RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL

Residential Property
TRIBUNAL SERVICE

Case Nos. CHI/OOML/LSC/2006/0099

Re: Flat 6 & Garage 14, Cavendish House, 138 Kings Road, Brighton, East Sussex BN1 2JH ("the Premises")

BETWEEN:

Boomtimes Limited ("the Applicant/Leaseholder")

And

C H Investment Company Limited ("the Respondent/Freeholder")

In the matter of Applications under Section 20C of the Landlord and Tenant Act 1985 ("the Act")and Section 158 & Schedule II of the Commonhold and Leasehold Reform Act 2002 (Administration Charge)

THE TRIBUNAL'S DECISION

BACKGROUND

1. This is a paper determination of an application made by the Applicant pursuant to Section 11 of the Commonhold and Leasehold Reform Act 2002 (The Act) as to the reasonableness of administration charges demanded by the Respondent. The administration charges that are the subject matter of this application amount to £1555.12 Solicitors fees for the preparation and service of a Section 146 Law of Property Act 1925 (the Section 146 notice) on the Applicant in relation to the failure to comply with sub-letting provisions in the lease and for correspondence in relation to alleged breaches of restrictions also contained within the lease.

THE LEASE

2. Clause 7 of the lease contains the usual proviso for forfeiture in the following terms:-

   "*provided always and it is hereby agreed that if the rents hereby reserved shall be unpaid for 21 days after becoming payable or if any* ***covenant*** *on the part of the lessee herein contained shall not be performed then it shall be lawful for the lessor at any time thereafter to re-enter upon the demised premises and thereupon this demise shall absolutely determine but without prejudice to any right of action or remedy of the lessor in respect of any antecedent breach .....*".

3. The Applicant owns the subject property by virtue of a lease dated the 15th May 1987 granted by C.H. Investment Company Limited to Mohammed Abdulah Al Araifan for a term of 150 years from the 1st March 1986 (The Lease). It is common ground between the parties that the tenants covenant in clause 3 (d) of the Lease requires the Applicant to:-

   "*pay all costs charges and expenses (including solicitors costs and surveyor fees) incurred by the lessor for the purposes of or incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the court*".

4. Clause 2 of the Lease contains a covenant by the Applicant to:-

   "*observe and perform the restrictions set forth in the First Schedule hereto*".

   The first schedule of the Lease imposes restrictions inter alia that the flat is not to be used for any purpose from which a nuisance can arise and there are also restrictions to keep the floors of the flats covered with carpet and to keep the windows properly cleaned both inside and out.

5. Clause 3 (h) & (i) of the Lease sets out obligations to be fulfilled by a Lessee in the event of a flat being sublet which include delivering to the lessor a deed executed by the proposed sub-tenant in favour of the freeholder the serving of a notice of the sub-letting upon the freeholder and paying a prescribed fee for registering the notice.

THE FACTS

6. On or about the 14th February 2003 the Respondent served on the Applicant the section 146 notice. The notice particularized the breaches of the lease which all related to the sub-letting of the property. Following service of the notice correspondence took place between the Respondents' solicitors and the

Applicants' solicitors over the breaches referred to in the section 146 notice. It appears that the breaches were finally remedied at the beginning of August 2003.

7. From June 2003 correspondence also took place between the Applicants and Respondents' respective solicitors relating to an alleged failure by the Applicant to carpet and keep the windows of the flat cleaned. The Respondents' solicitors also alleged that the noise emanating from the flat was causing a nuisance. Correspondence in relation to these separate matters appears to have been of a sporadic nature and continued throughout 2003 and into 2004, when it stopped without resolution. Throughout, the Applicant denied that any breaches of the restrictions had taken place. The letters from the Respondents' solicitors were stated to be, "in contemplation of the issue of a notice under section 146 of the Law of Property Act 1925" but no such notice was ever served. There appears to have been no further correspondence between the parties until April 2006 when the Applicant received a rent demand which included an application for £1,555.12 relating to solicitors' costs. The Applicant received no breakdown of these fees and in the absence of a breakdown refused to pay them. Further correspondence then passed between the parties culminating in this application. Following service of the application a breakdown of the bill has been provided by the Respondents' solicitors together with a copy of their invoice. The breakdown is, however, historic as the Respondents' solicitors state that they archived their file in 2006 and the time recording record was discarded and has not been found. A breakdown of the bill has therefore been produced some three years after the main activity on the file and as a result the Respondents' solicitors have applied a discount of 33%.

THE DECISION

8. Although it is not expressly stated in clause 3 (d) of the lease, it is nevertheless implicit that the Respondent is only able to recover its costs for the preparation and service of a section 146 notice if the notice is valid. Secondly it is also implicit that the Respondent is only able to recover its costs incidental to the preparation and service of a notice under section 146 if the circumstances complained of could properly found a claim for forfeiture of the lease against the Applicant. It is our opinion that in this case only the breaches relating to sub-letting could and did form the basis of a valid section 146 notice. The other breaches relating to the alleged nuisance and failure to carpet the flat and keep the windows clean could never have formed a valid section 146 notice. This is because they are not covenants or conditions entitling the landlord to re-enter and forfeit the lease but are only restrictions. In our opinion the proviso for forfeiture and re-entry in the Lease contained in clause 7 relates only to covenants and does not extend to restrictions.

9. We find therefore that the Respondent is only entitled to recover reasonable legal fees from 14th February 2003 when the section 146 notice was served until August 2003 when the breaches set out in the notice had been cured.

10. On the limited evidence before us it appears that between February 2003 and August 2003 the Respondents' solicitors received some seven letters and wrote approximately five letters. In addition they drafted a section 146 notice and perused two simple documents. We believe that a fair fee for all this work based on 2003 rates would amount to £450 plus vat made up as follows:-

7 Letters in @ 6 mins per letter	= 42 mins
5 Letters out @ 12min per letter	= 1 hour
Perusal of two documents	= 18 mins
Sub Total	**2 hours @ £150 per hour = £300**
Section 146 Notice	**= £150**
Final Total	**£450**

11. For the reasons given above we find that none of the legal fees billed to the Applicant after August 2003 are recoverable from the Applicant by way of an administrative charge.

REIMBURSEMENT OF FEES

12. No breakdown of the legal fees was provided to the Applicant until after the proceedings with the Tribunal were brought. The initial breaches which gave rise to the section 146 notice were accepted by the Applicant and were rectified by August 2003. The Applicants' bundle contained a number of letters in which the Applicant sought an explanation as to the nature of the invoice and a breakdown of it but no breakdown was forthcoming. In our opinion by not providing a breakdown the Respondent has acted unreasonably and left the Applicant with no option other than to issue these proceedings. In the circumstances we make an order under section 20C of the Act and we also direct that the Respondent reimburse the Applicant the total fees paid by him to the Tribunal in bringing this application. We make this direction pursuant to regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.

Chairman

R T A Wilson LLB

Dated 20th May 2004