

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL
County Court Transfer
S.27A Landlord & Tenant Act 1985 as amended**

DECISION AND REASONS

Case Number: CH1/00LC/LSC/2010/0060

In the matter of 1 Curlew Crescent, Strood, Rochester, Kent, ME2 2RF

Applicants (Landlord): MHS Homes Ltd

Respondent (Lessees): Mr. S. Finan

Date of Transfer: 25th March 2010

Tribunal Members: Mr. S Lal LL.M, Barrister (Legal Chairman)
Mr. R. Athow FRICS

Date of Hearing: 18th August 2010

Date of Decision: 19th August 2010

Application

1. The Applicants applied to the Medway County Court, then transferred to Brighton County Court in order to recover service charge arrears in respect of the subject premises for the year 2008-09. The liability to pay has never been in dispute nor has the proportion due under the lease, namely a 17.5% share in respect of the subject flat of the six that make up the premises. The matter was transferred to the Tribunal by order of Brighton County Court on 25th March 2010.
2. Directions were issued on 12th April 2010. The Applicant has complied with Directions and the Tribunal as well as the Respondent had been supplied with a copy of the Applicant bundle. The Respondent has likewise complied with the Directions and presented documentary evidence in the form a letter to the Tribunal.

Inspection

3. The Tribunal inspected the common parts of the subject premises in the presence of both the Applicant and the Respondent on the morning of the hearing. The subject premises consist of six flats in an "L" shaped building on a residential estate in Strood. There is a communal grass area to the front of the premises, a door entry system and a small communal garden to the rear. The Tribunal noted that the flat opposite the subject flat had been extended for disabled access.

The Hearing

4. The Applicant was represented at the hearing by Mr. Richard Wilder, Senior Legal Administrator and the Respondent appeared in person accompanied by his mother Mrs. Finan. The latter also addressed the Tribunal as she was involved in much of the administration of the premises.

The Law

5. 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.

6. 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."

7. 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 date at or by which it is payable, and
- e. the manner in which it is payable.

The Issue

8. The only matter in dispute was the reasonableness of the service charge in 2008/09. The Tribunal established at the outset that the Respondent had paid the sum of £860 out of the original county court claim of £2652.19. The latter figure was the estimated charge. The actual charge was £1169.86 so the amount now in dispute was the sum of £309.86. This was confirmed by Mr. Wilder. He did mention that sums in respect of 2009/10 had accrued but these were not part of the current application to the County Court and the consequent transfer to the Tribunal.

The Case for the Applicant

9. Mr. Wilder relied on the Applicant Statement of Case which the Tribunal has read in full. He added in oral submission on behalf of the Applicant that the Lease allowed for service charges to be paid both for actual expenditure incurred and also for such reasonable expenses to be paid in advance.
10. In respect of the subject of the County Court claim, he pointed out that the difference between what the Respondent had paid (£860) and what was now in dispute, namely £309.86 related to £249.99 for the provision of new digital TV equipment and £59.97 in respect of the variations between estimated and actual expenses, the greater part of it relating to electricity charges for the communal parts.

The Case for the Respondent

11. The Respondent said that they had been happy to pay the £860 but not the £309.09 because until they had come to the hearing they had never been told that this related to TV work but rather appeared as "Other" in the service charge account. Having had the details of these expenses explained to him at the hearing Mr. Finan was now prepared to pay the sum demanded.
12. Mrs. Finan pointed to the lack of communication on the part of the Respondent in particular that correspondence was being sent to the premises address rather than the Respondent's home address. She pointed to the lack of transparency on the part of the documentation and she also raised the issue of the internal extension to one of the flats and whether this would appear as part of the service charge.

The Tribunal's Decision

13. 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 Ltds 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.
14. 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.
15. The Tribunal are satisfied that the sum in dispute of £309.86 is a reasonable sum which has been explained to the Tribunal's satisfaction and almost certainly that of the Respondent because of the discussion at the hearing as to how that sum was arrived at. The sum comprises digital TV switch over work and the remainder is explained as the difference between estimated and actual expenses.
16. The Tribunal notes, and as was quite clear during the hearing, that there is no real animus as between the parties but rather that Mr. Finan quite legitimately wanted an explanation for figures that have appeared on his service charge bill. It is unfortunate that communication appears to have broken down because of the address issue and a possible change of staff in respect of the Applicant Company. One is left speculating whether if those channels of communication had been kept open, this matter could not have been resolved earlier and without resort to litigation.
17. Be that as it may, the Tribunal expects the Applicant to take note as Mr. Wilder clearly indicated he would, of the need to communicate clearly with Mr. Finan in terms of what has been spent and why and address this communication to the correct address. It also expects the Applicant Company to be transparent in its description of funds held in any reserve fund which does not appear to be the case at present. For example this may allow tenants to legitimately argue that certain expenses be taken from these funds.

18. The Tribunal therefore finds in favour of the Applicant. The sum of £309.86 is the amount that the Tribunal determines is recoverable and reasonable. The matter of costs and any ancillary matters arising will be determined by the County Court when the matter is transferred back to Brighton County Court.

Chairman.....

Date..... 19/08/10