RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Case No.	**CHI/29UH/LSC/2008/0024**
Property:	**Flats 4, 7, 11 and 12 Claire House,** **Flats 3, 4, 8 and 11 Ruth House,** **Flats 4, 7, 8 and 12 Carrie House.** **Maidstone** **Kent** **ME16 0UD**
Applicant:	**Lesley Place (Maidstone) RTM Co. Ltd.**
Respondent:	**Mrs. J. E. Wilson**
Date of Hearing:	**27th August 2008**
Members of the Tribunal:	**Mr. R. Norman (Chairman)** **Mr. C. White FRICS** **Ms. L. Farrier**
Date decision issued:	

RE: FLATS AT CLAIRE HOUSE, RUTH HOUSE AND CARRIE HOUSE MAIDSTONE KENT ME16 0UD

1. Flats 4, 7, 11 and 12 Claire House, 3, 4, 8 and 11 Ruth House and 4, 7, 8 and 12 Carrie House Maidstone, Kent, ME16 0UD are "the subject properties". The Lessor of the subject properties is G & O Rents Ltd. and up to the 31st December 2004 the managing agents were Urbanpoint Property Management Limited ("Urbanpoint"). With effect from 1st January 2005 Lesley Place (Maidstone) RTM Co. Ltd. ("the Applicant") became the right to manage company in respect of the subject properties. Mr. Hunter of Chaine Hunter is the present managing agent. Mrs. J.E. Wilson ("the Respondent") is the lessee of the subject properties. Mr. F. Wilson manages the subject properties on behalf of his wife, the Respondent.

2. The Applicant made a claim in the County Court (Claim No. 7MS02113) for service charges and the matter was transferred to the Leasehold Valuation Tribunal for determination.

3. The hearing on 27th August 2008 was attended by Mr . Hunter of Chaine Hunter, Mr. Lumley a Director of the Applicant and Mrs. Susan Heads of Susan Heads & Co., Solicitors representing the Applicant and by the Respondent and Mr. Wilson and Mr. Speller of Counsel representing the Respondent. The same persons, with the exception of Mr. Lumley, had attended the Pre-Trial Review on 18th April 2008.

4. At the Pre-Trial Review and with the agreement of the representatives of the parties directions were made which were to be complied with by 23rd May 2008. One copy of each document was to be supplied by each party to the other and four copies of each document to the Tribunal. After the parties had complied with those directions they were to request either a further Pre-Trial Review or a hearing date. The Respondent did not comply with the directions, the Applicant requested a hearing and a hearing was arranged for 27th August 2008.

5. Bundles of documents were produced on behalf of the parties but some of those produced on behalf of the Applicant were not paginated or indexed. The documents produced on behalf of the Respondent were produced three months late and just a few working days before the hearing, they were not indexed, in some cases the whole width of the text had not been copied, some copies were duplicated and some of the correspondence and other documents referred to in the documents produced were not included in the bundle. Mrs. Heads considered that there had not been full disclosure by the Respondent of the negotiations with G & O Rents Ltd. and Urbanpoint that resulted in the settlement in February 2007 referred to in the Respondent's Defence but Mr. Speller told us that all that could be disclosed had been disclosed.

6. In August 2004 G & O Rents Ltd made an application to a differently constituted Leasehold Valuation Tribunal for the determination of service charges payable and in July 2005 that Tribunal determined the service charges payable for the years ending 31st December 1999, 2000, 2001, 2002 and 2003. Before that Tribunal heard the case it was informed that G & O Rents Ltd had reached agreement with a number of the lessees including the Respondent and the application was withdrawn in respect of some of the lessees including the Respondent.

7. At the hearing on 27th August 2008 Mr. Speller told us, no doubt on his client's instructions, that the Respondent's case was put in the following way.

