

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



**Residential
Property
TRIBUNAL SERVICE**

S.27A Landlord & Tenant Act 1985(as amended)(“the Act”)

Case Number:	CHI/00ML/LIS/2009/0046
Property:	Dorset Court 211-213 Kingsway Hove East Sussex BN3 4FD
Applicant:	Dorset Court (Hove) Limited
Respondent:	Mr Philip Lalani
Appearances for the Applicant:	Jonathan Everett, Solicitor Frank Pilbeam, Managing Agent Philip Brotherton, Director of the Applicant Company
Appearances for the Respondent:	No appearances
Date of Inspection /Hearing	13th August 2009
Tribunal:	Mr R T A Wilson LLB (Lawyer Chairman) Mr D Lintott FRICS (Valuer Member) Miss J Dalal (Lay Member)
Date of the Tribunal's Decision:	28th August 2009

THE APPLICATION

1. This was an application, transferred to the Tribunal from the Brighton County Court, for a determination, firstly in respect of service charges payable for the years 2004 to 2008 and secondly for advance service charge payable for the half-year commencing 29th September 2008.

2. The Tribunal is also required to consider, pursuant to Regulation nine of the Leasehold Valuation Tribunal's Fees (England) Regulations 2003, whether the Respondent should be required to reimburse the fees incurred by the Applicant in these proceedings.

DECISION IN SUMMARY.

3. The Tribunal determines for the reasons set out below as follows:-
 - i) The on account service charge demand of £927.07 for the half year commencing 29th September 2008 is payable by the Respondent forthwith.
 - ii) By virtue of section 27 (4) of the Act, the Tribunal has no jurisdiction in respect of service charges demanded for the years 2005, 2006, 2007 and 2008 totaling £9,326.70 inclusive of interest and ground rent.
 - iii) The Tribunal orders that the Respondent repay the balance of the Applicant's Tribunal fees of £150 forthwith.

JURISDICTION.

Section 27A of the 1985 Act

4. The Tribunal has power under Section 27A of the Landlord and Tenant Act 1985 to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable in so far as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.
5. By section 19 of the Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.
6. The Tribunal has the power to determine whether an administration charge is payable in accordance with schedule 11 to the Commonhold and Leasehold Reform Act 2002 which provides that;

a variable administration charge is payable only to the extent that the amount of the charge is reasonable.
7. In paragraph 1d of Schedule 11 an administration charge is defined as an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or in directly in connection with a breach or alleged breach of covenant or condition in his lease.

INSPECTION.

8. The Tribunal inspected the property before the hearing in the presence of the Applicant. The Respondent did not attend. Dorset house is an eight-story building of 40 flats located on the corner of Kingsway and Carlisle Road, Hove, East Sussex close to the seafront. The building was constructed in 1956/1957 of cavity brick under a flat roof. The elevation to Kingsway was rebuilt in 2002/2003 and re-clad with constituted tiles.

PRELIMINARIES /ISSUES IN DISPUTE.

9. Mr Everett a solicitor, Frank Pilbeam managing agent and Philip Brotherton director of the Applicant Company attended on behalf of the Applicant. The Respondent did not attend and was not represented.
10. The Tribunal first considered the extent of its jurisdiction to make a determination. In the Tribunal's papers was a letter from the Respondent containing the following statement, "I do not dispute that I owe the above amounts [£9326 .70] as at 4th June 2008."
11. Mr Everett opening his case for the Applicant contended that this letter amounted to an admission which brought into play the provisions of section 27 (4) of the Act. He contended that the effect of this clause was to result in the Tribunal having no jurisdiction to determine service charges in respect of the years 2004 to 28th September 2008 on the grounds that the sums demanded had already been accepted as being owed by the Respondent.
12. The Tribunal considered the provisions of section 27 (4) of the Act and accepted the submissions made by Mr Everett that the Respondent had admitted the amounts claimed with the result that it had no jurisdiction to determine the service charges up to 28th September 2008.
13. Mr Everett confirmed that the Tribunal was not being asked to make a deliberation in respect of interest charged on the arrears as this was a contractual matter between the parties.
14. This left just one item for the Tribunal to determine, namely the half yearly payment on account demanded on 29 September 2008 for £927.07.

THE EVIDENCE

15. Mr Everett called Mr Pilbeam to give evidence in relation to this demand. Mr Pilbeam referred the Tribunal to the terms of the lease which provided a mechanism for the Applicant to claim service charge payments on account twice yearly.
16. Mr Pilbeam confirmed that his firm had issued a demand pursuant to these provisions based on a reasoned budget. He also confirmed that the demand had contained the statutory information and had been properly served on the Respondent.

17. Mr Everett contended that the lease provided for 'on account' payments to be demanded and that the Respondent had received a demand containing the statutory information in the sum of £927.09. The Respondent had not challenged the demand on the grounds of payability or reasonableness and in the circumstances he invited the Tribunal to make a determination that the amount was payable forthwith.
18. Mr Everett also invited the Tribunal to make an order requiring the Respondent to pay the balance of the Tribunal fees of £150. He reminded the Tribunal that the Respondent had not challenged the County Court proceedings and had not submitted a defence in accordance with the directions issued by the Tribunal. In these circumstances the 'on account' demand was clearly payable and the hearing had been unnecessary. For these reasons it was just and equitable for a repayment order to be made.

CONSIDERATION

19. The Tribunal considered the terms of the lease relating to the subject property and satisfied itself that there was provision for 'on account' service charge demands to be made to the Respondent.
20. The Tribunal was also satisfied that a demand for £927.07 had been duly served on the Respondent which contained the statutory information.
21. The Tribunal noted that the Respondent had been given the opportunity, but had not challenged the demand, or filed any defence. Bearing in mind that there had been no challenge the Tribunal had no difficulty in determining that the 'on account' payment was payable forthwith.
22. Finally the Tribunal considered the request that it make an order requiring the Respondent to repay the balance of the Tribunal fees. Bearing in mind that the Respondent had not lodged a defence or challenged the amount demanded, the Tribunal considered that the hearing was unnecessary and that the Applicant had been put to unnecessary expense. In the circumstances the Tribunal considers that it is just and reasonable for it to make an order requiring the Respondent to repay the balance of the Tribunal fee of £150 forthwith and it so orders.

Chairman


RTA Wilson LLB

Date 28th August 2009