

**SOUTHERN RENT ASSESSMENT PANEL AND
LEASEHOLD VALUATION TRIBUNAL**

In the matter of sections 27A and of 20C of the Landlord & Tenant Act 1985

Decision of the Leasehold Valuation Tribunal

Case Number:	CHI/45UG/LSL/2004/0003
The Property:	35 Imberhorne Lane, East Grinstead West Sussex RH19 1QX
The Applicant:	Mr Christopher Paine
The Respondent:	New Downland Housing Association Limited
Date of the Application:	23rd May 2004
Date Decision issued:	18th July 2005
Chairman	Mr R.T.A.Wilson LL.B

The Applications

1. The Applications made in this matter are:-
 - i) For a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") of the liability to pay service charge arising out of a common parts annual cleaning contract.
 - ii) An order pursuant to Section 20C of the Act that the Landlords costs incurred in these proceedings are not relevant costs to be included in determining the service charge for future years.

Summary of the Decision

2. The costs of the cleaning contract are not recoverable from the Applicant.
3. The Landlords costs incurred in these proceedings are not to be treated as relevant costs to be included in determining the service charge for future years.

Background

4. On the 25th May 2004 the Applicant applied to the Leasehold Valuation Tribunal for a determination of liability to pay service charges covering the cost of cleaning the common parts to the Applicants' block of flats.
5. On the 23rd August 2004 the Leasehold Valuation Tribunal gave directions that the application remain in abeyance until the Respondent had served on the Applicant a service charge demand, incorporating a charge for the cleaning of common parts.
6. The service charge demand has now been served on the Applicant enabling this application to be decided.
7. Giving the relatively low level of the service charge in dispute, the parties have agreed to a paper determination thus avoiding the disproportionate expense and cost of a hearing.
8. The subject matter of this dispute is whether or not the Applicant is obliged to contribute towards the cost of a cleaning contract for the common ways.

9. The Applicant has lived in the subject flat since 1980 first as tenant and then from 1994 as a leaseholder pursuant to a lease dated 8th July 1994 and made between the Mid Sussex Housing Association Limited and the Applicant. Between 1980 and 2004 the Applicant undertook the cleaning of the common ways himself under a rota system established by the residents of the block.
10. The Respondents claim that by 2004 the rota system had broken down as a number of the residents did not clean their porches. The Respondents were also concerned for health and safety reasons to ensure that anyone cleaning the common parts was properly insured and that there was a consistency and uniformity of service. As a result of the above concerns, the Respondent notified the Applicant and other residents that it intended to enter into a cleaning contract with a cleaning company to carry out this work.
11. The Respondent's carried out a consultation process in relation to what was to be a long term cleaning contract and following the consultation process the Respondent's entered into an agreement with Sussex Cleaning and Care Limited to undertake the cleaning of the common parts.
12. The Applicant does not wish to be charged for this service and would prefer to continue cleaning his own porch and invites the Tribunal to determine whether or not the charge is lawful.

Consideration

13. The Applicants' lease contains provision for the Respondent to make a charge for costs and expenses incurred by the Respondent in carrying out its obligations as set out in Clauses 2 and 4 and the covenants contained in the Seventh Schedule. The provision for payment is contained at Clause 2(d) on page three of the lease.
14. The relevant covenants imposed upon the Respondent are set out in the Seventh Schedule to the Lease and are as follows:-
 - i) To keep in good and substantial repair and condition (and whenever necessary rebuild, reinstate, renew and replace all worn or damaged parts)
.....
 - c) All forecourts, courtyards, gardens, fences, walls and paths which are used in common by the owner or occupiers of any of the Flats.
.....
 - e) All such parts of the Reserved Property not herein before mentioned and all fixtures and fittings therein and additions to thereto.

15. The term 'Reserved Property' is defined in the first schedule of the lease as:-

FIRST ALL THOSE areas, forecourts, courtyards, gardens, fences, walls, paths and any halls, staircases, landings, steps, passages, other parts of the Property which are used in common by the owner or owners or occupiers of any of the Flats forming part of the Property.

16. It is the Respondents' submission that the above charging provisions entitle it to engage contractors to undertake the obligations contained in the Schedule. Further it is entitled to make a charge to recover the cost and expenses as a result. The Respondents' submit that having undertaken the relevant consultation process, it is entitled to engage an appropriate cleaning company to keep the common parts, not forming part of the demised premises, in good and substantial repair and condition. They maintain that this is the purpose of the cleaning contract with Sussex Cleaning and Care Limited.

Interpretation of the Lease and Considerations

- 20 The landlords' power to levy a service charge and a leaseholders' 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. A 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 in the lease.
- 21 The Sixth Schedule to the lease set out regulations to be observed by the lessee. In paragraph 2(d) the lessee is obliged to keep all passages, staircases, paths and communal areas in the property clear of obstruction of any kind and in common with the lessor and other owners and as from time to time directed by the lessor to keep clean such of the landing, staircases, halls, front steps, and front areas as the lessee is entitled to use in accordance with the provisions of the lease.
- 22 It is my view that the effect of the above paragraph is to make the responsibility for cleaning the common ways, including the porch, the responsibility of the lessee and not the landlord. In my opinion it was the intention of the parties when the lease was drawn, as evidenced by the lease terms, that the landlord would delegate the cleaning of the common ways to the leaseholders. This intention was borne out in practice from 1980 to 2004.
- 23 It is the Respondents' submission that the covenants in the Seventh Schedule to the lease provide authority to commission outside cleaners to clean the common parts and recover the costs from the lessee. I disagree. The covenants make specific reference to keeping the common parts in good and substantial repair and condition but do not make any reference to the cleaning of them. I believe that had it been the intention of the parties that the landlord should be responsible for cleaning the common ways then there would have been express reference to this

obligation in the Seventh Schedule which there is not. Instead there is express reference to the lessee cleaning the common parts in the Sixth Schedule.

- 24 It is the Respondents' submission that the purpose of the cleaning contract is ultimately to keep the property in good and substantial repair and condition making it the landlords' liability. I disagree. I do not believe that the cleaning of the common parts has any material impact or influence in keeping the property in good and substantial repair and condition. In coming to this decision I have had regard to the fact that there is a regulation which enables the Respondent to ensure that the common parts are cleaned by the lessee thus achieving the landlords' objective.


Conclusion

- 25 Having regard to the above, I conclude that the Lease provides for the lessee to carry out the cleaning of the common parts and not the lessor. It follows therefore that the Respondent is not entitled to recover the cost of the cleaning contract in this current maintenance year or indeed in any subsequent year.
- 26 The Applicant has been successful in this application which has not involved any novel or unusual points of law or fact. In my opinion the lease terms are reasonably clear and the matter could have been settled without reference to the Tribunal. In these circumstances I consider it to be just and equitable to make an order under Section 20C of the Act



Robert Wilson (Chairman)

A Member of the Panel appointed by the Lord Chancellor



Dated