

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

S.27A Landlord & Tenant Act 1985 as amended

DECISION AND REASONS

Case Number: CH1/29UC/LSC/2009/0040

In the matter of 81A Tankerton Road, Tankerton, Whitstable, Kent CT5 2AH

Applicants: Mrs. J.M Bryan C/O Mr. D Howson

Respondent: Mrs. J Carter C/O Fosters Law

Date of Application: 11th March 2009

Tribunal Members: Mr. S Lal LL.M (Legal Chairman)
Mr. C. White FRICS MCI Arb
Mr. P. Gammon MBE

Date of Decision: 5th June 2009

Application

1. The Applicant applied to the Tribunal on 11th March 2009 under section 27A of the Landlord & Tenant Act 1985 (as amended) ("the Act") to determine her liability to pay service charges in respect of 81A Tankerton Road, Tankerton, Whitstable, Kent CT5 2AH ("the property") for the year 2008 only. The only matter in dispute related to service charge demands in respect of proposed works to be carried out to the Property.
2. Directions were issued on 13th March 2009. Both parties to the proceedings were invited to send to the Tribunal written representations. The Applicant has complied with the Directions and the Respondent has failed to respond at all.

The Inspection

3. The Tribunal inspected the Property externally on the morning of the hearing. Mrs. Bryan and Mr. Foggin attended as did Mr. Paul Tapsell of Counsel and Ms. Lisa Taplin for the Respondent. It consists of a three bedroom flat behind and above a ground floor shop with a garden at the rear. The Tribunal noted the peeling paint and general lack of maintenance in recent years.

The Hearing

4. The matter was listed for hearing at 11:00 am at the Alexander Centre in Faversham on 2nd June 2009. Mrs. Bryan was in attendance with her partner Mr. Foggin. Her solicitor who also happened to be her father, Mr. Howsen was delayed but she was content to proceed in his absence. The Respondent was represented by Mr. Paul Tapsell of Counsel instructed by Fosters Law and Ms. Lisa Taplin, daughter of the Respondent was present.

Preliminary Issue

5. Mr. Tapsell stated at the outset in open session that the Respondent now did not demand any service charges for the year in dispute (2008) and as far as they were concerned the Applicant did not have to pay anything and nothing was outstanding. In reply to questions he stated that the Respondent's had not complied with Directions due to the ill health of Ms Taplin and the inability to get full instructions. He stated that the plan was to try and get planning permission for the UPVC cladding to the front of the building and then, in the absence of agreement, to go through the proper statutory procedure as regards consultation. He mentioned that there had been ongoing discussion about settlement. The Tribunal invited submissions as to what the lease actually allowed to be done.
6. Mrs. Bryan in response said that she disagreed with the whole way the matter as to repairs and quotations for works had been done and that she would object to being charged for the costs of any planning application for work to the front of the property. She applied for her hearing costs and application fee and also for the costs of this action not to be added to the service charge under s. 20C of the Act.

Decision

7. The Tribunal formally records that the Applicant owes no monies in respect of 2008 following declaration of the same by Mr. Tapsell on instruction from his lay and professional client.
8. The Tribunal need strictly go no further but in the light of the indication that the UPVC option was still being considered and to stop the same issue being re-litigated on the same terms in the future in the absence of agreement, thought it useful to give some guidance as to the lease had the issue not been withdrawn in the terms as set out.

9. The Tribunal were of the view that the Lease only permits the Respondent Lessor to maintain and keep in repair the main structure of the building and any decoration must be in the manner (Clause 5 (3) (vi) "in which the same is as the time of this demise decorated or as near thereto as the circumstances permit." The Tribunal were of the view that the installation of UPVC cladding would not be recoverable under the lease as it could neither be described as a repair nor was it the same as that which is already there. It could more correctly be described as an improvement. Those advising the Respondent may wish to bear this in mind if they decide to go down that route in the absence of any agreement with the Applicant as any future Tribunal is likely to hold the same.
10. Following on from the above, it must be right that the Applicant cannot be charged for a planning application for work that the lease does not allow to be recovered from her in any event.
11. The Tribunal also decides that an order under s.20C of the Act is just and equitable in the circumstances. The material that the Tribunal has before it suggests a very robust posture adopted by those who represent the Respondent including threats made to the Applicant for forfeiture followed by a fairly rapid and perhaps understandable concession on the morning of the hearing by Counsel instructed to do so.
12. In respect of costs the Tribunal has jurisdiction under Paragraph 10 of Schedule 12 to the 2002 Act to make an order for costs against any party if they have acted frivolously, vexatiously, abusively or otherwise unreasonably in connection with the proceedings. The Tribunal does find that the Respondent has in the instant case acted unreasonably. No new material was introduced by the Respondent at the hearing and Directions had not been complied with. To withdraw on the basis stated and allowing the application to run to this late stage was itself unreasonable. To place the Applicant in the position of expending costs over this issue was an example of the unreasonable nature of the Respondent's conduct.

Determination

13. The Tribunal orders that all of the costs incurred by the Respondent in respect of this application are not to be regarded as relevant costs under s.20C of the Landlord and Tenant Act 1985.
14. Under paragraph 10(2)(b) of Schedule 12 to the Commonhold and Leasehold Reform Act 2002, the Tribunal determines that the Respondent shall pay the costs incurred by the Applicant in connection with these proceedings in the sum of £250.

15. The Tribunal directs that the Respondent do pay the Applicant's hearing fee of £150 and application fee of £70.

Chairman..... 

Date..... *5/6/09.*