

Southern Rent Assessment Panel and Tribunal

Case No. CHI/29UQ/LSC/2008/0103

BETWEEN:

MRS J WILSON

Applicant/Lessee

and

Respondent/Landlord

MIRAMEDE LIMITED

PREMISES: 2nd Floor Flat
7 Mount Sion
Tunbridge Wells
TN1 1TZ ("the Premises")

TRIBUNAL: Mr D Agnew, LLB, LLM (Chairman)
Mr R Athow FRICS MRIPM
Ms L Farrier

HEARING: 30th January 2009

DETERMINATIONS AND REASONS

1. The Application

- 1.1. On 17th September 2008 the Applicant applied to the Tribunal for a determination under Section 27A of the Landlord and Tenant Act 1985 (hereafter referred to as "the 1985 Act") as to the liability to pay and as to the reasonableness of certain service charges levied in respect of the Premises for the service charge years 2007 and 2008.
- 1.2. On 22nd October 2008 at a pre-trial review directions were made which included a requirement for the Applicant to file and serve her statement of case by 28th November 2008 and for the Respondent to file its statement of case in reply by 5 January 2009. The Respondent is the freehold reversioner in respect of the premises whose address is care of its then managing agents Chaine Hunter, a firm of professional managing agents.
- 1.3. The Applicant filed and served her statement of case under cover of a letter dated 25th November 2008. Some documents were received from Mr Hunter of Chaine Hunter at the Tribunal's office in Chichester

by fax either after the office closed on 29th January 2009 or before it opened on 30th January 2009, the date of the hearing. These documents were accompanied by a letter from Mr Hunter stating that he would not be attending the hearing.

2. Inspection.

2.1. The Tribunal inspected the Premises immediately prior to the hearing on 30th January 2009.

2.2. The Premises comprise a flat on the second floor of an end of terrace converted block of flats on a busy side road off the High Street in Tunbridge Wells. The property is probably over one hundred years old. The front elevation has been rendered. This rendering has water stain marks running down the walls from an iron balcony at second floor level. There are four storeys in addition to a basement below pavement level described as a "garden flat". There is a wrought iron railing around steps down to the garden flat. Outside and beside the front door to the garden flat there is a store cupboard the front of which is wooden and which is suffering badly from rot. The windows of the building have wooden frames all of which are in need of decoration. The guttering at the front seems in reasonable order but at the rear there is a significant amount of vegetation growing in it. The rear of the property generally is in a poor condition. The rendering to the walls is badly affected with algae. The render requires repair and redecoration. The downspouts require cleaning and redecoration. The soffits need repainting. There appears to be a problem with damp generally at the rear of the building.

3. The hearing.

3.1. This took place at the Camden Centre in Tunbridge Wells. The Applicant, Mrs Wilson attended accompanied by her husband who spoke on her behalf. There was no appearance from anyone on behalf of the Respondent or their managing agents. Mrs Wilson explained that from 1 November 2008 the Landlord had changed managing agents and that Chaine Hunter were no longer retained by Miramede as their managing agents.

4. The Applicant's case.

4.1. With regard to the service charge demand for 2008, this was based on a budget a copy of which the Tribunal was shown. Mrs Wilson pointed out that the service charge demand did not include the information which by statute it was required to include in order for the tenants to be liable to pay it. The service charge demand was dated 13th December 2007. The prescribed information was required to be attached by virtue of the Service Charge (Summary of Rights and Obligations and Transitional Provision) (England) Regulations 2007 which had been incorporated into Section 21B of the Landlord and

Tenant Act 1985 by virtue of Section 178 of the Commonhold and Leasehold Reform Act 2002. Consequently, until such time as the prescribed information was served upon the tenants with a service charge demand for the period the tenants were not liable to pay it, and by not serving it the tenants were not in breach of their leases. Further, if the service charge is not payable, the landlord cannot seek to charge interest on that unpaid service charge. The Applicant also sought an assurance from the Tribunal that in order to be valid any future service charge demand would have to have accompanying it the said statutory statement of rights and obligations.

