

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

Southern Rent Assessment Panel Leasehold Valuation Tribunal

Case Number: CHI/29UH/LSC/2009/0027

Property: Flat 68, St Andrew's Park, Tarragon Road, Maidstone, Kent

Applicant: St Andrews Park (Maidstone) Management Company Limited

Respondents:

(1)	Mr and Mrs J.Saunders	(Flat 68)
(2)	Mr M.Atkins	(Flat 64)
(3)	Mr and Mrs Bell	(Flat 38)
(4)	Mr P.G.Canfield	(Flat45)
(5)	Mr J.Harris	(Flat 48)

Additional Party: Mr R.J.Kensey (Flat 76)

Representatives

For the Applicant: Peverel OM Limited

For the Respondents: Francis J. Knight FCA for the first Respondents
The second to fifth Respondents and Mr Kensey were not represented

Date of Directions: 20th February 2009

Date of Decision: 16th June 2009

Members of the Tribunal

C.H.Harrison Chairman
C.White FRICS

Introduction

1. This is an application under section 27A of the Landlord and Tenant Act 1985 made on 16th February 2009 by the Applicant, naming the first Respondents as respondent tenants.
2. By Directions made on 20th February 2009, the Tribunal determined to deal with the application on the basis of written representations, without a formal hearing pursuant to Regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003.
3. By subsequent Directions made pursuant to Regulation 6 of the same Regulations, the Tribunal granted the several requests of the second to fifth Respondents to be joined as respondents and the request of Mr Kensey to be joined as an applicant. Nevertheless, the Tribunal anticipates that it was Mr Kensey's intention to be joined as a respondent to the application.

The Application

4. The application is very specific as to its purpose. It requests the Tribunal to determine:

“that service charges being charged to the [first] Respondents under the terms of the [first] Respondents lease dated 28th May 2002 are being correctly levied.”

The request was made in respect of the 2009 service charge year.

The Law

5. Section 27A(1) of the Landlord and Tenant Act 1985 provides that an application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-
 - 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, and
 - e) the manner in which it is payable.
6. Section 27A(3) of the 1985 Act makes similar provision in respect of anticipated future service charges.
7. Section 27A(4) of the 1985 Act provides that:

no application under subsections (1) or (3) may be made in respect of a matter which – (a) has been agreed or admitted by the tenant

In the Tribunal's opinion, it is implicit in any application under section 27A that there needs to be a dispute between the parties to the relevant lease about how its terms should be applied to any of the matters covered by subsections (1) or (3). If there is an agreement or admission by the tenant before an application, an application cannot be made – see subsection (4) above. If there is an agreement or an admission after the application, there is (to the extent of the matter agreed or admitted) no dispute for a tribunal to determine.

The lease

8. The first Respondents' lease specifies, in the sixth schedule, various maintenance expenses in respect of works and services which the Applicant is obliged to carry out and, to the cost of which, the first Respondents are obliged to contribute by way of service charge.
9. The sixth schedule is broken down into five separate parts, each part dealing with different categories of expense. The service charge arrangements under the lease oblige the tenant to pay a particular proportion of the expenses incurred under each part, the specified proportions differing from part to part.

The first Respondents' representations

10. On 28th February 2009, the first Respondents, through their representative Francis.J.Knight, wrote to the Applicant's representative, Peverel OM Limited and stated

...

On page seven of the application, the purpose of the application is incorrectly stated. There is no dispute that the terms of the signed lease are being charged in accordance with the lease. My clients complaint is that the lease was incorrectly drawn

That letter was copied by Mr Knight to the Tribunal.

11. There followed, in that letter, an explanation about why the first Respondents complain the lease was incorrectly drafted. However, allegations concerning mistaken drafting of leases which, on their face, are agreed and concluded documents are not matters for a leasehold valuation tribunal under section 27A of the 1985 Act. Whether such allegations may be the subject of an application by the first Respondents for rectification; or, to a leasehold valuation tribunal, for a lease variation; or of any other application, must be a matter for the first Respondents' own advice.

The Tribunal's conclusion

12. As the first Respondents have acknowledged (see paragraph 10 above) "*There is no dispute that the terms of the terms of the signed lease are being charged in accordance with the lease*", it necessarily follows that there is no dispute between the Applicant and the first Respondents on the question raised in the application, even though there may be a dispute between them about whether the lease terms are correct. Consequently, there is nothing for the Tribunal to determine on this application.
13. The Tribunal notes that certain representations have been made by the second Respondent concerning the services charges at St Andrew's Park. However, the Application relates exclusively to the first Respondents' own lease; and the Tribunal considers it would be inappropriate to widen the scope of the Application. It is open to any of the Respondents (and to Mr Kensey, if appropriate) to make their own application under section 27A.

Dated 16th June 2009



C.H.Harrison (Chairman)