accordance with its powers under Section 27A of the Landlord and Tenant Act 1985, that the total sum of **£4,240.34** is payable by the Respondent to the Applicant within **14** days of the date of this Decision.

#### **Section 20C**

20. Ms Evans made an application under Section 20C for an order that any costs incurred by the landlord in connection with these proceedings should not be regarded as relevant costs to be included in any future service charges payable by her. At the hearing Mr Rokach confirmed that he did not intend to charge any such costs to the service charge account. Accordingly it was not necessary for the tribunal to make an order under Section 20C.

**Dated 09 October 2008**

**Signed**  
**Ms J A Talbot**  
**Chairman**

Appendix**7 Whippingham Street, Brighton, BN2**

		<b>Payable by tenant</b>
<b>Y/e 25/12/1996 (demanded 14/01/1997)</b>		
Management fee	£100	
Insurance	<u>£550.92</u>	
	£650.92 @ 50%	£325.46
<b>Y/e 25/12/1997 (demanded 08/04/1998)</b>		
Management fee	£100	
Insurance	<u>£571.85</u>	
	£671.85	£335.92
<b>Y/e 25/12/1998 (demanded 02/05/1999)</b>		
Management fee	£100	
Insurance	<u>£598.73</u>	
	£698.73 @ 50%	£349.36
<b>Y/e 25/12/1999 (demanded 26/01/2000)</b>		
Management fee	£100	
Insurance	<u>£628.66</u>	
	£728.66 @ 50%	£364.33
<b>Y/e 25/12/2000 (demanded 26/01/2000)</b>		
NIL		NIL
<b>Y/e 25/12/2001 (demanded 20/01/2002)</b>		
Management fee	£100	
Insurance	<u>£745.69</u>	
	£845.69 @ 50%	£422.84
<b>Y/e 25/12/2002 (demanded 12/02/2003)</b>		
Management fee	£100	
Insurance	<u>£932.89</u>	
	£1,032.89 @ 50%	£516.44
<b>Y/e 25/12/2003 (demanded 09/05/2004)</b>		
Management fee	£100	
Insurance	<u>£941.77</u>	
	£1,041.77 @ 50%	£520.88
<b>Y/e 25/12/2004 (demanded 09/05/2005)</b>		
NIL		NIL
<b>Y/e 25/12/2005 (demanded 09/05/2006)</b>		
Management fee	£100	
Insurance	<u>£664.43</u>	
	£764.43 @ 50%	£382.21
<b>Y/e 25/12/2006 (demanded 27/02/2007)</b>		
Management fee	£100	
Insurance	<u>£711.44</u>	
	£811.74 @ 50%	£405.72



**Y/e 25/12/2007 (demanded 17/01/2008)**

Management fee	£100	
Insurance	<u>£734.35</u>	
	£834.36 @ 50%	£417.18
Plus advance maintenance charge for current year		£200
<b>Total payable</b>		<b>£4,240.34</b>

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Represented by Craven Property Management

**Respondent:** Ms Dawn Evans (tenant)

**Appearances:** For the Applicant:  
Mr Rokach, Director of Craven Management

For the Respondent:  
Ms Evans in person

**Application:** 09 February 2008

**Pre-Trial Review:** 19 March 2008

**Hearing:** 10 July 2008

**Decision:** 09 October 2008

**Refusal of permission to appeal:** 06 November 2008

**Members of the Leasehold Valuation Tribunal**

Ms J A Talbot MA  
Mr N Cleverton FRICS  
Ms J Dalal

**Ref: CHI/00ML/LIS/2008/0007**

**7 Whippingham Street Brighton BN2 3LL**

**Application for Permission to Appeal**

1. The Applicant's managing agent, Mr Rokach of Craven Property Management, has applied for permission to appeal against a decision of the Leasehold Valuation Tribunal dated 09 October 2008.
2. This was a determination of service charges payable by the tenant, Ms Dawn Evans, under S.27A of the Landlord and Tenant Act 1985.
3. Permission to appeal is refused.
4. The grounds of appeal assert that the Tribunal erred in disallowing interest payable on late service charges.
5. The Tribunal is satisfied that it was entitled to reach the conclusions that it did on the basis of the evidence before it, for the reasons fully explained in its Decision, in particular at paragraph 17, in relation to the disallowance of interest on late service charge payments. In brief, although the lease does entitle the landlord to such interest, on the evidence before it the Tribunal found that the Appellant had failed over a long period to calculate the interest in accordance with the lease terms.
6. There was no arguable error of law by the Tribunal in its application of Section 27A.

*It is for the parties now to consider whether they wish to make a similar application to the Lands Tribunal within 14 days, in accordance with Rule 5C(2) of the Lands Tribunal Rules 1996 (as amended) (SI 1996 1022), and paragraph 5.4 of the Lands Tribunal Practice Direction dated 16 May 2006.*

**Dated 06 November 2008**

**Ms J A Talbot MA  
Chairman of the Tribunal**

