

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



Section 27A Landlord and Tenant Act 1985

Application for a determination of liability to pay service charges
and

Schedule 11 to the Commonhold and Leasehold Reform Act 2002

Application for a determination as to liability to pay a variable administration
charge

DECISION AND REASONS

Case Number: CH1/00HG/LSC/2010/0029

Property: 264 Beaumont Road St Judes Plymouth PL4 9EH

Applicant : Mark Craft

Respondent : Graham Hooper

Date of Application: 4th March 2010 Section 27A LTA
29th May 2010 Schedule 11 CLARA

Tribunal Members: Miss Cindy Alpona Rai LLB Solicitor Chairman
Mr Timothy Nicholas Shobrook BSc. FRICS
Chartered Surveyor (Valuer Member)

Date of Decision: 22nd September 2010

SUMMARY OF DECISION

1. The Tribunal determined that that the Applicant is not liable to pay any of the following charges for the service charge years ending in the years referred to below :-

| | | | |
|-----|------|--------|--|
| (a) | 2007 | £70.00 | Site Visit |
| (b) | 2007 | £15.00 | Letter for copy of account |
| (c) | 2007 | £70.00 | Site visit (no access) |
| (d) | 2007 | £15.00 | Letter |
| (e) | 2007 | £15.00 | Letter (reminder) |
| (f) | 2008 | £15.00 | Letter for supply copy insurance details |
| (g) | 2008 | £15.00 | For insurance quote |
| (h) | 2009 | £15.00 | Letter overdue account |
| (i) | 2009 | £15.00 | Letter account |

Neither is the Applicant liable to pay £20 on account of the "float" in any of the disputed years. The reasons for its decision are set out below

BACKGROUND

2. On the 4th March 2010 the Applicant made an application to the Tribunal ("the First Application") for a determination as to the reasonableness of certain specified service charges and as to his liability to pay those charges in the service charge years ending 2007, 2008 and 2009 under Section 27A of the Landlord and Tenant Act 1985 ("the LTA")
3. Directions were issued on the 11th March 2010 by Donald Agnew a procedural chairman of the Tribunal that the application be determined without an oral hearing unless either of the parties objected.
4. On the 29th May 2010 the Applicant made another application to the Tribunal ("the Second Application") for a determination as to the reasonableness of certain specified administration charges by reference to the grounds and his reasons in the First application and as to his liability to pay those charges in the service charge years ending 2007, 2008 and 2009 under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (CLARA).
5. Further Directions were issued on the 4th June 2010 by John Tarling a procedural chairman of the Tribunal proposing that the First Application and the Second Application be consolidated and that the applications (in the absence of any objection from either party) would both be dealt with without an oral hearing.
6. Neither party subsequently objected to the Further Directions or provided the Tribunal with additional evidence or documentation so the Tribunal has

determined the matter on the basis of the information supplied with the First and Second Applications and the written responses received from Graham Hooper as Respondent to both applications.

THE APPLICANT'S CASE

7. These two applications have been made because the Applicant, Mark Craft is unhappy with certain charges being levied by the Respondent and disputes whether he is liable, under his lease, to pay these charges. Two separate applications have been made because the Applicant is unsure whether the charges which he is disputing are service charges or administration charges.
8. The charges which the Applicant disputes are those set out in paragraph 1 above and relate to the years referred to therein. In addition, the Applicant has queried if he should have to pay in each service charge year towards a £20 float held by the Landlord.
9. In relation to those disputed charges made by the Respondent landlord Graham Hooper for sending various letters, Mark Craft, the Applicant tenant does not accept that a charge should be made for any letter which the Landlord sends to him because he has no choice as to whether or not the letters are sent.
10. Neither does he believe that he should pay £70 for a seven year property inspection when he owns his property.
11. He also objects to being charged £15 for telephone calls that he has no option but to make, with regard to buildings insurance, as that policy is in the Respondent's name, so he cannot avoid involving the Respondent should he need to make a claim.
12. He objects to being charged £15 for the Respondent to obtain insurance quotations when a similar charge is also made to the tenant of the Upper Flat, and as far as he is aware the Respondent simply instructs a broker (who he suggests makes no charge to the Respondent). In addition he complains that the insurance premium which was invoiced in the account, a copy of which is provided at annexe E to his statement, and which shows a contribution of £213.36 for 2008, was later shown as being £229.89, (at annexe F), when the Respondent claimed difference between these two amounts of £9.53
13. He also queries why he is asked to pay for a cash float and why this is recoverable from the tenants.
14. Finally he queries whether the Respondent can charge interest at 4% above base rate of Barclays Bank plc [See annexe A]

