IN THE LEASEHOLD VALUATION TRIBUNAL
UNDER S27A LANDLORD & TENANT ACT 1985

DECISION AND REASONS

Case No	CHI/OOML/LSC/2009/0066
Property	14 Upper Market Street Hove
Applicant	Mr T N Douglass Landlord
Respondent	Mr P Roberts(Tenant, Upper and Ground Floor Flats)
Date of hearing	8 July 2009
Date of decision	2009
Members of the Tribunal	Ms H Clarke (Chair) Mr R A Wilkey FRICS FICPD Ms J Morris

1. **APPLICATION**
The Applicant became the freehold owner of the property, including the lower ground floor flat, in 1998. In early 2003 the Respondent acquired at auction the leasehold interest in the Upper Flat (First and Second Floors) and in 2008 he acquired at auction the leasehold interest in the Ground Floor Flat. The Applicant issued a claim for unpaid insurance costs and rent in the Brighton County Court. He also objected that the Respondent would not give him access to inspect the flats, and had not complied with formalities regarding the transfer of the properties nor as to certain alterations and building works which had allegedly been carried out. The Respondent filed a Defence denying liability to pay. By an order of the County Court dated 6 April 2009 and drawn on 17 April 2009 the case was transferred to the Tribunal.

2. **DECISIONS**
The Tribunal has no jurisdiction over ground rent and made no determination regarding rent.

3. The Tribunal had no jurisdiction to direct the Respondent to give the Applicant access for the purpose of inspecting the property, or to decide whether the Applicant ought to have been given notice of the Respondent's acquisition of the leases or whether the transfers were defective on any other grounds.

4. The Tribunal decided that it had jurisdiction to deal with the following matters and made the following determinations:

5. The obligation under the Leases for the Respondent to insure the flats continued to bind the parties, and accordingly no sums were payable by the Respondent to the Applicant in respect of insurance costs. Whilst the Tribunal has jurisdiction to deal with an application to vary the terms of a Lease, no such application had been made in the present case.

6. The Tribunal made an order under s20C Landlord & Tenant Act 1985 that no costs incurred by the Applicant in connection with the proceedings before the Tribunal may be regarded as relevant costs for the purpose of any service charges to be paid by the Respondent. There appeared to be no provision in the Leases under which the Applicant could recover such costs in any event.

7. The remainder of the claim shall be remitted to the County Court.

8. **INSPECTION**
The property comprised a four-storey converted terraced house probably built in the early part of the 19th century. There was a pitched slated roof and timber windows. The Tribunal inspected the exterior front of the property, a terrace area built at first floor level to the rear of the property, and the hall and staircase serving the upper and ground floor flats. The Tribunal also saw the interior of the ground floor flat to which renovation work appeared to be taking place. There were visible signs of plant growth to external guttering and the decorations both inside and outside were worn and the exterior was weathered. Otherwise the property appeared to be in fair condition.

9. **THE LEASE**
The Lease for the Upper Flat was made in 1963 for a term of 999 years and imposed a repairing obligation on the Tenant to keep the interior and exterior of the Upper Flat, and the utility pipes serving the Upper Flat, in good repair. It imposed an obligation on the Tenant to insure the demised premises against loss or damage by fire and such other risks as the Landlord may require. The obligations placed on the Landlord by the Lease were limited to a covenant for quiet enjoyment and a covenant to pay rates. The Lease of the Ground Floor Flat was made in 1962 and was in similar terms to that of the Upper Flat.

10. The Tribunal was also shown a Deed of Covenant dated 1986 made between the tenants at that time of each of the flats in the building, which provided for each tenant to maintain their part of the building, and for the costs of maintaining the roof, foundations and communal drains to be borne equally. There was no subsequent document indicating that the later owners of the flats had entered into any similar covenant. No variation was made by the Deed of Covenant to the insuring obligations of the tenants.

11. **THE LAW**
Landlord & Tenant Act 1985:
s18. 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 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.

12. Section 20C:
"(1) A tenant may make an application for an order that all or any of the costs incurred,...by the landlord in connection with proceedings before a .. leasehold valuation tribunal, ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant ...

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances".

13. *Section 27A. Liability to pay service charges: jurisdiction*
(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

14. **HEARING**
A hearing took place on 8 July 2009 at Brighton. Directions had been issued by the Tribunal on 20 April 2009, and each party submitted a written submission and documents. The Applicant and the Respondent attended the hearing and made oral submissions.

15. **DECISIONS ON JURISDICTION**
Neither party sought to persuade the Tribunal that the Tribunal had jurisdiction to deal with the issues of rent, alterations, access, or the propriety of the transfer of the leases to the Respondent. The Tribunal asked the Applicant to clarify his objection to the transfers. He explained that as the transfers to the Respondent had taken place without his knowledge, he had been unable to use those occasions as an opportunity to recover arrears of money due to him, in respect of insurance and/or rent.

