

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



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

Case Number: CHI/21UC/LSC/2006/0098

Property: Flat 1
107 Whitley Road
Eastbourne
East Sussex
BN22 8LS

Applicant: Ms A McMahon

Respondent: Mr B Knox

DECISION AND REASONS

BACKGROUND

1. By a letter dated the 25th March 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 19th March 2007.

GROUNDS FOR APPEAL

2. In summary the grounds for appeal are as follows:-
 - 2.1 Services for previous years have exceeded £400 and other services have emerged for the current year as a result of an independent survey mediated by the lessee of flat 1.
 - 2.2 The determination was based on an application made during the tenure of the previous lessee Mr Bain and has ceased to be relevant in that it fails to account for new services which have emerged.
 - 2.3 The Tribunal has not taken into account some services which are stipulated in the lease and has failed to include these in their considerations.

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 Applicant alleges that services in the previous years have exceeded £400 and that other services have emerged for the current year as a result of a recent survey. The Applicant also points out, that since the application was made, the ground floor flat of the property has changed hands with the inference that new circumstances now exist. The change of ownership of the ground floor flat has no bearing on the appropriate level of service charge.
5. In coming to its decision the Tribunal based its deliberations on the evidence presented to it in time according to the directions made by the Tribunal. The new independent survey was not included in the case papers and therefore was not considered. The Tribunal was entitled to come to its decision based on the evidence before it and it is not appropriate for the Tribunal to re-open the case on the basis of new evidence / submissions.
6. The lease allows for the Applicant to collect service charges in advance and also to collect any shortfall at the end of the year. Accordingly the Tribunal's determination does not prevent the Applicant from recovering the actual costs incurred by her by way of service charge at the end of the year, even if the amount exceeds £400.

7. 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 27th April 2007