

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

Case No: CHI/00HG/LIS/2010/0040

Re: 31 Queens Road, Lipson, Plymouth, Devon, PL4 7PL

**Between:**

William D. Tall (Flat 1)  
("the Applicant/Tenant")  
and

Kate Taylor & Steven Bartlett  
(Plymouth Land Management)  
("the Respondents/Landlords")

In the matter of Applications under  
(a) Section 27A of the Landlord and Tenant Act 1985 (Service Charges), and  
(b) Schedule 11 of the Commonhold and Leasehold Reform Act 2002  
(Administration charges)

**THE DECISION**  
**OF THE LEASEHOLD VALUATION TRIBUNAL**

**The Tribunal determines under Section 27A of the Landlord and Tenant Act 1985 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 that:**

- (a) The amounts for the "Landlords Consent to let fees" of £50 each year in the years 2006, 2007, 2008, 2009 and 2010 are not payable by the Tenant to the Landlord**
- (b) The amounts for the Landlords "Accounting costs and administration" of £30 (2006, 2007 & 2008 and £37.50 in 2009 and 2010 are payable by the Tenant to the Landlord**
- (c) No amounts of Interest on outstanding balances for the years 2007, 2008, 2009 and 2010 are payable by the Tenant to the Landlord**

**Date of Decision: 4<sup>th</sup> November 2010**

**REASONS FOR THE TRIBUNAL'S DECISION**

**1. The Applications**

There are Two Applications to the Tribunal:

- (a) One Application under Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of the liability of the Applicant/Tenant to pay to the Respondent/Landlord certain Service Charges incurred in the calendar years 2006, 2007, 2008, 2009 and 2010 under the terms of the Flat Lease.

- (b) Under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 for a determination of the liability to pay certain Administration Charges incurred in the calendar years 2006, 2007, 2008, 2009 and 2010.

**2. Background to the Application**

The Tribunal issued Directions providing for both parties to produce their respective written submissions and directed that the Tribunal proposed to deal with the matter as a paper determination without an oral hearing unless either party objected. Neither party objected, and the Tribunal makes this determination as a paper determination without an oral hearing.

**3. The matters in dispute**

At the date of the determination the following matters remained in dispute:

- (a) Year 2006 – Landlords Consent to let Fee £50.00  
Accounting costs and administration fees £30.00
- (b) Years 2007, 2008, 2009 & 2010:  
Interest charged at 7.5% on outstanding balance  
Landlords consent to let fee £50.00  
Accounting costs and administration fees £30.00 (2007, 2008)  
£37.50 (2009, 2010)

**4. The Documents before the Tribunal**

The Tribunal had before it the Bundles of documents which had been produced by the parties in accordance with the Tribunal's Directions. Copies of the Management Accounts (Service Charge Accounts) for the years in dispute and a copy of the Lease dated 6<sup>th</sup> February 1986 made between James William John Griffiths and Frank Holden were available to the Tribunal.

**5. The Relevant Law**

Section 27A of the 1985 Act. (Service Charges)

- (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.

Schedule 11 of the Commonhold and Leasehold Reform Act 2002  
("the 2002 Act") (Administration charges)

- Paragraph 5. (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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 would be payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

## **6. Consideration of the matters in dispute**

### **(a) Landlords Consent to Let fee £50**

The Tribunal read through the Lease and was unable to find any provision for the requirement of the Landlord's consent to any sub-letting. There is the usual Tenant's covenant not "to assign underlet or part with possession of part only of the Flat" contained in Clause 5(17) of the Lease. That is an absolute covenant against assigning underletting or parting with possession of part only. There is no evidence before the Tribunal that any such sub-letting was of part only. There is no Tenants covenant against sub-letting the whole of the Flat. There is also the usual covenant by the tenant to produce any underlease to the Landlord's Solicitors and pay a registration fee of £10 "together with any usual taxes" for the registration. The Tribunal interprets the reference to "taxes" as meaning VAT or any similar tax. On looking at each of the year's Management Accounts, the words used by the landlords Managing Agents are "Landlords Consent to Let Fee". In other words it clearly relates to a "consent" Fee as opposed to a "Registration" Fee. The Tribunal takes the view that they are two different Fees. As the Landlords managing agents have chosen to describe the fee as a "Consent to Let" Fee, then the Tribunal has to interpret the Lease to find out whether such a fee is payable under the terms of the Lease.

As the Lease does not contain any provision for the requirement for the Landlord to consent to any sub-letting of whole, and indeed does not provide for payment of any Fee for any such consent, the Tribunal reached the conclusion that no such Fee is payable by the Tenant to the Landlord.

### **(b) Accounting costs and administration fees**

This item is shown in the Management accounts for each year. There is also another item in those Accounts for "Agents Management Service Charges". This would seem to indicate that "Accounting costs and administration fees" is not a service charge item for management fees as these are included under a separate item. The Tribunal reached the conclusion that "administration fees" were more likely to fall within the definition of "Administration Charges" in Schedule 11 of the 2002 Act. However without having had any explanation for the Landlord as to exactly what this item covers it is difficult for the Tribunal to make a determination. The amounts involved of £30 and £37.50 had apparently already been paid by the Tenant and in view of the small size of the items, the Tribunal was inclined to find that they were payable. Certainly the wording of the Lease would seem to allow any reasonable charges for accounting and administration as coming within Part 5 of the Schedule to the Lease. The Applicant has apparently already sold his Flat and the Tribunal would have thought that he might have made an application in respect of at least the earlier years (2006 to 2009) before now if he had been concerned about this.

### **(c) Interest**

There is a charge included for "interest charged on outstanding account at 7.5%" in each of the annual Management accounts. There is no provision in the Lease for the Landlord to charge interest on outstanding arrears. The normal rule is that if the

Landlord wishes to charge interest on any arrears this must be specifically provided for in the Lease. As there is no such provision for interest in the Lease, the Tribunal reached the conclusion that no such interest is payable.

DATED this 4<sup>th</sup> day of November 2010

*J.B. Tarling* 

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John B. Tarling, MCMI Lawyer/Chairman

A member of the Panel appointed by the Lord Chancellor .