- 4.2. Further, with regard to the service charge year 2008 the tenants queried the reasonableness of the budgeted figure of £1530.00 for "contingency for repairs/redecoration when none seemed to have been done. In particular nothing has been done to repair or redecorate the rear wall of the premises. In fact, the tenants' dissatisfaction with Mr Hunter as managing agents was that nothing ever seemed to be done to repair or improve the appearance of the building and there was a lack of information from him. This has led to the freeholder appointing a new managing agent as from 1st November 2008.
- 4.3. The dissatisfaction with the performance of the managing agent has led to the tenants challenging the amount justified for the managing agent's fees for 2008 in the sum of £647.00. The tenants recognise that Chaine Hunter have done some things for their management fee but that they have not been instructed for the full year and have done very little to earn such a budgeted fee.
- 4.4. Mr Wilson accepted that the final account for 2008 had not yet been received. He also accepted that, on reflection there was nothing from the Income and Expenditure Account for the service charge year 2007 that he wanted to challenge.
- 4.5. Mr Wilson did seek an order that another party pay to reimburse him the fees he had paid for the Tribunal, namely £70.00 for the Application fee and £150.00 for the hearing fee. He also sought an order for costs on the basis that there had been no response from the Respondent or its managing agents to his wife's Application and that if there had he felt that matters could have been resolved. He pointed out that the Respondent has failed to comply with the Tribunal's directions and there has been no appearance by the Respondent or its managing agents at the pre-trial review or the final hearing. Mr Wilson also asked the Tribunal to make an order under Section 20C of the Landlord and Tenant Act 1985 that the Landlord should not add any costs of the Tribunal proceedings onto any future service charge demand.

5. The Law.

- 5.1. By Section 21B (1) of the 1985 Act it is provided that:- "A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges".
- 5.2. The prescribed requirements as to the form and content of the summary are set out in The Services Charges (Summary of Rights and Obligations and Transitional Provision) (England) Regulations 2007 No 1257. These are extensive and there is no need to set them out here as no such summary was served with the service charge demand in question.
- 5.3. By Section 21B(3) of the 1985 Act: "A tenant may withhold payment of a service charge which has been demanded of him if Sub-section (1) is not complied with in relation to the demand."
- 5.4. By Section 21B(4) of the 1985 Act: "Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it."
- 5.5 Under Section 27A of the Landlord and Tenant Act 1985 the Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:
- (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
 - (e) the manner in which it is payable.
- 5.6 By Section 19(1) of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.
- 5.7 By Section 19(2) of the 1985 Act: "Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable....."

6. The Lease

- 6.1. The lessees' liability to pay service charges is set out in clause 2(5) of the lease which states:

"To pay a fair proportion to be determined by the surveyor for the time being of the landlord whose determination shall be binding upon the tenant of the expenses payable in respect of

- a) the constructing repairing rebuilding and cleansing all party walls fences sewers drains and gutters and other things the use of which is connected to the demised premises and to other premises.
- b) One quarter of the cost of insuring the property....."

7. The determination.

7.1. The Tribunal decided that whatever documentation had been delivered to the Tribunal office either late on the evening before the hearing or early in the morning of the hearing would not be admitted into evidence. It had been delivered far too late and, the Applicant had not received any such documentation. The Respondent had been given plenty of opportunity to produce its evidence in good time prior to the hearing but had failed to do so.

7.2. The Tribunal decided the issues raised in the Application as follows:-

7.2.1. The Applicant said that no statement of rights and obligations had accompanied the service charge demand for 2008 made on 13th December 2007. The Respondent had produced no evidence to contradict this. The Tribunal finds, therefore, that no such requisite statement accompanied the service charge demand. Accordingly, by virtue of Section 21B (3) of the Landlord and Tenant Act 1985 the Applicant is entitled to withhold payment of the service charge demand for 2008 until such time as the prescribed summary is supplied accompanying such a demand.

