

**RESIDENTIAL PROPERTY TRIBUNAL  
LEASEHOLD VALUATION TRIBUNAL FOR THE EASTERN RENT ASSESSMENT PANEL**

**CAM/11UC/LIS/2005/0010**

**In the matter of the Landlord and Tenant Act 1985 Section 27A**

**Re:**

**Flat 11 Springfields 100 Hazlemere Road Penn Buckinghamshire HP10 8AS**

**PENN (RESIDENTS) LIMITED**

**Applicant**

**Represented by Messrs Shoosmiths Solicitors**

**-and-**

**MR EDWARD JOHN BISHOP**

**Respondent**

**Application Dated 04 November 2005**

**Paper Determination held 02 February 2006**

<b>Tribunal</b>	<b>Mr A A Dutton</b>	<b>Chair</b>
	<b>Miss M Krisko</b>	<b>BSc(ESTMAN)FRICS</b>

**Date of Decision 02 February 2006**

## **REASONS**

### **A. BACKGROUND**

1. This application was made by Penn (Residents) Limited under s27A of the Landlord and Tenant Act 1985 seeking a determination as to service charge payments for the years 2004 and 2005. The total sums appearing to be due on the application were £1605.75, which should be contrasted with the figures quoted in the statement of case referred to below. The sums demanded related to interim service charge payments under the terms of the lease for the subject premises.

### **B. EVIDENCE**

2. The matter was dealt with by way of paper determination and the Applicant's case was set out in a statement dated 15 December 2005 submitted by Messrs Shoosmiths Solicitors on behalf of the Applicant Company. The Statement of Case indicated that accounts were now available for the service charge year ending 30 June 2004 and had been prepared for the year ending 30 June 2005 but were not fully authorised and remained, according to the document, unaudited. In addition a service charge budget from 1 July 2005 to 30 June 2006 had been included within the papers and we were told that this was signed off by the Directors. Although the statement of case indicated that the final accounts for the year ending June 2005 and an approved budget would be available for the determination they were not produced.
3. The Statement confirmed that the items which were now in dispute were the interim service charges for the periods 1 July 2004 to 1 January 2005, 1 January 2005 to the end of June 2005, 1 July 2005 to the 1 January 2006. Although not in the original application a request to give a determination as to the reasonableness of a further interim service charge from 1 January 2006 was made in the sum of £410. The total sum claimed was £1620.
4. We were referred to sections of the lease which the Applicant relies upon to substantiate the claims made. The Statement confirmed that no indication had been given by the Respondent as to why he disputed the service charges other than that he was in a difficult financial position and in receipt of job seekers allowance. We were also told that the Applicant was a small Residents Management Company and the Respondents failure to settle the sums due was having an adverse affect on the cash flow situation. Following any determination by this Tribunal it was the intention of the Applicant to apply to the Respondent's Mortgagees for payment of the sums outstanding.
5. There was no evidence from the Respondent as to any concerns with regard to the figures claimed. A copy letter from the Respondent dated 31 May 2005 confirmed that he was unable to make a payment as his income was limited to a job seekers allowance.

### **C. INSPECTION**

6. The Tribunal inspected the subject premises on 2 February. It is a development of twenty flats in a two-story brick built enclave with tiled roof. It abuts a busy road with a bus stop to the front but is a well maintained block having, it appears, been recently externally decorated. The car-parking and such of the garden as could be seen were well maintained. The property had a pleasant entrance with a pond and water feature and the common parts from external inspection appeared to be

clean, carpeted and in a good state of repair. A door entry phone system was noted but we cannot say whether it was working at the time of the inspection.

**D. THE LAW**

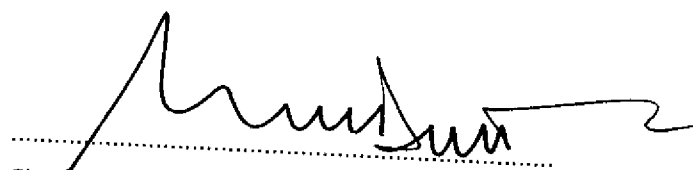
7. The law is to be found at s27A of the Landlord and Tenant Act 1985 and we bear in mind also the provisions of s18 of the said Act as well as the terms of the lease.

**E. DECISION**

8. We have considered the terms of the lease and are satisfied that the right to seek an interim service charge is provided for. The Fifth Schedule, paragraph 3 provides for the payment of minimum half-yearly sums which were initially set at £50.00 but can be increased as the Directors may by resolution determine. In addition, in clause 1 of the Fifth Schedule there is clear provision for the setting up of a Reserve Fund for future anticipated maintenance. It should also be noted that by virtue of paragraph 4 of the Fifth Schedule the Residents Association should certify the amount of the actual service charge as soon as is practicable after the year ending on the 24th day of June. It appears that in fact the year end is the 30 June although as we have indicated above the timescales for the production of these accounts does appear to slip.
9. The Applicant's case differs slightly from the original Application limiting the claim to three interim service charge payments and a future payment from 1<sup>st</sup> January this year. The payment for the 1 July 2004 is in effect on account for the year ending June 2005 as is the payment due to be made on 1 January 2005. We have the benefit of some unaudited accounts to year ending 30 June 2005 and we have no reason to doubt that figures substantially the same as this will eventually be approved by the Board of Directors. They appear largely consistent with the previous year's figures. It is a pity that having considered this case in February 2006 accounts for June 2005 have still not been approved.
10. The sum that would be payable by Mr Bishop, assuming the 2005 accounts to be correct is £622.05. Whilst we found the costs for the gardening and cleaning on the high side as well as the figures for repair and maintenance we have no evidence to query them and no challenge was made by Mr Bishop. As we have indicated the development is well presented and we are prepared to accept that these figures are reasonable. In the circumstances we find that the sum of £622.05 is due and that is the amount the Respondent, Mr Bishop, should pay for the year ending June 2005. This is less than the amount the Applicant sought but it seems to us appropriate to determine the figures on the basis of the unaudited accounts rather than on an interim basis.
11. We turn now to the interim service charge for 1 July 2005 which should be compared against the budget figures produced it appears sometime towards the end of last year. The budget figures show a total sum payable of £16,400.00 which includes for the first time that we can see a specific allocation to the Reserve Fund of £2,180.00. From the accounts it appears that the Company is in reasonable financial order. In those circumstances it seems somewhat unusual for a specific sum payable to the service charge Reserve Fund to be applied for at this stage when there was no evidence of any unusual future expenditure. For the purposes of calculating the interim service charge we propose to remove the reserve fund contribution from the budget which leaves a figure

of just over £13,000.00 of which a 20th would be £661.00. We therefore find that a reasonable interim demand for the year should be £350.00 in respect of the service charge interim payment due on 1 July 2005 and the same amount for the payment due on 1 January 2006. Although this was not part of the original application it seems appropriate to deal with this liability now so that outstanding issues are resolved. The statement of case raising this additional element was sent to the Respondent before Christmas and he has therefore had ample time to respond but has chosen not to do so.

12. We therefore conclude that the total sum payable by Mr Bishop in respect of the service charge year ending 2005 should be £622.05. In respect of the service charge year ending June 2006 for which two interim payments should be made under the terms of the lease we find that a sum of £700.00 is sufficient. This makes a total due from Mr Bishop in accordance with the terms of the lease of £1322.05.

  
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Chairman

Dated 8<sup>th</sup> February 2006