SOUTHERN RENT ASSESSMENT PANEL AND TRIBUNAL
LEASEHOLD VALUATION TRIBUNAL

CASE NO: CHI/21UC/NSI/2003/0003

BETWEEN:

Mrs SIMONE GREGORY **Applicant**

- and-

Mrs BETH ROBERTSON **Respondent**

PROPERTY: **7B BASLOW ROAD, EASTBOURNE, EAST SUSSEX.**

DATE OF HEARING: **1st September 2004**

DATE OF DECISION: **1st September 2004**

DECISION

1. INTRODUCTION

1.1 On the 27th August 2002 the Applicant applied to the Tribunal under Sections 19 (2A) & 19 (2B) of the Landlord and Tenant Act 1985 ("the Act") for a determination as to the reasonableness of service charges in respect of costs incurred and to be incurred by the Respondent in respect of 7 Baslow Road, Eastbourne, East Sussex, (the Premises) for the years 1999 to 2003.

1.2 On the 30th June 2004 the Tribunal gave directions for the determination of a preliminary issue namely whether the Tribunal had jurisdiction to consider the application having regard to Section 19 (2C) of the Act and in view of the provisions contained in Clause 4 (iii) of the Lease relating to flat 7 B Baslow Road, Eastbourne ("the Lease").

2. THE HEARING

2.1 The Applicant and the Respondent were present at the hearing with Mr Seldon representing the Applicant and Mr Packard representing the Respondent.

2.2 Mr Seldon and Mr Packard both confirmed that they had no representations to make concerning jurisdiction save that they would like the Tribunal to hear the application as their clients had almost reached agreement.

2.3 The Tribunal heard that the service charge accounts for the years 1999, 2001, and 2003 had been agreed between the parties.

2.4 The Tribunal heard that the service charge accounts for the years 2000 and 2002 were also agreed subject to production by the Respondent of a receipt to substantiate the payment of £ 2014.22 to Llewellyn Roofing Contractors (The Receipt).

2.5 Both Mr Seldon and Mr Packard expressed confidence that the Receipt would be found which would mean that the parties would have reached agreement on all issues and accordingly there would be no need for a full hearing.

2.6 Both Mr Seldon and Mr Packard confirmed that they would notify the Tribunal office in the event of the Peceipt being produced by the 29th Sept 2004.

2.7 Both Mr Seldon and Mr Packard confirmed that it had been agreed that both parties would bear their own costs arising out of the application and the dispute generally.

3. CONSIDERATION

3.1 The Tribunal first considered the preliminary issue of whether it had jurisdiction to hear the application. Section 19 (2C) of the Act, which has now been repealed, provides that an application cannot be made to a Leasehold Valuation Tribunal in respect of a matter, "which under an arbitration agreement to which the tenant is a party is to be referred to arbitration". Clause 4 (iii) of the Lease states, "should any dispute arise between the Landlord and the Tenant (interalia) in respect of any provision arising under this lease, then and in every such case such dispute shall be referred in the determination and award of the surveyor for the time being of the Landlord whose decision shall be final and binding upon the Tenant". Accordingly the Tribunal had to consider whether or not this clause amounted to a valid and binding arbitration clause for the purposes of Section 19 (2C) of the Act. The Tribunal concluded that the Clause did not amount to a binding arbitration clause. In its opinion the essence of an arbitration agreement is a referral of the dispute in question to an independent third party, whose decision will be binding on the parties. In this case the referral is to the Landlord's surveyor who can not properly be regarded as an independent third party. In the circumstances there is no effective arbitration agreement in existence which prevents the Tribunal from hearing the application and accordingly the Tribunal does have jurisdiction.

3.2 The Tribunal then considered the question of costs. The application made by the Applicant had merit. There had been considerable delays in the production of service charge accounts and it was accepted by the Respondent that in some cases sums claimed had not been justified. These facts alone suggest that the Respondent should not charge her

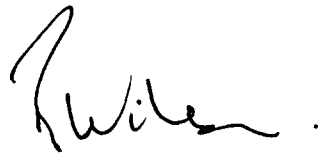
hearing costs to the service charge account payable by the Applicant. In any event it had been agreed by both parties that they should each be responsible for their costs. Accordingly the Tribunal had no difficulty in granting the Applicant's application that the Respondent's legal costs of the hearing should not form part of the service charges for the Premises.

4. THE DECISION.

4.1 For the reasons stated above this Tribunal does have jurisdiction to consider the application under Sections 19 (2A) and 19 (2B) of the Landlord and Tenant Act 1985.

4.2 None of the costs incurred by the Respondent in connection with these proceedings be regarded as relevant costs to be taken into account in determining the amount of service charge payable by the Applicant.

4.3 Either party be at liberty to re-apply for directions for the future conduct of the case in the event of the Receipt not being produced.



Robert Wilson LL.B (Chairman)
A member of the Panel appointed by the Lord Chancellor

Dated: 20th September 2004