RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/29UM/LSC/2009/0168
Premises: Flat B, 301 High Street, Sheerness, Kent, ME12 1UT
Applicant: Mrs C. M. Willens
Respondent: Influential Consultants Limited

Tribunal
Mr D. R. Hebblethwaite (Lawyer Chairman)
Mr C. C. Harbridge FRICS (Valuer Member)
Mr P. A. Gammon MBE (Lay Member)

DECISION

Note: This Decision has been delayed due to holidays of some Tribunal members since the Hearing. The Tribunal apologizes to the parties for any inconvenience that may have been caused by this.

1. On 30 November 2009 the Applicant issued an application for a determination of liability to pay and reasonableness of service charges in relation to the Premises under section 27A of the Landlord and Tenant Act 1985 (this will be referred to in this Decision as "the 1985 Act"). The determination was sought for the period 5 February 2009 to 4 February 2010. On the same date the Applicant issued an application for a determination as to liability to pay and reasonableness of a variable administration charge under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (this will be referred to in this Decision as "CLARA" and a reference to "Schedule 11" means Schedule 11 of CLARA). The determination was sought in respect of solicitors' fees specified in the application. In both applications the Applicant stated that she wished to make an application under section 20C of the 1985 Act.

2. Also on 30 November 2009 the Applicant issued an application for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act"). Within the application the Applicant also applied for an order dispensing with the requirement to serve a notice on the Respondent pursuant to section 22 of the 1987 Act.

3. The Inspection and Hearing were fixed for 19 May 2010. As to what happened that day parties are referred to the Preamble to the Directions order of the Tribunal dated 21 May 2010. The Inspection did take place on 19 May 2010 but the Hearing was held on 28 July 2010 at the Abbey Hotel and Conference Centre, Minster, near Sheerness.

4. Before the Hearing the Respondent issued an application on 26 May 2010 for a determination that a breach of covenant or a condition in the lease

had occurred, pursuant to section 168 (4) of CLARA. The Tribunal agreed to deal with this at the same Hearing.

5. Accordingly, at the Hearing the Tribunal had a number of applications before it, namely:

(a) Applicant's application re. service charges;
(b) Applicant's application re. administration charges;
(c) Applicant's section 20C application re. (a) and (b)
(d) Applicant's application for appointment of manager;
(e) (preliminary to (d)) Applicant's application to dispense with notice;
(f) Respondent's application re. breach of covenant.

6. The relevant statutory provisions in relation to these applications are set out or summarized below, following the same lettering as in para. 5 above:

(a) section 19 of the 1985 Act says:

> *(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –*
> *(a) only to the extent that they are reasonably incurred, and*
> *(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;*
> *and the amount payable shall be limited accordingly.*
>
> *(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.*

(b) Para. 2 of Schedule 11 says:

> *A variable administration charge is payable only to the extent that the amount of the charge is reasonable.*

(c) Section 20C of the 1985 Act provides that an applicant may ask for an order:

> *... that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a ...... leasehold valuation tribunal ...... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant ...*

(d) A number of conditions have to be satisfied before a Tribunal will appoint a manager. These appear in section 24 (2) of the 1987 Act and because of the length of the provisions it is not proposed to set them out in full. Parties should refer to the sub-section.

(e) Sub-section (1) of section 22 of the 1987 Act provides that before an application is made for an order under section 24 the tenant must serve a notice on the landlord which must contain the information set out in sub-section (2). Sub-section (3) states:

> *A leasehold valuation tribunal may ...... by order dispense with the requirement to serve a notice under this section on a person in a case where it is satisfied that it would not be reasonably practicable to serve such a notice on the person.*

(f) Sub-section (4) of section 168 of CLARA states:

> *A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.*

7. On the Inspection the Tribunal found 301 High Street to be an end-of-terrace two-storey house which was built about 100 years ago and which was converted into three self-contained flats, probably within the past 40 years. The original construction was conventional with solid brick walls, partially rendered and colour-washed, beneath a main pitched and gabled roof and a conjoined rear mono-pitched roof. Roof slopes were clad with what appeared to be tiling but which the Tribunal were advised, by Mr Thompson, was historic profiled metal sheeting. The subject Premises comprise a flat on the first floor and there are two flats on the ground floor. There is a small front garden and a communal entrance lobby, hall and staircase to the first floor and a rear hall affording access to the rear garden. A detailed inspection of the fabric of the building was not undertaken and the Inspection was limited to the exterior and the common parts. The property appeared to be in a fair state of repair and decoration.

8. At the Hearing the Applicant appeared in person and the Defendant was represented by its directors, Mr & Mrs J. F.Thompson. Both parties had filed comprehensive bundles including statements of case and each party had seen that of the other. The Tribunal members had read the bundles and statements before the Hearing. Accordingly, it was quite clear to both the Tribunal and the parties themselves what the case of each party was on the various applications. Nevertheless, the parties were invited to address each application in turn. It is not intended in this Decision to set out in full everything that was said but rather those points which either were emphasized by a party or which were queried by the Tribunal. For further details of the parties' cases reference should be made to the written statements and bundles.

