

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DIRECTIONS BY LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985 Sections 27A & 20C (as amended by
C&LRA 2002)

Case Reference: LON/00AF/LSC/2006/0384

Applicants: Ellesmere Court Leaseholders Limited (Landlord)

Respondent: Mr Keith Froussis (Tenant)

Premises: Flat 9b Ellesmere Court, Seymour Villas, London SE20 8TY

Date of Application: Transferred from Croydon County Court by Order dated
27th October 2006

Hearing Date: 6th February 2007

Appearance for Applicant: Ms Muir of Counsel

Appearance for Respondent: Mr Froussis in person

Tribunal: Mr L.W.G. Robson LLB (Hons) MCI Arb
Mr C.F. Kane FRICS
Mr E. Goss

PRELIMINARY MATTERS

1. This case relates to an application made under section 27A of the Landlord and Tenant Act 1985 (as amended) for a determination of the reasonableness of service charges, pursuant to an Order of the Croydon County Court dated 27th October 2006 setting aside the Applicant's default judgement in Claim 6CR02141 for Ground Rent and Service Charges totalling £5,260.13. The Respondent originally claimed that these charges were payable by the Applicant under the terms of a lease of the property dated 2nd November 1971 (the Lease). A copy of the Lease is attached to this decision as Appendix A. By a letter dated 6th November 2006 addressed to the Respondent the Applicant reduced the amount claimed to £3,469.54.
2. The Pre-Trial Directions dated 21st November 2006 noted that the Tribunal does not have jurisdiction to determine liability to pay ground rent. The issues noted as being in contention were the reasonableness of service charges for the each of the service charge years 2002/3 to 2006/7 inclusive. The Directions also gave the parties leave to make applications:
 - a) Seeking reimbursement of fees of the Application to the Tribunal (under Regulation 9 of the Leasehold Valuation Tribunals (Fees) Order 2003) and,
 - b) Under Section 20C of the Landlord and Tenant Act 1985 (limiting the landlord's right to recover the costs of this application through the service charge.
3. The hearing commenced at 10.45am, after the parties requested time to negotiate on the outstanding matters.
4. Ms Muir advised the Tribunal that the parties had been able to agree the amount outstanding at £3,153.13. This reflected reductions relating to the following sums:

Administrative charge for the year ending 6.4.04	47
The same for the year ending 6.4.05	23.50
The same for the year ending 6.4.06	111.53
Arithmetical discrepancy in accounts for the year ending 6.4.06	134.38

Total:	£316.41
5. Mr Froussis confirmed that he agreed the outstanding service charges at the revised figure of £3,153.13. In response to questions from the Tribunal he confirmed that he had received the necessary supporting documentation from the managing agents (which he had in his file), and was quite satisfied that the charges were reasonable.
6. The Tribunal noted that it did not have any the supporting documents relating to the service charge in its bundle, only statements of amounts outstanding, and that the Applicant would have been in difficulty in proving its case. The Tribunal was mindful of its duty to ensure that unrepresented parties understood what they were being asked to agree. However the Tribunal considered that Mr Froussis

was clearly satisfied with what he had been given, and that he was able to understand it. It appeared inappropriate to prolong the hearing further.

7. The Tribunal accepted and therefore decided that the sum of £3,153.13 was a reasonable charge in this case.

Reimbursement of Fees, and S20C Application

8. As the Directions made at the Pre-Trial Review referred to the matter, the Tribunal raised it. The Tribunal pointed out that as no fee had been charged by the Tribunal on a reference from the Court, no order for reimbursement of fees would be appropriate.
9. On the Section 20C application, Ms Muir stated that she had no instructions, but she saw no reason why the landlord should not add the costs of the application to the Tribunal to the service charge. Although she agreed that the bundle supplied by the Applicant was not in good order, the Respondent had all the papers but had not made it clear until the morning of the hearing what matters he was disputing. It was for the Respondent to state what he was disputing, so that the Applicant could deal with it. It was not for the Applicant to prove every item in the service charge unless it was disputed. Unless a landlord had been completely unreasonable and lost the case entirely courts would conventionally order its costs to be paid. The terms of the contract should prevail.
10. Mr Froussis stated that his main concern had originally been the damage which had been caused to his property through the delay in rectifying a blocked (foul) sewer pipe in the past, but he now understood that he could not raise that issue before the Tribunal. However as a result of the judgement in default having been obtained for approximately £2,000 more than he in fact owed, he did not trust the managing agents and he so he wanted the figure owed to be decided by the Tribunal. In reply to a question from the Tribunal he said that if they had not done that he would have paid the service charges. He resisted the suggestion that the Applicant should be entitled to add the costs to the service charge.
11. In reply to questions from the Tribunal it became clear that Ms Muir did not have copies of the correspondence and papers relating to the court proceedings. She was also unable to point to a provision in the relevant section of the lease (Clause 2(3)) allowing the landlord to add the costs of the application to the service charge. Ms Muir considered that Clause 2(17) might well entitle the landlord to charge the costs directly to the tenant through the Law of Property Act 1925, Section 146 notice procedure, although the Tribunal made it clear that was not a matter within its jurisdiction.
12. The Tribunal considered the papers, and concluded that the Respondent had raised at least one matter specifically prior to the Court application, notably the administrative charge of £111.53, which was mentioned in a letter to the managing agents dated 24th April 2005, and had also raised this item in his letter to the Court dated 6th July 2006, applying to set aside the original judgement. Further, the Applicant had not attended the Pre-Trial Review held in this matter, nor had it queried or made any application to vary the Directions made on 21st November 2006. It appeared to the Tribunal that it had done nothing at all until

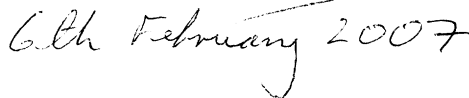
the day prior to the hearing, on 5th February 2007, when it had served a short and inadequate statement of case, when this should have been done by 5th December 2006.

13. If the Applicant had been dissatisfied with the Directions or was unclear as to the matters in dispute it should have made an application to the Tribunal. It had not done so. Prior to the hearing the Applicant had (rightly in the Tribunal's view) agreed to waive all the administrative charges, including the one specifically referred to by the Respondent, so to that extent the Respondent had been successful. While the Tribunal took the view that the Respondent should perhaps have been more forthcoming, and at least initially had been pursuing a matter which was outside the Tribunal's jurisdiction, he was unrepresented, and the Applicant was represented by managing agents and solicitors. The Tribunal considered that a more active approach to case management by the Applicant might well have resolved this case before proceedings commenced, and in any event there was no evidence before the Tribunal that such an approach had been tried.
14. Taking all these matters into account the Tribunal decided that it would be just and equitable to grant an application under Section 20C that none of the Applicant's costs in connection with this application be regarded as relevant costs in determining the amount of any service charge payable by the Respondent.

Chairman:



Date:



Appendix A

Lease dated 2nd November 1971