

IN THE LEASEHOLD VALUATION TRIBUNAL

SECTION 27A LANDLORD & TENANT ACT 1985

Case No	CHI/00ML/LSC/2008/0134
Property	First Floor Flat 48a Hythe Road Brighton
Applicant	Shuttleworth Property Management Ltd (Landlord) Rep by Circle Management Ltd (Agents)
Respondent	Mr Hurricane Newman-Starley Rep by Dean Wilson Laing, Solicitors
Date of decision	29 June 2009
Tribunal	Ms H Clarke (Barrister)

1. APPLICATION

The Application asked the Tribunal to determine whether interim service charges for the year 2008-2009 in the sum of £275 were reasonable and payable.

2. ISSUE FOR PRELIMINARY DECISION

The Respondent contended that the Tribunal had no jurisdiction to determine the matter on the grounds that the sum had been admitted by the Respondent to be reasonable, and that payment had been tendered before the Application was made and had in fact been made in response to the Application.

3. The Tribunal determined the preliminary question of jurisdiction without a hearing in accordance with revised directions given to the parties on 26 March 2009.

4. DECISION

The Tribunal had no jurisdiction to make a determination on the Application.

5. LAW

27A. Liability to pay service charges: jurisdiction

- (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 by whom it is payable,*
 - (b) *the person to 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.*
- (2) *Subsection (1) applies whether or not any payment has been made.*
- (3) *..*
- (4) *No application under subsection (1) or (3) may be made in respect of a matter which—*
 - (a) *has been agreed or admitted by the tenant,...*
- (5) *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*

6. THE LEASE

No point was taken by either party regarding the Lease which provided for an Interim Charge of a 'fair and reasonable' amount to be payable in advance on the First of January and First of July each year.

7. SUBMISSIONS AND REASONS

The Respondent through his solicitors stated that he did not dispute the reasonableness of the interim charge. He produced a copy of a cheque sent to the Respondent after the Application was made, and submitted that he had attempted to make payment some months earlier but it had been refused by the Applicant, apparently on the grounds that other charges were outstanding on his account. He also submitted that he had in any event paid part of the interim charge; the balance of £275 arose from the fact that he had expected to see a credit to his account in relation to a charge which was to be refunded and had withheld payment pending that credit.

8. The Applicant denied that the Respondent had offered payment before issue or that it had been refused. It submitted that the letter enclosing payment was ambiguous, and until the matter was clarified, the Respondent had been saying that the sum of £275 was disputed. It submitted that the Respondent could have avoided the Application being made and as such ought to pay costs and/or the fee for the Application.
9. The Tribunal accepted the submissions of both parties to the effect that payment of the sum did not in itself indicate agreement as to payability. The intention of a party making or offering payment was to be ascertained in the light of evidence of the surrounding circumstances, particularly the party's contemporaneously stated intention.

10. The evidence before the Tribunal was incomplete, comprising a small selection of correspondence dated before December, the time at which the Respondent said he tried to make payment. Whilst the Applicant was correct to say that a letter dated 30 October 2008 from the Respondent's solicitors said, "...the remaining balance is disputed", the Tribunal took the view that the letter had been sent in the context of correspondence between the parties relating to an unpaid credit and could readily be construed as referring only to the 'bottom-line' balance on the account, and not the shortfall in payment of the interim charge. The letters did not establish that either party's submissions were correct. However they did refer to the Respondent's position that he believed he was due a credit which had not been made, and that he had been requesting a breakdown of the budget figures; the Applicant appeared to respond that the information had been provided.
11. On the evidence available the Tribunal was unable to determine whether or not as a matter of fact the Respondent had tried to make payment and/or had been refused. However, it was clear beyond doubt that by his solicitors' letters of 12 March 2009, 24 March 2009, and statement of case dated 20 April 2009, the Respondent admitted that the total sum (save as to costs) sought in the Application was reasonable and payable. At the date of this decision the Tribunal consequently has no jurisdiction to determine the substantive application in respect of the service charge.
12. The Tribunal expects that further directions may be issued in respect of the application for costs.

