

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

**S.27A Landlord & Tenant Act 1985 as amended**

**DECISION AND REASONS**

Case Number: CHI/29UM/LSC/2008/0136

In the matter of 301 High Street, Sheerness, Kent, ME12 1UT

Applicants (Landlord): Influential Consultants Ltd c/o Mr. J F Thompson

Respondent (Lessee): Mrs.C M Willens

Date of Application: 9<sup>th</sup> December 2008

Tribunal Members: Mr. S Lal LL.M, Barrister (Legal Chairman)  
Mr. C White FRICS  
Mrs.L. Farrier

Date of Decision: 17<sup>th</sup> April 2009

**Decision**

**Application**

1. The Applicants applied to the Tribunal by way of application received on 9<sup>th</sup> December 2008 under section 27A of the Landlord & Tenant Act 1985 (as amended) ("the Act") to determine the liability of the Respondent in respect of 301b High Street, Sheerness, Kent, ME12 1UT (the "Property"). Specifically the Applicants wished for a ruling as to whether certain amounts could be recovered under the Lease and if whether they could be, they were reasonable in the circumstances for the year 2007/08. The true construction of the Lease would have implications for any future service charge demands for future work if the Lease allowed for that. The liability to pay has never been in dispute nor has the proportion due under the lease, namely 39.38% in respect of the current Respondent.
2. Directions were issued on 21<sup>st</sup> January 2009. Both parties to the proceedings were invited to send to the Tribunal written representations which they have both done. These are referred to below.

## The Law

3. The statutory provisions primarily relevant to applications of this nature are to be found in section 18, 19 and 27A of the Act. The Tribunal has of course had regard in making its decision to the whole of the relevant sections as they are set out in the Act, but here sets out what it intends shall be a sufficient extract from each to assist the parties in reading this decision. Section 18 provides that the expression "service charge" for these purposes means:

*"an amount payable by a tenant of a dwelling as part of or in addition to the rent-*

- a. *which is payable directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and*
- b. *the whole or part of which varies or may vary according to relevant costs."*

*"Relevant costs" are the cost or estimated costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable and the expression "costs" includes overheads.*

4. Section 19 provides that :

*"Relevant costs shall be taken into account in determining the amount of a service charge payable for a period:*

- a. *only to the extent that they are reasonably incurred, and*
- b. *where they are incurred on the provision of services or the carrying out of works only if the services or works are of reasonable standard*

*and the amount payable shall be limited accordingly."*

5. Subsections (1) and (2) of section 27A of the Act provide that :

*"(1) 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 to whom it is payable*
- b. *the person by whom it is payable,*
- c. *the amount which is payable,*
- d. *the time at or by which it is payable, and*
- e. *the manner in which it is payable.*

## The Inspection

6. The members of the Tribunal inspected the property on 17<sup>th</sup> April 2009. It is a two storied end of terrace house built about a hundred years ago and converted into three self contained units probably in the last 40 years. It is of conventional construction with solid brick walls under a roof that has been recovered in tiling.

7. The house has a common front entrance and hall which leads to a rear passage and a door to the garden. Flat A has an entrance door off the hall and is a small ground floor flat. Flat B has an entrance door off the rear passage and has some accommodation on the ground floor and some on the first floor. It has its own internal staircase. Flat C is reached via the main staircase and has accommodation at first floor level with a further room in the roof space. The inspection was limited to the exterior of the property and the common parts. It was not considered necessary to inspect the interior of any flat.

### The Issue

8. The only matter in dispute was the liability to pay the management charges and legal fees which formed a component of the service charge demand for the year in question. The Respondent accepted that any work actually carried out to the subject property was reasonable. Original defects to the work had now been corrected by the Landlord following her complaints. The period in question is from 1<sup>st</sup> December 2008 to the 1<sup>st</sup> February 2009 and the specific query above relates to the Cost Summary Spread sheet and Contractors invoices (hereinafter referred to as the "Spreadsheet") for the entire subject property, the Respondent being liable to pay a share of that amount.