8. He told us that the Respondent had not paid service charges to G & O Rents Ltd for 2005, 2006 or 2007 but that the sum she had paid to G & O Rents Ltd via that Company's Solicitors Glenisters was £45,000. That sum was for service charges due up to 31st December 2004 and included an element of reserves. The Respondent should be entitled to be repaid an appropriate proportion of the reserves and that proportion of the reserves would more than cover the service charges due for 2005, 2006 and 2007. As a result the Respondent should owe nothing for those years. Other lessees had been refunded their proportion of the reserves but in the case of each flat leased by the Respondent there had been no refund. She could not see why she should have been treated differently from other lessees who had reached a settlement similar to hers. She considered that the Applicant should be pursuing G & O Rents Ltd or Urbanpoint to hand over more money. Mr. Speller said that the only matter for our consideration was what he described as a set off.

9. However, there was a statement from Mr. Wilson dated 25th November 2007 which cast some doubt on how the case was put because in it he stated that he had on behalf of the Respondent paid service charges up to 2007. At the hearing he gave evidence that he had paid to G & O Rents Ltd. some service charges for the period 1st January 2005 to 31st December 2007 during which time the Applicant and only the Applicant had the right to demand service charges. He stated that he had done this because he believed that even though there was a right to manage company in place, the service charges were still due to the lessor and that the lessor could demand that any service charges which the right to manage company collected be paid to the lessor. Mr. Speller was asked if he wished to address us about that but he properly said that he could not support his Client on that point.

10. The Respondent's Solicitors provided us with correspondence about car parking permits and blocked soil pipes which was completely irrelevant to these proceedings and provided copy correspondence concerned with negotiations about the settlement reached between the Respondent and G & O Rents Ltd. That correspondence was incomplete. There were letters which referred to other correspondence which was not included in the documents produced. We were told by Mr. Speller that the Respondent's case relied on just two documents: a letter from Urbanpoint dated 8th September 2005 and a letter from Mr. Wilson to Glenisters, the Solicitors representing G & O Rents Ltd., dated 4th February 2007. Those two documents and other correspondence produced which referred to the settlement, including an e-mail from Glenisters acknowledging receipt of the cheque for £45,000, did not set out clearly the terms of that settlement but we came to the conclusion that as there was no application before us to determine the accrued uncommitted service charges to be paid by G & O Rents Ltd or Urbanpoint in accordance with Section 94 of the Commonhold and Leasehold Reform Act 2002 that settlement was of no concern to us.

11. At the Pre-Trial Review the following matters had been agreed by the representatives on behalf of their clients:

(a) That the Respondent is liable to pay service charges under the leases of all the subject properties.

(b) That the service charges are payable on 1st January every year.

(c) That the Applicant took over from 1st January 2005.

(d) That from 1st January 2005 the Applicant had the right to demand service charges.

(e) That from 1st January 2005 the Applicant and only the Applicant had the right to demand service charges.

(f) That no sums claimed from 1st January 2005 are challenged on the basis that they were not reasonably incurred.

(g) That if service charges are not paid interest should be charged.

(h) That the period covered by these proceedings is from 1st January 2005 to 31st December 2007.

(i) That the Applicant received from Urbanpoint the sum of £38,009.05.

12. The figures produced by Urbanpoint for the purpose of handing over management to the Applicant show that Urbanpoint did not pay to the Applicant any money which could be set off against the service charges due for the years 2005, 2006 and 2007 from the Respondent.

13. Indeed that appears not to be disputed by the parties. After that money had been handed over the Applicant still demanded from the Respondent money for service charges for those years and the Respondent, whichever of the two ways her case was put, did not contend that she had paid to the Applicant any money for service charges for those years.

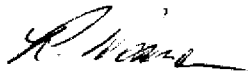
14. If, as he stated in evidence at the hearing, Mr. Wilson on behalf of the Respondent paid to G & O Rents Ltd service charges for a period when service charges should have been paid only to the Applicant then those service charges remain due to the Applicant and the Applicant is entitled to demand those service charges from the Respondent.

15. If G & O Rents Ltd have not dealt with the settlement as agreed with the Respondent then it is for the Respondent to pursue that company to resolve the matter.

16. On the evidence presented to us we find as a fact that the Respondent has not paid to the Applicant service charges due 1st January 2005, 1st January 2006 and 1st January 2007 and that the Applicant is entitled to them.

