

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



**Residential
Property
TRIBUNAL SERVICE**

S.27A Landlord & Tenant Act 1985 (as amended) ("the Act")

DECISION of the Leasehold Valuation Tribunal & ORDER

Case Number:	CHI/00ML/LSC/2006/0094
Property:	37 Denmark Villas Hove E. Sussex BN3 3TD
Applicant:	Mr D R Lewis ("the Freeholder")
Respondent:	Ms M M Clark ("the Leaseholder")
Tribunal Members:	Mr R T A Wilson LLB (Lawyer Chairman)
Date of Decision:	31 st January 2007

THE APPLICATION

1. This is an Application under Section 27A of the Act for a determination as to the liability of the Respondent to contribute her due proportion of £1,546.08 being the cost of the 2004 buildings insurance. The Applicant also claims interest on the unpaid amount pursuant to an interest provision in the lease.

DECISION IN SUMMARY

2. The Respondent is liable to pay her due proportion of the £1,546.08 together with interest thereon at the rate specified in the lease.

BACKGROUND

3. In December 2005 the Applicant issued a County Court summons against the Respondent for £601.16 representing arrears of ground rent and insurance. In August 2006 the County Court ordered that the matter be transferred to the Leasehold Valuation Tribunal. In November 2006 at a Pre-Trial Review, the parties agreed and the Tribunal directed that the issues be dealt with by way of a paper determination.

THE APPLICANT'S EVIDENCE & CASE

4. The Applicant's case simply put is that the flat lease contains an obligation on the part of the freeholder to insure the building and an obligation on the part of the lessee to contribute towards the cost. Pursuant to that obligation the Applicant paid the annual premium in 2004 of £1,546.08 and is entitled to receive from the Respondent her share of this cost. The amount demanded still remains unpaid. Furthermore the lease contains a provision providing for interest to be payable on late payments and the Applicant claims in addition to the principal sum, interest from the date when the amount came due until payment is made in full.
5. In support of his case, Mr Lewis filed with the Tribunal a short statement setting out the background and context of the payment. He says that in the summer of 2004 all three lessees had been withholding their service charge payments to the managing agents Messrs Parson Son & Basley (PS & B) pending the leaseholders forming a 'Right to Management' company. PS & B having no funds to pay the insurance which fell due on the 25th August wrote to Mr Lewis. In consequence Mr Lewis sent a cheque to PS & B payable to the insurers for £1,546.08. At the same time he wrote to the Respondent requesting her share of the insurance. With his statement there is included a copy of PS & B's letter of request, a cheque stub for £1,546.08 and a copy of his bank account statement showing the cheque as clearing on the 25th August 2004. Mr Lewis also displays a management ledger relating to the basement flat and covering the period 25th December 1997 to 24th June 2004.
6. Mr Lewis' bundle also contains a schedule of the insurance for the period 25th August 2004 to the 24th August 2005 and a copy of a letter from PS & B to Southern Insurance purportedly enclosing a cheque for £1,546.08 in payment of the premium. The typed date of this letter is 19/07/04 with the 07 being altered in manuscript to 08.

RESPONDENT'S CASE

7. In essence the Respondent's case is that PS & B had paid the insurance for the property in full in July 2004 when they received the first reminder from the insurers. The Respondent alleges that she had a phone call with PS & B around the 5th August 2004 to see if there was enough money in the account to pay for the premium. She alleges that, "Mrs Griffith of PS & B stated to her then that a cheque in settlement of the premium had already been paid following receipt of the reminder in July". The Respondent states that she had every reason to believe PS & B because the issue dates on the insurance certificates have all been in July. The Respondent adduces no evidence to support these contentions and the only insurance schedule with the papers has a renewal date of the 24th August 2004 and not a renewal date in July. In her bundle the Respondent includes a copy of a letter from PS & B to Southern Insurance Management Limited. The Respondent says that Mrs Griffiths is replying on 19/07/04 but the typed '7' of this date has been changed in freehand with a biro to read 19/08/04. She alleges that this is an attempt to make the letter part of another, second and later transaction and she considers it to be evidence of tampering. In addition the letter reads, "*please find enclosed **our** cheque to the value of the annual premium*". The Respondent thus maintains that '**our**' could never have referred to a cheque drawn on another company and that it must have meant PS & Bs' cheque drawn on the maintenance account. Mrs Clark considers that this is evidence that payment of the insurance premium had already been made before Mr Lewis demanded the amount again in August 2004.
8. The Respondent also alleges that the premium has been unreasonably inflated by 60% or possible as much as 80% and therefore the amount is unreasonable. However, no evidence is adduced to support this charge either in the form of a letter of opinion from an independent insurance agent or alternative comparable insurance quotations.
9. In summary, the Respondent considers that there is evidence of tampering and false accounting in an attempt to make two payments appear as one.
10. There are a number of other allegations and arguments advanced by the Respondent but it is not proposed to comment on these other than to record that all submissions have been considered.

