

CHI/00LC/LSC/2008/0095

**DECISION OF THE LEASEHOLD VALUATION
TRIBUNAL ON APPLICATION UNDER SECTION 27A OF
THE LANDLORD & TENANT ACT 1985**

Address: 25 Sunderland Close, Rochester, Kent, ME1 3AS
Applicant: Shuttleworth Property Management Limited
Respondent: Ms C Richards
Application: 3 September 2008
Inspection: 2 December 2008
Hearing: 2 December 2008

Appearances:

Landlord

Mr M Paine FPCS MIOD Head of Legal Services
Circle Residential Management Ltd, Managing Agents
For the Applicant

Tenant

Did not attend nor represented

For the Respondent

Members of the Tribunal

Mr I Mohabir LLB (Hons)
Mr R Athow FRICS MIRPM

IN THE LEASEHOLD VALUATION TRIBUNAL

CHI/00LC/LSC/2008/0095

**IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT
1985**

**AND IN THE MATTER OF FLAT 25, SUNDERLAND CLOSE,
ROCHESTER, KENT, ME1 3AS**

BETWEEN:

SHUTTLEWORTH PROPERTY MANAGEMENT LIMITED

Applicant

-and-

CLAIRE JOAN RICHARDS

Respondent

THE TRIBUNAL'S DECISION

Introduction

1. This is an application by the Applicant made pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of the Respondent's liability to pay and/or or the reasonableness of an interim estimated service charge contribution in the sum of £800 in the 2007/2008 service charge year.
2. The Respondent is the lessee of the property known as Flat 25, Sunderland Close, Rochester, Kent, ME1 3AS ("the subject property"). The Applicant is the freeholder. The Applicant occupies her premises by virtue of a lease dated 29 April 1988 granted by The City Council of Rochester Upon Medway to Ms A J Barnes for a term of 125 years from 1 November 1987 ("the lease").

3. By clause 3(1)(a) of the lease, the lessee covenanted to pay the lessor a contribution of 16.67% of the costs incurred pursuant to the Third Schedule. Essentially, the Third Schedule sets out those costs that may be incurred by the lessor and recoverable through the service charge account. It is not necessary to set these out here because the sum claimed by the Applicant is on account of those heads of claim. They only become relevant to the extent that the lessor seeks to recover any costs incurred that may or may not fall with the Third Schedule. That position does not arise in this application.
4. Clause 3(1)(b) provides that this contribution shall be estimated by the lessor as soon as practicable after the beginning of the municipal year and payable by the lessee by four equal instalments on the usual quarter days. The interim service charge payment is sought under this clause of the lease.
5. It seems that the Applicants managing agent, Circle Residential Management Ltd (“Circle”) had unsuccessfully tried to recover the interim service charge payment from the Respondent. Thereafter, it issued this application on 3 September 2008. Apparently, the Applicant has made three earlier identical applications claiming interim service charge contributions for the years 2005/06, 2006/07 and 2008/09, all of which were successful.
6. On 18 September 2008, the Tribunal issued Directions in this matter. Only the Applicant has complied with those directions. The Respondent has not only failed to comply with those directions, but has failed to play any part in these proceedings at all.

Inspection

7. The Tribunal inspected the common parts of the subject property on 2 December 2008. Although they found it to be a generally well maintained block, that is of no relevance in these proceedings.

Decision

8. The hearing in this matter also took place on 2 December 2008. The Applicant was represented by Mr Paine, Head of Legal Services of Circle. The Respondent did not attend and was not represented.

9. Mr Paine had, helpfully, set out set out his submissions in writing in a statement of case prepared on behalf of the Applicant. He generally repeated those submissions and took the Tribunal to the relevant lease terms he relied on. Mr Paine said that the estimated service charge budget expenditure for 2007/08 was as follows:

Cost Heading	£
Audit & Accounting	165.00
Building Repairs	227.00
Electricity	300.00
Gardening	800.00
Cleaning	800.00
Building Insurance	1,450.00
Management Fees	1,058.00
Total	4,600.00

Of the total estimated budget expenditure, the Respondent was contractually liable for 16.67%, being £800.

10. As a matter of law, Mr Paine submitted that the correct test to be applied was under s.19(2) of the Act, namely:

“Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.....”

Applying this test, he went on to submit that the interim service charge contribution was reasonable because the actual service charge expenditure was, in fact, £16,059.

11. The only evidence before the Tribunal was that filed and served on behalf of the Applicant. In the absence of any evidence from the Respondent, the Tribunal was bound to conclude that the interim service charge contribution claimed against the Respondent was reasonable within the meaning of s.19(2) of the Act. This was especially so, having regard to the actual expenditure incurred by the Applicant in the 2007/08 service charge year. The Tribunal summarily handed down its decision at the hearing to Mr Paine.

Fees

12. Mr Paine told the Tribunal that, on behalf of the Applicant, Circle had incurred fees totalling £220 in issuing the application and having it heard. He made an application for the Respondent to reimburse the Applicant those fees under paragraph 9 Schedule 12 of the Commonhold and Leasehold Reform Act 2002.

12. Again, the Tribunal had little difficulty in granting this application. The Applicant had been obliged to bring the substantive application because of the non-payment of the interim service charge contribution on the part of Respondent and the Applicant had wholly succeeded. The justice of the case was met by ordering the Respondent to reimburse the Applicant fees totalling £220.

Paragraph 10 Schedule 12 Costs

13. Mr Paine made a further application for costs of £500 under this provision in the Commonhold and Leasehold Reform Act 2002. He took the Tribunal to the relevant correspondence with the Respondent in which he sought to compromise the matter. This made been met with resolute silence from her. Indeed, she had not participated in these proceedings at all and the application had succeeded. The Applicant's costs were approximately £2,000 plus VAT and he sought a contribution of £500 from the Respondent in this regard.

14. It seems that in two earlier Tribunal decisions dated 11 November 2007 and 8 August 2008, the same application had been made on behalf of the Applicant against the Respondent on the same basis and granted. In both instances, the Tribunal found that, by her conduct, the Respondent had acted unreasonably. This Tribunal makes the same finding for the same reason and, accordingly, awards the Applicant cost of £500 personally against the Respondent.

Dated the 2 day of January 2009

CHAIRMAN.....*I. Mohabir*.....
Mr I Mohabir LLB (Hons)