9. Mr & Mrs Thompson also filed statements of case for what they described as "conjoined parties", namely the owners of the other two flats in the building. One of these is owned by Mr & Mrs Thompson themselves and the other by Featurekey Properties Limited, a company owned by the Thompsons. These statements more or less echoed that of the Respondent.

The Applicant in her statement made several references to the fact that the Thompsons owned the Defendant and, in effect, the other two flats. However, all three are separate legal entities and the fact of the ownership of the other two flats did not prevent the Tribunal from dealing with the applications as between the Applicant and the Respondent. To put it another way, these flat ownerships were irrelevant to the applications before the Tribunal.

10. **Service charges**

There was no dispute that the Applicant was liable to pay service charges in accordance with the lease nor as regards the proportion of the charges attributable to the Premises. The application was lodged on the estimate for the year in question. The accounts have since been prepared and were before the Tribunal. Further, the estimated demand for the next year (2010/11) has been sent out. The Applicant endorsed having a reserve fund; she particularly thought it acceptable for something specific, such as a new roof. When Mr Thompson said that a new roof was in contemplation, the Applicant stated that she didn't know if the roof would need replacing, if it was true. She was concerned about the bank accounts, not being satisfied with the statements produced and querying that it wasn't a trust account. What would be the position if anything happened to the landlord? Mr Thompson said that the bank account was a "client account" and that it was protected if the landlord went into liquidation. The Applicant raised the possibility that the bank accounts produced were forgeries. It was confirmed that Mr Thompson (a retired surveyor, he says) did the estimates himself. The Applicant made a number of points about the insurance policy. Mr Thompson said that it covered the contents in the other two flats but that his broker apportioned the premium to ensure that no part of the cost of this fell on the Applicant. The other points made will be dealt with later when describing the Tribunal's consideration of the application. There followed discussion on work done at the building by Commercial Electrical Services (described as "CES" in the accounts). Mr Thompson said there had been consultation under section 20 of the 1985 Act. There was also an issue over the side gate, which the contractor accused the Applicant of "vandalizing" it, which she denied. Mr Thompson said that he had done everything he was, in effect, directed to do at the Hearing of the Applicant's previous application (Case no: CHI/2W9UM/LSC/2008/0136). The Applicant felt that a lot of the charges were extortionate and the accounts weren't audited.

11. **Administration charges**

The charges in dispute are the Respondent's solicitors' fees for acting in correspondence and the service of a notice on the Applicant under section 146 of the Law of Property Act 1925 of her breach of covenant in failing to pay the service charge due after the determination on her previous application. The Applicant's case is essentially in two parts; first, that the notice was invalid as it was served prematurely, and, secondly, that the

amount charged is unreasonable. Essentially, the parties did not add anything to their statements of case.

12. **Appointment of manager/dispensation with service of notice**

The Tribunal announced that it would deal with the dispensation application first and make its decision straightaway, on the basis that if it refused that application then the application to appoint a manager would automatically be refused. The Applicant did not add to her statement of case but did say that she could have sent the notice to any number of addresses. She always had to wait for a reply when she sent anything to the Thompsons and sometimes there was "retribution".

13. At this point the Tribunal asked the parties to withdraw and, in their absence, considered the dispensation application. It determined that the Applicant could have served the requisite notice on the Respondent. It was irrelevant whether the Respondents would have replied or not. In the words of section 22 (3) of the 1987 Act the Tribunal was not satisfied that it would not have been reasonably practicable to serve the notice. Accordingly the dispensation application would be refused and, consequentially, the application to appoint a manager would be refused. The parties were invited to rejoin the Tribunal and the Chairman announced the decision.

14. **Section 20C application**

The Applicant argued that this should follow the Tribunal's decision on her substantive applications. Mr Thompson said that he couldn't see the point in the application as the Respondent was not proposing to charge any costs for dealing with the Applicant's applications. The Tribunal accepted this statement.

15. **Respondent's application re. breach of covenant**

The alleged breach was the failure by the Applicant to allow the Respondent to enter the Premises pursuant to clause 3 (5) of the lease, which obliges the tenant:

to permit the Landlord and persons authorized by the Landlord at reasonable times and on giving reasonable prior written notice (except in case of emergency) to enter the flat and examine the state of repair and condition thereof

The Tribunal had copies of the notice which the Respondent served on 22 April 2010, the Applicant's reply and ensuing correspondence. The Applicant accepted that she was given a reasonable period of notice but claimed that the times proposed were not reasonable, and that she had not been given enough information on the purpose of the visit. She asserted that she might have been "edged out" of her flat and that the Respondent might have changed the locks or gone through her papers.

16. **Consideration**

After the Hearing the Tribunal were left to consider three applications, the applications for appointment of manager and dispensation with notice and the section 20C application having been dealt with in the course of the Hearing (see paras. 13 & 14 above).

