

**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/29UD/LSC/2010/0038

In the matter of 20 Brougham Court, Hardwick Crescent, Dartford, DA2 6SE

Applicant: Bow Arrow Management Company Limited

Respondent: Ms. Kelly Lorraine Wood

Date of Transfer: 23rd February 2010

Tribunal Members: Mr. S Lal LL.M, Barrister (Legal Chairman)
Mr. C Harbridge FRICS
Mr. P. Gammon MBE

Date of Hearing: 23rd June 2010

Date of Decision: 25th June 2010

Application

1. The Applicants have had their case transferred to the Tribunal by way of an order made by Dartford County Court on 23rd February 2010 under section 27A of the Landlord & Tenant Act 1985 (as amended) ("the Act") to determine the liability of the Respondent in respect of the service charge years 2008 and 2009.
2. Directions were issued on 25th March 2010 and 28th April 2010. Both parties to the proceedings were invited to send to the Tribunal written representations to include a Statement of Case. The Respondent has not complied with Directions in any event nor has she supplied to the Tribunal any documentary submission, the Applicant has supplied a bundle of documents consisting of 72 pages (the "Bundle").

The Hearing

3. The Applicant was represented at the hearing by Miss. Eleanor Bruce, Counsel instructed by Maddersons Solicitor's. She was accompanied by Mr. Chad Bryant of Carrington's Residential Management Limited (appointed by the Applicant Company to act as Managing Agents). Mr. Bryant had provided a witness statement in the Bundle in any event.

4. The Respondent did not attend the hearing nor was she represented.

The Inspection

5. The members of the Tribunal inspected the property externally only, on the morning of the hearing. The Tribunal were unable to carry out an internal inspection as the Respondent did not appear to allow internal access. The Tribunal were also able to inspect the common areas, such as the communal garden area, the car parking and roads and the rubbish area. The subject property is one of in excess of 400 units on an estate type development which shares communal garden access and parking areas.

The Law

6. 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.

7. 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."

8. 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

9. The only matter in dispute is the liability to pay the service charge for 2008 and 2009.

The Case for the Applicant

10. Miss. Bruce, following a query raised by the Tribunal was able to clarify that the total amounts that the Applicant sought was £234.63 for the year 2008 and £657.93 for 2009 and £146.88 in administration charges. These 2008 and 2009 amounts were slightly downward modifications from that which appeared in the County Court Particulars of Claim because it was accepted by Miss. Bruce, having taken instructions from Mr. Bryant, that the 2008 accounts and the 2009 estimated accounts appeared to be based on a management fee percentage that was in excess of the 10% that was actually permissible by the lease.
11. Miss. Bruce suggested that an appropriate method of arriving at her revised figure was to deduct the "wrong" management fees amount from the overall service charge amount and then calculate 10% of what was left, add that back and apportion accordingly. She accepted that the full service charge amount for 2008 was not available but she suggested that a 4% reduction reflecting the reduction in the service charge amount for 2009 was a practical backwards extrapolation.
12. The Tribunal were content to adopt the revised figures as the amounts in dispute and were grateful to Miss. Bruce for the way she presented the case, was able to both assist the Tribunal in its questions and in the mathematical calculation and her recognition that such a reduction had to be made because the lease only permitted a 10% management charge.
13. She further submitted that the revised amounts were payable under the lease and were in any event reasonable.

The Case for the Respondent

14. The Respondent did not attend the hearing and no written submissions or any other documentary evidence was provided to the Tribunal.

The Tribunal's Decision

15. 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.
16. 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.
17. The starting point for the Tribunal's analysis was its assessment of the Service Charge amounts demanded for 2008 and 2009. On the face of it, and absent any argument presented to the contrary, the amounts demanded therein seem to be reasonable amounts with the Respondent having a clear liability to pay for those services under the terms of the lease. The Tribunal noted the extent of the communal areas and were unable to conclude that any of the amounts that made up the service charge were unreasonable. The Tribunal did not hear from the Respondent in any event. The Tribunal finds that the service charge demands have been served in the correct format and accepts the evidence of Mr. Bryant that this was the case.
18. In the circumstances that Tribunal rules that the Respondent is liable to pay the following amounts:

2008	£234.63
2009	£657.93
Administration Charges	£146.88
<u>Total</u>	<u>£1039.44</u>

19. 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 ordering the
Respondent to reimburse the Applicant's hearing fee in respect of this
hearing.

Chairman.....

Date.....