



**Residential
Property
TRIBUNAL SERVICE**

**SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference CHI/00ML/LSC/2009/0160

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER S27A AND S 20C OF THE LANDLORD AND TENANT ACT 1985**

Applicant: Mr J Crawley and Ms L Morley

Respondent: Gargan McDonnell Ratcliffe t/a Utilec Properties Ltd

Premises: 28A Warren Road Woodingdean Brighton East Sussex BN2 6BA

Date of Application: 9 November 2009

Leasehold Valuation Tribunal: Mrs F J Silverman Dip Fr LLM
Mr A McKay FRICS
Mrs J Morris

Date of hearing : 2 July 2010

Decision

The Tribunal determines the reasonableness of the service charges for the years 2006-10 (inclusive) as set out in the reasons below. The Applicant/Tenants share of the service charge is 0.66% of the total sums allowed, as per the provisions contained in the lease.

The Tribunal makes an order under s20C Landlord and Tenant Act 1985 .

- 1 By an application dated 9 November 2009 the Applicants, who are the tenants of the premises known as 28A Warren Road Woodingdean Brighton East Sussex BN2 6BA applied to the Tribunal for a determination of the reasonableness of their service charge for the years 2006-10. Directions were issued by the Tribunal on 25 January and 8 March 2010.
- 2 An application was also made for an order under s 20C Landlord and Tenant Act 1985 .
- 3 The hearing of the matter took place in Brighton on 2 July 2010. The Applicants were represented by Mr J Crawley who presented a bundle of documents for the Tribunal.
- 4 The Respondent did not appear and was not represented at the hearing. No response had been entered by the Respondent to the application. The Tribunal is satisfied that notice of the proceedings and hearing date had been correctly served on the Respondent at their last known address, such correspondence not having been returned to the Tribunal by the Post Office.
- 5 The Tribunal inspected the property prior to the hearing.

6 The property comprises a self-contained maisonette on the ground and first floor of the building. It is situated behind and above ground floor shop premises. The property is arranged with three bedrooms and a combined bathroom WC on the first floor and a kitchen and separate living room on the ground floor. Both ground floor rooms have doors accessing the fenced rear garden. The property is located in a shopping parade on a main road about four miles north east of Brighton town centre. The property has cement rendered and painted elevations under a pitched tiled roof. The interior of the maisonette is in good order with well equipped bathroom and kitchen fittings and double glazed plastic windows and patio doors. The external decorative condition was poor. To the front of the property there is a paved forecourt with steps leading from the pavement. This access is common to the maisonette and ground floor commercial premises but the maisonette has a gated private side entrance. There is no parking on the site but on road parking is available nearby. Part of the front boundary wall on the west side of the property had been removed.

7 The lease under which the premises are held provides in Clause 4 for the landlord to provide service and to insure the building and in clause 2.17 for the tenants to reimburse the landlord for the cost of service charges and insurance. The tenants proportion of the service charge is by Recital 1.6 on page 1 of the lease set at 0.66% of the total cost of services. The details of the services to be provided are contained in Schedule 5.

8 The Applicants have sought information from the Respondent as to the insurance of the property and in relation to the service charge. The Respondent has failed to comply with those requests.

9 By s21B Landlord and Tenant Act 1985 a demand for service charges issued by a landlord must be accompanied by a statement contained prescribed information. None of the service charge demands issued by the Respondent in this case comply with s21B. Accordingly the Applicants are entitled to withhold payment of any service charge due until the section has been complied with.


- 10 In relation to the 2006-7 accounts, in respect of which the demand was served on 20 June 2008, these appear to relate to the whole of the premises 28 Warren Road (although headed up 'Warren Way') and thus include the proportions payable by the ground floor commercial premises. An incorrect apportionment of the sums payable by the Applicants appears on the following page.
- 11 The Applicants did not challenge the insurance premium (£164.25). This amount is therefore payable by the Applicants in the proportion reserved by their lease and subject to withholding under s21B Landlord and Tenant Act 1985 (paragraph 9 above).
- 12 The lease makes no provision for the landlord to charge an administration fee (charged at £100). This amount is therefore not recoverable by the Respondent.
- 13 Similarly the lease makes no provision for the landlord to charge for bank charges (charged at £49) therefore this sum is not recoverable by the Respondent.
- 14 The demand for repairs/alterations to the front patio area in July 2006 has been served more than 18 months after the expense was incurred and thus is irrecoverable under s20B Landlord and Tenant Act 1985.
- 15 The management fee of £100 charged by Utilec Properties Ltd is a reasonable charge and is recoverable by the Respondent. This amount is therefore payable by the Applicants in the proportion reserved by their lease and subject to withholding under s 21B Landlord and Tenant Act 1985 (paragraph 9 above).
- 16 The accounts and demand for the service charge year 2007-8 were also served on 20 June 2008 and relate to the entire property including the ground floor commercial premises .

