

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

S.27A Landlord & Tenant Act 1985 as amended

S. 168 (4) Commonhold & Leasehold Reform Act 2002

DECISION AND REASONS

Case Number: CH1/00LC/LSC/2008/0044

In the matter of Flat 25, 25-30 Sunderland Close, Rochester, Kent, ME1 3AS

Applicants (Freeholders): Shuttleworth Property management Co Ltd per
Circle Management Ltd

Respondent (Lessee): Miss. Claire Joan Richards

Date of Application: 21st April 2008

Date of Hearing: 8th August 2008

Tribunal Members: Mr. S Lal LL.M (Legal Chairman)
Mr. R. Athow FRICS
Miss. L. Farrier

History

1. This matter started as an application by the Freeholders for the Tribunal to determine the liability and the reasonableness of the Lessee to pay interim service charges in respect of 2008/09. Further the Applicants wanted the Tribunal to determine whether the Lessee had breached a covenant or condition of the lease pursuant to s.168 (4) Commonhold & Leasehold Reform Act 2002.
2. Directions were issued in respect of both of the above matters on the 7th May 2008.
3. In reply to the above the Applicants have provided a 7 page bundle which contains written submissions in respect of the s.168 matter and a 16 page bundle in respect of the service charge matter. In addition the Applicants have provided a 14 page schedule of previous yearly service charge accounts.
4. No reply to Directions has been received from the Respondent Lessee.

5. The Tribunal gathered at 10am at the subject property but were unable to gain access. Neither Applicant nor Respondent was present and the Tribunal managed only to make a visual inspection of the outside of the property and common parts.
6. The Tribunal assembled for hearing at the designated time of 11am. The Respondent did not attend and no communication was received from her. The Applicants were represented by their authorised representative, Mr.Martin Paine.

The Applicant's Case

(a) S. 168 (4) Commonhold & Leasehold Reform Act 2002

7. In respect of this aspect of the Application, Mr.Paine adopted his written submissions of the 28th May 2008. He reminded the Tribunal of its power under the above Section to make such a Determination. He highlighted the extract from the Land Register which showed the Respondent to have re-mortgaged on the 6th June 2005 with Endeavour Personal Finance Limited. He said that this was in breach of Paragraph 2(6) of the Lease and he invited the Tribunal to so determine.

(b) S.27A Landlord & Tenant Act 1985 as amended

8. In respect of the above he adopted his submissions of the 28th May 2008 and invited the Tribunal to have regard to a decision it made in 2007 in respect of service charge liability for 2007/08 where the Respondent had accepted her liability to pay and also had not disputed the proportion of service charge that she had to pay. Mr.Paine emphasised that the present Tribunal was in fact the third Tribunal in so many years that had examined these matters. In respect of the reasonableness of the interim service charge he submitted that budgeted level of contribution is reasonable and follows findings made as to reasonableness by separate LVT's in respect of 2005/06 and 2007/08. The actual estimated amount was £4800 with the Respondent's annual contribution at £800.00 in accordance with the terms of the lease. He submitted that this was broadly consistent with an average of the amounts paid since 2002 which came to £744.87 per annum.

9. Mr.Paine then invited the Tribunal to make an order reimbursing his application fee of £70 and the hearing fee of £150. He referred the Tribunal to a recent determination of another LVT "Flat1, 6 Walmer Castle Road, Deal CH1/29UE/LSC/2007/0050 where fees had been reimbursed after the Respondent had failed to reply to correspondence. He submitted that the Tribunals jurisdiction was wide and would cover the situation where the Respondent had failed to reply to correspondence as well as the more obvious situation where a party had behaved frivolously or vexatiously.
10. He further made an application for Paragraph 10, Schedule 12 costs because of the Respondent's behaviour which he asked the Tribunal to find "otherwise unreasonable". He asked the Tribunal to make such an order for two separated amounts of £500, one in respect of the s.168 application and one in respect of the s.27A application. He said that the combined amount of £1000 was still not an accurate reflection of the actual amount of costs incurred in bringing the matter to this stage.