CONSIDERATION

11. The evidence put forward by the parties is not possible to reconcile. On the one hand the Applicant maintains that he issued a cheque to pay for the insurance in August 2004 following a request by the managing agents. On the other hand the Respondent maintains that she had a telephone call with the agent in early August 2004 when she received confirmation that the insurance had already been paid by the agent from funds held in the service charge account. The Tribunal must therefore decide which of the positions it prefers. On the evidence deduced, the Tribunal prefers the evidence of the Applicant for the following reasons:-
 - i) There is a letter from PS & B dated the 12th August 2004 to the Applicant requesting a cheque for £1546.08 to cover the insurance premium. There is no suggestion that the date on this letter has been tampered with.

- ii) There is a copy cheque stub dated some 4 days later for the sum in question albeit the payee is stated to be the insurers and not PS & B.
 - iii) There is the letter from PS & B dated the 19th August 2004 in which a cheque for £1,546.08 is sent to Southern Insurance. Whilst it is accepted that the date has been changed in manuscript the Tribunal does not consider this fact alone supports the Respondents view that a double payment has been made. Even if the date on this letter has been altered, the Respondent gives no explanation as to why some three weeks later the Managing Agents apparently wrote to the Applicant stating that the premium was still outstanding. The integrity of this letter has not been called into question and suggests that on the 12th August 2004 the premium had not been paid.
 - iv) PS & B are a well known and respected firm of Managing Agents and I think it unlikely that they would write to a client requesting money for a liability which had already been discharged.
12. Having regard to the above I hold that the Respondent is liable to pay her due proportion of £1,546.08 demanded by the Applicant.
13. Turning now to the Applicant's claim for interest. In the bundle is a copy of the lease relating to the property and there is an obligation on the part of the Applicant to insure the building and an obligation on the part of the Respondent to pay her due proportion. Furthermore clause 4 (B)(iv) of the lease states that if any sum shall not be paid within 21 days after the same shall become due then the same shall carry interest at 4% above base at Midland Bank or the rate of 10% per annum which ever is the higher until payment.
14. Having regard to the existence of this clause I find that the Applicant is entitled to charge interest as above from the date when the proportion of insurance premium became overdue i.e. 9th September 2004 up to the date when payment is made in full.



Robert Wilson (Chairman)

A Member of the Panel appointed by the Lord Chancellor

Dated: 31st January 2007

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
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LEASEHOLD VALUATION TRIBUNAL



**APPLICATION FOR PERMISSION TO APPEAL
SECTION 175 of the COMMONHOLD AND LEASEHOLD REFORM ACT
2002 (“the Act”)**

Case Number: CHI/00ML/LSC/2006/0094

Property: 37 Denmark Villas
Hove
East Sussex
BN3 3TD

Applicant: Mary Clark

Respondent: David Lewis

DECISION AND REASONS

BACKGROUND

1. By a letter dated the 22nd February 2007 the Applicant has applied to the Tribunal for permission to appeal to the Lands Tribunal on the decision of the Leasehold Valuation Tribunal dated 31st January 2007.

GROUNDS FOR APPEAL

2. In summary the grounds for appeal are that the Tribunal has not taken into account that by allowing this claim and also granting interest, the Respondent will be profiting from his non compliance with the law which makes the decision flawed.

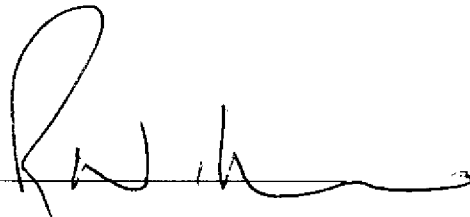
DECISION

3. Permission to appeal is refused.

REASONS

4. The Tribunal in reaching its decision made careful findings of fact and applied the law on the basis of the written evidence presented to it. The letter of appeal raises a number of issues not raised in the original application namely allegations that the Respondent has failed to comply with section 92 of the Act and has failed to supply final accounts in relation to a right to manage application. The Applicant had the opportunity to raise these issues in her statement of case and chose not to do so. It is not appropriate for the Tribunal to re-open the case on the basis of new evidence presented to it.
5. Having given careful consideration to the application, the Tribunal can find no reason to believe that a different body, armed with the information that was before it at the hearing, but not after, would have reached a different conclusion on the facts, and so cannot accept that the Applicant has established proper grounds for appeal. Her request is therefore refused.

Signed



R T A Wilson LLB Chairman

Dated

16th March 2007