15. In response to Graham Hooper's letter dated 15th March 2010 (which is a response to the application) he says that:-
- a. Mr Hooper is not available on a 24/7 basis as is evidenced from the statement in Annexe 1, which states clearly that calls will generally not be taken except during normal office hours.
 - b. Furthermore Mark Craft states that no telephone number for the Landlord has been provided to him.
 - c. He does not accept that the charge of £15.00 is a "one off" charge each year and cites by way of rebuttal his own invoices which show more than one such charge each service charge year (as listed in the application and noted in paragraph 1 above).
 - d. He is unhappy with Graham Hooper's justification of the "Site Visit Charge" for which he does not accept he should be liable.
 - e. He does not accept that the float is refunded each year.
 - f. He maintains that it is only in the last three years and on account of his unhappiness with the landlord's charges that he has not paid his service charge account when due.
 - g. He does not accept that he should have any obligation to advise the Landlord whether or not he lets the flat and whether or not his tenant is employed.

THE RESPONDENTS CASE

16. The Respondent case is that he owns more than one freehold property which he previously converted into flats and that the Property is one of these. He "runs" the freeholds "as the lease allows" on a "cover cost basis only". He suggests that with the exception of the Applicant his other tenants are happy.
17. He implies that most tenants are prepared to pay towards his administration costs by means of a "one off" charge of £15. He says that this is intended to reimburse him for the time and costs expended in preparing the accounts, procuring buildings insurance and accepting telephone calls. He says that the only other charge he makes is if the tenants require works to be carried out and quotes as an example responding to solicitors requests for copy documents. He says that the lease allows him to make a charge once in every seven years for inspecting the property to confirm that it is maintained to the standard required by the lease and explains what he does to achieve this.
18. In response to the specific queries raised by the Applicant in relation to the float he refers to clause 4(b) of the lease which he says enables him to

- charge "in advance"; states he has never done this but instead requires payment of a float to cover "his unforeseen expenses".
19. He justifies the charges made by stating that his "work and time" must be paid for, and that there are commitments that he needs to fulfil to keep the lease in order and rules that (the tenant) needs to follow. He suggests that if the Applicant is subletting the flat he should notify him and provide information since he implies it might increase the insurance costs to the Applicant.

THE LEASE

20. A copy of the lease dated 19th December 1986 and made between Graham Hooper (who is the Respondent) and Mary Reilly (who was the original tenant) ("the Lease") of the ground floor flat has been produced to the Tribunal.
21. The Lease provides inter alia that the tenant shall pay an annual service charge calculated in accordance with the provisions set out in **Part 5 of the Schedule** by one instalment payable in advance on the 1st day of July in each year.
22. The service charge is described as being 50% of the sum which the Landlord (or his agent) certifies in writing to be the reasonable cost and expense to the Landlord for the twelve months immediately following of:-
- a. performing his obligations under **clause 6** and
 - b. collecting the ground rents and service charges in relation to all flats in the building.
23. **Clause 4(b)** provides "that the "Tenant shall pay to the Landlord an annual sum as a service charge" to be calculated in accordance with these provisions. There are two flats within the building. At the end of each 12 month period the Landlord can take account of the sums collected and either increase or decrease the amount estimated for the subsequent year as appropriate.
24. The Landlords obligations, set out in **clause 6** of the Lease, are:-
- (a) to maintain and keep clean and where necessary provide lighting for the main entrance porch stairs and passageways and all other common parts of the building and
 - (b) to keep the same in good and substantial repair and condition and to keep the exterior of the building in good and substantial decorative repair and condition and
 - (c) to keep the building insured against specified risks and also to endorse the interest of the tenant and any mortgagee of the tenant on the insurance policy.

