

**SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/00MR/LIS/2010/0058

Between:

DKF Developments Ltd (Applicant)

and

Mr Ross McPherson (Respondent)

Premises: Flats 3, 4 and 10 Charter House, Lord Montgomery Way,
Portsmouth, Hampshire PO1 2SG ("the Premises")

Date of Hearing and Determination: 5 October 2010

Tribunal: Mr D Agnew BA LLB LLM Chairman
Mr P D Turner-Powell FRICS

DETERMINATION AND REASONS

DETERMINATION:

1. The Tribunal determines that service charges claimed by the Applicant as outstanding at the time of the issue of County Court proceedings in respect of each of the flats comprising the Premises are as follows:-

Service Charge arrears accrued prior to 31 December 2008	£558.29
18.11.2008 Service Charge on account for the period September to December 2008	£150.00
Service Charge due 1.1.2009	£933.75
Service Charge due 1.7.2009	£933.75
Service Charge due 1.1.2010	£888.95
2. The Tribunal further determines that subject to any set-off and counter-claim that the Respondent may pursue through the County Court the aforesaid service charges totalling £3464.74 were reasonable and were due and payable by the Respondent to the Applicant as at the date of the issue of the aforesaid court proceedings in respect of each of the three flats comprising the Premises.
3. The Tribunal has no jurisdiction to make any determination with regard to alleged outstanding ground rent which is part of the Applicant's claim in the County Court.

4. The files in the three County Court actions will now be returned to the County Court for all outstanding matters to be dealt with.

REASONS:

Background

5. On 18 June 2010 District Judge Wilson in Portsmouth County Court transferred three cases under numbers OQT50935, OQT50952 and OQT50920 in respect of flats 4, 10 and 3 respectively at Charter House Lord Montgomery Way, Portsmouth ("the Premises").
6. The claim was identical in respect of all three cases. The first item was a claim for £558.29 being the amount it was alleged comprised service charges in arrears as at 1 September 2008 when the current managing agents, Bernards, took over the management of the building in which the three flats are situated. Bernards then levied a service charge on account to cover the period 1 September 2008 to 31 December 2008 in the sum of £250.00. £150.00 of this was outstanding as at the date the claim was made to the County Court. Thereafter service charges were levied on 1 January 2009 for £933.75, on 1 July 2009 for the same sum, namely £933.75 and on 1 January 2010 for £888.95. The claim to the County Court also included a figure for arrears of ground rent, a claim for interest under the County Court Act 1984, a court fee and solicitors fixed costs on the summons.
7. The Tribunal issued directions on 19 July 2010 for the parties to file statements of case and the case was listed for hearing on 5 October 2010.

The Inspection

8. The Tribunal inspected the premises immediately prior to the hearing on 5 October 2010. Present at the inspection were Ms S.Bryan (the Applicant's solicitor) and Mrs T Simmons (the Applicant's managing agent). Also present at the inspection was the Respondent in person. The Tribunal were able to look at the outside of the premises, the common parts and Flat 3 where the Respondent pointed out to the Tribunal the damp walls to the flat and the corridor leading thereto. This damp is the subject of his complaints about the condition of the premises and his possible set-off and counter-claim arising from his assertion that the damp had prevented him from letting the property resulting in a loss of rental income. The Respondent claimed that this was the reason why he had not paid the service charges claimed. The Respondent confirmed that Flats 4 and 10 did not suffer the same problem with regard to damp and it was therefore unnecessary for the Tribunal to inspect the interior of those flats.

9. Charter House is a complex building. It was constructed about a hundred years ago and now comprises 42 residential flats above eight commercial units the flats having been converted from offices presumably in or about 2003, the date of the flat leases. There are five storeys, the upper four being served by a modern lift. The communal stairways are spacious and well carpeted, although not kept particularly clean. The windows were extremely dirty. There was a bicycle on the stairway. The main entrance door appeared to be damaged. The Tribunal noticed that there was a considerable amount of damp on the wall of the corridor leading to Flat 3 and in particular in the bedrooms of Flat 3.

