



Residential
Property
TRIBUNAL SERVICE

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference CHI/45UC/LSC/2008/0131

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER S27A AND S20C OF THE LANDLORD AND TENANT ACT 1985**

Applicants: Mrs C Powell (Flat 1)
Mr M Betteridge & Ms F Hargreaves (Flat 2)
Mr M Ratsma & Ms R Suddaby (Flat 3)
Mrs D Butler (Flat 4)

Respondent: Canda Copying Ltd

Premises: Guildersfield, Norfolk Square, Bognor Regis PO21
2JA

Date of Application: 26 November 2008

Leasehold Valuation Tribunal: Mrs F J Silverman Dip Fr LLM
Mr R Wilkey FRICS FICPD
Ms J Morris

Date of hearing : 19 October 2009

Decision

The Tribunal finds that:

It does have jurisdiction to consider the application from the tenants of Flats 2-4 in respect of service charge year 2006-7.

The Respondent is not entitled to recover any part of the administration fee against any of the Applicants from Flats 2-4 inclusive in relation to service charge year 2006-7.

The Respondent is not entitled to recover any part of the administration fee against any of the Applicants (including Ms Powell) for service charge year 2007-8.

The Respondent consented to an order against it under s20C of the Landlord and Tenant Act 1985. The Tribunal therefore makes such an order.

The Tribunal orders the Respondent to reimburse the Applicants' application fee of £200.

Reasons

- 1 The application which was filed with the Tribunal on 26 November 2008 asked the Tribunal to determine the reasonableness of service charges for the years 2006-7 and 2007-8 and to make a determination under s20C Landlord and Tenant Act 1985. An application for the reimbursement of the Applicants' application fees was made by them at the hearing.
- 2 An informal application made by the parties to extend the remit of the Tribunal to consider service charges for the year 2008-9 at the substantive hearing was declined by the Tribunal:
- 3 The hearing of this matter had been postponed pending the outcome of an appeal against a County Court decision relating to part of the subject matter of this application by Ms Powell.
- 4 The hearing took place at the Tribunal offices in Chichester on 19 October 2009 at which Mr J Donegan, solicitor, represented the Applicants and Mrs Mosely represented the Respondent. The Tribunal heard evidence on behalf of the Applicants from Mr M Surman and from Ms Powell and Mrs Butler. No witnesses were called for the Respondent but Mrs Mosely made submissions on their behalf.
- 5 The Tribunal inspected the property immediately prior to the hearing.
- 6 The property is a terraced house in Norfolk Square which is a tree lined road near the sea front in Bognor Regis. The property was built in about 1870 and has been converted into four self contained flats. The lower ground floor flat (Flat 1) has its own separate access from the communal pathway and a private patio garden. The remaining three flats share a communal

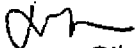
front door from the street accessed by a flight of steps. Inside the communal front door are a communal hallway, staircase and landings leading to the three flats. The exterior of the building appeared to be in good condition although there was evidence of bubbling paintwork and paint splashes on the exterior of windows and on decking belonging to Flat 1. A few small areas of rendering had not been re-painted, giving the overall impression that attention to detail had been lacking in the recent exterior decoration works. Although the interior common parts were generally in good condition, there was some evidence of rotting skirting boards, a broken baluster, and the automatic light switch on the ground floor broke when switched on during the inspection.