The Respondents Case

11. Nothing was received from the Respondent.

The Decision

12. In respect of s.168 (4) Commonhold & Leashold Reform Act 2002, the Tribunal are satisfied that the Respondent breached a covenant of the Lease. Specifically the Lease at 2(6) says

"Within one month after every assignment assent mortgage charge or transfer or sub-lease of the Demised Premises to give written notice to the Council specifying the name and address of the assignee mortgagee chargee transferee sub-lessee or other successor in title to furnish to the Council a complete plain copy of such assignment mortgagee chargee transfer and sub-lease and to pay to the Council a registration fee of Twenty Pounds or such higher fee plus expense as maybe reasonable required from time to time by the Council."

13. The Tribunal are satisfied by the Land Registry entry that the Respondent did re-mortgage to Endeavour Personal Finance Limited and such a Charge was registered on the 30th June 2005 and this was not notified to the Applicant Landlord and thus the Respondent was in breach of the terms of her lease as above.

14. In respect of s.27a, the Tribunal are satisfied that the Respondent is liable to pay the service charge in the proportion described by the lease, namely Clause 3 (1) (a) whereby she covenants to pay 16.67% of the costs expense outgoings and matters referred to in the third Schedule of the Lease. This is consistent with previous decisions of this Tribunal in respect of the 2005/06 and 2007/08 service years.
15. The Tribunal further determine that the sum of £4800 per annum with the Respondent paying her proportion of £800 is not unreasonable in the circumstances. This is because, in the absence of any counter suggestion by the Respondent as to reasonableness or otherwise, it is consistent within the broader range of service charge levied since 2002 and as recently as November last year, an LVT noted that a per annum proportion of service charge of £700 for the subject property was payable by consent. The Tribunal have seen nothing to suggest that a de facto increase of £100 for the interim year takes the matter into being "unreasonable."
16. In respect of the reimbursement of fees the Tribunal notes the wording of Regulation 9 of the Leasehold Valuation Fees Regulations 2003 and accepts that its discretion is a wide one, mindful of course of the general presumption that a party before the Tribunal should not have to pay the costs. However in this present case the Tribunal takes into account the general history of non-payment of service charges and the fact that the Applicant has behaved reasonably in writing before the application being made in an attempt to resolve the matter but to no avail. In the circumstances they have had no option but to incur the application and hearing fee.
17. In respect of costs under paragraph 10(2) of Schedule 12 of the 2002 Act, the Tribunal awards costs of £500 in respect of the s27A application and £250 in respect of the s.168 Application. The reason for this is that although the Tribunal accepts that the Respondent's conduct has not been frivolous or vexatious or abusive or disruptive, it does accept that her inaction and total disengagement with either process could be described as "otherwise unreasonable" in the context of the Applicant making every effort to have the matter resolved without any such application. This decision is consistent with the decision of the LVT in November 2007 when a costs order of £500 was made in respect of that particular service charge dispute characterised by inactivity and disengagement. The Tribunal nevertheless felt that two separate amounts of £500 amounting to £1000 would be disproportionate in the circumstances because to an extent, in respect of attendance for example, there had been a certain amount of duplication. Further the requested amounts of costs, amounting as they did to a higher amount than the service charge in dispute could be viewed as having a punitive effect beyond that which is strictly necessary.

Determination

18. The Respondent to pay interim service charges of £800 in the 2008/09 service year.

19. Under Reg 9 of the Leasehold Valuation Tribunal (Fees) Regulations 2003, the Tribunal order that the Respondent should reimburse the Applicant's application fee of £70 and hearing fee of £150.

20. Under Paragraph 10(2)(b) of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 the Tribunal determines that the Respondent shall pay the costs incurred by the applicant in connection with these proceedings in the sum of £750.

S. Lal.

8/08/08.

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Legal Chairman