

**IN THE LEASEHOLD VALUATION TRIBUNAL
UNDER S27A LANDLORD & TENANT ACT 1985**

DECISION AND REASONS

Case No	CHI/43UF/LIS/2009/0061
Property	Flat 2, Tatra Mill lane Ashington Pulborough RH20 3BX
Applicants	Lisgo Charlton Ltd Represented by Mr M Packwood, PPS Management
Respondent	Mr B Young, Flat 2 Represented by Ms Markandya, Counsel
Date of hearings	17 November 2009 26 January 2010
Date of decision	2 February 2010
Members of the Tribunal	Ms H Clarke (Chair) Mr N Robinson FRICS Ms J Morris

1. APPLICATION

By a claim issued in the Chichester County Court (“the County Court proceedings”) the Applicant sought judgment against the Respondent for the balance of service charges and ground rents owed. The Respondent filed a defence asserting that the sums claimed were unreasonable, and the matter was transferred to the LVT for determination.

2. DECISIONS

The Tribunal determined that the service charge demands which were claimed in the County Court action were not payable.

3. The Tribunal made no decision concerning ground rent as this fell outside its jurisdiction.

4. The Tribunal made an order under s20C that costs incurred by the Applicant in connection with the County Court and the Tribunal proceedings are not to be regarded as relevant costs to be taken into account in determining the service charge payable by any of the lessees of the property.

5. INSPECTION

The Tribunal inspected the exterior of the property immediately prior to the hearing on 17 November. The flat owned by the Respondent constituted the raised ground floor of a converted house, probably constructed in the mid 20th century. Adjacent to the house at the rear was a shared driveway and some outbuildings. Access to

Flats 2 and 3 could be made most easily from the rear of the house. A stream ran alongside the driveway. The driveway showed signs of repair work and fortification of the stream sides. The main house itself appeared to be in generally good condition, although a flat roof to an extension showed significant plant growth and some distortion to gutters, external woodwork was rotten, and there was some deterioration to external decorations. There were some signs of water escape from pipes or guttering, although the Tribunal noted that it had rained heavily in the preceding days. The outbuildings were in poor condition with partially collapsed roof.

6. THE LEASE

The Tribunal was shown a copy of a Lease dated 5 October 1990 for Flat 2, under which the Respondent now held as Lessee. The Lease provided for the Lessor to maintain the structure of the building and the boundaries and paths, to insure the property and to decorate the exterior. The Lease made provision for the Lessee to pay contributions towards the Lessor's expenses. Insurance premiums were to be payable on demand. The other relevant terms are considered more fully below.

7. THE LAW

Landlord & Tenant Act 1985:

s18. Meaning of "service charge" and "relevant costs".

"(1) In the following provisions of this Act "service charge" 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 or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable."

8. *s19 (2) "Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise".*

9. *s20C Landlord & Tenant Act 1985 provides:*

"(1) A tenant may make an application for an order that all or any of the costs incurred,...by the landlord in connection with proceedings before a ..court or leasehold valuation tribunal, ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant

...

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances"

10. *s21B "(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges..*

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand."

11. HEARING

An initial hearing took place on 17 November 2009 which was adjourned by the Tribunal to a further hearing on 26 January 2010 to enable documents to be produced. In accordance with the further Directions issued by the Tribunal each party submitted a bundle of documents, and the Respondent also submitted a witness statement. Whilst the witness statement was not provided until the date of the hearing, the Tribunal decided to admit it, after allowing the Applicant's representative an opportunity to consider it.

