

**IN THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL**

**CHI/43UH/LAC/2006/0002**

**IN THE MATTER OF FLAT 21, FAIRVIEW COURT, MANOR ROAD,  
ASHFORD, MIDDLESEX**

**BETWEEN:**

**MRS M BREHENY**

**Applicant**

**-and-**

**FAIRVIEW COURT RESIDENTS ASSOCIATION LIMITED**

**Respondent**

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**THE TRIBUNAL'S DECISION**

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**Background**

1. This is an application made by the Applicant pursuant to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the Act") for a determination of her liability to pay and/or the reasonableness of an administration charge. The administration charge that is the subject matter of this application is the sum of £88.13, being the cost incurred by the Applicant's managing agent, Shelleys, in seeking to recover service charge arrears in the sum of £526.26 allegedly owed by the Respondent.

2. The Applicant occupies the subject property by virtue of a lease dated 10 November 1967 granted by Westminster and Country Estates Ltd to Phyllis Gloria Clifton for an initial term of 99 years from 25 December 1966 (“the lease”). The term of the lease was extended to 999 years by a Deed of Variation dated 31 July 2001.
3. By clause 3(c), the Lessee covenanted to pay a contribution of one twenty seventh of the expenditure incurred by the Lessor in complying with the Lessor’s covenants under clause 5 (c), (d) and (e). The Lessor’s covenants concern only the maintenance and repair of the building, cleaning and lighting of common parts and external decoration. Clause 2(e) allows the Lessor to recover all costs charges and expenses incurred for the purpose of or incidental to the preparation and service of a notice under s.146 of the Law of Property Act 1925.
4. By a letter dated 30 January 2006, Shelleys wrote to the Applicant demanding payment of alleged outstanding service charge arrears in the sum of £526.26. In that letter, Shelleys also informed the Applicant that it had added the sum of £88.13 to her service charge account for the additional administrative incurred by them in having to pursue her for the alleged service charge arrears. The total sum demanded by Shelleys was, therefore, £614.39. On 8 June 2006, the Applicant issued this application seeking a determination of her liability to pay and/or the reasonableness of the additional administration charge of £88.13.

## **Decision**

5. The Tribunal's determination of this application took place on 11 October and was based entirely on the basis of the Applicant's statement of case and other documentary evidence filed by her in support of the application. The Respondent has not filed or served either a statement of case or any documentary evidence despite a Direction to do so made on 29 June 2006. The Tribunal did not inspect the subject property.
6. The Tribunal determined that the Respondent was not entitled to recover from the Applicant the administration charge of £88.13 incurred by Shelleys in seeking to recover the service charge arrears of £526.26. It is clear that there is no provision within clause 5(c), (d) or (e) for the recovery of management or administration charges. If such a provision exists, it comes within clause 2(e) of the lease. Indeed, in the second paragraph of their letter dated 30 January 2006, Shelleys appear to generally rely on this provision in the lease. Clause 2(e) allows the Lessor to recover all costs, charges and expenses in relation to the commencement of forfeiture proceedings by preparing and serving a s.146 notice arising from one or more breaches of covenant in the lease by the Lessee.
7. However, the Tribunal was of the view that the Respondent was not entitled to rely on the provisions of clause 2(e) even if the Applicant had breached the terms of her lease by accruing service charge arrears. Section 168(1) of the Act provides that a landlord cannot serve a s.146 notice until either a determination

has been made by a Tribunal or the breach is admitted by the tenant. In this instance, neither of these circumstances had occurred. The Applicant's alleged service charge arrears post date the commencement of the Act and, therefore, it has applies to this case. No application has been made by the Respondent for a determination that the Applicant had in fact breached one or more terms of her lease by failing to pay her service charge contribution promptly or at all. Unless and until such a determination has been by a Tribunal, the Respondent or it's managing agent is not entitled to recover any costs incurred for the purpose and incidental to the preparation of a s.146 notice as any such notice would be invalid. The only such costs that would be recoverable under clause 2(e) would be costs incurred in relation to a valid s.146 notice and as at the date the administrative cost of £88.13 was demanded, the Respondent could not serve a valid s.146 notice.

8. It is also clear that at no stage has the Applicant admitted breaching one or more terms of her lease by accruing the alleged service charge arrears. In her statement of case, the Applicant challenges the reasonableness of the service charge contribution demanded from her in relation to the cost of exterior redecoration and the work carried out to the pathways. She alleges that the former has not yet been done and the latter has not been carried out to a proper standard. If the Applicant was successful in both of these arguments, it might afford her a partial or complete defence to any alleged or actual breach of her lease by failing to pay all or part of the sums demanded.

9. Accordingly, for the reasons stated above, the Tribunal finds that the Applicant has no liability to pay the sum of £88.13.

**Section 20C**

10. The Applicant has made a s.20C application within the originating application for an order that the Respondent be disentitled from recovering all or part of any costs it had incurred in these proceedings against her. However, it was not necessary for the Tribunal to consider this application at all because it was satisfied that there was no express provision in the lease that allowed the Respondent to recover any such costs.

Dated the 11 day of October 2006

CHAIRMAN.....

Mr I Mohabir LLB (Hons)