

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

CHI/21UC/LAC/2006/0004

Decision of the Leasehold Valuation Tribunal on an application under Schedule 11 to the Commonhold and Leasehold Reform Act 2002

Applicants:	Labyrinth Property Management
Respondents:	Charles D'Beer & Mrs India D'Beer
Re:	Flat 4, 7 Granville Road, Eastbourne, East Sussex
Date of Application	7 th December 2006
Date of Inspection	None
Date of Hearing	None
Representing the Applicants	None
Representing the Respondent	Stephen Rimmer & Co, Solicitors

Members of the Leasehold Valuation Tribunal:

M J Greenleaves	Lawyer Chairman
P R Boardman	Lawyer

Date of Tribunal's Decision: 12th April 2007

Decision

1. The administration charges claimed are not payable and the application is dismissed.

Reasons

Introduction.

2. This was an application made by Stephen Rimmer & co on behalf of Labyrinth Property Management (the Applicants) in respect of Flat 4, 7 Granville Road, Eastbourne, East Sussex (the property) for determination under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act) of the liability to pay administration charges.
3. The parties having been given due notice in directions made on 15th December 2006 in this matter, the application was determined by the Tribunal without a hearing by virtue of the provisions of Regulation 13 of The Leasehold Valuation Tribunals (Procedure)(England) 2003 Regulations as amended

Background

4. In February 2006 the Applicants instructed Stephen Rimmer & Co (the Solicitors) concerning outstanding service charges due from the Respondents.
5. The Solicitors had correspondence with the Respondents. That failed to secure payment and on 12th September 2006 they issued an application to the Tribunal under Section 27A of the Landlord and Tenant Act 1985 for a determination in respect of those charges.
6. Before the hearing of that application the Respondents paid the outstanding charges and the application was withdrawn.
7. The Solicitors applied to the Respondents by letter dated 21st November 2006 for payment of the costs that the Applicants had incurred in the course of their instructions to that time. Those costs totalled £1,074 plus VAT. They claimed payment of those costs under "Clause 9" of the Respondents' lease (see below).
8. The Respondents did not pay, so the Applicants issued the present application.

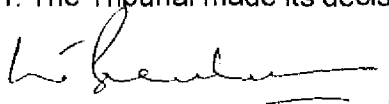
The Application to the Tribunal

9. The Tribunal received written submissions on behalf of the Applicants. The Respondents did not make any representations.

Consideration

10. The Applicants claim
 - a. administration charges of £1,480.50 including VAT;
 - b. that those charges are payable by the Respondents by virtue of Clauses 2(9) and 2(12)(b) of the lease.
11. Clause 2(9) is a covenant by the [Respondents] "to pay all costs charges and expenses (including Solicitors' costs and Surveyors' fees) incurred by the Lessors for the purpose of or incidental to or in contemplation of the preparation and service of a Notice under Sections 146 or 147 of the Law of Property Act 1925"
12. Clause 2(12)(b) is, in terms, a covenant not to assign or underlet or part with possession of the demised premises without the landlord's written consent, the tenant paying the landlord's costs for considering such an application.
13. The Tribunal did not have any submissions from the Applicants as to how the latter Clause might found the present application. The Tribunal does not understand on what basis the Applicants could found the present application on Clause 2(12)(b) as there is no evidence before the Tribunal that any application for consent was applied for by the Respondents such that that Clause might apply. The Tribunal had no hesitation therefore in rejecting the application so far as it was based on that Clause.
14. The only other Clause relied upon by the Applicants is Clause 2(9) as set out above. The Tribunal has not been referred to any other Clause as being relevant to the application.
15. Accordingly the Tribunal's decision turned on interpretation of the meaning and scope of Clause 2(9) only. The Tribunal did not have any submission from the Applicants to assist it.

16. Relying on its own expert knowledge, the Tribunal found that on the true construction of that Clause, costs, etc are payable under it if they are incurred, either
 - a. For the purpose of preparation and service of the specified notice; or
 - b. Incidental to the preparation and service of such a notice; or
 - c. In contemplation of preparation and service of such a notice.
17. On the facts of the case presented by the Applicants, no such notice has been prepared or served. Costs have evidently been incurred, but they have been incurred in :
 - a. taking instructions for recovery of service charges initially by demand by letter and subsequently by application to the Tribunal
 - b. making the present application to the Tribunal.
18. The Applicants seek to persuade the Tribunal that that all of those costs fall in some way within the clause as analysed in paragraph 16 above. But it is settled law that a tenant's covenant is to be construed against the landlord, so the Applicants must be able to show that those costs related only to work done for the "purpose of" or "incidental to" or "in contemplation of" the preparation and service of such a notice.
19. The Tribunal found that the costs were not actually incurred for work which had any or any sufficient nexus to preparation and service of such a notice and were therefore not payable under that Clause at all.
20. The Tribunal notes that at some date the lease has been varied but not in any way affecting the issues in this case; however, the opportunity perhaps to cover the costs issues that arise in this case had not been taken.
21. The Tribunal made its decisions for the above reasons.



M J Greenleaves (Chairman)

A member of the Southern
Leasehold Valuation Tribunal
appointed by the Lord Chancellor