

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

S.27A Landlord & Tenant Act 1985 as amended

DECISION AND REASONS

Case Number: CH1/29UH/LSC/2008/0107

In the matter of Flat 8, Claire House, Lesley Place, Maidstone, Kent, ME16 0UD

Applicants: Mrs. Wilson c/o Mr. Wilson

Respondent: G&O Rents c/o Urban point Property Management

Date of Application: 26th September 2008

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

Date of Decision: 2nd April 2009

Application

1. The Applicants applied to the Tribunal on 26th September 2008 under section 27A of the Landlord & Tenant Act 1985 (as amended) ("the Act") to determine their liability to pay a service charges in respect of Flat 8, Claire House, Lesley Place, Maidstone, Kent, ME16 0UD ("the property") for the years 1999-2004 and 2005 to 2009.
2. Directions were issued on 18th December 2008. Both parties to the proceedings were invited to send to the Tribunal written representations which they have both done. These are referred to below.

The Inspection

3. The Tribunal inspected the Property externally on the morning of the hearing. The Tribunal also inspected the common parts. It is a self contained flat in a purpose built block of flats with a designated parking space to the rear.

The Hearing

4. The matter was listed for hearing at 11:00 am at the Maidstone Community Support Centre. Mr. and Mrs. Wilson attended in person and Mr. Sam Gossain, Director of Urban point appeared on behalf of the Respondents. Mr. John Hunter of Chaine Hunter was also present, his firm being the current managing agents.

Preliminary Issue

5. The Tribunal were a little unclear as to the exact nature of the Application and Mr. Wilson was asked to clarify. He said that the reason why the Application was made was not for a determination per se in respect of the service charge years 1999-04 and 2005-09 but specifically for the year ending 31st December 2004 only. He added that what the Applicant's really sought was a clarification as to what had happened to reserve fund monies which a previous LVT had noted as being in existence in 2005. He submitted that the suspicion remained that the un-audited accounts supplied in 2007 might reveal additional sums due to the Applicants even though they had not purchased the property until March 2007. This was not a dispute about liability or amount to be paid but rather trying to establish whether any more was due back to the Applicant's.
6. He admitted that there was satellite litigation in the county court currently ongoing in respect of the auditing or otherwise of the accounts.
7. Mr. Gossain for the Respondent pointed out that the matter currently before the Tribunal had been litigated in respect of other flats in the same block as recently as August last year and that the present application was in essence the same dispute.
8. Mr. Hunter offered an explanation of the any disputed reserve fund amount which he said had been given at the PTR before Directions were made in any event.

Decision

9. The Tribunal having received submissions as to the exact nature of the application and being assisted by the fact that the valuer member had in fact sat on the LVT referred to above in August 2008, indicated to Mr. and Mrs. Wilson that the Application as submitted and the submissions made in respect as to what the actual issue in dispute was, resulted in the Tribunal being minded to treat the matter as frivolous, vexatious or otherwise an abuse of process within the meaning of Regulation 11(1) (b) of the Leasehold Valuation Tribunal (Procedure) Regulations 2003.

10. This was primarily because the Application could be construed as wholly misleading in referring to service charge years from 1999-2009 and the matter appertaining to sums held under the reserve fund had been litigated as recently as August 2008, the presumption being that there should be an end to litigation rather than the same matter being revisited in a different way. The Tribunal was also concerned that there appears to be ongoing collateral litigation in any event. The Tribunal indicated that it was minded to adjourn the matter so that the matter could be properly argued at a future date as it must do when considering the issue under the above Regulation.
11. The Applicant at that point indicated that the explanations provided when the issues were being defined, did in fact clarify the matters and that they wished to withdraw their application.
12. In the light of that observation, the Tribunal records the Application as formally withdrawn.
13. 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 Applicant's have in the instant case acted unreasonably. No new material was introduced by the Respondent's at the hearing and to withdraw on the basis that the issues had now been defined (arguably they had been defined at the Pre-Trial Review) when it was clear that the Tribunal was minded to adjourn the matter so as to hear formal argument as to why the application may itself come within the scope of the more serious abuse of process, showed that allowing the application to run to this late stage was itself unreasonable. It has already been noted that the matters were litigated as recently as August 2008 and the presumption must be that litigation must be a finite matter. To place the Respondent's in the position of expending costs over essentially the same issues was an example of the unreasonable nature of the application.

