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DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 section 27A

Case Reference: LON/00AH/LSC/2010/0556

<u>Property:</u>	13 Hyrstdene, South Croydon, Surrey CR2 6JW
<u>Applicant:</u>	Mrs Crassimira Kostadinova Crastin-Botting
<u>Respondents:</u>	Hyrstdene Residents Society Limited
<u>Date of Application:</u>	11 th August 2010
<u>Date of Directions:</u>	13 th August 2010
<u>Date of Determination:</u>	25 th October 2010
<u>Tribunal Members:</u>	S. Shaw LLB (Hons) MCI Arb M Taylor FRICS MAPM

DECISION

1. This case involves an Application dated 11th August 2010, in which Mrs Crastin-Botting ("The Applicant") seeks an order in respect of an "incentive discount" (to be explained below) included in the service charges for the years 2000-2009. The application is made pursuant to the provisions of section 27A of the Landlord and Tenant Act 2005. The Property concerned is 13, Hyrstdene, South Croydon, Surrey CR2 6JW ("the Property") and is made against the freehold-owning company and Landlord, namely The Hyrstdene Residents' Society ("The Respondents").
2. The background to this matter has already been set out in a previous Decision of the Tribunal dated 21st June 2010, to which reference should be made. Briefly, that application was dismissed principally because it was brought under the Commonhold and Leasehold Reform Act 2002, Schedule 11, and it was determined that the contentious discount in this case was not an administration charge for the purposes of that Act. This further application has been issued for a determination upon the matter.
3. It is proposed to summarise the parties' respective positions, and the to give the Tribunal's Determination.

4. The Applicant's Case

The Property is one of 18 properties on a small private estate. The freehold is owned by the Respondent which is a company owned by 15 of the leaseholders on the estate. The Applicant is one of the 3 non-freehold owning leaseholders.

5. The Directors of the Respondent, themselves owners of flats on the Estate, give of their services gratuitously. In 1997, a decision was taken at a Society AGM, to give a discount for prompt payment of service charges. This system has apparently worked well for some 13 years, and appears to be supported by everyone on the estate apart from the Applicant. The Applicant has herself been a beneficiary of the discount for several, perhaps many, years. The discount currently runs at £15 for each of 3 annual instalments, thus a maximum of £45 per year.

6. The Applicant, whose case is managed by her son, seeks a determination to the effect that the *"incentivisation of payment is not provided for in the lease..."* and is *"legally unfounded"*. She asserts that the Respondent has *"acted outside its remit, and assumed a legislative power which they do not possess in implementing the incentivisation policy"*. Presumably, were such a determination made, there would have to be some form of accounting

between the Applicant, the Respondent and all the other owners, covering the period of the last 13 years. The discount has been characterised as a "*penalty charge*" for late payers.

The Respondent's Case

7. The Respondent contends that the sum concerned is not a penalty, but a discount for prompt payment, analogous to the discount often given by utility providers and other commercial entities. It saves on administrative overheads, and simplifies the task of the unpaid volunteers who manage the Respondent. The time taken in chasing late payments would probably result in the appointment of professional managers, a step which would increase the overall service charge payable.

The Tribunal's Conclusion

8. It is right to say that there is no express provision in the lease for a discount arrangement of this kind. The relevant provisions have been set out at paragraphs 3-6 of the Tribunal's previous Decision referred to above, and to which reference should be made. The machinery provided for in the lease is of a fairly conventional kind, requiring the lessee to pay a proportion of the cost of expenditure incurred by the lessor in discharging its own obligations under the lease, as summarised at paragraph 5 of the earlier Decision.

9. The function of this Tribunal, in the context of an application under section 27A (necessarily requiring an investigation under section 19) is pre-eminently to scrutinise service charges by reference to whether the costs have been reasonably incurred, and where works or services have been carried out, whether they have been to a reasonable standard. Against this background, issues of payability also arise under section 27A. In this case there has been no challenge under any of these heads. There is no assertion that any particular service has been overcharged or unreasonably incurred, nor that any works or services have been of an inadequate standard.

10. The Applicant's contention, it seems to this Tribunal, is, in effect, not that she has been charged too much, but that other owners (herself included) in previous years have paid too little, because they have enjoyed the benefit of a relatively small discount for early payment. Properly analysed, this amounts to the Applicant asserting that the Respondent has failed fully to enforce the covenants in the lease against certain owners during certain years.

11. This last assertion may or may not be the case, but it does not seem to the Tribunal that this entitles her to any relief under section 27A of the Act. There is, as indicated, no evidence before the Tribunal to support any assertion on behalf of the Applicant that charges she has paid have not represented good value for money. It may be that she has a technical argument for enforcement of the covenants against other owners, but this is not the forum for such an action, and it is speculative as to where such an action would lead.

12. For the reasons indicated above therefore, the Tribunal dismisses this application. No further order is made on this application

Legal Chairman: S SHAW

A handwritten signature in black ink, appearing to read 'S. SHAW', with a small dash below it.

DATED: 25th October 2010