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**Residential  
Property**  
TRIBUNAL SERVICE

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**

**REF: LON/00AZ/LSC/2006/0417**

**35A RUSHEY GREEN, LONDON SE6**

**OVERTON PROPERTY DEVELOPERS (SOUTH EAST) LIMITED**

**Applicant**

**MS F. TELFORD**

**Respondent**

Date of hearing: Paper decision

Date of decision: 22 June 2007

Tribunal: Mr M.A. Martynski - Solicitor  
Mrs S. Redmond BSc(Econ) MRICS  
Mr D. Wills ACIB

**Summary of decision**

1. The Applicant has not shown the Tribunal that the provisions of the lease as to service charges have been complied with and so the Tribunal is unable to make the declaration sought in the application.

**Background**

2. This is an application made by the Applicant on 30 November 2006 seeking a declaration that the sums demanded on account of a service charge for the years 2006-2007 are reasonable and payable. Those sums were:-

£297.50 on 25.03.06

£490.00 on 29.09.06

3. Directions were given on 15 December 2006 allocating the case to the Paper Track. Both parties submitted documents on which they wanted to rely. The Tribunal first considered the matter on 23 February 2007 and came to the conclusion that it required further information. A request for further written information was sent to the

Applicant who replied by letter dated 6 March 2007. The Tribunal considered the information from the Applicant and concluded that it still did not have sufficient information and that an oral hearing was necessary. The first available date for that hearing was 22 June 2007. The parties were notified of the proposed hearing. Both parties registered their views that they were not happy to have an oral hearing. On 30 May 2007 the Applicant's managing agent (Mr J McDonnell of Guaranteed Property Services) wrote to the Tribunal to say that a surprise trip had been booked for him and that he would be leaving on that trip on 22 June and accordingly would be unable to attend the hearing. The Tribunal further considered the matter, if the hearing was to be re-arranged, that hearing could not take place until September 2007. Given this and the parties' expressed reluctance for there to be an oral hearing, the Tribunal decided to deal with the case on the papers provided and advised the parties accordingly.

### **The lease**

4. The relevant parts of the lease provide as follows;  
*"interim service charge instalment" means a half yearly payment on account of the final service charge which is .....a half of the final service charge on the latest service charge statement* [Fourth Schedule paragraph 1]

*"The landlord must*

.....  
*(b) have a service charge statement prepared for each period ending on 31<sup>st</sup> December during the lease period which:*

.....  
*(ii) states the amount of the final service charge*

.....  
*(iv) is certified by a member of the Institute of Chartered Accountants in England and Wales ..... [Fourth Schedule paragraph 2]*

### **The Tribunal's decision**

5. Mr McDonnell was asked by the Tribunal in its request for further information in February 2007 to supply an audited account for the year 2005-2006. This request was made because; (a) an audited account is a requirement of the lease, and; (b) although an account for the year in question was included with the papers, that account was not audited despite the fact that a charge had been made for accounts. In response to this request Mr McDonnell sent the same unaudited account that he had already supplied to the Tribunal. It should be noted that Mr McDonnell appears to make his accounts for the financial year April to March. As can be seen from the above lease provisions, the lease provides for an account to be made up to 31 December.

6. The provisions in the lease set out a clear and simple process for the landlord to claim interim service charges on account. The starting point is the last service charge statement. That statement has to be certified by an accountant. The service charge payable by the tenant as set out in the statement is divided by two and the resulting sum is the sum payable on 25 March and 29 September for the year in question.

7. Unfortunately in this case, the service charge statement provided to the Tribunal was not certified. Had the service charge statement shown to the Tribunal been a proper certified statement, the Tribunal would have taken the figure in that statement of £626.76 which was the service charge shown as payable for the year 05/06 by the tenant as its starting point. Applying the provisions of the lease, that figure would be divided by two to give the figure of £313.38. That figure of £313.38 would have been the correct interim figure payable by the tenant on 25 March and again on 29 September.

8. Given the comments above, the Tribunal is therefore unable to agree with the interim charges of £297.50 and £490.00 claimed by the Applicant.

### Costs

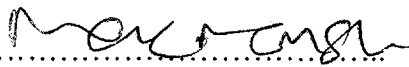
9. In his letter of 14 February 2007, Mr McDonnell requested an order that the Respondent pay his costs of £200.00 and the application fee of £70.00. Given the decision set out above, the Tribunal does not make any order in respect of the Applicant's costs. No application was made by the Respondent as to section 20C Landlord and Tenant Act 1985 which provides as follows;

*(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, 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 or any other person or persons specified in the application.*

*(2).....*

*(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. Had such an application been made, the Tribunal would have made an order preventing the costs incurred in this application being charged as service charge costs.



Mark Martynski  
Chairman  
22 June 2007

