

**IN THE LEASEHOLD VALUATION TRIBUNAL
UNDER S27A LANDLORD & TENANT ACT 1985**

DECISION AND REASONS

Case No	CHI/21UC/LSC/2009/0149
Property	Flat 1 Regency Court 4-5 South Cliff Eastbourne
Applicant	Regency Court Residents (Eastbourne) Ltd Represented by Mr M Harris, Director, Flat 7 Regency Court
Respondents	Mr and Mrs Bruce, Flat 1 Regency Court
Date of hearing	21 January 2010
Date of decision	2 February 2010
Members of the Tribunal	Ms H Clarke (Chair) Miss C Barton Bsc FRICS Ms J Morris

1. APPLICATION

The Applicant issued a claim in the Eastbourne County Court for water charges said to be payable by the Respondents. The Court transferred the claim to the Tribunal for determination.

2. DECISIONS

The Tribunal determined that the Respondents and the Applicant were bound by the terms of the Leases in respect of payments for water rates, and that the Respondents were not liable to pay the sums demanded by the Applicant for 'excess' water charges.

3. The proportion of water rate bills which the Respondents were liable to pay was one-twelfth and there was no power to apportion the bills according to rateable value.

4. INSPECTION

The Tribunal inspected the property immediately prior to the hearing. The property comprised a block of 12 flats probably constructed in the mid-20th century with a communal front door at raised ground level. The Respondents' flat was located on the lower ground floor with its own separate entrance. Inside the Respondents' flat was an individual water stopcock serving the flat. The Tribunal was shown a stopcock located inside a utility room below the communal hallway, which appeared to control the shared water supply, and was told that a further stopcock was located in a locked shed in the front garden area. The Tribunal was also told that the property was served by cold water tanks located at roof level. At pavement level the Tribunal observed three inspection chambers. One of these contained what appeared to be a

water tap of some age and decay, another contained a large quantity of silt and debris, and the third could not be opened. There was no water meter accessible for inspection by the Tribunal, and no individual meters serving each flat.

5. THE LEASE

The Tribunal was shown a copy of a Lease of Flat 1 dated 22 April 1968 which created a lease of 99 years from 24 June 1965. The lease had subsequently been surrendered and a re-grant for 999 years was made on 12 September 2000 with effect from 25 December 1999; this imported and adopted the covenants from the 1968 Lease.

6. The Lease provided for the Tenant to pay the following: "one equal twelfth part of the costs expenses outgoings and matters mentioned in the Fourth Schedule..."
7. The Fourth Schedule referred to the landlord's costs of insuring and repairing the building, and to the "Water Rate assessed on the Building and the Estate but not the Water rate on flats separately assessed".
8. The Tenant's obligations under the Lease included an obligation to keep in repair all cisterns pipes and ducts insofar as they were solely installed or used only for the purposes of the flat.

9. THE LAW

Landlord & Tenant Act 1985:

s18. Meaning of "service charge" and "relevant costs".

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

10. Section 19. Limitation of service charges: reasonableness.

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period

(a) only to the extent that they are reasonably incurred,

11. Section 27A. Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

12. HEARING

A hearing took place on 21 January 2010 at Eastbourne. Directions were issued by

the Tribunal, and each party submitted documents and a statement. The Applicant was represented by Mr Michael Harris, Director of the Applicant company, and by Mrs Lynda Harris, Company Secretary. The Respondents appeared in person and called their grandson Mr Gareth Bruce as a witness.

13. At the hearing Mr Harris sought permission to adduce 2 character references relating to himself and an inspection report prepared by South-Eastern Water dated 14 January 2010. After the Respondents had an opportunity to look at these documents, the Tribunal decided to admit the inspection report, but not the references, into evidence without a further adjournment. The Tribunal also stated that it would disregard certain documents included in the Respondents' bundle at pages 105-133 which were concerned with disagreements between Mr Harris and other lessees.

14. REASONS FOR DECISIONS

The Applicant's evidence was that it was a limited company of which the shares were owned by the tenants of Regency Court. In October 2006 a demand for water rates was received which was surprisingly high and showed that an unusually high volume of water had been used in the preceding 6 months. Mr Harris took the matter up with the water supplier and an inspection was carried out in January 2007 by a Mr Pennington from South-East Water. He gained access to all but 3 of the flats, and he returned to inspect the remaining 3 the following day. The Applicant relied on the log entry 'inspection report' contained in the letter dated 14 January 2010 from South-East Water, which stated that a leak had been found in Flat 1 which accounted for the high water use.

15. For several years it had been the practice of the Applicant to apportion the water rates according to the rateable value of the flats. This had been challenged by other lessees, but the practice had continued. In answer to the Tribunal's questions regarding the terms of the Lease, Mr Harris for the Applicant stated that the rateable value apportionment had been approved by managing agents and accountants in the past. It had been agreed at company AGMs.
16. The Applicant, acting through Mr Harris, took the view that the Respondents were solely responsible for the additional water consumption and ought to pay the costs over and above the 'normal' rate. The Applicant accordingly issued demands to the Respondents for an amount which represented what Mr Harris calculated to be the 'extra' amount of water charges, and had latterly added interest charged at 5%.
17. The case for the Respondents was set out in their statement. They gave evidence, and called the evidence of Mr Gareth Bruce, that they became owners of Flat 1 in about October 2005 and shortly afterwards arranged for the WC, bath suite, and kitchen to be replaced. The flat remained unoccupied until about August 2006 when their grandson Mr Gareth Bruce started to live there. The Respondents frequently visited him there and no leaks were observed. In January 2007 Mr Gareth Bruce spent a few days away from the property, and on his return he noticed that water was dripping from the cistern into the WC. It did not flush so as to empty the cistern but was a regular drip. This was not happening before he went away. He spoke to the First Respondent who informed him that Mr Pennington was due to inspect a couple of days later, and to await that date. On the day of the inspection the First Respondent arrived at Flat 1 before Mr Pennington, and was able to cure the drip by