### The Case for the Applicant

9. The Applicant was represented by Mr. Webb of Counsel instructed by Finley Page, Solicitors. Mr and Mrs Thompson were present throughout. Mr. Webb was content to adopt the written Statement of Evidence on behalf of his lay client as representing an accurate summary of the case for the Applicant. In oral submission he pointed out that the Respondent had not in fact made any payment since May 2007. This statement was refuted by the Respondent who pointed out that she had paid the insurance and this was agreed by the Applicant. He confirmed that the sum of £130.05 was due to the Respondent as part of the sinking fund due to the Respondent when the freehold had been purchased by the Applicant's and this should now be reflected in her individual spreadsheet. In any event the Spreadsheet referred to in Paragraph 7 above was the document he would work from as it itemised the expenditure in respect of the entire subject Property. An amended spreadsheet was provided.
10. In respect of the Lease he submitted that Clause 2 allowed the landlord to be paid a fair and reasonable proportion which the Landlord may expend and may reasonably be required on account of anticipated expenditure. He argued that Clause 2(a) allowed the Landlord to appoint an agent which would include a solicitor for the recovery of fees and that Clause 2(d) gave the Landlord absolute discretion in respect of work carried out for the general benefit of the building which was not limited to repairs and maintenance by the wording of Clause 2(d). He added that such amounts that maybe demanded had to be paid within 28 days according to the terms of the Lease. The amounts that could be demanded were subject to the over arching statutory provision of "reasonableness" in any event.

11. In respect of the Legal Fee component of the Spreadsheet he submitted that these were a reasonable sum incurred by local solicitors acting as an agent under the express provision of the Lease. After questioning by the Tribunal he agreed that all invoices up to the 25<sup>th</sup> September 2008 had to be reserved because they were not in the correct form as per the Service Charges (Summary of Rights and Obligations and Transitional Provisions) (England) Regulations 2007. He submitted that such technical oversight did not negate the liability of the Respondent to pay now, rather that prior to that date she did not have to do so because the invoices were not in the correct form. On further questioning by the Tribunal he reluctantly accepted that the legal costs directly related to the collection of the service charge which themselves had not been correctly demanded and were not payable.
12. He took the Tribunal through the various other expenditures and submitted that they were reasonable as per the subject property.
13. In respect of the forthcoming expenditure he asked the Tribunal to give directions as to whether the same could be claimed.
14. Mr Thompson who attended the Tribunal admitted that there was no separate bank account for the service charges monies. He himself acted as a Director for the Applicant Company and had de facto been appointed by his company to manage the subject property as part of his Directorship but had no specific management contract. There was no specific evidence that he had been appointed as a manager, rather he carries out the activity as a Director of the freeholder. It was also pointed out that he and his wife were leaseholders of Flat C and that Mr. Thompson is a Director of Feature Key Properties Ltd, the company that has owned Flat A for about ten years.

#### The Case for the Respondent

15. Mrs. Willens attended in person. Having heard Mr. Webb she asked for an adjournment because she thought she might be at a disadvantage in her presentation of her case. The Tribunal declined to adjourn the matter at this late stage as the issues had been defined for some time; both parties had complied with Directions and were fully aware of the each others cases prior to the hearing. The Applicant was entitled to employ a lawyer of their choice as was the Respondent. The latter had chosen not to do so. The Tribunal as an expert Tribunal was perfectly capable of construing the lease before it as well as the other material and were of the view that an adjournment was not necessary in the interests of justice at this late stage. Her application was refused.
16. She adopted her written submissions of 20<sup>th</sup> March 2008 which she indicated had been prepared by solicitors in any event. She admitted to the Tribunal that she did not query the reasonableness of the remedial work itself but rather her dispute related to what she described as the unreasonable management fees and legal expenses.

17. She argued that they were unreasonable and unnecessary and that both legal fees and management fees the matter should have been put out to tender because they were long term contracts for more than one year.

