SOUTHERN RENT ASSESSMENT PANEL
& LEASEHOLD VALUATION TRIBUNAL

Case No.	**CHI/29UQ/LSC/2009/0096**
Property:	**82 Blackthorn Avenue** **Tunbridge Wells** **Kent** **TN4 9YG**
Applicant:	**Miss Lorraine Jones**
Respondent:	**Town and Country Housing Group Limited**
Date of Hearing:	**24th February 2010**
Members of the Tribunal:	**Mr. R. Norman** **Mr. R. Athow FRICS MIRPM**

82 BLACKTHORN AVENUE, TUNBRIDGE WELLS, KENT TN4 9YG

Decision

1. The Tribunal determined that the only service charge in respect of the years April 2008 to March 2009 and April 2009 to March 2010 which Town and Country Housing Group Limited ("the Respondent") is able to charge Miss Lorraine Jones ("the Applicant") under the terms of the lease is a fair proportion of all costs charges and expenses if any incurred by the Respondent in maintaining repairing renewing and reinstating any of the footpaths or common areas or other land on the estate (which is defined in the lease as "The land comprised in the Landlord's Title Number as at 16 April 1996" and the Landlord's Title Number is K760849) for which the landlord may be or become liable. This is in accordance with clause 4(T) of the lease.

2. There is no provision in the lease for the Respondent to collect from the Applicant any sums in respect of estimated costs charges and expenses. The lease provides only that the Respondent may collect a fair proportion of all costs charges and expenses which have been incurred.

3. Clause 4(A) of the lease provides for the payment by the Applicant of rent and other expenses such as insurance, rates, etc. but at the hearing it was accepted on behalf of the Respondent that clause 4(A) did not relate to the service charges which had been disputed. The Applicant accepts she is liable to pay ground rent and buildings insurance

and does not dispute this. It follows that in respect of the year April 2008 to March 2009 the sum of £25 audit costs is not payable by the Applicant and in respect of the year April 2009 to March 2010 the sums of £22.08 community caretaking, £50.04 communal repairs, £20.04 auditor's fee and £114.96 management fee are not payable. If any money has been paid by the Applicant in respect of any of those sums or part of them then the Respondent is to refund such sums to the Applicant. In respect of the year April 2010 to March 2011 the estimated sums of £12 community caretaking, £26.40 grounds maintenance, £49.92 communal repairs, £25.04 auditor's fee and £117.48 management fee are not payable. If any money has been paid by the Applicant in respect of any of those sums or part of them then the Respondent is to refund such sums to the Applicant. The discretionary payment of £400 made by the Respondent to the Applicant is of no relevance to the Tribunal's decision and is not to be brought into account in calculating any sums to be refunded to the Applicant.

4. It may be that in April 2011, in accordance with clause 4(T) of the lease, the Respondent will make a charge in respect of a fair proportion of all costs charges and expenses incurred by the Respondent in maintaining repairing renewing and reinstating any of the footpaths or common areas or other land on the estate for which the Respondent may be or become liable. The lease does not provide for the payment by the Applicant of a set percentage of costs and expenses but if the Respondent decides upon a sum to charge in accordance with clause 4(T) of the lease and the Applicant disputes that sum then an application may be made to the Leasehold Valuation Tribunal to determine the sum payable. It will be necessary for evidence such as paid invoices in respect of sums paid for work carried out, details of that work and how the proportion demanded has been calculated to be produced by the Respondent.

5. The Tribunal was not satisfied that the Respondent is able to claim from the Applicant anything towards the costs of these proceedings and it was stated on behalf of the Respondent that there was no intention to try to do so but for the avoidance of doubt an order is made under Section 20C of the Landlord and Tenant Act 1985 ("the Act") that all or any of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

Background

6. The Applicant is the lessee of 82 Blackthorn Avenue, Tunbridge Wells, Kent, TN4 9YG ("the subject property") and the Respondent is the freeholder of the subject property.

7. The Applicant made an application under Section 27A of the Act for a determination of the following issues:
(a) The provisions, if any, in the lease which permit the Respondent to raise service charges.
(b) For what items, if any, service charges may be raised.

(c) If any service charges are permitted within the lease, for what proportion of the service charges is the Applicant liable.
(d) If service charges are permitted, whether it is possible to limit any increase in these in future years.

8. The Applicant also made an application for an order under Section 20C of the Act that all or any of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

9. It was originally intended that the Tribunal would proceed to determine the matter on the basis only of written representations and without an oral hearing and the parties did not object to this but it was stated in the directions that if in the opinion of the Tribunal the matter becomes more complicated or additional matters are raised by either party the Tribunal may decide to review its decision to have the matter determined without a full hearing and that in that case the Tribunal would make further directions.

10. The Tribunal came to the conclusion that there was a need for a full hearing with argument and submissions being made by or on behalf of the parties so that a decision could be made.