adjusting a small screw in the cistern. He told Mr Pennington what he had observed. Mr Pennington did not see any leak happening in Flat 1. There had been other leaks in other flats, none of which were noted by Mr Pennington. A ceiling had come down in another flat, not Flat 1, due to a water leak. Mr Pennington was not told about this.

18. The Tribunal considered whether the payments for water rates fell within the definition of service charges under the Landlord & Tenant Act 1985. Section 18(1)a) specifically included the cost of services, and the supply of water and sewerage services to a property fell within that definition. The Tribunal therefore decided that the payments for water rates were service charges. Neither party had contested this.
19. The Respondents' Lease was very clear as to how the water rates were to be apportioned. In the absence of a measured supply to each flat, the Lease provided that the Respondents were to pay one-twelfth of the bill for the total supply to the building.
20. It was immaterial whether the Applicant or other lessees thought this was fair or reasonable. Neither the Applicant nor any of its directors had the authority to impose a different basis of charging. Insofar as any agreement had been made at an AGM, the Tribunal noted that this would have been the AGM of the Applicant Company and could only affect the rights and responsibilities of the Respondents in their capacity as shareholders of the Company, not in their capacity as lessees. The Lease had not been varied, and the Applicant could not charge service charges other than in accordance with the Lease.
21. The Tribunal considered the evidence relating to the use of water. It was clear that during 2006-2007 there appeared to be two six-month periods during which water use was higher than in some preceding and subsequent periods. However, the Tribunal did not find on the evidence available that this could be attributed solely or mainly to an escape of water in Flat 1. There was no direct evidence from Mr Pennington or from anyone else to set against the direct evidence of the Respondents and Mr Gareth Bruce, who were unanimous in saying that there was only a small drip of water for a few days at most. Mr Pennington had not seen the leak in question when it was active. Mr Pennington also could not be considered to be independent of the matters in question, because his employers would be liable to repair any leak outside the curtilage of the building and his 'report' did not have the status of independent expert evidence. The Tribunal's expert knowledge and experience led it to doubt whether a slow leak of the kind described would be able to account for such a substantial use of water. The arrangement of the water supply at the Property included numerous junctions and taps, some of them very aged, and the stop-cock was evidently in an unsatisfactory condition prior to being replaced. There was no evidence that Mr Pennington had inspected the water tanks. The pattern of use and occupation of the 12 flats was variable. There was evidence that other leaks had occurred in other parts of the building, whether or not they were observed by Mr Pennington. Any of these matters could have affected the volume of water being used.
22. In all the circumstances the Tribunal did not find on the balance of probability that a leak of water in Flat 1 was the sole or the main cause of the increased water use.

Moreover, even if it had been, the parties would still be bound by the terms of the Lease as to payment of the water rates, so far as the service charges were concerned.

23. There was also no provision in the Lease for the imposition of interest on late payment of service charges, whether at 5% or at any other rate. It was not a question of what the Applicant or its Directors thought was reasonable, there was no entitlement to interest.

24. The Tribunal did not find it necessary to inquire into the form of service charge demands nor as to whether the prescribed statutory information had been served with them as required by section 21B of the Landlord & Tenant Act 1985.

Signed-----*huc*-----

Dated-----*2-12-10*-----

IN THE LEASEHOLD VALUATION TRIBUNAL

UNDER S27A LANDLORD & TENANT ACT 1985

RESPONSE TO REQUEST FOR PERMISSION TO APPEAL

Case No	CHI/21UC/LSC/2009/0149
Property	Flat 1 Regency Court 4-5 South Cliff Eastbourne
Applicant	Regency Court Residents (Eastbourne) Ltd Represented by Mr M Harris, Director, Flat 7 Regency Court
Respondents	Mr and Mrs Bruce, Flat 1 Regency Court
Date of hearing	21 January 2010
Date of decision	2 February 2010
Date of refusal of permission to appeal	8 March 2010
Members of the Tribunal	Ms H Clarke (Chair) Miss C Barton Bsc FRICS Ms J Morris

1. The Applicant's request for permission to appeal is refused.
2. **REASONS FOR REFUSING PERMISSION**
The Tribunal considers that no substantial procedural defect occurred in the course of the Application, and no error of law is disclosed by the Applicant's proposed grounds of appeal.
3. Under paragraph 12 of the proposed Grounds; the notes of hearing record that Mr Harris did cross-examine the Respondents and would have had the opportunity to cross-examine Mr Gareth Bruce at this time.
4. Under paragraph 13; Both parties were asked at the start of the hearing to clarify who was going to give evidence. There was no suggestion at any stage that Mrs Harris would do so.

5. Under paragraphs 10 & 17: as the Grounds themselves disclose, the Tribunal dealt with the question of additional documents as a preliminary issue at the start of the hearing.

Dated 8-3-10

Signed *Me* Chair