### The Tribunal's Decision

18. The starting point for the Tribunal's analysis must be the Lease. The Tribunal are satisfied that, giving the words of the Lease their plain English meaning, the Applicant is able to charge the Respondent both for work done and for future work (Clause 2).
19. The Tribunal are also satisfied that the Landlord is permitted under Clause 2(b) to appoint a surveyor or agent in connection with its obligations under the Lease in respect of repairs and maintenance which also expressly covers the collection of any such sum. The use of an agent is a sufficiently wide enough concept to include a solicitor and or manager.
20. The Tribunal are not satisfied, notwithstanding the issue of construction above, that Mr. Thompson is in fact a duly appointed manager. He seems to carry out duties as Director of the Freeholder and as such is an employee of that company. It seems that each invoice for money spent has been addressed to the Freeholder Company, Influential Consultants Limited and that they have obtained advice from the solicitor. Every demand for service charge payments has been made on the notepaper of the Freehold Company and it was clear that any money received is passed through the account of that company.
21. The Tribunal are satisfied that under Clause 2 (d) the Landlord is not limited to repair and maintenance but would include other expenditure for the general benefit of the building in his absolute discretion. This, although subject to the statutory requirement of reasonableness, would cover what maybe termed an "improvements" such as the installation of fire safety alarms and systems.
22. The Tribunal turns now to the issue of what is reasonable. The notion of something being reasonable has been held to mean that the landlord does not have an unfettered discretion to adopt the highest standard and to charge the tenant that amount; neither does it mean that the tenant can insist on the cheapest amount. The proper approach and practical test were indicated in *Plough Investments Ltd v Manchester City Council* [1989] 1 EGLR 244 that as a general rule where there may be more than one method of executing in that case, repairs, the choice of method rests with the party with the obligation under the terms of the lease.
23. Further the tenant cannot insist on the cheapest method and a workable test is whether the landlord himself would have chosen the method of repair if he had to bear the costs himself. Ultimately it is for the court or tribunal to do decide on the basis of the evidence before it and exercising its own expertise. In that regard the LVT is an expert tribunal and is able to bring its own expertise and experience in assessing the evidence before it.

24. In respect of the expenditure year in question as covered by the Spreadsheet, the Tribunal are satisfied that building work and other physical maintenance are reasonable sums. The subject property is in a poor state and both parties accept the need for remedial work. The Respondent makes no specific challenge to this aspect of the service charge demands as contained in the Spreadsheet. Likewise the Tribunal are satisfied that the various invoices for the work done do show a "reasonable" costing with regard to the relevant legal principle to be applied.
25. In respect of the management fees, the Tribunal are satisfied that no management fees have actually been incurred, rather the Freehold company has expended money in obtaining legal advice as to how it should operate and the notion of a manager and management fees is a fiction with regard to the subject property in the light of the arrangements described at Paragraphs 13 above.
26. The Tribunal are further satisfied that the £420 demanded in respect of bank charges is an unreasonable amount as there was no evidence before the Tribunal of such charges being incurred and Mr. Thompson admitted that any monies were paid into the Influential Consultants account which was in overdraft. No evidence was before the Tribunal that the other two flats in the subject property had in fact paid.
27. The Tribunal were satisfied that the sum of £260 in respect of the fire inspection is not recoverable either as this was written by Mr. Thompson acting as Director of the Freeholder and not as a manager because the Tribunal find on the evidence that there is no manager.
28. The Tribunal were satisfied that the sum of £1500 for legal fees was a reasonable sum in respect of work carried out by the solicitors. The Tribunal are satisfied that legal expenses in respect of a s.20 were valid up to the sum indicated of £1500 but nothing else as the solicitors appear to have been instructed and advised on the recovery of service charges by freehold company and had in fact failed to advise that the demands made before 25<sup>th</sup> September 2008 were not valid demands

29. Following the above the Tribunal decides the following amounts as a reasonable sum in respect of the subject property for the period 1<sup>st</sup> December 2007 to 1<sup>st</sup> February 2009:

Maintenance (Not in Dispute)	£9478.21
Insurance (Not in Dispute)	£728.83
Management Fees	£00.00
Legal Fees	£1500
Fire Inspection	£00.00
Bank Charges	£00.00
Total	£11707.04

30. The total amount is therefore £11707.04 which would leave a liability for the Respondent according to her proportion of 39.38%, of £4610.

31. The Tribunal, in respect of intended future expenditure, hopes the parties' note what has been found as reasonable in respect of the current management fees and professional fees in assessing any future liability.

32. Having regard to the guidance given by the Land Tribunal in the Tenants of Langford Court v Doren LRX/37/2000, the Tribunal considers it just and equitable to make an order under s.20C of the Landlord and Tenant Act 1985. The Respondent has to a large part succeeded in respect of her submissions as to the reasonableness of the legal fees and management fees. The Tribunal directs that no part of the Applicant's relevant cost incurred in the application shall be added to the service charges as a just and equitable outcome in light of its substantive decision.

Chairman.....

Date.....