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/LIS/2009/0020**
Property:	**Flat 3 9-10 York Place Brighton BN1 4GU**
Applicant/tenant:	**Mr O Droseltis**
Respondent/landlord:	**Originally Southern Horizon Housing Ltd Now amalgamated with Amicus Horizon Group Ltd**
Date of Deliberation	**13th July 2009**
Tribunal:	**Mr R T A Wilson LLB (Lawyer Chairman) Ms J A Talbot MA (Cantab) (Lawyer Member)**
Date of the Tribunal's Decision:	**22nd July 2009**

THE APPLICATION

1. This was an application made by Mr Droseltis purportedly under section 27A of the Act for a decision regarding his liability to pay service charges in respect of the above mentioned premises. The application was made in respect of three years being the 1st April 2007 to 31st March 2008, the 1st April 2008 to 31st March 2009, and also in respect of the future year 1st April 2009 to 31st March 2010.

2. We say that the application was purportedly made under section 27A of the Act because the principal argument in relation to this case is the question of whether the Leasehold Valuation Tribunal has jurisdiction to entertain the application.

3. On the 14th April 2009 the Tribunal gave directions that it proposed to deal with this preliminary point of jurisdiction on the basis of written representations only without a

formal hearing. Neither party objected and indeed both parties confirmed that they were content for the Tribunal to deal with the issue without a formal hearing.

THE FACTS

4. The Applicant is the tenant of Flat 3, 9-10 York Place, Brighton, East Sussex upon the terms of a tenancy agreement dated the 3rd February 2006 which was granted by Southern Horizon Housing Limited which the Tribunal understands has now amalgamated with Amicus Horizon Group Limited.

5. The tenancy agreement is stated to be an assured shorthold tenancy and commenced on Monday the 6th February 2006.

6. Details of the rent and service charge are stated on the first page of the agreement to be:-

Basic rent:	£67.38 per week
Plus for Services	£11.30 per week
Total Rent	**£78.68 per week**

The space after the words "and including the following services" has been left blank.

7. Clause 1d provides, *the landlord lets to the tenant from the start date shown above*:

a) .....
b) .....
c) .....
d) The services (if any) shown above.

8. Clause 3 is entitled, '*Promises by the Landlord*' and at sub clause (c) states, "*to provide the services (if any) shown on the front page of this agreement*".

9. The Tenancy agreement has the following provisions in respect of rent and service charge at clause 9:-

The total rent payable or any separate element of it may be changed by the landlord at any time before or after the end of the contractual period of this tenancy:

a) in the case of a decrease, at any time on one week's written notice to the tenant

b) in the case of an increase:

i) in the basic rent as shown on the first page of this agreement and then from the 1st April each year following (whether before or after the expiry of the term granted by this agreement) by the landlord giving the tenant not less than four weeks notice in writing of the proposed new rent; which may not be given at any time before or up

to three months after the 1st April to have effect from the 1st April notwithstanding the date has already passed.

ii) In any other charge making up part of the total rent shown on the first page of this agreement, upon the landlord giving the tenant not less than four weeks notice of the increase.

THE LAW

10. Sections 18 and 19 of the Act as amended provide as follows:-

18 Meaning of "service charge" and "relevant costs"

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a [dwelling] as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance[, improvements] or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose—

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

19 Limitation of service charges: reasonableness

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

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

[(2A) . . .

(2B) . . .

(2C) . . .]

(3) . . .

(4) . . .

[*(5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.*

CONCLUSIONS ON JURISDICTION

11. The Tribunal firstly noted that the tenancy agreement was defective because the particulars on the first page of the tenancy agreement fail to set out any "services" which are to be provided by the landlord. This conflicts with the definition of rent also contained on the first page of the tenancy agreement, which includes a sum of £11.30 per week in respect of services.

12. The tenancy agreement makes two further references to services, the first contained in clause 1(d) and the second by implication as set out in clause 9(b) (ii).

13. Clause 1(d) states somewhat ineloquently that the landlord lets to the tenant from the start date shown above, *"the services (if any) shown above"*. The Tribunal considered that the purpose of this clause was to establish a contractual obligation on the part of the landlord to provide services for which a charge was to be made initially in the sum of £11.30 per week. Unfortunately in failing to particularize the services the tenancy fails to establish this contractual obligation.