The "tenant covenants" in the lease oblige the tenant, inter alia, to pay the Landlord:-

- (a) a specified fee when giving him notice of any dealing with the lease of the flat (which is a fixed amount of Ten pounds plus tax) and
- (b) the Landlord's costs incurred in connection with forfeiture proceedings and in relation to any licence granted at his request.

There is no other obligation within the lease for the Tenant to pay the Landlord for anything else.

25. In calculating the service charge Part 5 of the Schedule of the Lease provides that the Landlord should estimate the costs for the subsequent year and provide a copy of the annual estimate to each tenant and collect the estimated sum in advance on the specified date and on account of those estimated costs (for the subsequent year).

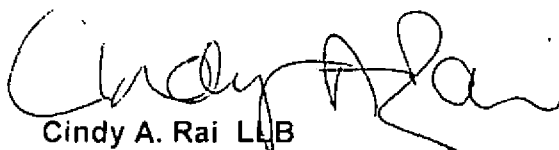
THE LAW

26. There are no specific provisions in the Lease specifically entitling the Respondent to make any of the disputed charges set out in paragraph 1 above. Such charges all fall within the definition of an "administration charge" contained in paragraph 1(b) of Schedule 11 of CLARA and being a charge "for or in connection with the provision of information or documents by or on behalf of the landlord". Since the charges which the Respondent has sought to charge the Applicant are neither specified in the Lease nor calculated in accordance with a formula specified in it they fall within the definition of "variable administration charge" contained in paragraph 1(3) of the same schedule. Paragraph 2 provides that a variable administration charge is only payable to the extent that the amount of the charge is reasonable. Paragraph 5 contains the jurisdiction for the tribunal to determine the liability of the Applicant to pay the administration charge.

THE DECISION

27. The Lease contains no provision which entitles the landlord to charge for administration or which imposed a liability on the tenant to pay such charges except in relation to the registration of a "dealing" with his lease and the provision of a licence. The charges which the Respondent is seeking to recover seem either to be in respect of the costs of his time and labour or equivalent to a management fee. The Lease does not contain a provision which would entitle the Respondent to recover charges for any of these things.

28. Although the Respondent specifically states that the Lease entitles him to make a charge in respect of a recurring 7 year inspection of the Property the Tribunal could not find any such provision in the Lease.
29. In the absence of any provisions contained in the Lease specifically entitling him to recover any of the disputed charges from the tenant the Tribunal determines that the Applicant is not liable to make any of these payments to the Landlord for any of the years referred to in his application (which charges have been referred to in full in paragraph 1 above). Given that the Applicant is not liable to pay the disputed charges the Tribunal has not made any determination as to the reasonableness of the amounts charged.
30. In relation to the £20 "float" the Tribunal determines that a charge such as this charge, would be payable on account of the amount of expenditure that the landlord estimated would be payable for the subsequent year, (see paragraph 22 above), but that any such payment must be utilised towards the estimated costs of the landlord complying with his obligations in the Lease and therefore could, for example, be set against the tenant's share of the insurance premium, but could not be set off against the other variable administration charges. Neither the Applicant nor the Respondent has suggested or produced any evidence that such a written estimate, certified in writing by the landlord, was provided, therefore the Tribunal determines that the Applicant is not liable to pay towards the "float".



Cindy A. Rai LLB
Chairman