

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL

GRANVILLE HOUSE, VICTORIA PARADE, RAMSGATE KENT CT11 8DF

Applicant: Granville House Leaseholders Association

Represented by: Mr A Kimpton (Flat 12)
Dr F Sherriff (Flat 21)

Respondent: Abvale Ltd (Landlord)

Represented by: Mr J Dhams of the Property Management Company (YYZ) Ltd.

Date of Hearing: 22 May 2009

Date of application: 16 February 2009

Members of the Leasehold Valuation Tribunal:

Mr M Loveday BA(Hons) MCI Arb
Mr CC Harbridge FRICS
Mr R Athow FRICS MIRPM

1. This is an application for a determination of liability to pay service charges under s.27A of the Landlord and Tenant Act 1985 ("LTA 1985") in respect of Granville House, Victoria Parade, Ramsgate, Kent CT11 8DF.
2. By an application dated 16 February 2009, the Applicant, which is a recognised tenant's association under LTA 1985 s.29(1), sought a determination under s.27A(1) in respect of relevant costs. A pre-trial review was held on 25 March 2009 and the Tribunal inspected the premises before that hearing in connection with a linked application in application no CHI/29UN/LSC/2008/0113. Directions were given on 25 March 2009 which identified the following issues to be determined at a hearing:
 - (a) The relevant costs are £45,500 incurred in the service charge year ending 31 December 2007 and relate to fire alarm replacement and associated works.
 - (b) The first issue is whether all or part of the above sum has been admitted or agreed within the meaning of s.27(A)(4) of the Landlord and Tenant Act 1985.
 - (c) The second issue is whether the relevant costs are recoverable under the terms of the lease of each flat.
3. A hearing took place on 22 May 2009. The Applicant was represented by its Chairman, Mr Alan Kimpton (Flat 12) and its Treasurer, Dr Fiona Sherriff (Flat 21). Mr Jonathan Dhams appeared on behalf of the landlord. Mr Dhams is a Director of YYZ Ltd (trading as the Property Management Company). He is the managing agent for Granville House and was instructed by Mr D Abbott, administrative receiver for the landlord. A short bundle of correspondence was produced to the Tribunal in respect of negotiations between solicitors Girlings (for the Applicant) and Lass Salt Garvin (for the Respondent).
4. At the hearing, the parties both informed the Tribunal that agreement had been reached about the relevant costs in dispute and that there was no need for the Tribunal to determine matters. The agreement had been made between the solicitors for both parties based on earlier agreements made in writing in 1991 and 1999. In essence, the agreement was that these earlier agreements precluded the landlord

from recovering the relevant costs of fire precaution works from the lessees who are or were members of the Applicant.

5. As stated above, the Applicant is a recognised tenant's association but it is not a party to any of the leases at Granville House. It is not itself a "tenant" within the meaning of the Landlord and Tenant Act 1985. Notwithstanding this apparent procedural irregularity in the present application, the parties confirmed that the Applicant was the agent of certain lessees within the building for the purpose of negotiating the settlement of service charge matters with the landlord. The Tribunal is therefore satisfied that the relevant costs in this application are a "matter" which has been "agreed ... by the tenant" under section 27A(4) of the Act. The Tribunal does not therefore have jurisdiction to determine the application. Furthermore, it is also unnecessary to join individual lessees as additional parties to the Application.

6. At the hearing, the Applicant further sought an order under s.20C of LTA 1985. Such an application appears in paragraph 9 of the Application dated 16 February 2009, albeit that it was not referred to in the Directions. Mr Dhams agreed that such an order should be made. The Tribunal therefore determines in accordance with section LTA 1985 s.20C that no part of the costs of the landlord incurred or to be incurred by the 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 any tenant at Granville House.

7. The Applicant applied for a costs order under paragraph 10(2)(b) of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 and for an order for reimbursement of fees under paragraph 9(2) of Schedule 12. In the first instance, the Applicant sought costs of £500, and in the second instance they sought reimbursement of the application fee of £350 and the hearing fee of £150. Neither application was referred to in the Directions, but Mr Dhams did not object to the Tribunal dealing with the applications.

