

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Schedule 11 of the Commonhold & Leasehold Reform Act 2002

Section 20C Landlord and Tenant Act 1985

Case Number: CHI/29UD/LAC/2010/0002

In the matter of Flat 6 Collingwood House, London Road. Greenhithe, Kent,
DA9 9EG

Applicant: Alison Doris Woodhouse

Respondent: Estates & Management Limited
(Solitaire Property Management)

Date of Application: 22nd January 2010

Date of Decision: 24th March 2010

Tribunal Member: Mr. S Lal LL.M, Barrister (Legal Chairman)

1. This matter falls to be determined as a paper determination following Directions made by this Tribunal on 25th January 2010.
2. On that occasion both sides were asked to send their respective statements of case no later than the 10th February 2010 which they have both done.

The Case for the Applicant

3. In summary the Applicant says that this is the same application that was made to the LVY last year in March 2009 and then subsequently withdrawn after the Respondent had agreed to refund monies in connection with the LVT application fee.
4. The Applicant says that the lease does not permit the Landlord to recover administration fees and any attendant legal fees and costs in respect of late payment.
5. In her Statement of Case, the Applicant says that the Respondent agreed to refund fees up to the date of the previous LVT being withdrawn.

6. She says that despite this she received a statement in June 2009 and in September 2009, referring to a sum of £145.63 in respect of a late payment charge and legal fees. There was the further imposition of an administration charge in September 2009, this accrued to a total figure of £203.13 received in November 2009 as well as a service charge demand for £18.88 (the service charge element was later settled in any event).
7. The Appellant alleges that the lease does not allow for any ability to charge late fees or administration charges.

The Case for the Respondent

8. In summary in the Statement of Case the Respondent submits that in February 2009, the Respondent did upgrade its accounts and there was a phased migration to a new computer system. The information was not properly transferred and therefore the charges remained on the Appellant's account and that the Respondent now says that any charges were sent in error and that they have apologised to the Applicant.
9. In any event the Respondent says that the lease allows for the recovery of the cost of a letter before action in respect of service charges.

The Tribunal's Decision

10. The Tribunal has been asked to rule on two matters; firstly the ability of the lease to allow for administration charges or late fees as a matter of principle and secondly on the specific history of the present matter.
11. In respect of the first issue, the Tribunal determines that the lease is absolutely clear in that it allows the Respondent to charge for any proceedings taken against the Lessee to recover "rents Service Charge or other monies payable by the Lessee." (Clause 1 (c) of the Third Schedule.
12. In the Tribunal's opinion this would only allow the Respondent to claim monies that relate to the recovery of the above and could in principle cover the cost of a letter before action, as a matter which is taken in connection with any proceedings, to recover any such monies even if the proceedings are yet to be concluded or indeed started in the sense of a formal County Court action. The Clause refers to "any proceedings" in any event. The notion of a letter before action could be viewed as part and parcel and indeed a very early albeit, necessary step in the recovery of monies and as has been noted is a necessary first step in any proceedings even though formal proceedings may not have begun.

13. However, the definition of what may be due is contained in the Seventh Schedule as what makes up a service charge. The Tribunal is unable to find any reference therein to the payability of administration charges or late fees and consequently finds that the lease does not allow for the same.
14. Turning to the second issue, the Tribunal is appalled that the Appellant has been put in the situation of having to come back to the Tribunal in order to have this matter resolved because a computer error on the part of the Respondent has incurred charges to be sent to the Appellant again. Not only were these sent once but they appear to have been sent again on a number of occasions and communication seems to have broken down in respect of the terms of any agreement made in March /April 2009. It is unfortunate that the Applicant has been put to the cost and trouble of having to come back to the LVT on essentially the same point.

Summary

15. A letter before action can clearly be part of any proceedings for the recovery of monies due without actual legal proceedings having begun.
16. The lease does not allow for the payment of administration charges and late payment charges.
17. It is extremely unfortunate that the Appellant has been put to the trouble of having to come back to the LVT to have the matter resolved because of computer errors.
18. Having regard to the guidance given by the Land Tribunal in the *Tenants of Langford Court v Doren LRX/37/2000*, the Tribunal considers it just and equitable to make an order under s.20C of the Landlord and Tenant Act 1985. The Applicant has succeeded in respect of her submissions in terms of the majority of the issues. The Tribunal directs that no part of the Applicant's relevant cost incurred in the application shall be added to the service charges as a just and equitable outcome in light of its substantive decision and that the Applicant be refunded the cost of her application fee in connection with this LVT.

Chairman.....  24/3/10.....