IN THE LEASEHOLD VALUATION TRIBUNAL
SOUTHERN PANEL

LANDLORD & TENANT ACT 1985

Case No	CHI/45UH/LSC/2008/0108
Property	Seaview Court Rowlands Road Worthing BN11 3LF
Applicant	Seaview Court Management (Worthing) Ltd represented by Parsons Son & Basley
Respondent	Brinor Investments Ltd represented by J Nicholson & Son
Tribunal	Ms H Clarke (Barrister) (Chair) Mr R Wilkey FRICS
Date of hearing	14 January 2009
Date of decision	29 January 2009

1. **THE PRELIMINARY HEARING**
   The Applicant sought a determination of whether insurance costs for the years ending 2007, 2008 and 2009 were reasonably incurred. The Applicant asked the Tribunal to decide whether it had jurisdiction to deal with those costs. The Tribunal accordingly gave directions for a preliminary hearing to determine the question of jurisdiction.

2. At the hearing in Chichester the Applicant was represented by Mr Holden FRICS of Parsons Son & Basley. The Respondent was represented by Mr Maidman MRICS of J Nicholson & Son.

3. At the hearing the Applicant conceded that the insurance costs incurred in 2008 were incurred reasonably, and asked that they be withdrawn from the Tribunal's consideration.

4. **THE PARTIES**
   The Applicant is the Management Company established by the lease to manage the property, which consists of 33 flats in 2 blocks. The Respondent is the freehold owner and reversioner to the long leases upon which flats in the property are let. No tenant of any flat within the property had been given notice of or made a respondent to the application.

5. **THE DECISION**
   The Tribunal decided that it did not have jurisdiction to determine the applications.

6. **THE LAW**
   The relevant parts of sections 18 and 27A of the Landlord & Tenant Act 1985 provide as follows:
   18 (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.

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 ...

(2) Subsection (1) applies whether or not any payment has been made.

(3) 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,...

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

7. **SUBMISSIONS AND REASONS FOR DECISION**

Three issues arose for determination on the question of jurisdiction.

a) At the hearing the Tribunal invited submissions on whether the costs in question fell within the scope of sections 18 and 19 Landlord & Tenant Act.

b) The Application raised the question of whether the insurance cost was a service charge, as it was payable as rent.

c) The Respondent in its submissions contended that the costs of insurance for 2007 and 2008 could not be challenged because they had been paid, thereby depriving the Tribunal of jurisdiction.

8. The Tribunal firstly considered the parties' respective liabilities and obligations regarding insurance against the background of the statute. The Tribunal was shown a sample Lease dated 2 April 1971 between the freeholder and the tenant of Flat 34. This placed an obligation on the freeholder to insure the part of the property described as 'the flats', and an obligation on the tenant to pay to the freeholder a 1/33rd share of the freeholder's costs of doing so. The Lease contemplated that the Management Company would grant an under-lease to the tenant. The Management Company was not a party to this lease.

9. The Tribunal also had sight of a Lease dated 20 February 1970 by the freeholder to the Management Company, which demised the common parts of the property to the Management Company and required the Management Company to insure them in the joint names of itself and the freeholder. This lease required the Management Company to grant an under-lease to the tenant of each flat.

10. The Tribunal was told by the representatives of both parties that no such under-leases were available, and so far as the representatives attending were aware, had never been granted. It had been impracticable for insurance of the flats and the common parts to be effected separately, and it would have prevented tenants from arranging for a mortgage to be secured over their flats. The Respondent had become the freeholder in the 1980s and since before that time, the practice of all concerned had been that the freeholder arranged the insurance of the entire property through a block policy, the Management Company reimbursed the freeholder for the annual

premium cost, and the Management Company then collected the entire premium from the tenants through the mechanism of the service charge. The insurance costs which were being challenged in the application were the annual premiums for the whole property for the years 2007, 2008 and 2009 (subject to the Applicant's concession on 2008).

11. The representatives of both parties present at the hearing agreed that the Management Company was empowered to enforce service charge payments by the tenants, but no service charge demands were produced nor any evidence to support the view of the parties as to the power of the Management Company to do so.

12. On the question of jurisdiction, the Tribunal took the view that the principal issue was whether the cost of the insurance was a cost incurred by or on behalf of a landlord, in connection with a matter for which tenants were liable to pay a variable service charge, within the meaning of s18. Provided this test was satisfied, the Tribunal had jurisdiction under s19 to consider whether the cost was reasonably incurred. The Tribunal took the view that in order for costs to be "payable" by a tenant there must exist some obligation to that effect.

13. On the evidence and submissions available, it appeared that a collateral arrangement for the provision of and payment for insurance had been made between the parties which did not accord with the terms of the Leases seen by the Tribunal. The terms of that arrangement could not be specified. It appeared to pass to the tenants the burden of paying for the insurance of the common parts, which may not have been their obligation under any of the Leases. It was not clear whether any consideration had been provided, which would have been necessary for such an arrangement to have contractual weight. Nor was it clear whether or how the agreement of any tenant had been obtained, nor who, if anyone, could enforce that agreement There had not, apparently, been any variation of the leases regarding insurance.

14. The Tribunal therefore could not find, on the balance of probability, that the annual costs of a single insurance premium for the entire property were costs which were payable by the tenants (or any tenant), whether directly or indirectly. The Tribunal decided on issue a) above that it did not have jurisdiction.

15. The Tribunal considered the question of the insurance payments being described as 'rent' (issue b) above). It appeared that the section of the lease which the Applicant had in mind referred to the tenant's covenant under the Lease with the freeholder. This was not the payment which was the subject of the application. In any event, s18 specifically provides that costs which are payable as rent may be service charges. The Applicant abandoned the point at hearing.

16. The Tribunal heard submissions on point c) above, and drew the attention of the parties to the provisions of s27A Landlord & Tenant Act 1985. The Respondent submitted that "any payment" in subsection 27A(2) meant "partial payment" and maintained that the decision in Daejan Properties v London LVT (12 July 2001) (reported at 2001 [EWCA] Civ 1095) remained good law and prevented the Tribunal from dealing with the insurance costs from 2007. The Tribunal decided there was no reason to limit the words of the section in that way, and that s27A had superseded the effect of the decision in Daejan. The Tribunal decided on this point that the mere fact that payment had been made did not deprive it of jurisdiction.

Signed-------J.M.C----------Chair Dated-----29th June 2009--