Signed-----

Ms H Clarke

Dated 30 June 2009

SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/00ML/LSC/2008/0134

DECISION AND REASONS

Application : Sections 27A and 20C of the Landlord and Tenant Act 1985 as amended (“the 1985 Act”) and paragraphs 9 and 10 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”)

Applicant/Landlord : Shuttleworth Property Management Co Ltd

Respondent/Leaseholder : Mr Hurricane Newman-Starley

Premises : 48a Hythe Road, Brighton, BN1 6JS

Date of section 27A Application : 27 November 2009

Date of First Directions : 8 December 2008

Date of Second Directions : 26 March 2009

Date of Jurisdiction Decision : 29 June 2009

Date of Third Directions : 27 July 2009

Date of Fourth Directions : 21 August 2009

Hearing of Applications on Costs : determined on the papers without a hearing

Members of the Tribunal : Mr P R Boardman JP MA LLB (Chairman), Mr J Mills

Date of Tribunal’s Reasons : 14 October 2009

Introduction

1. On the 27 November 2008 the Applicant/Landlord applied under section 27A of the 1985 Act for a determination of the liability of the Respondent/Leaseholder to pay a service charge
2. In submissions dated the 5 February 2009 the Applicant/Landlord applied under paragraphs 9 and 10 of the 12 Schedule of the 2002 Act respectively for an order for the Respondent/Leaseholder to reimburse the Applicant/Landlord the fees paid by the Applicant/Landlord and for an order that the Respondent/Leaseholder pay the sum of £500 towards the costs of the Applicant/Landlord in connection with the proceedings, on the grounds that the Respondent/Leaseholder had acted unreasonably in failing to attempt to resolve any disagreement in relation to the service charge
3. On the 29 June 2009 the Tribunal decided that :

- a. the Tribunal was unable, on the evidence available, to determine whether or not as a matter of fact the Respondent/Leaseholder had tried to make payment and/or had been refused
 - b. however, the Respondent/Leaseholder had, by letters dated the 12 March 2009 and the 24 March 2009, and by the statement of case dated the 20 April 2009, admitted that the total sum sought in the application was reasonable and payable, save for costs
 - c. at the date of the decision the Tribunal accordingly had no jurisdiction to determine the substantive application in respect of the service charge
 - d. it was expected that further directions might be issued in relation to the application for costs
4. In submissions dated the 14 August 2009 the Respondent/Leaseholder :
- a. made an application under section 20C of the 1985 Act, and submitted that the application should succeed because the Applicant/Landlord's substantive application had failed for lack of jurisdiction
 - b. applied for an order that the Applicant/Landlord should pay the sum of £500 towards the costs of the Respondent/Leaseholder in connection with the proceedings, on the grounds that the Applicant/Landlord had acted unreasonably and vexatiously in ignoring the Respondent/Leaseholder's repeated requests to withdraw proceedings on the basis of lack of jurisdiction
5. In submissions dated the 5 October 2009 the Applicant/Landlord, by its agent Martin Paine FPCS MIOD of Circle Residential Management Ltd, submitted that :
- a. in considering the three applications yet to be determined the Applicant/Landlord considered that both parties had become entrenched in their positions
 - b. neither party had acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings, and therefore neither party was entitled to costs under paragraph 10 of the 12 Schedule of the 2002 Act
 - c. the Applicant/Landlord therefore withdrew its application under paragraph 10 of the 12 Schedule of the 2002 Act
 - d. the Applicant/Landlord did not oppose an order under section 20C of the 1985 Act

Statutory provisions

6. The relevant provisions of schedule 12 to the 2002 Act are as follows :

Fees

9 (1) Procedure regulations may include provision requiring the payment of fees in respect of an application or transfer of proceedings to, or oral hearing by, a leasehold valuation tribunal in a case under—

- (a) the 1985 Act (service charges and choice of insurers),*
- (b) Part 2 of the 1987 Act (managers),*
- (c) Part 4 of the 1987 Act (variation of leases),*
- (d) section 168(4) of this Act, or*
- (e) Schedule 11 to this Act.*

(2) Procedure regulations may empower a leasehold valuation tribunal to require a party to proceedings to reimburse any other party to the proceedings the whole or part of any fees paid by him.

