

**SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**

Case No: CHI/OOML/LSC/2010/0089

Between:

Brighton Marina Residential Management Company Limited
(Applicant)

and

Mr D. McAneny (Respondent)

**In the Matter of Section 27A of the Landlord and Tenant Act 1985 ("the
1985 Act") and
In the Matter of Schedule 11 of the Commonhold and Leasehold Reform
Act 2002**

Premises: 59, Neptune Court, Brighton Marina Village, Brighton BN2 5SN
("the Premises")

Date of Hearing: 19th November 2010

Tribunal: Mr D. Agnew BA LLB LLM Chairman
Mr R.A. Potter FRICS

DETERMINATION AND REASONS

Background

1. On 14th June 2010 District Judge Pollard in the Brighton County Court transferred Case number OBN00946 between the Applicant and Respondent to the Tribunal for adjudication provided that the Respondent filed a defence by 4pm on 21st June 2010. The Applicant was claiming £3,255.08 in arrears of ground rent, service and administration charges plus interest and court costs. The Respondent duly entered a defence and counterclaim on 21st June 2010.
2. The Tribunal issued Directions for the filing and serving of detailed statements of case by the parties. The Applicant complied with the Directions but the Respondent failed to do so. The case was first listed

for hearing on 29th September 2010. Shortly before the hearing the Respondent telephoned the Tribunal office to say that he was very ill and could not attend the hearing on the appointed day. He asked that the hearing be adjourned. He was asked to provide a doctor's note as to his condition but he said he was unable to obtain this in time. Reluctantly in the absence of evidence as to the Respondent's medical condition, the Tribunal agreed to adjourn the hearing to 19th November 2010. The Respondent was asked to provide the doctor's note when he had managed to obtain it. No such evidence was received from the Respondent. However, again on the day prior to the adjourned hearing, the Respondent telephoned the Tribunal office to ask for a further adjournment in view of his illness. Again, the Respondent was asked to provide medical evidence and it was pointed out to him that the Tribunal had never received the doctor's note for the last adjournment. The Respondent told the Tribunal office that his doctor was unavailable and that he could not obtain the evidence in time before the hearing. He said he had a hospital appointment for an operation on 2nd December 2010. He subsequently supplied to the Tribunal office a copy of an outpatient's appointment for that date made on 5th November 2010 which appeared to be for a first appointment and not for an operation. The matter was referred to the Tribunal who confirmed that in the absence of written confirmation from a doctor that the Respondent was too ill to attend the hearing it would proceed as arranged on 19th November 2010.

Inspection

3. The Tribunal inspected the exterior of Neptune Court immediately preceding the hearing. The Tribunal clerk rang the Respondent's doorbell several times but received no answer, so the Tribunal were unable to meet the Respondent or inspect the interior of the Premises.
4. Neptune Court is a modern purpose-built block of 81 flats constructed approximately twelve years ago as one of several similar blocks built at a similar time right on the seafront at Brighton Marina. The flats are arranged round a central courtyard with allocated parking. A promenade runs along the South side of the block adjacent to which is the marina itself where many pleasure boats of all descriptions are moored. The marina development itself comprises a mixture of residential and commercial units with a supermarket, restaurants and other retail outlets within the development. The accommodation at Neptune Court is on four storeys with some garages or carports on the ground floor. The construction is of brick under a tiled roof. Windows are upvc double glazed and the rainwater goods are plastic. The common hallways and stairs are carpeted. All appeared on the day of inspection to be kept to a reasonable standard.

The Hearing

5. The Hearing took place at the Holiday Inn, Brighton on 19th November 2010. Attending at that time were Mr Kevin Pain, counsel for the Applicant, Mr Donnan, the Applicant's solicitor and Mr John Davey, a Director of the Applicant Company. There was no appearance from the Respondent.

6. The Applicant's claim in the County Court was made up as follows:-

Service charge 1.4.08	£245.77
Goods/services 30.5.08	£ 3.21
Ground Rent and service charge 1.7.08	£275.77
Legal fees 3.9.08	£ 29.37
Ground rent and service charge 1.10.08	£ 245.77
Goods/services 13.11.08	£ 80.00
Ground rent and service charge 1.1.09	£ 287.71
Goods/services 19.2.09	£ 25.00
Legal fees 3.3.09	£ 40.25
Service charge 1.4.09	£ 257.71
Legal fees 14.5.09	£ 40.25
Ground rent and service charge 1.7.09	£287.71
Legal fees 20.8.09	£ 40.25
Service charge 1.10.09	£257.71
Legal fees 13.11.09	£ 40.25
Ground rent and service charge 1.1.10	£319.63
Legal fees 1.3.10	£ 40.25
Management fee 22.3.10	£200.00
Service charge 1.4.10	£262.69
Legal fees 13.4.10	£173.90

