

# **RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**SOUTHERN RENT ASSESSMENT PANEL**

**LEASEHOLD VALUATION TRIBUNAL**

**Case Number**            **CH/18UK/LIS/2005/0021**

**Decision on an Application under Section 27(A) Landlord and Tenant Act 1987**

**Applicant:**                **William Henry Smith**

**Respondent:**            **Torridge District Council**

**Re:**                        **53 The Mount Appledore Bideford N Devon EX39 1NZ**

**Date of Application:**   **23 May 2005**

**Date of Hearing:**        **12<sup>th</sup> October 2005**

**Venue:**                    **The Royal Hotel Bideford Devon**

**Representation:**        **The Applicant in person**  
                                 **Mr Phillip Thomas, Head of Housing Management, for**  
                                 **the Respondent**

**Tribunal Members:**    **D Sproull LLB Chairman**  
                                 **E G Harrison FRICS**  
                                 **P G Groves**

**Date of Decision:**       **31<sup>st</sup> October 2005**

## ***DECISION***

### **The Application and the proceedings**

1. The Tribunal is asked to make a determination of liability to pay service charges under Section 27(a) Landlord and Tenant Act 1985.
2. Prior to the Hearing the Tribunal made a site inspection and the parties pointed out all the features to which they intended to make reference.
3. The Tribunal heard oral evidence from the Applicant and from Mr Thomas.

### **Background**

4. The Mount is a development of flats at Appledore Bideford Devon. There are 65 flats with 42 having been sold by Torridge District Council. The Applicant had purchased his property, a leasehold interest, on the 12<sup>th</sup> May 1986, a copy of the Lease being attached to his application.
5. In 2003 the Respondent had embarked on a planned maintenance programme and maintained that all leaseholders were initially consulted by way of a hand delivered letter on 25<sup>th</sup> March 2003 which the Applicant says he never received.
6. A Notice under Section 20 Landlord and Tenant Act 1985 was served on each leaseholder on the 23<sup>rd</sup> June 2003.
7. The Applicant objected to paying the service charge account for 2003 and for the 5 previous years.
8. The Tribunal had made directions for the conduct of the application on 24<sup>th</sup> June 2005 and both parties had submitted large bundles of documentation to the Tribunal prior to the Hearing but there was no agreed bundle and no part of either party's case had been agreed by the other.

### **The Hearing**

9. Because the directions of the 24<sup>th</sup> June 2005 had been largely ignored the Chairman commenced the Hearing by attempting to narrow the issues involved. As a result of his questioning the following was agreed by both the Applicant and the Respondent.
  - (a) The Chairman having read to the parties Section 27(a) Landlord and Tenant Act 1985 the only item at issue was "the amount which is payable".
  - (b) The copy of the Lease dated 12<sup>th</sup> May 1986 attached to the application (although it did not have a plan attached to it) was the document to which the Tribunal should refer
  - (c) Statements of account in the various bundles for the years 1998 to 2003 were the ones which were in contention

- (d) In the account for each year both parties accepted that the £10 ground rent was payable but the Applicant disputed all other items save that later in the Hearing he conceded that the insurance item was reasonable for each year and he did not dispute it
- (e) The Applicant disputed the figure each year for the ground maintenance cost (grass cutting) but agreed that, were he liable to pay for grass cutting, the figures charged were reasonable. His initial argument was that nobody else in Appledore paid for grass cutting and he did not therefore see why he should.

10. As a preliminary point the Tribunal needed to be satisfied that the consultation process laid down by Section 20 Landlord and Tenant Act 1985 had been complied with. The Chairman put to the Respondent that it appeared to the Tribunal that the procedure had not been followed in that, although one month's notice was given on the 23<sup>rd</sup> June, it would appear from the Notice that the contract for the works was actually dated the 9<sup>th</sup> July 2005, the day before Mr Smith's acceptance of the estimate (with reservations) dated 10<sup>th</sup> July 2003. The Respondent conceded that the statutory consultation requirements had not been followed and accepted that the maximum which could be recovered in respect of the 2003/2004 additional works was only £50.

11. On the accounts for each of the years in question a charge had been made for a payment to a Standing or Reserve fund. The Chairman invited the Respondent to point to the provision in the Lease which entitled the Respondent to make such a charge. The Respondent conceded that there was no such provision and agreed to waive the Charge.

12. At this stage the only outstanding points were in respect of grass cutting and the administration charge.

- (a) So far as grass cutting is concerned Mr Thomas stated that the Respondent Council entered into contracts for grass cutting for this and other estates within the area and the charge was then divided between the various properties in accordance with the details that had been provided.
- (b) So far as the administration charge is concerned Mr Thomas said that this was calculated at a flat rate of 12.5% (excluding insurance). With the charge for the 2003/2004 works being reduced to £50 and the exclusion of the Sinking/Reserve fund annual payment, the administration charge would be reduced considerably.

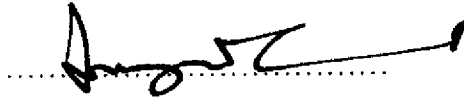
13. The Tribunal adjourned to give Mr Thomas the opportunity to re-calculate the service charge for the 6 years in question (with all the adjustments referred to above) and, on reconvening, the figures were put to the Applicant. They were as follows:-

1998/99	£28.42
1999/2000	£28.98
2000/01	£30.10
2001/02	£36.66
2002/03	£38.24
2003/04	£89.12

Both the respondent and the Applicant agreed all the figures and the Tribunal made a formal determination in those figures in accordance with the agreement of both parties.

Following the Hearing the Applicant made application to have the fees paid amounting to £220.00 refunded and his application was granted.

Dated 31<sup>st</sup> October 2005

A handwritten signature in black ink, appearing to read 'Dugald Sproull', written over a horizontal dotted line.

Dugald Sproull LLB  
Chairman