

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

**S.27A Landlord & Tenant Act 1985 as amended**

**DECISION AND REASONS**

Case Number: CH1/29UC/LIS/2008/0050

In the matter of Flat 21, Frances Court, 117 High Street, Herne Bay, Kent,  
CT6 5LA

Applicant: Francis Court Management (Herne Bay) Ltd c/o Touchstone

Respondent: Ms. K. Sissons

Date of Transfer: 6<sup>th</sup> November 2008

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

Date of Decision: 15<sup>th</sup> June 2009

**Application**

1. The Applicant had originally applied to the County Court in an attempt to recover alleged service charge debt of £1486.42 which included some element of ground rent as well as service charge. The County Court transferred the matter of its own motion to the Leasehold Valuation Tribunal on 6<sup>th</sup> November 2008. No further direction was made at that time.
2. Directions were issued on 9<sup>th</sup> March 2009. It was made clear at the Pre-Trial Review that in the light of the Defence filed in reply to the County Court claim, the Tribunal would consider the reasonableness of the service charge amounts effectively under section 27A of the Landlord & Tenant Act 1985 (as amended) ("the Act")
3. Both parties to the proceedings were invited to send to the Tribunal written representations. They are referred to below.

**The Inspection**

4. The Tribunal inspected the common parts of the subject Property on the morning of the hearing. Ms. Sissons attended as did Mr. Wheeler for the Applicant.

5. It consists of a first, second and third floor converted into a number of individual flats above shops in the high street in Herne Bay. The conversion was done in the 1980's; prior to this the building had been shops and offices of a supermarket.

### **The Hearing**

6. The matter was listed for hearing at 11:00 am at the Alexander Centre in Faversham on 15<sup>th</sup> June 2009. Ms. Sissons was in attendance with her father Mr. Sissons. Mr. Wheeler who described himself as a property manager appeared for the Applicant.

### **Preliminary Issue**

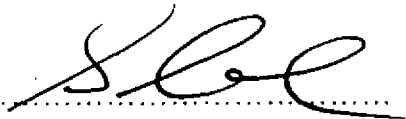
7. The Tribunal were concerned at the outset of the hearing that although the Directions had been complied with in the general sense, in respect of determining reasonableness, the Tribunal would have to have before it the amounts in dispute coupled with a budget account of how the anticipated expenditure had been arrived at and hence the demand made of the Respondent.
8. Mr. Wheeler stated at the hearing that the amount claimed had now gone up to £1719.22, representing six month blocks of £429.80 demanded of the Respondent. He was unable to supply how this figure had actually been arrived at as there was no breakdown of the same. He accepted that it would be difficult to assess reasonableness as a fact finding exercise in respect of the various component parts that made up the service charge in the absence of information as to breakdown supported by a budget. There had not been a budget included in the bundle submitted by the Applicant. Similarly the Applicants' representative did not have a copy to present the Tribunal.
9. It was clear to the Tribunal, from the Respondent's written response that her major dispute seems to have been with internal decoration but this would not stop her seeking to argue that other elements of the service charge demand were unreasonable in the circumstances. The Tribunal would have real difficulty in ascertaining what remained in dispute and what was not contentious because it was accepted as being reasonable.
10. The accounts that were submitted to the Tribunal by the Applicant were an amalgam of service charge elements and also company accounts relating to the Applicant Company and Ground Rents. They did not show a service charge component and nor was a budget produced as to anticipated expenditure for the year in dispute. Mr. Wheeler stated that it was on the basis of anticipated expenditure that the service charge demands were sent out and this presented the Tribunal with real problems as to determining the reasonableness of the same.

11. Mr. Wheeler was given the opportunity to take instructions and having done so, accepted that the accounts before the Tribunal were not in the appropriate format and that the service charge element should have been kept separate from general company accounts and Ground Rents, and also the accounts were not certified in accordance with Landlord and Tenant legislation. These are all aspects of good practice and are recommended to be laid out in the correct manner by both the RICS Code of Practice and the ARMA guidelines. It is understood from viewing the Managing Agents' web site that they are a member of ARMA and the Directors are Chartered Surveyors. This was confirmed by Mr. Wheeler.
12. Mr. Sissons for the Respondent stated that he attempted to get a budget agreed with a Mr. Matika for the Applicant Company after the pre-trial review but that that individual had left the Applicant Company and the matter had not been pursued any further.

### Decision

13. The Tribunal formally decides, in the absence of any proper breakdown or production of an anticipated budget for the year in dispute, that the Applicant has failed to establish the reasonableness of the service charges demanded of the Respondent. In failing to do so the Applicant has failed to establish the allegation, (initially started in the County Court as an action for the recovery of a debt, but which was enlarged to consider reasonableness generally when transferred to this jurisdiction) against the Respondent. In the circumstances the Tribunal decides that the Applicant has failed in their attempt to recover service charges demanded as reasonable for 2007-08 and that concludes the matter before this Tribunal.
14. There is nothing stopping the Applicant or Respondent from issuing a s.27A application to this Tribunal in the future for a determination as to reasonableness on the basis of a production of proper certified service charge accounts with evidence of a budget as to how any service charge demand was arrived at. In those circumstances the Tribunal would be in a position to assess reasonableness as regards those matters that remained contentious.

Chairman.....



Date.....

15/6/09