

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

COMMONHOLD AND LEASEHOLD REFORM ACT 2002

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL IN RESPECT OF THE
OUTSTANDING QUESTION OF COSTS**

Case No: CHI/29UN/LDC/2004/0017

Property: Arlington House
All Saints Avenue
Margate
Kent

Applicants: Mr. R.F. Beasley and other lessees of
Arlington House on behalf of the Arlington
House Residents Association

Respondent: Metropolitan Property Realizations Limited

Members of the Tribunal: Mr. R. Norman (Chairman)
Mr. M.G. Marshall FRICS
Ms. L. Farrier

Date decision Issued:

RE: ARLINGTON HOUSE, ALL SAINTS AVENUE, MARGATE, KENT

1. The Tribunal made a determination in respect of the liability to pay service charges which were the subject of this application.
2. Mr. Moss on behalf of the Applicants had made submissions as to costs but Mr. Fadipe on behalf of the Respondent had not. When making our determination as to the payment of service charges we considered whether we should go on to deal with costs immediately or to allow further submissions to be made by the parties and we came to the conclusion that as the parties would, on receipt of the determination as to the payment of service charges, be aware of our decision on the matters in dispute the fairest course would be to allow submissions by the parties in the light of our determination. We therefore invited submissions and invited the parties to include in those submissions the sums claimed.
3. Submissions have been made on behalf of the parties and we have considered those submissions.

4. Counsel in his submissions on behalf of the Respondent relies on Clause 2(a)(v) which allows the landlord to recover the costs of employing "all maintenance staff cleaners gardeners and porters and other staff including the costs of uniforms bonuses national insurance contributions pensions and gratuities and the cost of employing independent contractors if thought fit as alternative or in addition".
5. Not all the leases and underleases are in common form. We have been provided with copies of an underlease of Flat 3B, a lease of Flat 15E and an underlease of Flat 15H.
6. That clause appears in the underlease of Flat 3B and in the lease of Flat 15E.
7. However, in the underlease of Flat 15H clause 2(a)(v) relates to "All rent rates taxes and telephone charges payable in respect of the Porter's flat (should he occupy one)" and there is no clause in that underlease similar to clause 2(a)(v) in the underlease of Flat 3B and the lease of Flat 15E.
8. In the absence of any other submission, presumably the landlord accepts that in respect of Flat 15H, and any other leases or underleases with similar wording, the costs of these proceedings cannot be recovered by the landlord.
9. Clause 2(a)(v) relied on by Counsel we find refers to the cost of employing maintenance staff cleaners gardeners and porters and by listing such workers, the addition of "and other staff" limits the meaning of such other staff to staff of a similar nature. In the same way "independent contractors" are also limited to independent contractors carrying out work of a similar nature whether as "an alternative or in addition".
10. There is no mention in that clause of employing any professional person such as an engineer, solicitor or barrister.
11. We find that clauses 2(a)(v) in the underlease of Flat 3B and the lease of Flat 15E do not apply to the costs of these proceedings.
12. Counsel submits that if we do not accept the landlord's contention as to clause 2(a)(v) then we need not deal with the leaseholders' application for an order under Section 20C of the Landlord and Tenant Act 1985. Presumably this is because in those circumstances the landlords would not seek to recover any of the costs of these proceedings from the leaseholders. However, for the sake of clarity we make an order under Section 20C of the Landlord and Tenant Act 1985 that all of the costs incurred or to be incurred by the landlord in connection with these proceedings before the Leasehold Valuation Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the lessees or underlessees of Arlington House.



R. Norman
Chairman

IN THE SOUTHERN RENT ASSESSMENT PANEL

CHI/29UE/MNR/2005/0106

BETWEEN:

MR BERT GRUDEVALL

Applicant

-and-

MR JOHN ULLMAN

Respondent

THE COMMITTEE'S DECISION

Background

1. This is a reference by a tenant, Mr Bert Grudevall, of a landlord's notice dated 21 June 2005 proposing a new rent for the premises known as Ground Floor, 6 The Paddock, Dover, Kent, CT16 1RN. The landlord is Mr John Ullman, the Respondent in this matter. The property is a self-contained converted maisonette on the ground floor comprising three rooms, a WC and the use of a garage located in the basement.
2. The Applicant's occupies the subject premises by virtue of a lease dated 26 April 2000 granted by the Respondent, William McGarry and Patricia Anger to Patrick Anthony Cronin for a fixed term commencing on 25 December

1998 until 24 December 2007 (“the lease”). The lease expressly describes the subject premises as a “*Ground Floor Dentist’s Surgery and consulting rooms*” and goes on to state that the premises are let for use as “*a Dentist’s Surgery*”. The Applicant took an assignment of the remaining term of the lease on 16 November 2001. In the assignment, the subject premises were also described in the same terms as the lease, namely, a ground floor dentist’s surgery. Under the terms of the lease, the rent was stated to be £5,000 per annum to be paid by equal monthly instalments in advance. The lease also expressly provided that the rent may be increased on every third anniversary after it had commenced.

3. By a letter dated 21 June 2005, the Respondent’s managing agent informed the Applicant that the rent would be increased to £516.64 from 24 July 2005. On 12 July 2005, the Application referred this matter to the Committee pursuant to s.13(4) of the Housing Act 1988 (as amended) (“the Act”) for a determination of the rent under s.14(1).
4. However, in a faxed letter to the Panel dated 19 July 2005, the Applicant confirmed that he did not believe that his tenancy was an assured tenancy under the Act. In a letter of the same date, the Respondent’s managing agent also confirmed that no assured tenancy existed between the parties because it was a commercial/business lease with no residential element. By a further letter dated 28 July 2005, the Applicant consented to this matter being listed for a jurisdiction hearing.

Decision

5. The hearing in this matter took place on 19 August 2005. The Applicant was represented by his wife, Mrs Grudevall. The Respondent did not appear and was not represented.
6. Mrs Grudevall confirmed to the committee that no assured tenancy within the meaning of the Act existed between the parties. She also confirmed that the premises were presently being used and have always been used for the purpose of a dental practice carried on by the Applicant. No part of the demised premises was used for residential purposes.
7. The Tribunal found that it did not have jurisdiction to deal with the referral made by the Applicant under s.13(4) of the Act because the premises are used for commercial and not residential use. The only basis on which the Committee had jurisdiction to make a determination under s.14(1) of the Act is if the tenant occupied **residential** premises under either an assured or assured shorthold tenancy. These are the only two forms of tenancy capable of being created under the Act. The tenancy granted to the Applicant under the lease is neither such tenancy. By the subject premises being used entirely for commercial purposes, the Applicant's tenancy may instead be subject to the provisions of the Landlord and Tenant Act 1954 and the matter of any rent increases may be a matter of contract under the terms of the lease. Accordingly for the reasons stated above, the Committee decision is that it had no jurisdiction to entertain the Applicant's referral in this matter.

CHAIRMAN.....J. Monahan.....

DATE.....21/11/05.....