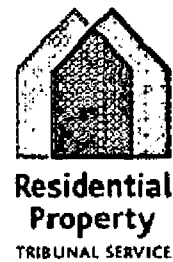


**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



Section 27A Landlord and Tenant Act 1985 (as amended)
Application for a determination of liability to pay service charges

DECISION AND REASONS

Case Number: CHI/00hg/LIS/2009/0023

Property: 2 -3 Patna Place Plymouth Devon PL1 5AY

Applicant: 2 – 3 Patna Place Management Limited acting
by Freehold Management Services Limited

Respondent: Mr Y. Bali (Flat B)
Mr C Davies (Flat C)

Date of Application: 24th February 2009

Date of Hearing: 26th June 2009

Tribunal Members: Cindy Rai LLB (Lawyer Chairman)
Timothy E. Dickinson BSc FRICS (Valuer
Member)

Date of Decision: 28th July 2009

SUMMARY OF DECISION

1. The Tribunal decided that the Respondents were liable in full for the service charges estimated (at the time of the application) for the current year 2008 and subsequently invoiced to each Respondent prior to the Hearing were payable in full by each of the leaseholders in accordance with the invoices issued.

INSPECTION

2. Prior to the Hearing the Tribunal inspected the common areas and exterior of the Property. The Applicant was represented by Mr Knapper. None of the Respondents were present

3. A communal front door leads into a passageway off which are stairs serving the upper flats. The building comprises 5 flats. A back door leads through a narrow concrete passage at the rear of the building to a good size back yard, situate to one side of the building and from which it is possible to gain access on foot only to Patna Place. The communal yard which contains a drying area is in a fair condition.

BACKGROUND

4. Directions were issued on the 31st March 2009 enquiring if the Respondents wished to contest the application and seeking additional information and a statement of case from the Applicant.
5. None of the Respondents provided any further information but the Applicant provided the Tribunal with copies of the "tenant ledgers" as at the 19th June with copies of the most recent demands issued to each in respect particularly of the Buildings Insurance Premium which had fallen due for payment since the Application was made.
6. Although the Applicant has referred to each of the five leaseholders as Respondents the applicant states that this was to keep them informed. The major part of the arrears are in respect of Flat B – Mr Bali who is not an occupier and Flat C – Mr Davies whose flat is occupied by his wife.
7. The application refers to arrears in respect of Buildings Insurance Premium ground rent and estimated service charges for the current year. The tribunal has no jurisdiction in respect of ground rent.
8. It would appear from the information provided with the application that no response to the demands for payment has been received from Mr Bali. He does not seem to have made any payments during the last year and the total amount of the service charge arrears (excluding ground rent) for Flat B is £492.63.
9. Mrs Davies had promised to make payments and wrote to the Applicant in January 2009. She does not appear to dispute that the payments demanded are due but neither she nor her husband has made any payment during the last year. The total amount of the service charge arrears (excluding ground rent) for Flat C is £492.63.

10. Mr Ashton's statement for Flat D reveals that he has paid in full and no amount is currently outstanding.
11. Miss Farrell's statement shows that the only amount outstanding is in respect of the recently invoiced Buildings Insurance premium and the amount demanded on the 5th June 2009 of £102.66 remains due.
12. Miss Cutler's statement for Flat A shows a balance outstanding of £193.24, but this amount is only in respect of the building insurance premium which was originally invoiced on the 5th June 2009.
13. Following the issue of the Directions neither party requested an oral hearing.

14. **The Law**

The Tribunal's jurisdiction is contained in section 27 of the Act. Section 27 is set out below.

S27A Landlord and Tenant Act 19 85

Liability to pay service charges: jurisdiction

(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, improvements, 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 would be payable,*
- (b) the person to whom it would be payable,*
- (c) the amount which would be payable,*
- (d) the date at or by which it would be payable, and*

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.[...] [FN1]

[FN1] inserted subject to savings specified in SI 2004/669 Sch.2 para.6 by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 155 (1)

15. Clause 2 of the Lease of Flat B contains the Tenant's covenants. Clause 2 (3) refers to an obligation "to pay to the Landlord 17% of the gross amount which the Landlord shall from time to time pay for the maintenance repair upkeep decoration or replacement of those parts of the Property for which the Landlord is responsible in accordance with the terms of the covenant on the part of the Landlord hereinafter contained such service charge to be calculated in accordance with the provisions of the Fourth Schedule hereto for each and every year of the term hereby granted and proportionally for any part of the year in advance and paid on the 29th September in each year...." It is clear

from the copy invoices that Flat A is invoiced for a 32% contribution with each of the other flats being liable for a 17% contribution.

16. The 4th schedule provides that the service charge shall be "the sum which on the Thirtieth day of August in every year of the said term the Landlord or his authorised agents estimate and certify in writing to be the cost and expense to the Landlord of:-
- (a) Performing his obligations under clause 4(2) (3) (4) and (9) hereof
 - (b) Administrative costs interest charges and professional and management fees incurred in connection with any matters referred to in this clause including (without prejudice to the generality of the foregoing) accountancy and audit fees legal fees the costs of supplying an audited statement of the service charge to each tenant and the cost of preparing estimates of the service charge for any period or of future maintenance expenditure"

There is a specified mechanism for crediting advance estimated payments made by the tenants against the actual costs incurred and for an annual adjustment to be made by way of credit or debit.

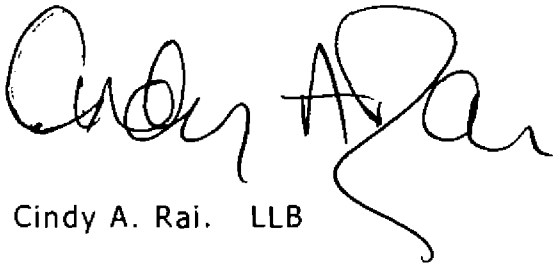
17. Clause 4(2) requires the Landlord to insure the Building, clause 4(3) requires the Landlord to maintain and keep in good repair and condition the external walls and foundations etc; the steps halls staircases and landings, the bin areas and the drains cable pipes and wires used in common by the tenants and clause 4(9) states "That (subject to contribution as aforesaid) the Landlord will so far as practicable use his best endeavours to keep clean and lighted the parts of the Building shown edged green on the Plan used by the Tenant in common with the Landlord and or the tenants or occupiers of the Building or any part or parts thereof". No coloured copies of the plan attached to the sample lease were provided.

Decision

18. The only dispute in this case relates to whether or not the amounts invoiced by the Applicant are payable in accordance with the terms of

the lease. Evidence was supplied to demonstrate that the insurance has been renewed on favourable terms and at a lesser premium than in the previous year. The estimates of the other service charges seem to be in accordance with the actual costs incurred in the previous year. No respondent has suggested that the Landlord is not providing services. Three of the named respondents have paid some or all of the service charges invoiced.

19. The Tribunal determine that these charges are reasonably incurred and payable by the Respondents who hitherto have not paid the amounts demanded.

A handwritten signature in black ink, appearing to read 'Cindy A. Rai', with a long, sweeping flourish extending from the end of the name.

Cindy A. Rai. LLB

Chairman