

**IN THE LEASEHOLD VALUATION TRIBUNAL
UNDER S27A LANDLORD & TENANT ACT 1985**

DECISION AND REASONS

Case No	CHI/00ML/LIS/2009/0074
Property	Lower Ground Floor Flat 16 Stanford Road Brighton
Applicant	Mr S F Handoum Represented by SDK Law, Solicitors
Respondent	Mr M Houlihan
Date of decision	11 December 2009
Members of the Tribunal	Ms H Clarke (Chair) Miss C Barton BSc MRICS

1. APPLICATION

The Applicant asked the Tribunal to determine that certain sums demanded were payable by the Respondent in respect of service charges years ending September 2003, 2004, 2005, 2006, 2007 and 2008. The evidence also claimed service charge for the half-year ending March 2009 and the Tribunal agreed to include that sum in its determination.

2. DECISIONS

The Tribunal determined that the sum of £3,814.22 was payable by the Respondent in respect of service charges from September 2003 to March 2009 inclusive.

3. The Tribunal determined that interest was payable on a portion of the service charge, but that it was to be calculated on an annual principal sum of only £35. As the Applicant did not particularise the interest claim the Tribunal was unable to determine the sum payable.
4. The Tribunal has no jurisdiction over ground rent and made no determination regarding rent.

5. INSPECTION

The Tribunal inspected the exterior of the property. It comprised a converted terraced house with a rendered exterior probably built in the late 19th century which appeared to contain 3 or 4 flats. The subject property was the lower ground floor which appeared to have its own access door from the exterior. The property appeared to be in good condition with some minor weathering to exterior decorations and wear to the front steps.

6. THE LEASE

The Tribunal was provided with a copy of the Lease dated 14 September 1976 which demised a term of 99 years from 25 March 1974. The Landlord's obligations under the

Lease included maintaining the structure and the internal passageways and common parts in good condition and exterior decoration, and insurance of the building. The Lease provided for the Tenant to pay £35 per annum by equal half-yearly payments in respect of all monies expended by the Landlord or reasonably certified as being necessary for compliance with its covenants. The expenses may include managing agents', accountants', solicitors' or surveyor's fees. If not so paid, "the same" shall attract interest at 2% over base rate. If the expense of complying with the Landlord's covenants was predicted to exceed the total so paid, then the tenant would be liable also to pay one-quarter of any additional expenses by half-yearly payments in advance.

7. The Tribunal considered the wording of the Lease and decided that the provision as to interest attached only to the covenant to pay £35 per annum and could not on a sensible reading of the document be interpreted as attaching to all sums payable by way of service charges.

8. THE LAW

Landlord & Tenant Act 1985:

s18. Meaning of "service charge" and "relevant costs".

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

9. Section 27A. 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.

10. EVIDENCE AND DETERMINATION

A pre-trial review hearing took place on 24 September 2009 at which only the Applicant's representative attended. Directions were issued by the Tribunal. The Applicant submitted a bundle of documents including service charge demands, maintenance accounts prepared by independent accountants, and some correspondence. The Respondent did not make any representations or submit any evidence.

11. The Respondent wrote to the Tribunal making no challenge to the sums claimed but offering payment at the rate of £100 per month. However the Tribunal has no jurisdiction over issues of when or how any sums due shall be paid. It therefore makes no decision on the Respondent's proposal to pay by instalments of £100 per month.

12. In accordance with the Directions the Tribunal considered the papers and reached its decision on the paper evidence submitted.
13. The Tribunal was satisfied that the service charge demands and supporting accounts demonstrated that the sums claimed had been incurred and were properly due under the Lease. It was the Applicant's undisputed case that no payments had been made by the Respondent for many years, since a date earlier than 2003 (the start of the period with which the Tribunal was concerned).
14. The Tribunal therefore determined on the evidence that the sums demanded as service charges were payable by the Respondent making a total of £3,814.22 up to and including March 2009. For the reasons given above the Tribunal decided that interest was not payable under the Lease on the whole of this amount. Interest at 2% above base rate was payable on £35 for each of the 6 years under consideration, and would run from the half-yearly dates at which each instalment of £17.50 fell due.

Signed.....*MC*.....

Dated.....*11-12-09*.....