

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/45UD/LSC/2005/0051

Re: Flats 4 and 7, Regis Court, High Street, Bognor Regis, West Sussex, PO21 1HZ

In the matter of an Application under Section 27A of the
Landlord & Tenant Act 1985

BETWEEN

Crayrose Properties Limited
("the Applicant")
and

David John Woodley (Flat 4) and
Ella Wade-Jones (Flat 7)
("the Respondents")

Members of the Tribunal: Mr J.B. Tarling, MCMI (Lawyer/Chairman)
 Mr A.O. Mackay FRICS
 Ms J.K. Morris

Attendances: Mr K.C. Stote for the Applicant

Hearing: 29th July 2005

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

1. This matter relates to an Application by the Applicant/Landlord under Section 27A of the Landlord and Tenant Act 1985 and asks the Tribunal to determine the liability of the two Respondent/tenants to pay Service Charges. The Application is in respect of the Service Charges for the year ending 25th March 2005, and also asks the Tribunal to consider making a determination for future years.
2. The Tribunal made Provisional Directions on 8th June 2005 requiring the Respondents to submit written statements setting out the Service Charge items, which they contested. Neither Respondent responded and no documents were received by the Applicant or the Tribunal. The matter was listed for hearing and a Hearing took place at Bognor Regis on 29th July 2005.
3. Prior to the Hearing the Tribunal carried out an inspection. The two Flats in question were part of a development of 24 Flats, which were in two linked separate Blocks of 12. Both Blocks were identical in design and layout and were each four storeys high. Flat 4 was on the Third Floor and Flat 7 was on the Second Floor. Surrounding the Blocks were some communal gardens and at the rear were some carports.

4. The communal gardens were well maintained with lawns and flower borders in a well-tended and tidy condition. The Blocks were brick-built and appeared to be well maintained. They both had flat roofs and evidence of recent repairs could be seen from ground level. Internally the common parts were newly carpeted and freshly decorated. There were modern lifts, which served the upper floors. Generally speaking the Tribunal was very impressed with the pristine condition of the common parts and the Blocks were amongst the most well presented they had seen. The Carports at the rear were also in a good condition of decoration and repair.
5. A Hearing took place at Bognor Regis Town Hall. The Applicant was represented by Mr K.C. Stote, who was a Director of the Applicant company assisted by Mr Watts who also a Director of the Company. Neither Respondent attended the Hearing nor were they represented.
6. Mr Stote had submitted a bundle of documents in support of the Applicant's Application, and these papers were before the Tribunal. He confirmed that the Applicant was a Company which owned the Freehold and it was controlled by the Lessees. All the Lessees were Shareholders in the Company. They managed their own affairs without any Managing Agent. Neither of the defaulting Respondents had responded to requests to pay the Service Charges and accordingly he was requesting the Tribunal to make a determination of their liability to pay. Neither Respondent had objected to any specific item of Service Charge nor had they indicated why they had failed to pay. Out of the 24 Lessees, 22 had paid and the only two Lessees who were in arrears, were the two Respondents.
7. The Service Charges in question were set out in a Schedule to the Statutory Accounts for the year ended 25th March 2005, which the Company had prepared for the purposes of the Companies Acts. Mr Stote asked the Tribunal to approve the items set out in that Schedule. In respect of future years Mr Stote referred to various documents relating to Meetings of Shareholders at which proposals for future Service Charge expenditure had been discussed and voted upon.
8. The Application Form also contained a request that the Tribunal deal with a number of other matters. These included a request that the Tribunal "press collection" of the Service Charges and also approve some new "penalty charge rules" for future use.
9. **Consideration**
Following conclusion of the hearing the Tribunal retired to consider the matter. Dealing firstly with the Service Charges for the year ended 25th March 2005, the Tribunal took the view that as the Respondents had failed to challenge any item of Service Charge, the whole of the Service Charge expenditure for that year would be approved. The Respondents had failed to comply with the Tribunal's Directions and had failed to attend or be represented at the Hearing.
10. In respect of future years Service Charges, the Tribunal was concerned that, whilst it quite understood the reasons why the Applicant had chosen to consult the Lessees and deal with the matter at a Shareholders AGM, these procedures fell short of what the Tribunal would normally expect in approving matters under the Landlord and Tenant legislation. No form of advance Service Charge Budget for future years or supporting detailed Estimates or proposals had been produced upon which the Tribunal could

make a determination. It also appeared that neither of the two Respondents had attended the AGM held on 21st May 2005, nor had they responded in any way to the proposals. The Tribunal was concerned not to attempt to approve future Service Charge expenditure without further evidence of such expenditure being produced on which it could make an informed judgement. Accordingly the Tribunal declined to make such a determination. It was of course open for the Applicant to make another Application the following year, once the actual Service Charge expenditure was known.

11. The Tribunal also considered the two other matters contained in the Application Form. In respect of collection procedures, the Tribunal's functions under Section 27A of the 1985 Act were simply to determine the liability of the Respondents to pay. The Tribunal had no powers to deal with the actual enforcement or collection of arrears as those powers were to be dealt with by the County Court. Accordingly the Tribunal had no power to assist the Applicant further with the collection of the arrears.
12. In respect of the new proposed "penalty charge rules" the Tribunal was also unable to assist, as such rules would need to be incorporated within the Leases of the Flats for them to be enforceable. The existing Leases did indeed contain a provision for interest to be charged on any arrears of Service Charges and the Applicant was entitled to charge such interest until payment. Clause 3 (ii) of the Lease provides for interest to be calculated at 4% above the minimum base lending rate of the National Westminster Bank until such Service Charges are paid. The time for the start of such interest would be from the date on which the Schedule of Service Charges for the year ended 25th March 2005 was sent to the Respondents.
13. In summary the Tribunal approves the whole of the Service Charge expenditure as set out in the Schedule of Service Charges attached to the Company's audited Accounts for the year ended 25th March 2005 and in accordance with the terms of the Leases each Respondent is required to pay one twenty-fourth share thereof. In addition each Respondent shall be required to pay interest on such arrears at the rate specified in Paragraph 12 above for the period as set out therein.

Dated this 4th day of August 2005

J.B. Tarling



John B. Tarling, Solicitor, MCMI
(Chairman)