Determination

14. The matter is treated as formally withdrawn at the hearing by the Applicant's.

15. Under paragraph 10(2)(b) of Schedule 12 to the Commonhold and Leasehold Reform Act 2002, the Tribunal determines that the Applicant shall pay the costs incurred by the Respondent in connection with these proceedings in the sum of £250.

Chairman.....



Date.....

2/4/07.

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12 MAY 2009**

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RESPONSE TO NOTICE OF APPEAL

Case Number: CH1/29UH/LSC/2008/0107

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Applicants: Mrs. Wilson c/o Mr. Wilson

Respondent: G&O Rents c/o Urban point Property Management

Date of Application: 26th September 2008


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

1. The Tribunal is in receipt of the grounds of Appeal (the "Grounds") drafted by Mr. F.G Wilson dated 25th April 2009 in which he wishes to appeal the decision dated 2nd April 2009 and sent to on 22nd April 2009. The substantive matter was withdrawn at the hearing and Mr. Wilson therefore only appeals the award of costs against him under Paragraph 10 of Schedule 12 to the 2002 Act.
2. In reply the Tribunal states the following. Firstly the Tribunal disputes the entirety of paragraph 10 of the Grounds. No such indication was given. The decision of the Applicant to withdraw her application was made after the Tribunal indicated that it was minded to adjourn the matter so that it could hear proper argument as to whether the application was an abuse of process within the meaning of Regulation 11(1) (b) of the Leasehold Valuation Tribunal (Procedure) Regulations 2003.

3. The parties were asked to vacate the hearing room for 5 minutes so that the Tribunal could consider the best way to progress the matter in respect of any future abuse of process hearing. When the Tribunal resumed, the Applicant indicated that she wished to withdraw the application as their questions had now been answered. It was clear to the Tribunal that the decision to withdraw was only made after the Tribunal had indicated that it was minded to adjourn the matter (as it must do) for full argument as to an abuse of process. The Tribunal were clear in its mind that the Application was withdrawn because the Applicant realised at that stage that there was a real risk that the whole matter could be held as an abuse of process at some future date.
4. Secondly the Tribunal were concerned that the Application as drafted concerned a determination in respect of the service charge years 1999-04 and 2005-09 but this was subsequently modified at the hearing for the year ending 31st December 2004 only. This was in the Tribunal's view grossly misleading both to the Tribunal and to the Respondent who would have to prepare the matter in response.
5. Thirdly it took Mr. Wilson some time to finally define the issue that he eventually requested a determination on and the Tribunal were of the view that this was essentially the same issue that had been recently litigated in August 2008, namely what had become of the reserve fund monies.
6. Fourthly once the issue had in fact been defined at the hearing and pursuant to paragraphs 2-8 of the Grounds, it was clear that this information had in fact been disclosed at the Pre-Trial Review held 22nd October 2008 as is confirmed in paragraph 8 of the Grounds. The Tribunal were firmly of the view that the Applicant by allowing the matter to proceed to a full hearing ostensibly in respect of service charge years from 1999-04 and 2005-09 acted in a wholly unreasonable way when this was not what actually the Applicant wanted which was only finally clarified at the hearing.
7. In summary the decision to award costs against the Applicant on the basis that her conduct was unreasonable in pursuing the matter to full hearing was based on:
 - (a) The wholly misleading nature of the Application itself.
 - (b) The late withdrawal and only after the Tribunal had indicated it was minded to treat the whole matter as an abuse of process.
 - (c) Previous recent and similar litigation involving the same parties and in respect of the same issue arising out of other flats in the same building.
 - (d) The only extant matter having effectively been resolved at the PTR.

8. For the Reasons above the Tribunal refuses leave to appeal.

.....Chairman

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