

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

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

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**

**Case No.** CHI/29UN/LSC/2006/0046

**Property:** Basement Flat  
1 Clarendon Gardens  
Ramsgate  
Kent  
CT11 9BA

**Applicant:** Mr. S. Powell  
Powell & Co.  
11 Islingword Street  
Brighton  
BN2 9UR

**Respondent:** Westleigh Properties Ltd.  
c/o Basicland Registrars Ltd.  
Hyde House  
The Hyde  
London  
NW9 6LH

**Date of Hearing:** 23rd August 2006

**Members of the Tribunal:** Mr. R. Norman (Chairman)  
Mr. R.T. Athow FRICS, MIRPM

**Date decision Issued:**

**RE: BASEMENT FLAT, 1 CLARENDON GARDENS, RAMSGATE, KENT**

**Background**

1. The Applicant made an application for a determination of liability to pay service charges. Included is an application for an order under Section 20C of the Landlord and Tenant Act 1985.
2. The application concerns a demand for the payment of charges of £1,336.88 being costs and expenses in connection with a claim made by the Respondent against the Applicant in the County Court, which was transferred to the Leasehold Valuation Tribunal for determination of the reasonableness of charges and was then returned to the County Court.

At the disposal hearing there was no attendance by anyone on behalf of the Respondent but before that hearing a statement had been produced on behalf of the Respondent and was before the District Judge at the County Court. He was aware of the claim, the cheque which the Applicant had sent to the Respondent and the application for costs contained in the statement. The District Judge made no order as to costs.

3. A Pre-Trial Review was held on 23rd June 2006 and was attended by Miss S. Nagy on behalf of the Applicant. There was no appearance by anyone on behalf of the Respondent. Directions were made and in response statements from Miss Nagy and Ms Scott on behalf of the Applicant and Respondent respectively together with supporting documents have been received. By those statements the parties confirmed their acceptance of the Leasehold Valuation Tribunal's jurisdiction to deal with the matters the subject of this application on the basis only of written representations and documents without a formal hearing and set out their respective cases.

### **Determination**

4. We made the following determination and our reasons appear below.

5. The sum of £1,336.88 claimed by the Respondent in respect of costs and expenses in connection with a claim made by the Respondent against the Applicant in the County Court is not payable and as that sum has been paid to the Respondent the Respondent is to pay to the Applicant the sum of £1,336.88 within 28 days of the date this decision is issued.

6. We make an order under Section 20C of the Landlord and Tenant Act 1985 that all or any of the costs incurred, or to be incurred, by the landlord in connection with the proceedings before this 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 Applicant.

### **Reasons**

7. The lease contains a covenant by the tenant in clause 2. (8):

“(8) To pay all costs (including Solicitors' costs and surveyors' fees) incurred by the Landlord of and incidental to the preparation and service of:-

- (i) a notice under section 146 of the Law of Property Act 1925 notwithstanding that forfeiture is avoided otherwise than by order of the Court
- (ii) a schedule of dilapidations recording the breaches of the Tenant's covenant to yield up the Flat in repair at the termination of the term hereby granted or
- (iii) proceedings for the recovery of any of the rents reserved”

8. The part of the clause upon which the Respondent relies therefore reads:

To pay all costs (including Solicitors' costs and surveyors' fees) incurred by the Landlord of and incidental to the preparation and service of proceedings for the recovery of any of the rents reserved.

9. However, the sums claimed by the Respondent and which are set out in Ms Scott's statement are in respect of the conduct of proceedings and not costs of and incidental to the preparation and service of proceedings and therefore do not come within the scope of this clause.

10. Perhaps the draughtsman of the lease had in mind the situation where costs are incurred in preparing and serving proceedings and then before the matter can come to court the tenant pays the arrears. By this clause provision was made for the recovery of such costs. Once the matter actually comes to court then costs can be dealt with by the court. Similar considerations could well apply in the situations covered by sub clauses (i) and (ii). But whatever the reasoning, this clause deals with only costs incurred by the Landlord of and incidental to the preparation and service of proceedings.

11. Costs, described by the Respondent as arrears recovery fees were included in the claim made by the Respondent in the sum of £230.30 along with a court fee of £120. When the Leasehold Valuation Tribunal made its determination as to the reasonableness of service charges, it was noted that the question of interest and costs remained to be disposed of by the County Court and that costs were at the discretion of the District Judge.

12. At the disposal hearing the District Judge had before him a statement from Ms Scott dealing with all costs and expenses and he was therefore aware of such matters. He dealt with the sum claimed and interest and did not order any costs. He did not specifically mention in his judgement that he was not awarding costs but there was no need for him to do so. He did not award any costs. He did not even award the court fee. This tends to confirm the Applicant's assertion that the District Judge found that if the managing agents had complied with the reasonable request to produce expenditure documentation the service charges would have been paid without recourse to the courts.

13. Under Section 20C of the Landlord and Tenant Act 1985 a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application. The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

14. It may well be that in the particular circumstances of this application there is no need for an order under Section 20C but for the avoidance of doubt we made such an order. As the District Judge did not make any order as to costs and the clause in the lease relied upon by the Respondent does not provide for the costs now claimed we found that it was just and equitable that an order under Section 20C be made.



R. Norman  
Chairman.