

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Residential
Property**
TRIBUNAL SERVICE

S.27A Landlord & Tenant Act 1985 (as amended) ("the Act")

DECISION of the Leasehold Valuation Tribunal & ORDER

Case Number:	CHI/45UG/LSC/2006/0057
Property:	10a Keymer Parade Burgess Hill West Sussex RH15 0AB
Applicant:	Robert Dann
Respondent:	Mr A Reeves
Date of Hearing:	13 th October 2006
Venue:	Griffin Room The Marletts Hall Civic Way Burgess Hill
Appearances:	
For the Applicant:	Mr Robert Dann
For the Respondent:	Mr Tony Newey from Messrs Howlett Clarke Crowther Wood Solicitors
Tribunal Members:	Mr R T A Wilson LLB (Lawyer Chairman) Mr Roger Wilkey FRICS (Valuer Member) Ms Jan Morris (Lay Member)
Date of Decision:	2 nd November 2006

The Application

1. This is an Application by Robert Dann the freeholder of 10 Keymer Parade, Burgess Hill, West Sussex ("the Property") for a determination under Section 27A of the Landlord and Tenant Act 1985 as to the liability of the leaseholder of the first and second floor maisonette at the Property, to contribute to the costs of insuring the Property.

Background

2. On the 28th February 2006 Robert Dann's Company, Heath Bathrooms Limited commenced proceedings against Mr Reeves in the Northampton County Court. The pleadings claimed the sum of £354.57 being the amount of the unpaid insurance premium for 2006.
3. On the 12th June 2006 the County Court on its own initiative transferred the case to the Leasehold Valuation Tribunal for determination.
4. On the day of the hearing the Tribunal inspected the exterior of the Property briefly. The Property comprises a three storey unit in a parade of shops. On the ground floor there is a bathroom show room owned and occupied by Mr Dann whilst the first and second floors are arranged as a residential maisonette owned and occupied by Mr Reeves.
5. Mr Reeves occupies the first and second floor maisonette by virtue of a lease of 99 years from the 19th August 1988 and made between W. Rowe of the first part and C. Lancaster & M. Webb of the second part. A copy of this lease is contained within the case papers.

Decision in Summary

6. The Tribunal determines for the reasons set out below, that there is no provision in the lease of the maisonette enabling the freeholder to collect, by way of service charge or otherwise, all or any part of the cost of insuring the maisonette and or Property.

The Case for the Applicants

7. Mr Dann commenced his case by stating that he owned the freehold of 10 Keymer Parade, Burgess Hill from which he operated his business, 'Heath Bathrooms' from the ground floor. The maisonette above the shop was owned and occupied by Mr Reeves. Mr Dann stated that the arrangement regarding buildings insurance had up until this year been straight forward and effective. For the last twenty years, the

freeholder arranged the insurance of the entire building and the leaseholder reimbursed two thirds of the cost. Mr Reeves had honoured this arrangement until the current year when he queried not only the cost of insurance but also the percentage attributable to the maisonette.

- 8 In Mr Dann's view there was a subsisting agreement relating to insurance and as he had paid the insurance in good faith, Mr Reeves should honour his side of the agreement and reimburse Mr Dann with two thirds of the cost.
9. Upon being questioned by the Tribunal Mr Dann accepted that the agreement referred to above was not evidenced in writing and there was no clause in the lease allowing him to charge part of the cost of insurance to the maisonette. Furthermore Mr Dann confirmed he was aware that the freeholder's obligation to insure the property in the lease actually excluded the maisonette. Mr Dann then queried if the Tribunal had the power to vary the lease so as to impose upon the freeholder an obligation to insure the whole building subject to receiving a fair contribution from the leaseholder of the maisonette.
10. Mr Dann could produce no authorities to support his claim for reimbursement but maintained that the fact that the voluntary arrangement had continued for nearly twenty years now made it a binding one.

The Case for the Respondents

- 11 Mr Newey commenced his case by referring the Tribunal to the Respondents statement of case sent to the Tribunal on the 13th September 2006 and which was included in the Respondents trial bundle. Mr Newey reminded the Tribunal that the freeholders covenants were contained within clause 3 of the lease and included the following:-
 - 3b to insure and keep insured the said building (excluding the maisonette) against comprehensive risks.....and to produce a policy and last premium receipt to the lessee on demand.
- 12 Mr Newey said that it could be seen that the freeholders covenant to insure extended only to the building without the maisonette and it therefore followed that the leaseholder was responsible for insuring the maisonette himself. If one examined the remainder of the lessee's covenants in clause 2, there was no provision whereby the lessee was required to pay any service charge.
- 13 Having regard to the above it was his case that Mr Dann could not claim reimbursement of any part of the insurance premium by way of service charge.

The Tribunals Deliberations

- 14 The Tribunal reminded itself that the landlord's power to levy a service charge and a leaseholder's obligation to pay it are governed by the provisions of the lease. The lease is a contract between the leaseholder and the landlord and there is no obligation to pay anything other than what is provided for in the lease. The general principle of a lease is that the landlord is not obliged to provide any service which is not covered by the lease, and the leaseholder is not responsible for payment where there is no specific obligation set out in the lease.
- 15 The lease in this case is quite clear in so far as it excludes the landlord's obligation to insure the maisonette. Furthermore it contains no provisions which amount to a power by the landlord to recover service charge.
- 16 Having regard to the above, the Tribunal had no difficulty in concluding that Mr Reeves has no responsibility to contribute towards the costs of insuring the Property. This is the legal position notwithstanding the fact that in previous years Mr Reeves has voluntarily made a contribution.
17. The Leasehold Valuation Tribunal does have powers to vary a lease but its powers can only be exercised if a formal application to vary the lease is made and that the statutory grounds to vary are made out. In this case no application to the Tribunal has been made and therefore the Tribunal is not in a position to vary the lease
- 18 Neither party made an application with regard to costs pursuant to Section 20C of the Act and accordingly the Tribunal made no finding in this respect.

Chairman



R.T.A. Wilson

Dated

2nd November 2006