The Leases

10. By Clause 4(4) of the Respondent's leases the lessee has covenanted to pay "by way of further or additional rent the interim charge and service charge at the times and in the manner provided in the fourth schedule" of the lease.
11. By Clause 5 of the lease the lessor covenants with the lessee inter alia "to maintain and keep in good and substantial repair and condition:-
 - (i) the structure of the property ...
 - (iv) the common parts ...
 - (iv) to insure the property
 - (vii) to decorate the common parts ...
 - (viii) to keep the common parts lighted and carpeted ...
 - (xi) to employ managing agents ...
 - (xvi) to provide a sinking fund
12. The fourth schedule of the lease provides the mechanism for the landlord to charge and recover the service charge in particular it is provided that :
 - (2) 'The service charge' means a sum equal to the percentage contribution of the total expenditure apportioned in accordance with paragraph of the particulars in respect of each accounting period.
 - (3) The interim service charge means a sum equal to the percentage contribution to such sums to be paid on account of the service charge in respect of each accounting period as the lessor shall reasonably estimate as likely to be incurred in that accounting period in respect of the total expenditure with an appropriate amount as a reserve ..."
13. By paragraph 2 of the fourth schedule to the lease it is provided that "if the interim service charge paid by the lessee in respect of any accounting period exceeds the service charge for that period then such surplus shall be carried forward by the lessor and credited to the account of the lessee in computing the service charge in the next succeeding accounting period ...
 - (iii) if the service charge in respect of any accounting period exceeds the interim charge paid by the lessee in respect of that period together with any surplus from previous years carried forward as aforesaid then

the lessee shall pay the excess to the lessor within fourteen days of service on the lessee of the certificate referred to in the following paragraph

(iv) as soon as practicable after the expiration of each accounting period the lessor's accountant shall draw up and submit to the lessee accounts setting out details of the total expenditure and service charge in respect of that period and shall certify the amount (if any) due from the lessee on account of the service charge."

The Law

14. By Section 27A of the 1985 Act it is provided 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 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.
 - (2) Subsection (1) applies whether or not any payment has been made.


The Hearing

15. Immediately prior to the hearing the Applicant's counsel Miss Eleanor Bruce had a discussion with the Respondent to ascertain whether any settlement or agreed way forward could be achieved. The parties reported that they had agreed between them that the Respondent did not challenge the reasonableness of any of the service charges levied. What the Respondent wished to claim was that his loss of rental income as a result of the damp to flat 3 should be off-set against the service charges levied. The parties agreed that the appropriate forum for that set-off or counter-claim was the County Court rather than the Leasehold Valuation Tribunal and that all the parties required of the Tribunal was simply to determine that the service charges were reasonable and then pass the matter back to the County Court for it to determine any further matters.
16. The Tribunal considered, however, that if it was going to make a determination as to the reasonableness of the service charges that had been levied it required to be satisfied:-
- a. that proper service charge demands had been made
 - b. that those service charges complied with Section 21B of the Landlord and Tenant Act 1985 which required the demand to be accompanied by a statement setting out a summary of the tenants' rights and obligations, and

c. that the amounts charged by way of service charge were reasonable.

17. Accordingly, the Applicant's managing agent produced copies of the service charge demands which had been sent accompanied by a summary of tenants' rights and obligations. The managing agent also produced a budget breaking down the service charges claimed into constituent parts and the managing agents also produced invoices supporting the expenditure actually incurred and certified accounts for the service charge year 2009.
18. The Respondent confirmed that he had received the copies of the budget statements and he had no issue with the amounts charged.
19. The Tribunal was satisfied having perused all the documents that the service charge demands had been properly made and the sums for the various items contained within the budget forming the service charges demanded were reasonable.
20. In those circumstances the Tribunal was prepared to make the determination set out in paragraphs 1 – 3 above.

Dated this 14th day of October 2010


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D. Agnew BA LLB LLM
Chairman