8. In essence, the Applicant relied on the same arguments in each case. Mr A Kimpton and Dr Sherriff submitted that the landlord and its advisers had acted unreasonably throughout the course of the application. The landlord had interpreted the 1991 and 1999 agreements in a partisan way and tried to 'bend' the meaning of these agreements. The landlord procrastinated for 7-10 years after these two agreements and eventually the Applicant had offered to compromise. The landlord's arguments had been wholly unreasonable. The landlord had spun out these arguments in solicitors' letters. When asked for specific examples of unreasonable conduct by the landlord, Mr A Kimpton and Dr Sherriff referred to letters in the bundle and the additional run of correspondence provided to the Tribunal on the day of the hearing. The application bundle had been sent to the landlord's solicitors by recorded delivery on 9 April 2009 and not returned by the Royal Mail undelivered. The Applicant was not simply stirring things up, it was out of pocket as a result of the dispute and should be paid something. The Applicant had incurred legal costs of solicitors which could be inferred from the letters from its solicitors to the other side which were before the Tribunal. As far as the hearing fee was concerned, the Applicant need not have been at the hearing at all.

9. Mr Dhams stated that he did not have any specific instructions about the costs and reimbursement of fee matters. However, the landlord had not acted unreasonably. The landlord had taken a pragmatic view that the amounts in dispute were such that it was better to settle the matter than incur further costs. Real difficulty had been caused in the application because neither the landlord nor its representatives had received the hearing bundle before the hearing. He referred to a letter from Lass Salt Garvin dated 20 May 2009 to this effect. As a result, there had been "frantic" last minute discussions between the solicitors.

10. Schedule 12 paragraph 10 states:
 - 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 with 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 is ordered to pay in the proceedings by a determination under this paragraph shall not exceed-

(a) £500 ...

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

11. As far as paragraph 10 is concerned, there is no suggestion that the landlord has acted frivolously, vexatiously, abusively or disruptively in connection with the application. The issue is whether the landlord has acted unreasonably. In this instance, the Tribunal declines to make an order for costs. The landlord's administrators were faced with an application by tenants relating to significant sums of money and the effect of agreements made some years ago. It cannot be said to have acted unreasonably by employing solicitors to resist the application. The Tribunal considers it would only be in exceptional circumstances that an order for costs would be made where the Tribunal ceases to have jurisdiction as a result of an agreement between the parties. The Tribunal notes that costs issues could have (but were not) dealt with in the agreement between the solicitors apparently reached the day before the hearing – and the issue of costs does not seem to have been raised by the Applicants until the hearing itself. Furthermore, there is nothing in any of the correspondence to suggest that the landlord's solicitors behaved unreasonably. There is a dispute about whether the latter received the application bundle (which the Tribunal is unable to resolve on present evidence), but there is no indication that either party attempted to open serious negotiations to settle the matter before the week of the hearing. In the end, the parties have reached an agreement just before the hearing, and there is nothing so unreasonable in the landlord's behaviour to displace the statutory presumption in paragraph 10(4) that costs are not payable by either party.

12. Paragraph 9(2) of Schedule 12 permits the Tribunal to order a reimbursement of fees. The requirements are set out in paragraph 9 of the Leasehold Valuation Tribunal (England) (Fees) Regulations 2003 which states:

"in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings."

13. Although the discretion to order reimbursement of fees is a wider one than under paragraph 10 of Schedule 12, in this instance the Tribunal declines to order any reimbursement for the same reasons given above.

14. The Tribunal's decision is therefore:

- (a) The relevant costs having been "agreed ... by the tenant" under section 27A(4) of the Act, the Tribunal does not have jurisdiction to determine the application.
- (b) In accordance with section LTA 1985 s.20C, no part of the costs incurred or to be incurred by the landlord in connection with these proceedings is to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any tenant at Granville House.
- (c) No order for costs is made under Paragraph 10 of Schedule 12 to the 2002 Act.
- (d) No order shall for reimbursement of fees is made under Paragraph 9(2) of Schedule 12 to the 2002 Act.



Mark Loveday BA(Hons) MCI Arb
Chairman
23 May 2009