

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

S.27A Landlord & Tenant Act 1985 as amended

DECISION AND REASONS

Case Number: CH1/21UG/LSC/2008/0042

In the matter of 41 Egerton Road, Bexhill-on Sea, TN39 3HJ

Applicants (Tenants): Mrs. Jacqueline Frances Strang (Flat 1)
Ms. Dorothy Makin (Flat 2)

Respondent (Landlord): Mr. Gary Sayers

Date of Application: 31st March 2008

Tribunal Members: Mr. S Lai Li.M (Legal Chairman)
Mr. B H R Simms FRICS MCI Arb

Date of Decision: 16th July 2008

Application

1. The Applicants applied to the Tribunal on the 31st March 2008 under section 27A of the Landlord & Tenant Act 1985 (as amended) ("the Act") to determine their liability to pay a service charge in respect of 41 Egerton Road, Bexhill-on Sea, TN39 3HJ ("the property") for the year 2007 and future years. Specifically the Applicants wished a ruling as to the method of calculation of the Administration Expenses under the terms of their lease. The actual amount of service charge and the liability to pay has never been in dispute.
2. Directions were issued on the 2nd May 2008. It was decided under the terms of Regulation 13 of the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 that the intention was to determine the matter on the basis of written representation only and without an oral hearing. Both parties to the proceedings were invited to send to the Tribunal written representations which they have both done. These are referred to below.

The Law

3. 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.

4. 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."

5. 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 Inspection

6. The members of the Tribunal inspected the property on the 16th July 2008. It is a Victorian house which has been converted into three self contained flats. The Tribunal Members were able to gain access only to the First Floor and Basement Flats but were also able to inspect the common parts, including the communal hallway and stairs.

The Issue

7. The only matter in dispute was the correct method of calculation of administration expenses payable to the Landlord in relation to maintenance and repair work to the property.

The Applicant's Case

8. In their written submissions of the 24th May 2008, the Applicants referred to Lease for the subject property and in particular the Fourth Schedule at Point 1, which reads as follows:

"In computing the amount recoverable an addition of five percent shall be added to the actual costs and expenses for administration expenses."

9. The Applicants asked the Tribunal to construe this provision as meaning that five percent be added to the total costs of any work and then divided by three, to reflect the one third share payable by each of the lessees according to the lease.
10. They referred to the October 2004 demand issued when building works had been carried out to the property and 5% was added to the total invoice and then divided by three.
11. They argued that in respect of 2007, 5% administration expenses were applied to the whole cost of annual maintenance and were then charged to each flat. They argued that this effectively resulted in total administration expenses of 15% and was contrary to the terms of the lease.

The Respondent's Case

12. The Respondent replied to the above submissions by way of written reply dated the 15th June 2008.

13. The Respondent detailed his own involvement with the subject property and how remedial work had been attempted in 2001 to the exterior of the property and communal hallways and detailing his attempts to carry out further remedial work in subsequent years.
14. The Respondent point out that no administration charge had been applied between 1994-2002 and indeed he carried out much of the work himself.
15. He stated that the first time he applied an administration charge was in 2002 and that in 2003, Mrs. Strang (one of the Applicants) appeared to accept that 5% of the total cost should be applied to each flat. The administration charges for the years 2003, 2004, 2005 and 2006 were all de minimis amounts although the Respondent does acknowledge that he has not applied the 5% calculation consistently and that ultimately it will depend on the Tribunal's own assessment of the terms of the Lease.

The Lease

16. The Tribunal was provided with a copy of the lease dated the 26th February 1960 and has regard to all the terms of the lease in coming to its decision but highlights here those clauses which it believes are specifically relevant to the payment of administration expenses as part of overall service charge liability.
17. The relevant part is the Fourth Schedule at Point 1, which reads as follows:

"In computing the amount recoverable an addition of five percent shall be added to the actual costs and expenses for administration expenses."

18. The Fourth Schedule throughout refers to payment being in one-third proportions.

Consideration

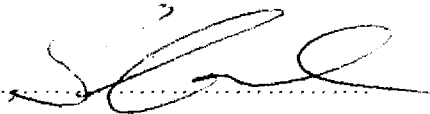
19. The issue for the Tribunal is a narrow one. The amount of service charge is not in dispute but only the administration expenses that arise out it.
20. The Tribunal is of the view that the lease, upon a proper construction of the words in the Fourth Schedule can only mean that 5% is applied to the total amount of service charge and then divided by one-third as opposed to each flat paying 5% of the total amount. The Tribunal are

satisfied that this is reflected in the use of the words "actual costs" which can only mean the total cost of the service charge to be apportioned as described in the Preamble to the Fourth Schedule. Further the Tribunal are satisfied that any other construction could lead to the absurdity of each flat paying an amount above and beyond of what the actual lease provides for, which is 5% of the actual costs incurred as constituting administrative expenses.

The Tribunal's Decision

21. The Tribunal therefore determines that the administration expenses shall comprise 5% of the total amount divided between each flat of the subject property in accordance with the terms of the lease.
22. The Tribunal notes that the Applicants have already paid the 2007 amount as demanded but would expect that part of it which relates to the incorrectly calculated administration expenses to be adjusted to now reflect the decision of this Tribunal.

Chairman.....



Date.....

16/7/08.....