- 17 The Applicants did not challenge the insurance premium (£169.36). This amount is therefore payable by the Applicants in the proportion reserved by their lease and subject to withholding under s21B Landlord and Tenant Act 1985 (paragraph 9 above).
- 18 The lease makes no provision for the landlord to charge an administration fee (charged at £100). This amount is therefore not recoverable by the Respondent.
- 19 Similarly the lease makes no provision for the landlord to charge for bank charges (charged at £52) therefore this sum is not recoverable by the Respondent.
- 20 The management fee of £100 charged by Utilec Properties Ltd is a reasonable charge and is recoverable by the Respondent. This amount is therefore payable by the Applicants in the proportion reserved by their lease and subject to withholding under s 21B Landlord and Tenant Act 1985 (paragraph 9 above).
- 21 The accounts and demand for the service charge year 2008-9 were delivered in November 2008 (before the end of the accounting year in question) and relate to the entire property including the ground floor commercial premises.
- 22 The Applicants did not challenge the insurance premium (£134.08). This amount is therefore payable by the Applicants in the proportion reserved by their lease and subject to withholding under s21B Landlord and Tenant Act 1985 (paragraph 9 above).
- 23 The lease makes no provision for the landlord to charge an administration fee (charged at £500). This amount is therefore not recoverable by the Respondent.
- 24 Similarly the lease makes no provision for the landlord to charge for bank charges (charged at £73) therefore this sum is not recoverable by the Respondent.

- 25 The management fee of £100 charged by Utilec Properties Ltd is a reasonable charge and is recoverable by the Respondent. This amount is therefore payable by the Applicants in the proportion reserved by their lease and subject to withholding under s 21B Landlord and Tenant Act 1985 (paragraph 9 above).
- 26 The demand in relation to work for blocked sewers is served out of time and is thus irrecoverable under s20B Landlord and Tenant Act 1985. In any event the Applicants said that they were unaware of any works having been done in relation to blocked sewers. The sewers run across the forecourt of the property and thus any work to them would have been noted by the Applicants. The Respondent had not entered a Response to the application and no evidence has been produced to verify or justify this item of expenditure. The Tribunal therefore prefers the Applicants evidence on this point and declares that the charge would be irrecoverable by the Respondent even if the demand had been served timeously.
- 27 The lease does provide for a reserve fund to be set up by the landlord. The accounts under discussion make a demand for a contribution of £500 to such a fund. The Tribunal finds this sum to be reasonable. This amount is therefore payable by the Applicants in the proportion reserved by their lease and subject to withholding under s 21B Landlord and Tenant Act 1985 (paragraph 9 above).
- 28 The accounts and demand for the service charge year 2008-9 were delivered in October 2009 (before the end of the accounting year in question) and relate to the entire property including the ground floor commercial premises.
- 29 The Applicants did not challenge the insurance premium (£124.31). This amount is therefore payable by the Applicants in the proportion reserved by their lease and subject to withholding under s21B Landlord and Tenant Act 1985 (paragraph 9 above).
- 30 The lease makes no provision for the landlord to charge an administration fee (charged at £550). This amount is therefore not recoverable by the Respondent.

- 31 Similarly the lease makes no provision for the landlord to charge for bank charges (charged at £89) therefore this sum is not recoverable by the Respondent.
- 32 The management fee of £110 charged by Utilec Properties Ltd is a reasonable charge and is recoverable by the Respondent. This amount is therefore payable by the Applicants in the proportion reserved by their lease and subject to withholding under s 21B Landlord and Tenant Act 1985 (paragraph 9 above).
- 33 The Applicant said that they were unaware of any rubbish having been removed from the premises. A skip is permanently situated on the forecourt to take rubbish from the ground floor commercial premises. The Respondent had not entered a Response to the application and no evidence has been produced to verify or justify this item of expenditure. The Tribunal therefore prefers the Applicants evidence on this point and declares that the charge is irrecoverable by the Respondent.
- 34 The lease does provide for a reserve fund to be set up by the landlord. The accounts under discussion make a demand for a contribution of £550 to such a fund. The Tribunal finds that a sum of £500 , as charged in the previous accounting year would be reasonable. This amount (£500) is therefore payable by the Applicants in the proportion reserved by their lease and subject to withholding under s 21B Landlord and Tenant Act 1985 (paragraph 9 above).
- 35 The Applicants also made an application for an order under s20C Landlord and Tenant Act 1985. The Respondents did not enter a response opposing the making of such an order. Having considered the matter, the Tribunal determines that it will make an order under this section. The Applicants have substantiated their case before the Tribunal and the Respondent has failed to supply any evidence or response to the application. The accounts served by the Respondent are poorly presented and the demands do not comply with current legislative requirements. By

letter dated 22 October 2009 the Respondent encouraged the Applicant to make an application to the Tribunal which the Applicant has done.



Frances Silverman

Chairman

12 July 2010.