

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



S.27A Landlord & Tenant Act 1985 (as amended) (“the Act”)

DECISION of the Leasehold Valuation Tribunal & ORDER

Case Number:	CHI/45UH/LSC/2007/0016
Property:	Flat 6 28 Rowlands Road Worthing West Sussex BN11 3JS
Applicant/ Freeholder:	S & J Head Properties Limited
Respondent/Leaseholder:	Mr S. Coughlan
Appearances:	
For the Applicant	Mrs Head
For the Respondent	Appeared in person
Date of Hearing	4 th June 2007
Tribunal Members:	Mr R T A Wilson LLB (Lawyer Chairman) Mr R Wilkey FRICS (Valuer Member) Mr T W Sennett MA FCIEH (Lay Member)
Date Of Decision:	25th June 2007

THE APPLICATION

1. The Application in this case is for a determination under Section 27A of the Act as to the Applicant's liability for service charge accruing in 2004.

DECISION IN SUMMARY

2. For the reasons set out below, the Tribunal finds that the service charge challenged in 2004 was reasonably incurred and is payable in full without deduction.

BACKGROUND

3. This application was commenced by the Applicant in the Worthing County Court on the 15th February 2007. The original claim was for the sum of £1,627.51 representing arrears of ground rent and maintenance. The case was subsequently transferred by order of DDJ Parker from the Worthing County Court to the Leasehold Valuation Tribunal for determination. At the time of the hearing the sum in dispute had been reduced to some £800.

INSPECTION

4. The Tribunal inspected the property both internally and externally on the day of the hearing in the presence of a director of the Applicants and with Sean Coughlan the Respondent. The subject property is a Victorian terraced building arranged over three floors. The external appearance was reasonable and the common ways of the property were also in a reasonable condition and showed signs of being recently painted. Mr Coughlan drew the Tribunal's attention to minor areas of water penetration both to the common parts and also to the interior of his flat.
5. At the outset of the hearing both parties confirmed that they were not in dispute over any items of expenditure incurred in the period 1st January 2004 to 31st December 2004. Their dispute related to a set off of some £800 made by the Respondent to cover the costs incurred by him in painting the common parts approximately two and a half years ago.
6. The parties accepted that the Tribunal had no jurisdiction over the alleged arrears of ground rent. It appeared accepted by the parties that pursuant to the lease of the property monies paid by the Respondent could first be applied in discharging ground rent with the balance being applied towards unpaid service charges.

THE EVIDENCE

7. Mrs Head for the Applicants told the Tribunal that the dispute related to a set off applied by Mr Coughlan in relation to service charge dating back to 2004. The set off sought by Mr Coughlan was for the costs he had incurred in painting the

internal common parts. It was her case that Mr Coughlan had started painting the common parts without her authority. In April 2005 she had written to Mr Coughlan stating that she did not agree to him undertaking any work and that the Freeholders would wish to use professional decorators. She reminded the Tribunal that under the Lease of the property the responsibility for painting the interior common parts rested with the Freeholders and not any individual lessee. She accepted that the common parts were not in particularly good order but maintained that priority had to be given to other more urgent areas of repair, namely to the exterior of the building. She had made it clear to Mr Coughlan that the Freeholders would not be prepared to reduce his maintenance bill by an arbitrary amount considered by Mr Coughlan to be a fair price for his work.

8. In reply Mr Coughlan confirmed that he had no issue or dispute in relation to any item of service charge incurred in 2004. His issue was that the Freeholders had allowed the common parts to get into such a poor state that he felt that he had no option other than to paint them himself. As he had done this he considered that he was entitled to be reimbursed. The figure of £800 charged by him was a reasonable sum properly reflecting the cost of work carried out by him.

THE TRIBUNALS CONSIDERATIONS

9. The Landlord's power to levy a service charge and a leaseholder's obligation to pay for it are governed by the provisions of the Lease. The Lease is a contract between the Leaseholder and the Landlord and there is no obligation on either party to pay for anything other than what is provided for in the Lease. A Landlord is not obliged to provide any service which is not covered by the lease, and the Leaseholder is not able to undertake work which is the Landlord's responsibility and then recover the costs from the Landlord.
10. In this case the Lease places an obligation on the Freeholder to carry out the cleaning and decorating of the common parts and not on the Leaseholder. As a general rule, a Leaseholder is not entitled to carry out work which is the Freeholder's responsibility and then seek to recover the costs by way of a set off. In our view this is what has happened in this case. Mr Coughlan has carried out work which is the responsibility of the Freeholder and seeks to recover the costs by way of a set off against service charge owed by him. On his own admission Mr Coughlan does not challenge any individual item of service charge levied, and so we are bound to find that the service charge demanded by the Applicant in 2004 is payable in full without set off.

Chairman _____



RTA Wilson LLB

A member of the panel appointed by the Lord Chancellor

Date 25th June 2007