17. The Applicant claimed in the County Court the sum of £19,644.88 being the amount of service charges due 1st January 2005, 1st January 2006 and 1st January 2007 and that sum has not been challenged by the Respondent. We order that that sum be paid by the Respondent to the Applicant within 28 days of this decision being issued.

18. There are also claims for a court fee of £360, solicitors costs of £100 and interest of £2,487.01 as at the 23rd November 2007 when the claim was issued and with interest continuing at £4.31 per day. We note that the Respondent accepted that if service charges are not paid interest should be charged but we do not have jurisdiction to deal with those matters. Therefore if they cannot be agreed between the parties it will be necessary for the parties to refer those matters to the County Court.



R. Norman
Chairman

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL
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APPLICATION FOR PERMISSION TO APPEAL

Case No.	**CHI/29UH/LSC/2008/0024**
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Applicant:	**Mrs. J. E. Wilson**
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RE: FLATS AT CLAIRE HOUSE, RUTH HOUSE AND CARRIE HOUSE MAIDSTONE KENT ME16 0UD

For the avoidance of misunderstanding the Tribunal will refer to the original Applicant as "the RTM Company " and to the original Respondent as "the Lessee".

References to paragraphs are references to the paragraphs in the reasons for the Tribunal's determination in this case.

An application has been received from the Solicitors representing the Lessee for permission to appeal the Leasehold Valuation Tribunal's determination in this case.

The Tribunal has considered the application and has determined that permission should not be granted for an appeal to the Lands Tribunal for the following reasons.

The Lessee contends that "The LVT erred in law in that it failed to make any or proper finding of fact (as was addressed to it) that the account of monies held by Urbanpoint (the previous managing agents appointed by the lessor, G & O Rents) which was rendered to the RTM company in relation to the Respondent was plainly and on its face defective. This account was not audited." The Lessee then lists a number of points on which it is argued that the account was defective on its face. The Lessee then refers to the settlement reached with Urbanpoint, the failure of the RTM Company to make use of Sections 93 and 94 of the Commonhold and Leasehold Reform Act 2002 and the possibility of making an application to the County Court for a declaration.

The Tribunal was not assisted by the Lessee's failure to comply with the Directions (paragraph 4), the late production of a bundle of documents on behalf of the Lessee and the poor quality of the bundles (paragraph 5), the fact that the Lessee's case was put in two conflicting ways (paragraphs 8 and 9), the provision by the Lessee's Solicitors of completely irrelevant correspondence and correspondence which did not set out clearly the terms of a settlement (paragraph 10).

However we came to the conclusion that as there was no application before us to determine the accrued uncommitted service charges to be paid by G & O Rents Ltd or Urbanpoint in accordance with Section 94 of the Commonhold and Leasehold Reform Act 2002 the account and the settlement were of no concern to us (paragraph 10).

At the Pre-Trial Review a number of matters had been agreed by the representatives on behalf of their clients and these are set out at paragraph 11.

The figures produced by Urbanpoint for the purpose of handing over management to the RTM Company show that Urbanpoint did not pay to the RTM Company any money which could be set off against the service charges due from the Lessee for the years 2005, 2006 and 2007 and whichever of the two ways her case was put, the Lessee did not contend that she had paid to the RTM Company any money for service charges for the years 2005, 2006 and 2007 (paragraphs 12 and 13).

If, as he stated in evidence at the hearing, Mr. Wilson on behalf of the Lessee paid to G & O Rents Ltd service charges for a period when service charges should have been paid only to the RTM Company then those service charges remain due to the RTM Company and the RTM Company is entitled to demand those service charges from the Lessee (paragraph 14).

If G & O Rents Ltd have not dealt with the settlement as agreed with the Lessee then it is for the Lessee to pursue that company to resolve the matter (paragraph 15).

On the evidence presented to the Tribunal we found as a fact that the Lessee had not paid to the RTM Company service charges due 1st January 2005, 1st January 2006 and 1st January 2007 and that the RTM Company was entitled to them (paragraph 16).

The Tribunal made its determination; making findings of fact on a balance of probabilities after considering all the evidence provided by the parties and considering the submissions made.

There is no justification for an appeal and permission is refused.

R. Norman
Chairman.