

# LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/43UF/LLC/2010/002

**Re: Flat 2 Kennett House, Flint Close, Redhill, Surey RH1 1ED**

BETWEEN:

Mr B C Picton                                 Applicant

and

Raven Housing Trust Limited   Respondents

In the matter of an Application under Section 20C Landlord and Tenant Act 1985

## **Background**

1. On 3 March 2010 the Applicant submitted an application to the Tribunal for an Order under Section 20C of Landlord and Tenant Act 1985 ("the 1985 Act") limiting service charges arising from the landlord's costs of proceedings. The Landlord had previously made an application to the Tribunal under Case No: CHI/43UF/LSC/2009/0080 under Section 27A of the Landlord and Tenant Act 1985. This had resulted in a determination of the Tribunal dated 21 January 2010 in which the landlord had succeeded in recovering all it claimed under the service charge payable by Mr and Mrs Picton for major works which had been carried out to the property in 2005.

2. At the hearing, Mr and Mrs Picton who were unrepresented omitted to make an application under Section 20C of the 1985 Act asking that the costs of the proceedings should not be added to any future service charge account. This was rectified by Mr Picton's application of 3 March 2010.

3. Directions were given on 11<sup>th</sup> March 2010 in which the Tribunal proposed to deal with the application by way of written submissions and the appropriate notice was given. Neither party objected to this procedure being adopted.

## **The Grounds of the Application**

4. Mr Picton felt that he had been unable to get his case across to the Tribunal because he had been unable to afford representation and also because he was unable to produce a witness, Mr John Coghil, who had been the landlord's property manager at the time the works were carried

out. Mr Picton says Mr Coghill would have confirmed that he had agreed that the work would not commence until he had received a full breakdown of the costs. The main ground of his application, however, is that he is simply not in a position to afford to pay the landlord's costs and he has produced an income and expenditure statement of means to show this.

### **The Respondents' Position**

5. The Respondents have responded to the application by saying that the lease makes no provision to enable the landlord to recover the costs of the Tribunal proceedings by way of service charge and therefore the Tribunal has no jurisdiction to make an order under Section 20C of the 1985 Act. Even if it has, however, it argues that as the landlord was successful in the Tribunal proceedings it would not be appropriate for the Tribunal to make any order under Section 20C.

### **Determination**

6. The Tribunal agrees that the Applicant's lease of Flat 2 Kennett House does not enable the Landlord to recover the costs of the previous Tribunal's proceedings by way of service charge. If, however, the lease had provided for this then the Tribunal would not have made an order under Section 20C of the 1985 Act. The landlord had been wholly successful in defeating the challenge to the service charge for the major works concerned. Unfortunately for Mr Picton, the inability to afford the costs that are likely to be claimed is not in itself a reason for an order being made under that section. As, however, the lease does not provide for the costs to be recovered through the service charge the landlord will not be able to add the costs to a future service charge in any event.

7. The landlord argues, however, that it will instead be seeking to recover the costs amounting to some £12,758.95 from Mr Picton by virtue of paragraph 14 of the sixth schedule of the lease. This provides that the lessee shall pay all expenses (including solicitors costs and surveyors fees) incurred by the landlord for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925. This requires that before proceeding to forfeit a lease for breach of covenant other than for non-payment of rent it is first necessary for a landlord to serve a notice on the lessee containing certain information.

8. Should the landlord seek to do this it seems to the Tribunal that it would be claiming an "administration charge" within the meaning of paragraph 1(1) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). This gives the meaning of an administration charge as "an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly - ...

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease." By claiming that the costs of the Tribunal

proceedings are payable by Mr Picton under the provision in the lease which enables the landlord to recover the cost of a notice under Section 146 (1) of the Law of Property Act 1925 the Landlord is asserting that the Tribunal proceedings were a necessary preliminary to the service of a notice under Section 146(1) of the said Act of 1925 because Section 81 of the Housing Act 1996 requires that a landlord may not serve a notice under Section 146(1) of the 1925 Act unless the charges have been finally determined by a Leasehold Valuation Tribunal or they have been admitted by the tenant.

9. This Tribunal is not in a position to make any determination as to whether or not Mr and Mrs Picton are liable to pay the landlord's costs of the previous Tribunal proceedings by virtue of paragraph 14 of the sixth schedule of their lease because, first, it seems that no formal demand has yet been made for the payment of those costs and certainly no application has been made to the Tribunal for a determination under paragraph 5 of Schedule 11 to the 2002 Act for the Tribunal to decide whether or not the lessees are liable under the terms of their lease to pay such an administration charge. If the landlord does make a formal claim for the payment by the lessees for the costs of the previous Tribunal proceedings then the Tribunal would have jurisdiction under paragraph 5 of Schedule 11 to the 2002 Act to consider on an application made by either the landlord or lessees as to whether or not the lessees are liable to pay such a charge under the terms of their lease. In view of the amount at stake it would be well worth the lessees seeking legal advice with a view at least to written submissions being made on their behalf to the Tribunal on this point as this Tribunal, without in any way prejudging the issue, considers that the lessees could well have legal arguments to the contrary. There are organisations which provide advice and sometimes written representations on behalf of lessees for little or no cost: alternatively, some solicitors are prepared to work on a pro bono basis.

10. For the moment, however, it is sufficient for this Tribunal to say that the landlord on its own admission is unable to recover its costs through the service charge notwithstanding that the Tribunal makes no order under Section 20C of the Landlord and Tenant Act 1985.

Dated this 17<sup>th</sup> day of June 2010

  
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D. Agnew BA LLB LLM  
Chairman