

SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/45UC/LSC/2006/0111

BETWEEN:

Ms H Hyam

(Applicant/Landlord)

- and -

Ms J Dunmore

(Respondent/Tenant)

PREMISES: Flat 2,
62 Norfolk Road
Littlehampton
West Sussex
BN17 5HB
("the Premises")

TRIBUNAL: MR D AGNEW LLM (Chairman)
MR R WILKEY FRICS, FICPD
MR T W SENNETT MA MCIEH

HEARING: 2nd FEBRUARY 2007

1. Background

1.1 On 24th October 2006 by order of District Judge Levinson in proceedings in Worthing County Court numbered 6WG 03472 the Applicant's claim against the Respondent for payment of certain service charges in respect of the Premises, was referred to the Leasehold Valuation Tribunal.

1.2 The Applicant's claim was for £1,578.37 made up as follows:-

Balance due on service charge account at 31/03/06 -	£ 308.28
½ year maintenance due 31/03/06 -	£ 200.00
Monies required in advance for works to front elevation of 62 Norfolk Road -	£1,045.09
Late payment fee -	£ 25.00

	£1,578.37

- 1.3 The Respondent admitted on the County Court response form that the £308.28 and £200 listed above were owed to the Landlord and by the date of the hearing these sums had been paid. However, the Respondent continued to query the figure of £308.28 and maintained that the £200 required for the period 31st March 2006 to 1st October 2006 was not due to be paid until the end of the period which was after the County Court summons had been issued.

2. The Inspection

- 2.1 The Tribunal inspected the Premises prior to the hearing on 2nd February 2007. A description of the Premises is contained in previous decisions of the Tribunal dated 8th December 2004 and 19th May 2006. As the Tribunal's decision in the current case does not depend on the description of the Premises or their condition, it is not proposed to set out a description of the Premises again in these reasons.

3. The Respondent's case

- 3.1 Once the Applicant explained to the Respondent at the hearing how the sum of £308.28 had been arrived at the Respondent accepted that the figure was correct and that as she had paid it she had no further challenge in respect of this item. Similarly, once the Tribunal explained to the Respondent that according to her Lease the maintenance sum of £200 required by the Landlord to be paid each half year in advance was on account of expenditure estimated to fall due during the course of the period, and that it was due and payable at the start of the period, the Respondent accepted that the figure claimed was due and payable on 31st March 2006. As far as the amount requested on account of works to the front elevation of the property were concerned, the Respondent's challenge was not to the amount or the necessity for the works to be done but she considered that the requirement for her to contribute to works to a different part of the building from that where her own flat was situated was not a requirement of her lease. Furthermore, she believed that steel beams were being installed where no steel beams were previously. Hence, this was not a repair within the meaning of her lease.

On it being pointed out to her by the Tribunal that the specification for the works which had been sent to the Respondent and was contained within the case papers clearly stated that the existing steel beams would be removed and replaced by others and that the lease required her to contribute to such repairs wherever they were in the building at

62 Norfolk Road, just as the other tenants were obliged to contribute to repairs to the structure of the building involving her flat, the Respondent accepted that she was liable to pay the sum claimed in respect of this item. This left the late payment fee of £25 for the Tribunal to decide as to whether it was reasonable for the Respondent to pay. The Respondent's case was that this was unreasonable because it had been charged to her before the time for payment had elapsed if she was right in saying that it was not due to be paid until 1st October 2006.

4. The Law

4.1 Section 27A of the Landlord & Tenant Act 1985 ("the 1985 Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

- (a) the person by whom it is payable
- (b) the person to whom it is payable
- (c) the amount which is payable
- (d) the date at or by which it is payable
- (e) the manner in which it is payable.

4.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

5. The Lease

5.1 By Clause 3 of the lease "the Lessee covenants (i) with the Lessor to observe and perform the obligations and regulations set out in Part 1 of the Fifth Schedule....."

- 5.2 By Part 1 of the Fifth Schedule to the lease the Lessee covenants "to pay to the Lessor a Maintenance Charge being that fraction specified in paragraph 5 of the Particulars ($1/9^{\text{th}}$) of the expense which the Lessor shall, in relation to the property, reasonably and properly incur in each Maintenance Year and which are authorised by the Eight Schedule hereto [including the provision for future expenditure therein mentioned].... and FURTHER on the first day of April in each Maintenance Year ("the payment date") to pay in advance on account of the Lessee's liability under this Clause the Interim Maintenance Charge....."
- 5.3 The expenditure for which the Lessee is liable to contribute $1/9^{\text{th}}$ towards is set out in the Eighth schedule of the lease. The items relevant to this case are:-
- i) "the cost of employing a Management Agency or Surveyor to manage the property and to collect the maintenance charges in respect of the flats therein....."
 - and ii) "all legal and other proper costs incurred by the Lessor:-
 - a) in the running and management of the Property and in the enforcement of the covenants on the part of the Lessee and of the Lessees of other flats in the Property".

6. The determination

- 6.1 The Tribunal had no hesitation in finding that it was reasonable for a late payment fee of £25.00 to be charged to cover in part the costs to which the Landlord and managing agent had been put to in seeking payment from the Respondent of the monies properly due from her. The Respondent accepted at the hearing that the moneys being claimed from her were due and owing at the time of the correspondence from the Managing Agent chasing payment. Furthermore, the Tribunal decided that £25 was a reasonable sum for the Agent to be paid in the circumstances. It may be that the Applicant can seek an order from the County Court to recover some more of the fees and costs incurred in successfully seeking an order against the Respondent, in particular the court issue fee. However, the late payment fee is an item which strictly speaking should be charged to the service charge account generally in respect of which the Respondent's contribution is $1/9^{\text{th}}$. The Tribunal therefore orders that the Respondent pay £2.77 towards the late payment fee (i.e. £25/9).
- 6.2 The Applicant did not seek an order under paragraph 10 of Schedule 12 to the Commonhold & Leasehold Reform Act 2002 which enables a leasehold valuation tribunal

to order a party to pay up to £500 towards another party's costs in appropriate circumstances. Had such an application been made the Tribunal may well have been minded to make such an order as it found that there was really no merit in any of the Respondent's challenges to the service charge demand. Although the late payment charge to the Respondent has been reduced, this has not been done on the basis of the Respondent's objection but because the Tribunal considered that this was a service charge item which should be charged to all the tenants and that the Respondent's share of this cost was therefore only 1/9th. The amount involved is also very small.

- 6.3 The Tribunal considered that all the items disputed by the Respondent would not have been properly disputed had the Respondent either consulted the Applicant or had sought legal advice. If this were to happen again in the future the Respondent would run the risk that the Tribunal may well consider it appropriate to order her to pay the Landlord's costs of the Tribunal proceedings.

7. Conclusion and Order

- 8.1 The Tribunal determines that of the sum of £1,578.37 claimed by the Applicant from the Respondent in respect of service charges for Flat 2, 62 Norfolk Road, Littlehampton, West Sussex the Respondent is to pay £1,047.86 (£508.28 having been paid by the Respondent subsequent to the issue of the County Court claim) made up as follows:-

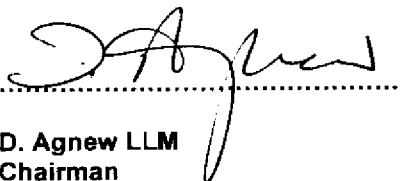
	£
Monies required in advance for works to front elevation -	1,045.09
Late payment fee -	2.77

	1,047.86

The said sum shall be paid by 15th March 2007.

Dated this 26^L day of February 2007

Signed:


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D. Agnew LLM
Chairman