- 7 A number of matters had been agreed by the parties prior to the hearing as set out in Appendix A to this decision (Schedule of agreed matters as prepared and signed by the solicitors for the Applicants).
- 8 In relation to service charge year 2006-7 the only matter in dispute between the parties was the management/administration fee of £2400 (£600 per flat) charged by the Respondent.
- 9 As a preliminary issue the Tribunal was asked to consider whether it had jurisdiction to deal with this item since Ms Powell had litigated this item (and other matters) in the County Court who had given judgement in favour of the Respondent. Ms Powell's application to appeal that judgment had been unsuccessful.
- 10 Although Ms Powell conceded that as a result of that judgement she was precluded from challenging the service charges for the year 2006-7, the Applicants argued that it was still open to the remaining Applicants (Flats 2-4 inclusive) to pursue their application in respect of that year's administration charge. The Respondent argued that the Tribunal was precluded from dealing with this matter in respect of all the Applicants because of the judgment against Ms Powell.
- 11 Having heard submissions from both parties' representatives the Tribunal finds that it does have jurisdiction to consider the application from the tenants of Flats 2-4 because s 27A (4) (c) of the Landlord and Tenant Act 1985 only relates to an application being barred from 'the tenant' (ie one particular tenant, in this case, Ms Powell) whose application 'has been the subject of a determination by the court'. Further, it would be inequitable and contrary to the rules of natural justice to preclude the Tribunal from determining applications in respect of the same matter from other tenants who had not been a party to Ms Powell's action and who had not had the opportunity to express their views in the deliberation of that process. It would also arguably be a breach of Art 6 Human Rights Act to preclude the tenants of Flats 2-4 from continuing their application because another individual tenant had litigated the same matter in another place.
- 12 The Applicants also argued that the matter should be allowed to proceed because the County Court had made no 'determination' under s27A (and see s27A(4)(d)) Landlord and Tenant Act 1985. It is unclear from the judgements of the Deputy District Judge and (on appeal) the Circuit Judge whether they did indeed 'determine' the matter with reference to s 27A. The Court of Appeal did not consider the subject matter of the case at all, having simply refused leave to appeal in principle.

- 13 The Tribunal reaches no definite conclusion on this point but since the scenarios in s27A(4) are alternatives, the Applicants' argument succeeds on s27A(4)(c) irrespective of the merits of s 27A(4)(d).
- 14 In respect of the administration charge of £600 per flat for the service charge year 2006-7, the Respondent was unable to produce any invoice for this sum. Further, the Tribunal accepts the Applicants' evidence (given by Ms Powell and Mrs Butler and on their behalf by Mr Surman) that very little had been done to justify such a fee. The Respondent had not carried out regular inspections of the property, and had not complied with the requirements set out in paragraph 3 of Part 3 of the RICS Code relating to Manager's Duties/conduct.
- 15 The Tribunal concludes that because the Respondent was unable to produce an invoice for the sum in question it is not properly payable by the tenants of Flats 2-4.
- 16 The Tribunal recognises that its decision in relation to this matter diverges from the decision which binds Ms Powell in respect of the same matter but reminds the parties that a judicial decision is made dependent on both the law and the evidence presented to the court or Tribunal. The present Tribunal is not privy to the evidence which was before the County Court, but on the evidence presented to it at the current hearing it is clear that the tenants of Flats 2-4 should not be held liable to pay the sum in question.
- 17 In relation to service charge year 2007-8, the administration charge of £618 per flat, which was the only item in dispute between the parties, has not previously been litigated by any of the Applicants. The Tribunal therefore has jurisdiction to deal with it in respect of all the Applicants (including Ms Powell).
- 18 The evidence in relation to the administration charge for the service charge year 2007-8 was substantially similar to that relating to the previous year. No invoice had been raised by the Respondent and the previously identified failures to observe the RICS Code had continued. Additionally, the major works (external redecoration) had not been properly supervised or carried out, as demonstrated on physical inspection of the property, and a number of matters had been charged additionally to the administration fee (notably the costs of litigation and of dealing with major works). It also appeared that the Respondent had not fully complied with S20 procedures in relation to the major works and had failed to identify VAT elements in their demands.
- 19 Therefore the Tribunal's decision in relation to the service charge year 2007-8 is identical to that pertaining to the earlier year. The Respondent is not entitled to recover any part of the administration fee against any of the Applicants (including Ms Powell).
- 20 That being so, it is not necessary for the Tribunal to consider whether the fee levied by the Respondent as an administration charge was reasonable.
- 21 However, should the Tribunal be wrong in its primary conclusions, it sets out below its consideration of the reasonableness of the sum charged by the Respondent in this case (£600 per flat for the year 2006-7 and £618 per flat for year 2007-8).
- 22 For the Applicants Mr Surman's evidence was that a fee of £150-250 per flat per year (exclusive of VAT) was appropriate for flats of this type and in this area of the south coast. The Respondent brought no evidence to

justify their fee other than an unsupported statement by their representative that she had been told that £600 was the going rate. She also said that the lease itself contained onerous obligations on the landlord but was unable to demonstrate to the Tribunal any obligations contained in the lease which would not be found in a normal lease of this type. Mr Surman is a qualified surveyor with considerable experience of management of property in the locality. His opinion therefore carries some weight and mirrors the opinion of the Tribunal who, as an expert Tribunal, also have experience of property within the local area.

