

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

B E T W E E N :

MR C G R BEARD

Applicant

- and -

SKILTONCOURT LIMITED

Respondent

PREMISES: 299E HIGHLAND ROAD, SOUTHSEA, HAMPSHIRE

**DECISION AND ORDER
OF THE TRIBUNAL CHAIRMAN**

1. Introduction

- 1.1 This is an application by the Applicant under Section 27A of the Landlord & Tenant Act 1985 for, in effect, a determination as to the amount of his liability to the Landlord for service charges for the period 2000 to 2004.

2. Background

- 2.1 On 16th October 2003 the Applicant on behalf of all six tenants of 299 Highland Road, Southsea, ("the premises") made an application for the Tribunal to consider the reasonableness of service charges for the years 2001, 2002 and 2003 and in respect of the Advance Service Charge for 2004.
- 2.2 That application was dealt with at two hearings: the first on 5th February 2004 and the second on 5th April 2004. The Tribunal's decision is dated 30th April 2004. That decision included a description of the property at 299 Highland Road, Southsea, and it is not necessary to repeat that description in this decision.
- 2.3 During the course of those hearings the Tribunal heard evidence which was accepted by Mr Tucker, a Director of the Respondent Landlord, that the electricity supply affording lighting to the common staircase was metered through the Applicant's meter in his own flat and added to his own electricity consumption. Whilst this is evidently unsatisfactory, Mr Beard had an

arrangement with the previous landlord to Skiltoncourt that, to compensate Mr Beard, he would receive a discount of £5 per month from his service charge. During the course of the hearings Mr Tucker confirmed that he was prepared to accept the same arrangement.

2.4 Skiltoncourt Ltd had only charged for electricity within the service charge for 2002 when matters came before the Tribunal as a result of the 16th October 2003 application. The charge was £16 per flat. Mr Tucker said that this charge was meant to cover the electricity consumed for 2001 (for which there was no separate charge for electricity) as well as 2002. On that basis the Tribunal decided that the charge of £16 per flat in the 2002 service charge account was reasonable.

2.5 Mr Beard's current application was prompted by receipt by him of a notice under Section 146 of the Law of Property Act 1925 served by the Landlord which alleged that he owed £354.49 by way of arrears of service charge and that unless he paid this sum plus £235 costs within 14 days he was liable to proceedings being commenced for the forfeiture of his lease.

2.6 Mr Beard complained that he had had no breakdown of the £354.49 alleged to be due to the Landlord. He has subsequently said that he has now received some further information from the Landlord (which has not been copied to the Tribunal) clarifying the breakdown of the £354.49 claimed, as a result of which he now seeks a determination concerning the £200 which he says is in dispute concerning electricity charges and the discount of £5 per month referred to previously. That £200 is made up as follows:-

4 years' worth of discount @ £5 per month ($48 \times 5 = £240$)

Less: £40 being one-sixth of the £240 (ie a one-sixth share of the discount sharing the same with the other 5 tenants equally).

2.7 Mr Tucker, on behalf of the Landlord, has signed a form sent to the him by the Tribunal Office indicating that he does not seek to oppose the application. It is not clear, however, what he means by this. One interpretation is that the Landlord accepts that Mr Beard is entitled to the discount of £200 from the service charges as claimed by Mr Beard, but alternatively it could mean that the Landlord has no positive case to advance and is simply content to leave matters to the Tribunal to decide.

2.8 By a letter of 27th August 2004 the parties were advised that a Panel Vice-President had considered the matter and was prepared to deal with the current application as a "paper decision" if both sides agreed. Mr Beard agreed subject to matters having been explained by him sufficiently clearly and the Landlord responded by saying that it did not oppose the

application. Accordingly, the case was allocated to the Chairman who sat on the previous case to determine the application without a hearing.

3. The Law

- 3.1 Under Section 27A of the Landlord & Tenant Act 1985 the Leasehold Valuation Tribunal is given jurisdiction to determine the reasonableness of service charges payable by tenants, to determine who is liable to pay those service charges and to whom. It can only determine the reasonableness of service charge items which are properly claimable as such and to determine whether or not an item is properly claimable by a landlord recourse must be had to the terms of the lease. If an item is not properly claimable as a service charge item then the Landlord cannot recover that item at all. If it is properly claimable then it must be reasonable and the Tribunal can determine whether or not it is reasonable.

