

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



S.20C Landlord & Tenant Act 1985 (as amended) ("the 1985 Act")

Case Number:	CHI/21UD/LLC/2010/0003
Property:	Ground Floor Flat 97 Emmanuel Road Hastings East Sussex TN34 3LE
Applicant:	Mrs B Fitzgerald
Respondent:	New Era Investments Limited
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman) Mr N Cleverton FRICS (Valuer Member)
Date of the Tribunal's Decision:	1st June 2010

The Application.

- 1) This is an application for an order under S.20C of the 1985 Act that the respondent landlord's costs in proceedings bearing case number CHI/21UD/LBC/ 2009/0045 should not be regarded as relevant costs to be taken into account in determining the service charge payable by the applicant.

The Decision.

- 2) The tribunal makes an order under S.20C of the 1985 Act in respect of all of the landlord's costs incurred in case number CHI/21UD/LBC/2009/0045.

Background.

- 3) On 9th March 2010 the tribunal made a determination on an application by the respondent landlord pursuant to S.168 of the 1985 Act ("the Substantive Application") seeking a declaration that the applicant had committed a breach of covenant in relation to her lease of the property. The tribunal's determination was that there had been no such breach.

- 4) On 16th March 2010, the applicant applied to the tribunal for an order under S.20C of the 1985 Act in respect of the costs of the Substantive Application.
- 5) On 1st April 2010 the tribunal gave directions that the matter be determined on the basis of the papers and without an oral hearing.

The Evidence.

- 6) The applicant's evidence was set out in her application. She invited the tribunal to make an order under S.20C of the 1985 Act on the grounds that all the wasted costs incurred in the Substantive Application had come about due to the lack of supporting evidence from a competent surveyor. In the event the tribunal had found in her favour and therefore it would not be just or equitable for her to be penalised in respect of costs.
- 7) The respondents filed no evidence and had simply written to the tribunal confirming that they did not wish to contest the application.

Consideration.

- 8) The legislation gives the tribunal discretion to disallow in whole or in part the costs incurred by a landlord in proceedings before it being regarded as relevant costs to be taken into account in determining the amount of service charge payable by the tenant. In the tribunal's judgement the only principle upon which its discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The decided cases suggest that these circumstances can include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise.
- 9) The tribunal is satisfied that it should exercise its discretion in this case and make an order under S.20C of the 1985 Act. The applicant was successful in defending the Substantive Application as the tribunal found that there was insufficient evidence for it to conclude on the balance of probabilities that there had been a breach of covenant.
- 10) Bearing in mind this finding and also bearing in mind the conduct of the parties, in the tribunals opinion it would be unjust for the applicant to have to pay the costs of the Substantive Hearing in the form of a service charge. For these reasons the tribunal makes an order under S.20C of the 1985 Act.

Chairman


R.T.A. Wilson

Date: 1st June 2010