7. The above totals £3153.20. Mr Pain pointed out and the Tribunal agreed that the Tribunal has no jurisdiction to deal with arrears of ground rent. The Tribunal also stated that it had no jurisdiction to deal with interest claimed as this was not a variable administration charge. Invoices demanding the above amounts were included in the hearing bundle. Mr Pain explained that the statement of tenants' rights and obligations is not included with the initial invoice to the tenants but it is included in the follow up letters chasing payment and the Tribunal could see that from the documentation in the hearing bundle. Mr Davey explained that the Goods/services figures were for the Applicant's own internal costs of dealing with the arrears. The legal fees claimed were those of the Applicant's own in-house solicitor for recovery of the arrears save for the figure of £173.90 which was Mr Donnan's firm's fees for acting in this matter up to and including the issue of the County Court proceedings, including the preparation of the Particulars of Claim. His charging rate was £185 per hour plus vat. Mr Pain pointed out to the Tribunal that the Respondent's defence had not challenged the reasonableness of the amount of the service charge but could be summarised as follows:-

- (a) the Applicant failed to give the Respondent notices relating to the payment of ground rent as required by Section 166 of the 2002 Act.
 - (b) the Applicant failed to serve a summary of rights and obligations with the demands for payment contrary to Section 153 of the 2002 Act.
 - (c) the Applicant has failed to hold the service charges on trust.
 - (d) charges for legal services have been wrongly added to the service charges.
 - (e) there is an outstanding insurance claim in respect of the premises.
8. It was the Applicant's case that:-
- a) the Tribunal had no jurisdiction to determine whether or not ground rent had been properly demanded
 - b) that the statements of rights and obligations had been served with the follow up letters as could be seen from the hearing bundle
 - c) the service charge moneys are held on trust by virtue of Section 42 of the landlord and Tenant Act 1987 and although the legislation is not yet in force requiring the money to be held in a separate designated account, the Applicant company's accounts showed that the moneys were held in three separate accounts.
 - d) Legal fees are recoverable from the Respondent tenant direct, not as part of the service charge payable by all lessees, under paragraphs 3 and 4 of Schedule 5 to the lease.
 - e) It is difficult to know what point the Respondent is making about the insurance claim. Suffice it to say that a claim has been progressed with regard to a fire in the Respondent's flat. As the Respondent has failed to particularise his case in this regard and has not shown that the Applicant is in breach of the lease or is entitled to damages the Tribunal is invited to dismiss this challenge to the amounts claimed.

The Law

9. By Section 27A of the 1985 Act it is provided that:-
- (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) An application may also be made to a Leasehold Valuation Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvement, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, 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.

10. By paragraph 2 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 it is provided that:-“ A variable administration charge is payable only to the extent that the amount of the charge is reasonable” and by paragraph 5 of the said schedule, 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
- the manner in which it is payable.

The Lease

11. By clause 2(a) of the lease the lessee covenants with the landlord and the Company (the Applicant) to observe and perform the obligations contained in the Fifth Schedule. By paragraph 3 of the Fifth Schedule the lessee covenants to pay to the Company the Service Charge which shall be the due proportion applied to the Annual Cost incurred by the Company in each accounting period. Paragraph 5 of the Fifth Schedule provides that the lessee is to pay to the Landlord and/or the Company... “all sums (including legal and surveyors fees) incurred for the purpose of or incidental to the recovery of arrears of rent hereunder.....”

The Determination.

12. Although the Respondent had not challenged the reasonableness of any of the service charges demanded the Tribunal was satisfied from the information provided from the Applicant company's accounts that the service charges were reasonably incurred and were of a reasonable amount. As stated above, the Tribunal makes no determination with regard to ground rent or interest as it has no jurisdiction to do so. The Tribunal was satisfied that the amounts claimed for legal fees and the internal costs of seeking to recover moneys properly owed by the Respondent were reasonably incurred and of a reasonable amount. These fees are recoverable from the Respondent under paragraphs 3 and 4 and 5 of the Fifth Schedule to the lease. There is no merit in the Respondent's claim that a summary of rights and obligations was not served with the invoice. It was served with the follow up letters and from that point the charges became enforceable. The Respondent failed to make out any case with regard to the insurance claim and the Tribunal therefore finds no reason to reduce the claim by way of any equitable set off in respect thereof.
13. It follows that the Tribunal determines that the Respondent is liable to pay the following amounts to the Applicant

Service charges totalling £2320.47
Legal/administration fees totalling £712.73.
The total that the Tribunal determines that the Respondent shall pay to the Applicant for the above items from 1st April 2008 up to 27th April 2010, the date when the claim was issued, is £3033.20. This sum is payable within 14 days of the date of this determination.

Dated this 13th day of December 2010

Signed

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D. Agnew BA LLB LLM
Chairman