4. The Lease

- 4.1 By clause 3.1 of the Lease of the premises the tenant covenants "to pay contributions by way of service charge calculated in accordance with the Third Schedule to the Landlord equal to the Tenant's Proportion of the amount which the Landlord may from time to time expend and as may reasonably be required on account of anticipated expenditure on rates services repairs maintenance or insurance being and including expenditure described in the Third Schedule".
- 4.2 It is thus a prerequisite of the Landlord being able to claim a service charge item that he has actually expended money or anticipates expenditure, in this case on the electricity as a service to the building, before he can reclaim it.
- 4.3 As the chairman of the Tribunal understands it, the Landlord has not sought to charge any of the lessees for electricity for 2003 or as yet for 2004 but Mr Beard is seeking to off-set against his liability for service charges for 2000-2004 the sum of £200 to give effect to the agreement for the discount and from which it would appear (from a letter dated 23rd June 2004 from the Respondent to the Applicant) the Landlord is seeking to renege.

5. Assumptions

- 5.1 It is assumed for the purpose of this decision that Mr Beard has personally been charged and has paid for electricity supplied to the common stairway from 2000 to 2004 (48 months) and for which he has received no discount from service charge by the Landlord in compensation. Mr Beard did not produce any written evidence to the Tribunal to this effect but he offered to produce the evidence if necessary and Mr Tucker has not challenged Mr Beard's assertions

at all. Furthermore, Mr Beard's case on this point is consistent with the evidence he gave at the previous hearings and this was not challenged by the Landlord. Consequently the Chairman has proceeded on the basis that this is correct. If the Landlord wishes to challenge this assumption he must do so within 14 days of receipt of this decision, in which case there will have to be a hearing for these facts to be proved.

6. Consideration and Decision

- 6.1 The current situation with electricity for the common parts being charged to and added to Mr Beard's personal electricity bill is most unsatisfactory, particularly where the current Landlord is apparently reneging on his agreement which was made during the previous hearing to put into effect the agreed discount of £60 per annum from Mr Beard's service charge account as compensation
- 6.2 Strictly speaking, if there is not going to be installed by the Landlord a separate meter for the common parts (which there ought to be) Mr Beard should claim the cost of the electricity for the stairway from the Landlord who should then claim one-sixth of the total cost from each of the tenants by way of the service charge account. The difficulty with this is that it is not possible precisely to calculate the amount of electricity used by the common parts because it is simply included in a global charge to Mr Beard with his own private electricity consumption and, from past experience of the Landlord's behaviour as heard by the Tribunal at the earlier hearings, Mr Beard would not have much confidence in being reimbursed by the Landlord for the cost of that electricity.
- 6.3 The Chairman is satisfied from the evidence the Tribunal heard previously and Mr Tucker's acceptance thereof, that there was an agreement by the current Landlord to compensate Mr Beard for having to pay for the electricity for the common parts by means of a reduction each year in his service charge account of £60 in return for Mr Beard allowing the current arrangements with regard to the metering of electricity to continue. This seems to be a reasonable sum.
- 6.4 Since Section 27A was inserted into the Landlord & Tenant Act 1985 by the Commonhold & Leasehold Reform Act 2002 Leasehold Valuation Tribunals have had jurisdiction to determine the liability of a tenant to pay service charges and to determine the amount for which that tenant is liable. The Tribunal Chairman hereby determines and orders that the amount of the Applicant's liability to the Landlord for service charges up to the amount required on account for 2004 (namely £485.23) shall be reduced by the amount of £200 by way of a set off to take into account the agreed discount.

- 6.5 The Landlord should continue to give Mr Beard a discount from future service charge demands in the sum of £60 per annum whilst the situation persists that Mr Beard is personally being charged and pays for the electricity supplied to the common parts. If the Landlord is unwilling to do this then it should arrange for the electricity supply to the common parts to be separately metered and it can then charge each flat one-sixth of the resultant electricity bill which would be a far more satisfactory arrangement.
- 6.6 As this application was only rendered necessary by the Landlord apparently reneging on its agreement to credit the Applicant with £60 per annum towards his service charge liability the Chairman determines that it would be wrong for the Landlord to add whatever costs it might have incurred in respect of this Application to the service charge account and therefore makes an Order under Section 20 (C) of the Landlord & Tenant Act 1985 accordingly.

Dated this 25th day of November 2004

(signed)

Signed:

**Donald Agnew
Chairman**

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Dated this 25th day of November 2004

(signed)

Signed:

Donald Agnew
Chairman