Inspection

11. On 24th February 2010 the Tribunal in the presence of the Applicant, Mrs. Speller from the Citizens Advice Bureau assisting the Applicant, Mr. Dunthorne, Financial controller, Miss Nwufo Service Charges Officer and Mr. Ahmed Leasehold Officer representing the Respondent. We did not inspect inside the subject property but it is agreed by the parties that it is a two bedroom semi-detached house on a development comprising a number of houses and flats in Southborough on the outskirts of Tunbridge Wells.

12. Those present were asked to point out to us anything which they wished the Tribunal to see. We were shown a footpath at the rear of the subject property and we were told that it had been cleared of brambles the previous day. We were also shown areas of grass, a play area and other areas of land which we were told were maintained by the Respondent. We were told that not all the houses and flats in the development were owned by the Respondent and that it was accepted that there should be some element of charging other owners for a proportion of the cost of maintaining the footpath, areas of grass, the play area and other areas of land maintained by the Respondent. Mr Ahmed showed us an area which was outside the boundary of the estate which he said was included as part of the gardening contractor's specification.

13. Mr. Ahmed stated that all the roads on the development had been adopted by the local authority and that as far as he was aware the local authority had also adopted all the sewers.

The Hearing

14. The hearing was attended by all those who had been present at the inspection.

15. The Tribunal having considered all the documents provided in advance, considered the additional documents and plans which had been produced on behalf of the Respondent on 23rd February 2010 which were first seen by the Tribunal at the inspection.

16. Mrs Speller assisted the Applicant by taking us through the Applicant's statement of case and documents produced. The Applicant gave evidence in which she confirmed the contents of the witness statement she had produced; adding that she had now found the letter from her solicitors who represented her when she purchased the lease of the subject property. Copies of that letter were produced for the Tribunal and for those representing the Respondent. It was accepted that the Applicant did not challenge the charge for insurance. There were no questions for the Applicant from those representing the Respondent or from the Tribunal.

17. Mr. Dunthorne addressed the Tribunal and stated that the lease allowed the Respondent to charge service charges. We therefore asked him to clarify which parts of the lease were relied on in order to demand service charges.

18. Included in the documents produced is an e-mail dated 22nd June 2009 written by Mr. Ahmed, on behalf of the Respondent, to Mrs Speller. In that e-mail it was stated that points 2 and 3 on page 6 of the lease referred to service charges. Those points are clauses 4(A)(2) and 4(A)(3) of the lease. In the Respondent's statement of case it is stated that the Respondent relies on clause 4(A)(b) on page 5, clauses 4(2) and 4(3) on page 6 and clause 4(T) on page 8 of the lease. The Tribunal assumed that, as those numbers do not coincide exactly with the numbers of the clauses in the lease (except 4(T)), the Respondent intended that the clauses relied on are: clauses 4(A)(1)(b), 4(A)(2), 4(A)(3) and 4(T).

19. Clause 4 (A)(1)(b) provides that the tenant must pay to the landlord without deduction any expenses (including legal and other professional fees) incurred by the landlord under clause 5 or as a result of any breach of the tenant's duties, paying when asked. Clause 5 sets out the landlord's duties, not to withhold unreasonably consent, to make good damage done to the subject property during work under clause 4(F) except to the extent that the damage resulted from the tenant's breach of duty, and as to insurance.

20. Clause 4 (A)(2) provides that the tenant must pay all present and future rates, taxes, charges, assessments and outgoings whatever (whether of a capital or recurring nature) which are payable in respect of the subject property or the owner or occupier.

21. Clause 4(A)(3) provides that the tenant must pay to the landlord a rateable proportion (to be decided by the landlord's surveyor whose decision will be final) of any

rates, taxes, charges and outgoings which are now or may in the future be payable in respect of the subject property jointly with any other property.

22. Mr. Dunthorne stated that there had been no breach of tenant's duties by the Applicant, that the Respondent had no issues with the Applicant as tenant and that clauses 4(A)(1)(b), 4(A)(2) and 4(A)(3) were not relied on to allow the charging of service charges. It was confirmed by Mr. Dunthorne and by the Applicant that a discretionary payment of £400 had been paid to the Applicant in acknowledgement of the concern and discomfort which the Respondent had caused by failing to provide a standard of response which the Respondent would expect.

23. Clause 4(T) provides that the tenant must pay to the landlord a fair proportion of all costs charges and expenses if any incurred by the landlord in maintaining repairing renewing and reinstating any of the footpaths or common areas or other land on the estate (which is defined as "The land comprised in the Landlord's Title Number as at 16 April 1996" and the Landlord's Title Number is K760849) for which the landlord may be or become liable.

24. Mr. Dunthorne stated that it was this clause which was relied upon to allow the charging of service charges. However, he was unable to persuade the Tribunal that anything more should be read into that clause. The service charges claimed are payable only in so far as they come within the limits of that clause.

25. After further consideration the Tribunal announced a summary of the decision which had been reached.

R. Norman
Chairman