- 23 The Tribunal's opinion is that the sum purportedly charged by the Respondent as an administration fee appears to be more than two times the upper limit of the sum normally charged by managers for flats of this type and in similar locations. The Tribunal, having read the sample lease supplied in the bundle, could not find any landlord's obligations which were abnormal or onerous. It should also be borne in mind that the maximum fee would only be recoverable by a landlord/manager who had fully and properly complied with his obligations.
- 24 The Applicants made an application under s20C Landlord and Tenant Act 1985. The Respondent consented to such an order which is therefore made by the Tribunal.
- 25 At the hearing the Applicants also made an application for re-imbursement of their application fees (but not hearing fees) by the Respondent. The Respondent objected to this on the grounds that the Applicants could not have achieved a total victory in their application because a number of matters in dispute had been conceded by them prior to the commencement of the hearing.
- 26 Having considered this matter the Tribunal orders the Respondent to refund to the Applicants the sum of £200 (application fees). The Tribunal takes into account the fact that a number of disputed issues had been settled between the parties prior to the hearing but concludes on balance that had the Respondent complied with its management obligations and had they communicated more effectively with the tenants, an application in respect of those elements which had been agreed could have been avoided. The only matter which remained in dispute before the Tribunal at the hearing resulted in a decision in favour of the Applicants.


Frances Silverman
Chairman
27 October 2009.

BETWEEN:

**MRS CHERYL POWELL (FLAT 1)
MR MICHAEL BETTERIDGE & MS FIONA HARGREAVES (FLAT 2)
MR MATTHEW RATSMA & MS RACHEL SUDDABY (FLAT 3)
MRS DEBORAH BUTLER (FLAT 4)**

Applicants

- and -

CANDA COPYING LIMITED

Respondent

AGREED MATTERS

1. Mrs Powell is bound by the judgment of Chichester County Court dated 23 September 2008 and no longer disputes the service charges for the year ended October 2007. The remaining Applicants seek a determination of the 2007 service charges.
2. The only item in dispute in the 2007 service charges is the management/administration fee in the total sum of £2,400. All other items are agreed by the Applicants.
3. All of the Applicants seek a determination of the 2008 service charges. The only items in dispute are the management/administration fee in the total sum of £2,472, the administration costs on the County Court claim in the total sum of £848.60, the administration costs on the exterior paintwork in the total sum of £304.25 and the Accountancy charges in the total sum of £199.75. All other items are agreed by the Applicants.

4. The Respondent concedes the administration costs on the County Court claim and this item will be withdrawn from the 2008 accounts. The parties have agreed the administration costs on the exterior paintwork in the reduced sum of £250. The parties agree that the sum claimed for Accountancy charges (£199.75) is reasonable but this item should be removed from the 2008 accounts and should be included in the 2009 accounts (the expenditure having been incurred in the year ending October 2009).

5. The outstanding issues to be determined by the Tribunal are:

5.1 Does the Tribunal have jurisdiction to determine the 2007 management/administration fee, given the decision of Chichester County Court dated 23 September 2008?

5.2 If so, is any ^{sum} fee payable by the Applicants (other than Mrs Powell) given the Respondent's failure to produce a receipted invoice for this fee?

5.3 If so, whether the fee was reasonably incurred?

5.4 If not, what is a reasonable fee having regard to the evidence and the service provided (the Applicants accept the principle of a fixed fee per flat)?

5.5 In respect of the 2008 management/administration fee, is any fee payable given the Respondent's failure to produce a receipted invoice for this fee?

5.6 If so, whether the fee was reasonably incurred?

5.7 If not, what is a reasonable fee having regard to the evidence and the service provided (the Applicants accept the principle of a fixed fee per flat)?

Dated 18 October 2009



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Osler Donegan Taylor
Solicitors for the Applicants