7.2.2. It follows that the Applicant is not currently in breach of her lease by virtue of non payment of the service charge demanded on 13th December 2007.

7.2.3. It also follows that as the said service charge is not payable until such time as a demand is served with an accompanying summary of rights and obligations no interest can properly be charged on the outstanding sum until it becomes payable. In any event there is no provision in the lease enabling the landlord to charge interest for the late payment of the service charge.

7.2.4. The Tribunal notes the Applicant's concern about the amounts budgeted for managing agents fees (£647 or £129.50 per flat) and as a contingency for repairs and decorations (£1530.00). However, as the Applicant realises, no final account for 2008 has yet been prepared so neither she nor the Tribunal can know what is actually going to be charged for these items. If no repairs or redecoration have been carried out then (assuming all tenants had paid the service charge as demanded for that year, which is highly unlikely) there would be £1530.00 in the account available for repairs and redecoration for 2009. Similarly, Mr Hunter may not charge £129.40 per flat for managing agent's fees during the year.

The Applicant will have to wait and see and if she is dissatisfied with the final account she can then re-apply to the Tribunal to determine whether or not those charges are reasonable. As budget figures, however, the Tribunal finds that they are reasonable amounts to be included in the budget and to form the basis for the service charge demand on account of expenditure for 2008.

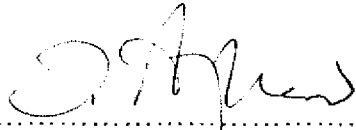
7.2.5. There is no provision in the lease to enable the landlord to add the cost of the Tribunal proceedings to any future service charge account. In any event the landlord has not, to the Tribunal's knowledge, incurred any costs because it has not participated in these proceedings. It is therefore unnecessary for the Tribunal to make an order under Section 20C of the Landlord and Tenant Act 1985 but had there been the facility for the Landlord to have added any costs to future service charges the Tribunal would have made such an order considering it reasonable to have done so.

7.2.6. With regard to costs and fees the Tribunal has the following jurisdiction. By paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 "a leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings" where..... "(b) he has, in the opinion of the leasehold valuation tribunal acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. Miramede Limited, in the opinion of the Tribunal acted "frivolously" or "otherwise unreasonably" by failing to comply with directions or attend hearings and by trying to file evidence at the very last minute before the final hearing. The Tribunal considers that it is reasonable for Miramede Limited to pay costs of £100.00 to the Applicant to reimburse her for her out of pocket expenses assessed by the Tribunal to cover the cost of travel, photocopying and postal charges. It could well be however that the fault in this respect lies solely at the door of Chaine Hunter. It was their address at which correspondence from the Tribunal and from the Applicant was served on Miramede Limited. If this was not passed on to Miramede Limited or if Chaine Hunter were expected by Miramede Limited to deal with the Tribunal proceedings but did not do so then it will be appropriate for Miramede Limited to look to Chaine Hunter to reimburse it this sum. As the Respondent in this case is Miramede Limited the Tribunal cannot determine that the costs should be paid by Chaine Hunter. In any event the Tribunal had no evidence before it as to where the fault truly lay with regard to non-compliance with the Tribunal's directions.

7.2.7. Similarly, with regard to the recovery of fees paid to the Tribunal the Tribunal's jurisdiction to require a party to proceedings to reimburse any other party is contained in paragraph 9(2) of Schedule 12 to the 2002 Act and Regulations 9(1) of the

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003. The Tribunal considers that it is reasonable for the Applicant to recover her £70.00 for the Application fee and £150.00 for the hearing fee from the Respondent, Miramede Limited. These fees however were largely incurred as a result of Chaine Hunter having failed to comply with statutory requirements when serving the service charge demand for 2008. The Tribunal would therefore expect the Respondent Miramede Limited to look to Chaine Hunter to reimburse it for having to make this payment to the Applicant.

Dated this 16th day of February 2009



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Donald Agnew LLB LLM
(Chairman)