12. The hearing on 26 January 2010 was attended by Mr Mark Packwood of PPS Management on behalf of the Applicant, and Mr Packwood explained that he was also a director of the Applicant. The Respondent Mr Barry Young appeared and was represented by Counsel, Ms Markandya.
13. The hearing was also attended by Ms Carol Lessiter, Lessee of Flat 3 at the property. Ms Lessiter had indicated to the Tribunal that she wished to be joined as a Respondent. However, the Tribunal did not join her to the application because Ms Lessiter stated that the Applicant had obtained judgment against her in the County Court, in respect of her share of the same service charges as were in issue against Mr Young.
14. The case for the Applicant under the claim was that the Respondent was liable to pay a total of £3022.50. This arose from demands made at six-monthly intervals from 24 June 2007 to 25 December 2008. There was a sample invoice dated 30 July 2009 in the Respondents' bundle of documents, and Mr Packwood stated that all the demands had been in the same form as that one. The demands were made in respect of budgeted expenditure, not actual expenditure. However the budgets for the relevant period were not shown to the Tribunal, other than for the year ending 24 December 2009. Mr Packwood agreed in answer to the Tribunal's question that the demands were for payment on account.
15. The Respondent's case was that the demands were not payable because they lacked the prescribed information required by s21B Landlord and Tenant Act 1985 and the Regulations made under it. Alternatively, the Respondent said there was no authority to demand payments on account. The Respondent wished to challenge the costs which were incurred in the relevant years. Work had been done to the riverbank which was of a poor standard, and the sums collected from the tenants did not match the payments made to the builders. No s20 Notice had been served for the major works done to the riverbank. The tenants objected to paying management charges, as the service had not been good.
16. The Tribunal considered the evidence. It was abundantly clear that the demands were for payments on account. There was no evidence of a reconciliation against actual expenditure for the relevant period. The Tribunal considered the wording of the Lease. Clause 3(1)b) contained a covenant by the Lessee to pay 'all rates taxes assessments charges impositions road charges and outgoings which may at any time be assessed charged or imposed upon the demised premises or any part thereof..' Mr Packwood submitted that Clause 3(1)b) could be construed so as to include payments

of service charges on account. The Tribunal rejected this submission. The clause did not make any reference to when payments must be made, and did not therefore impose an obligation to pay in advance. Even if Mr Packwood's suggested interpretation that 'outgoings' could include contributions to maintenance was correct (which the Tribunal did not accept), the clause referred to outgoings 'which may at any time be assessed charged or imposed' and in the view of the Tribunal a budget for anticipated expenditure did not show anything which had been 'assessed charged or imposed'. There would not be an 'outgoing' until the Lessor had incurred an expense. The other part of the Lease which dealt with maintenance contributions was Clause 4(2) which obliged the Respondent Lessee to make an annual payment. There was no provision for six-monthly payments. His obligation was to pay two-fifths of the 'costs and expenses incurred by the Lessor...' plus management costs. In the view of the Tribunal this was clearly a contribution to be made after the relevant expenses were incurred, and not in contemplation of them. There was therefore no authority under the Lease to demand payments on account. Consequently none of the demands relied upon in the claim were payable.

17. The Tribunal also accepted the Respondent's submission that the demands for payment had not complied with the statutory requirements. Three of the four demands were issued after section 21B of the Landlord and Tenant Act 1985 came into force, together with the Regulations referred to above. It was the Respondent's unchallenged case that the necessary information prescribed by statute had not been sent to him with the demands. No documentary evidence of any such information was shown to the Tribunal. Mr Packwood for the Applicant said in terms that all the demands were in the same form as the one dated 30 July 2009, which had none of the prescribed information in it. On this ground, the Tribunal found that the demands dated 25 December 2007, 24 June 2008, and 25 December 2008 were not payable.

18. The Tribunal decided to make an order that costs incurred by the Applicant in connection with the County Court and the Tribunal proceedings are not to be regarded as relevant costs to be taken into account in determining the service charge payable by any of the lessees of the property, because the claim had been wholly unsuccessful and the criticisms made by the Respondent regarding the failure to provide prescribed information were well founded according to the evidence which the Tribunal saw.

19. The Tribunal did not make any determination about whether costs were reasonably incurred in the relevant years. As the claim concerned payments on account, the demands had not in fact been issued in respect of costs incurred. Consequently, issues about whether repair works had been done well, whether there had been adequate consultation for major works, whether the accounts correctly reflected income and expenditure, or whether costs had been reasonably incurred, would need to be the subject of a further application if they were to be challenged.

Signed ----- *hmc* -----

Dated ----- *2-12-10* -----