(3) The fees payable shall be such as are specified in or determined in accordance with procedure regulations; but the fee (or, where fees are payable in respect of both an application or transfer and an oral hearing, the aggregate of the fees) payable by a person in respect of any proceedings shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) Procedure regulations may provide for the reduction or waiver of fees by reference to the financial resources of the party by whom they are to be paid or met.

(5) If they do so they may apply, subject to such modifications as may be specified in the regulations, any other statutory means-testing regime as it has effect from time to time.

Costs

10 (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.

7. By virtue of the provisions of paragraph 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 a tribunal may require a party to reimburse another party for the whole or part of any fees paid by him
8. By virtue of section 20C of the 1985 Act a tenant may apply for an order that all or any of the costs incurred by the landlord in connection with proceedings before a leasehold valuation tribunal 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

The Tribunal's findings

The Applicant/Landlord's claim for fees under paragraph 9 of the 12 Schedule of the 2002 Act

9. The Tribunal finds that :
- a. the Tribunal's decision on the 29 June 2009 was that the Tribunal had no jurisdiction to determine the substantive application in respect of the service charge
 - b. the Applicant/Landlord has withdrawn the Applicant/Landlord's application for costs under paragraph 10 of the 12 Schedule of the 2002 Act
 - c. in all the circumstances the Tribunal is not persuaded that an order should be made, and dismisses the Applicant/Landlord's application for fees

The Applicant/Landlord's claim for costs under paragraph 10 of the 12 Schedule of the 2002 Act

10. The Tribunal finds that :
- a. the Applicant/Landlord has withdrawn the Applicant/Landlord's application in this respect
 - b. the Tribunal dismisses the Applicant/Landlord's application for costs accordingly

The Respondent/Leaseholder's claim for an order under section 20C of the 1985 Act

11. The Tribunal finds that :
- a. the Applicant/Landlord has indicated that the Applicant/Landlord does not oppose the Respondent/Leaseholder's application in this respect
 - b. in any event, the Tribunal's attention has not been drawn to any paragraph in the Respondent/Leaseholder's lease as indicating that the Applicant/Landlord would have been entitled to include the Applicant/Landlord's costs of these proceedings in any service charge
 - c. in all the circumstances it is reasonable to make an order
 - d. the Tribunal accordingly orders that none of the costs incurred by the Applicant/Landlord in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent/Leaseholder

The Respondent/Leaseholder's claim for costs under paragraph 10 of the 12 Schedule of the 2002 Act

12. The Tribunal finds that :
- a. the decision of the Tribunal on the 29 June 2009 was that the Tribunal had no jurisdiction to determine the substantive application in respect of the service charge
 - b. it is clear from the correspondence before the Tribunal that the Respondent/Leaseholder had invited the Respondent/Leaseholder to withdraw the proceedings before the 29 June 2009
 - c. however, the Tribunal also found that the Tribunal was unable, on the evidence available in relation to the substantive application in respect of the service charge, to determine whether or not as a matter of fact the Respondent/Leaseholder had tried to make payment and/or had been refused
 - d. the admissions by the Respondent/Leaseholder referred to in the Tribunal's decision dated the 29 June 2009 were by letters dated the 12 March 2009 and the 24 March 2009, and by the statement of case dated the 20 April 2009
 - e. those admissions were dated over 3 months after the date of the Applicant/Landlord's application on the 27 November 2009

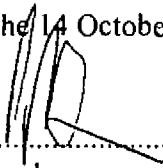
- f. the Tribunal's decision on the 29 June 2009 was made on the papers, without further costs being incurred by the parties in attending a hearing
- g. in all the circumstances the Tribunal is not persuaded that an order should be made, and dismisses the Respondent/Leaseholder's application for costs

Summary of the Tribunal's decisions

13. The Tribunal :

- a. dismisses the Applicant/Landlord's application for fees under paragraph 9 of the 12 Schedule of the 2002 Act
- b. dismisses the Applicant/Landlord's application for costs under paragraph 10 of the 12 Schedule of the 2002 Act
- c. orders that none of the costs incurred by the Applicant/Landlord in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent/Leaseholder, under section 20C of the 1985 Act
- d. dismisses the Respondent/Leaseholder's application for costs under paragraph 10 of the 12 Schedule of the 2002 Act

Dated the 14 October 2009



.....
P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor