

**THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**



**Residential
Property
TRIBUNAL SERVICE**

S.27A Landlord & Tenant Act 1985 (as amended) ("the 1985 Act")

Case Number:	CHI/45UF/LSC/2009/0154
Property:	St Johns Crescent Broadbridge Heath Horsham West Sussex RH12 3NG
Applicants:	Mrs. S Ludlow of flat 71 and the lessees of flats 51, 73,75,79,83, and 85,
Respondent:	The Paddocks Residents Association Ltd
Appearances for the Respondent:	Nick Harvey of Messrs Huggins Edwards & Sharp
Date of Inspection/Hearing	5th May 2010
Tribunal:	Mr. R T A Wilson LLB (Lawyer Chairman) Lady J Davies FRICS (Surveyor Member) Mr. Trevor Sennett (Professional Member)
Date of the Tribunal's Decision:	4th June 2010

THE APPLICATION.

1. This was an application pursuant to S.27A of the 1985 Act for a determination of the liability of the applicants to pay service charges in respect of their flats for the service charge year ending 24th March 2009.

THE DECISION.

2. The tribunal determines that as the only disputed item was agreed during the course of the hearing it has no jurisdiction to determine the application.

THE LAW.

3. The tribunal has power under S.27A (1) of the 1985 Act to decide about all aspects of liability to pay service charges and can interpret the lease where

necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when service charge is payable. However this section must be read in the context of S. 27A (4) of the 1985 Act, which sets out limits to the tribunals powers to determine.

4. S.27A (4) provides that an application cannot be entertained by the tribunal in respect of a matter which has been agreed or admitted by the tenant.

THE LEASE.

5. The tribunal was provided with a copy of the lease relating to the subject property and was told that all the leases for the development were in similar form.
6. There is no suggestion that the service charge expenditure is not contractually recoverable under the terms of the lease and it is therefore not necessary to set out the relevant covenants in the lease giving rise to the applicants' liability to pay a service charge contribution.

INSPECTION.

7. The tribunal inspected the property prior to the hearing in the presence of the parties' representatives. The property is a purpose built flat of conventional construction in a 2 storey block of 4 flats built in 1988. It comprises an entrance porch, living/dining room, small kitchen, internal lobby, one double bedroom and bathroom with wash hand basin, wc and bath. It has heating provided by electric night storage heaters and has the benefit of communal grounds. The committee noted during the internal inspection some evidence of possible damp staining in the living room.

BACKGROUND AND PRELIMINARY MATTERS.

8. On 17th October 2009 Mrs Ludlow applied to the tribunal for a determination in respect of service charges arising in the service charge year 2009. On 30th October 2009 the tribunal gave directions that Mrs Ludlow should file with the tribunal and send to the respondent, a statement of case by the 23rd November 2009 and for the respondents, if they wished to contest the application, to file a reply within 21 days of receiving the statement of case. On the 16th April 2010 the tribunal granted applications by the lessees of flats 51, 73, 75, 79, 83 and 85 to be joined in the case as applicants.
9. Mrs. Ludlow had failed to comply with these directions in that she had not sent to the tribunal or to the respondent a written statement of her case and thus at the hearing it was not apparent to the tribunal what it had to determine. Furthermore none of the lessees who had been joined in as applicants had filed any evidence.

THE HEARING

10. At the hearing Mrs. Ludlow represented herself and confirmed that she was also authorized to speak for the other lessees. Mr. Harvey of Huggins Edwards and Sharp, the managing agents appeared for the respondents.

11. In view of the absence of any written evidence the tribunal invited the applicant to explain her case. She confirmed that the only issue for determination was whether the managing agents were justified in issuing a service charge demand for £198.88 per flat in respect of the cost of damp proof repairs to 71 St Johns Crescent.
12. Because of the small amount involved, the Chairman of the tribunal adjourned the hearing to give the parties the opportunity to talk to each other to see if the issue could be resolved.
13. After approximately 20 minutes the parties returned to the hearing room and issued what in effect amounted to a joint statement. The applicant and the respondent agreed that the respondent was able to make the demand and that the figure of £198.88 for the work was reasonable although further quotes were now necessary. What was not agreed was where the money should come from. The applicant contended that the money should be sourced and funded from money held in the reserve fund. The respondent contended that there was not enough money in the reserve fund and therefore their decision to issue an interim service charge demand for the cost of the proposed works was justified.
14. The chairman then explained to the applicant the extent of the tribunal's jurisdiction and in particular the limitations imposed on it by S.27A (4) of the 1985 Act. This section precluded the tribunal from making a determination in respect of matters agreed. The applicant confirmed that she understood the impact of this section and once again confirmed that she had no quarrel with the amount of the demand simply where the money should come from.
15. Having regard to S.27A (4) of the 1985 Act the Chairman invited the applicant to withdraw the application on the grounds that the tribunal would not be able to make a determination as to where the money should be sourced. This issue was governed by the terms of her lease.
16. The applicant confirmed that she did wish to withdraw the application and that she would arrange for a letter of withdrawal to be signed by all the lessees who had been joined in as joint applicants.
17. Mr Harvey confirmed that he agreed to the application being withdrawn because in his view there was no question that the cost of the repairs was a valid service charge expense and that he was entitled to raise the demand for the sum, which fell below the consultation threshold. At this point the hearing concluded.

CONSIDERATION

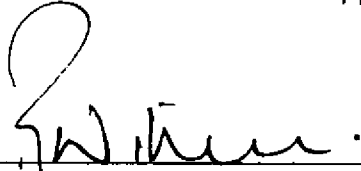
18. The tribunal was satisfied from the oral evidence that the only issue between the parties was where the funds were to be sourced in respect of the repairs to 71 St John's Crescent.
19. The tribunal noted that although the applicant had withdrawn the application at the hearing she had subsequently written to the tribunal office stating that she had been advised that she should not withdraw and in effect she invited the tribunal to make a determination. The tribunal took the view that it could proceed on the basis of the evidence put to it at the hearing.
20. The tribunal reminded itself of the extent of its jurisdiction and in particular the provisions of S.27 (4) the 1985 Act. This section provides that the tribunal has no power to make a determination in respect of a matter that has been agreed or admitted by the tenant. In this case it is quite clear that the applicant has both agreed and admitted that the sum of £198.88 is payable. Her only quarrel

is where this sum of money should be sourced. She believes that it should be taken from reserve funds whereas the respondents consider that the reserve fund has insufficient funds and that an interim service charge demand is therefore justified.

21. The tribunal considers that it is not within its powers to arbitrate over where the expenditure is to come from. This is an issue governed by the lease. In this case the lease does enable the respondent to build up a reserve fund and it also contains provisions entitling the respondent to make interim service charge demands to fund expenditure. The provisions of the lease give the respondent the discretion as to how the funding of repairs to the building is to be carried out and the tribunal does not have the power to make a binding determination in this respect.
22. Accordingly the only issue to be determined, namely the estimated cost of the repairs has in effect been agreed by the tenant as a consequence of which the tribunal has no power to make a determination. Its decision is therefore as set out in paragraph 2 above.

SECTION 20C APPLICATION

23. The legislation gives the tribunal discretion to disallow in whole or in part the costs incurred by a landlord in proceedings before it being treated as relevant costs to be taken into account when determining the amount of service charges payable. The tribunal has a wide discretion to make such an order that is just and equitable in all the circumstances. The decided cases suggest that in arriving at its decision the tribunal should have regard not only to the outcome of the case but also the conduct of the parties.
24. The tribunal declines to make this order. The applicants did not comply with the tribunal's directions to provide a statement of case and at the hearing it very soon became evident that the sole issue was not one that the tribunal had power to make a determination over. The applicants properly withdrew the application at the hearing but then changed their minds and required the tribunal to reconvene to make a determination. This has involved additional expense. There is no doubt that the respondent was justified in making the demand and in these circumstances it would not be just or equitable for a section 20C order to be made. This application is therefore refused.

Chairman 
RTA Wilson

Date 4th June 2010