17. Regarding the service charges, the Tribunal considered the insurance premium carefully. Subject to what follows, it felt that the premium was reasonable and that the brokers had fairly apportioned the premium to exclude the contents in the other two flats. However, it was not appropriate to insure for loss of rent in the sum of £50,000. Mr Thompson was mistaken in thinking that this was for alternative accommodation in the event of property damage – this is included in the standard cover – and is indeed for loss of rent from tenants to landlord. However, the only rent concerned is the ground rent reserved by the lease of £50 per annum until 2020. Assuming the other leases to reserve the same ground rent that totals £150 per annum, and the Tribunal has adjusted the premiums for 2009/10 to £718.27 and for 2010/11 to £919.73. The reserve fund was a big issue in the application. The Tribunal is satisfied that the Respondent may build up a reserve fund in view of the wording of clause 1 (2) of the lease which refers to

the amount which the Landlord may from time to time expend ***and as may reasonably be required on account of anticipated expenditure*** ......

It is the Tribunal's view that the words emphasized (in bold) permit the collection of both an amount in advance for the forthcoming year and contributions to a reserve fund. Both would, of course, be subject to the test of reasonableness as required by section 19 of the 1985 Act. The Tribunal finds that the cycles chosen by the Respondent for cyclical maintenance and repair are right and that the sums to be accumulated are reasonable. The only figure that must be deleted from the reserve funds contributions (see JFT6 in Respondent's bundle) is that for insurance excess. This should be collected from time to time when actually applicable in any year. The figures allowed are **£5,117** in both years 2009 and 2010. The bank account is perfectly acceptable. The Tribunal is satisfied that it is a client account and safe in the event of the liquidation of the Respondent. It does not need to be a trust account. The Tribunal rejected out of hand the Applicant's suggestion that the bank statements produced by the Respondent might be forgeries. The Tribunal considered the expenditure for 2009/10 (set out at JFT7) and concluded that all the items (leaving Jarmans' bills to be considered in the next para. and insurance having been dealt with above) were reasonably incurred and reasonable in amount. Regarding the RICS publications and the re-charge from Featurekey Ltd. for office equipment, the Tribunal noted that Mr Thompson undertakes the management of the building himself and so the

Respondent does not incur the costs of surveyors or agents, the lease permitting the cost of such, if instructed, to be apportioned to the tenants, including the Applicant. Thus, the figures allowed will be £223.45 for management, £2,160 for maintenance and £767.29 for insurance, total **£3,150.74**. The Tribunal further considered the amounts incurred in the first part of the 2010/11 year (at JFT7). Insurance is dealt with above and the remaining amounts are found reasonable. Finally, the estimate for 2010/11 (at JFT4) was considered and items were determined as reasonable as to the items concerned and as to amount (subject to the adjustment of insurance – see above), total **£3,664.23**. The parties are reminded that this will be subject to adjustment at the end of the 2010/11 year when the actual accounts are produced. The Tribunal was satisfied that procedurally the Respondent has acted correctly, e.g. tenant's rights included on demands. There is no requirement for the accounts to be audited. It follows that the Applicant's due proportion of the figures in bold type is now payable by the Applicant.

18. Regarding the management charges, the Tribunal carefully went through the timetable for the service by Jarmans, the Respondent's solicitors, of the notice of breach of covenant and did not find that it had been served prematurely in accordance with the rules about timing following a tribunal determination. The notice was valid, was good and sufficient, and indeed the Applicant did receive it. The solicitors' fees are recoverable under clause 3 (13) of the lease. They come within the definition of administration charge under Schedule 11 and so are only payable to the extent that they are reasonable. The invoices of Jarmans were perused and, whilst the Tribunal would have liked more information, it concluded that overall they were not unreasonable. It was also noted that the Applicant was warned about the charges accruing on more than one occasion by Jarmans. Accordingly, the total of **£1,991.88** is now payable by the Applicant.

19. To summarize what is payable by the Applicant now:

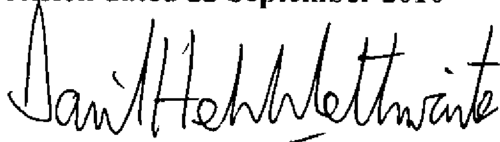
Reserve fund contribution 2009	£5,117.00
Reserve fund contribution 2010	5,117.00
Service charges 2009/10	3,150.74
Service charges 2010/11 (estimate in advance)	3,664.23
Total	£17,048.97
Applicant's proportion (39.38%)	£6,713.88
Add administration charge	1,991.88
Total amount now payable by the Applicant	**£8,705.76**

20. Finally, the Tribunal determined that the tenant was in breach of covenant by not permitting the landlord to enter the Premises and examine the state of repair and condition in accordance with clause 3 (5) of the lease. The landlord gave reasonable prior written notice and proposed reasonable

times for the visit. The tenant did not propose any alternative and set about spurious querying of why the landlord wanted to attend. There were no grounds whatsoever for her assertions at the Hearing that she might be "edged out" of the Premises.

21. This is the second Tribunal case brought by the Applicant in two years. She has committed volumes to paper in her statements of case covering several applications, in which, before the present Tribunal, she has been almost wholly unsuccessful. It is the hope of the Tribunal that this Decision not only disposes of the applications before it but also gives clear guidance for the future, thus obviating the need to bring further applications.

Decision dated 22 September 2010



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David Hebblethwaite
Chairman