14. At Clause 9 of the tenancy agreement contains what the Tribunal considered to be a rudimentary mechanism for increasing firstly the basic rent and secondly increasing the service charge element of the rent. Clause 9(b) (ii) enables the landlord to increase *any other charge making up part of the total rent shown on the first page of this agreement, upon the landlord giving the tenant not less than four weeks notice of the increase.* The Tribunal considers that these words are intended to cover the service charge element of the rent.

15. The essential question to be answered by the Tribunal is does clause 9 (b) (ii) of the tenancy agreement amount to a variable service charge within the meaning of section 18 of the Act? If the answer to this question is yes then the Tribunal is able to accept jurisdiction and assess the rent/service charge payable by reference to section 27A of the Act. If the answer is no then the tenancy agreement does not contain a variable service charge but a fixed one, and as a result the Tribunal has no jurisdiction to determine the service charge/rent which will be capable of review pursuant to section 14 of the Housing Act 1988, if the tenant refers a Notice proposing a rent increase served by the landlord under Section 13 to the Rent Assessment Committee .

16. The Tribunal firstly considered the effect of the assured shorthold tenancy agreement failing to set out the service charges to be provided by the landlord. Whilst it is common ground that the Respondents are providing services, the Tribunal is of the view that the failure to set out the scope of services in the tenancy agreement means that the landlord is not under a contractual obligation to provide any of the service nor is the tenant under any obligation to pay for them. If the Tribunal is correct in its interpretation of the tenancy agreement in this way, it follows that the tenancy agreement does not contain either a fixed or variable service charge and accordingly the Tribunal has no jurisdiction to deal with this application.

17. However, to assist the parties the Tribunal extended its deliberations to consider if it would have jurisdiction in the event of the tenancy agreement being cured of its defects by the inclusion of a clause detailing the services to be provided by the landlord.

18. The Tribunal considered not only the statutory material, and in particular sections 18 and 19 of the Act, but also two Upper (Lands) Tribunal decisions namely, *Homegroup Limited v Lewis and others LRX/176/2006 and Argun Chand v Calmore Area Housing Association Limited LRX/170/2007.*

19. The tenancies in these cases had been granted by a housing association whose agreements provided for a fixed sum for rent and another fixed sum for service charge and also contained a note that the service charge is part of the rent and will change at the same time. In each case the tenancy provided for annual rent revision by notice and the tenant sought to challenge the service charge under section 27A of the Act. In practice when the landlord gave notice of increase each year it would fix the service charge by reference to the actual costs of the previous year. However, the tenancy did not indicate that either the altered rent or the element of rent relating to service charge was to be calculated in any particular manner. It was held by the Tribunal in both cases that the rent (including service charge) was not a payment, "*the whole or part of which varies or may vary according to the relevant costs*" for the purposes of section 18 of the Landlord and Tenant Act 1985. The Upper (Lands) Tribunal thus held that the service charges were therefore fixed service charges and properly within section 14 of the Housing Act 1988 rather than section 18 of the Landlord and Tenant Act 1985.

20. The wording of these tenancy agreements differ from the tenancy agreement being considered here and therefore can be distinguished. However, in the two cases above mentioned it was held that there are two components of a charge falling within section 18(1) of the Act. Either a charge must be one which is either directly related to (and varied with) the costs incurred, or alternatively a charge is payable on account with a balancing charge being made at the end of the relevant period once the relevant costs are known.

21. In the tenancy agreement under review there is nothing indicating that any altered rent is to be calculated in any particular manner, or linking an alteration in rent (including service charge) with an alteration in the cost of providing any relevant services. Further more, there are no provisions for a balancing charge to be made once the relevant costs have been established. Accordingly the Tribunal takes the view that section 18 (1)(b) is not satisfied. It is true that the landlord in deciding whether to serve a notice of increase and, if so how much that increase should be, may well inform itself by reference to the estimated cost of providing the services, but it is not obliged to do so. In this case there is no direct relationship between the amount of the cost as a cause and the amount of the service charge as a consequence. Interposed between the amount of the costs and the amount of the service charge is the independent decision of the landlord. For these reasons the Tribunal considers that the service charge under review is a fixed service charge.

22. In the final analysis therefore the Tribunal concludes that it has no jurisdiction to deal with application which was purportedly made under section 27A of the 1985 Act.

Chairman_____
R.T.A.Wilson

Dated 22nd July 2009