16. The Tribunal observed that the Leases did not appear to contain any restriction on the Tenant's ability to assign the interest, beyond a requirement that notice of assignment should be given to the landlord afterwards. However, in the circumstances it was not necessary to decide about the validity of the transfers in order for the Tribunal to decide the payability of the sums claimed. The Applicant did not deny that the Respondent was the proper owner of the leasehold interests. There was no other statutory provision under which the Tribunal had jurisdiction to examine the formalities of the transfer procedure.

17. Whilst the Tribunal has jurisdiction (if such an application is made) to decide whether a breach of covenant has occurred, the substance of the claim transferred was a claim for injunctive relief seeking to compel the Respondent to provide information/documentation and to give the Applicant access. The Tribunal has no jurisdiction to make such orders.

18. The Tribunal also observed that the sum claimed for ground rent appeared to have been offered by the Respondent, and this issue appeared to be capable of resolution.

19. **DECISIONS ON INSURANCE/SERVICE CHARGES**
The Applicant's case was that he had insured the building himself for a number of years. Prior to the Respondent's acquisition of the flats, he had come to an agreement with the former tenant of the ground floor flat who paid him a share of the premiums. The former tenant of the Upper Flat had not communicated with him, so he had felt forced to insure the entire building himself. When the flats passed to the Respondent, there were consequently arrears of insurance costs which the Respondent ought to pay together with interest because otherwise the Applicant would be out of pocket. The Respondent had also not been responsive to communications. Although he had told the Applicant that he had insured the flats, the Applicant was not convinced because he had never seen a certificate. In fact, said the Applicant, the Respondent was to be taken as having admitted his liability to pay because he had from time to time sent payment of part of the money demanded. The Applicant considered that the Leases may not bind the parties because they had not been updated.

20. The case for the Respondent was that he had no obligation to pay anything to the Applicant. He was under an obligation to insure his flats, and he had done so. He produced a letter of confirmation from an insurance broker for the year 2007-2008, and a receipt for payment of premium for the year 2008-2009. Whilst he did not dispute that arrears would be carried forward with the lease, the former owners now were unlikely to be contactable and it would be unjust for him to have to pay. He had not been able to agree that the Applicant's insurance should prevail, as he doubted the rebuild value for which it had been obtained, and he disagreed with the Applicant about the way it should be apportioned.

21. The Tribunal considered the provisions of the Lease in conjunction with s18 Landlord & Tenant Act 1985. It was clear on the face of the Leases that the responsibility to insure each flat was with the tenant of that flat. In the experience of the Tribunal this was not the way that insurance was normally arranged under a modern lease, and it had a number of disadvantages. The parties had apparently taken the same view and had made some efforts to agree a different approach, whereby the whole building should be insured and the cost apportioned. However, their discussions had not resulted in any agreement. There was no evidence that there had been any variation of the Leases, which were still binding on the parties. In the circumstances there was no basis on which the Respondent was bound to pay any or all of the cost incurred by the Applicant to insure the building.

22. It was not enough for the Applicant to say he was out of pocket. There was no provision in the Lease or elsewhere which obliged the tenant to indemnify him if he took on the burden of insurance himself, however understandable it might be for a freeholder to do so in order to avoid the risk that the property was uninsured.

23. The Tribunal considered the letters referred to by the Applicant, but decided that they did not show that the Respondent admitted an obligation to pay. On each occasion the Respondent's offer of part payment was accompanied by a reference to the insuring obligations in the Lease or a statement that the Respondent continued to insure the property himself. The fact of payment was not therefore unequivocal, and did not itself give rise to an inference that the Respondent agreed with the Applicant's claim. As the Respondent said, he made partial payment on occasion in an attempt to bring the dispute to an end.

24. In the circumstances nothing was payable by way of service charge by the Respondent to the Applicant.

25. The Tribunal considered its powers in relation to the awarding of costs. The Applicant sought costs in his claim but did not make any specific submissions as to the grounds or statutory basis on which he said costs should be awarded. The Tribunal did not consider that any order for costs or the reimbursement of fees should be made. The Applicant had not achieved the outcome which he wished for in the claim, although he had obtained sight of some documents which had not been produced to him hitherto. It appeared to the Tribunal that the Applicant had not, before issuing the claim, clarified the legal basis on which he was seeking payment nor had he considered the implications of the Leases. Neither party had resisted the transfer of the matter to the Tribunal by the County Court. It seemed clear that the Leases did not permit the Applicant to recover any sums by way of service charges. The Tribunal would in any event make an order under s20C Landlord & Tenant Act 1985 to the effect that no costs incurred by the Applicant in connection with the proceedings before the Tribunal may be regarded as relevant costs for the purpose of any service charges to be paid by the Respondent.

Signed

Ms H Clarke (Chair)

Dated 10 July 2009