

**SOUTHERN RENT ASSESSMENT PANEL AND LEASEHOLD VALUATION TRIBUNAL
RENT ASSESSMENT COMMITTEE**

Case No: CHI/19UH/LSC/2008/0053

BETWEEN:

SHIPYARD ESTATE WEST BAY MANAGEMENT LIMITED

Applicant/Landlord

- and -

MR A G PETTITT

Respondent/Tenant

PREMISES:

Flat 21 Old Shipyard Centre
The Ship Yard Estate
West Bay
Bridport
Dorset
DT6 4HG (“the Premises”)

TRIBUNAL:

Mr D Agnew LLB, LLM (Legal Chairman)

DETERMINATION DATE:

26th August 2008

Determination and Reasons

1. Background

- 1.1 On the 9th June 2008 the Applicant made an application to the Tribunal under Section 27A of the Landlord and Tenant Act 1985 for a determination as to the reasonableness and liability for payment of service charges in respect of Flat 21 and garage Old Shipyard Centre, The Shipyard Estate, West Bay, Bridport, Dorset, DT6 4HG (“the Premises”)
- 1.2 On 13th June 2008 a member of the panel appointed by the Lord Chancellor issued directions. These provided for the Applicant to file and serve its statement of case together with a bundle of correspondence witness statements, expert's reports and other

documents on which it seeks to rely in support of its application by 16th July 2008 and for the Respondent to respond thereto within 21 days of receipt of these papers from the Applicant. The directions also stated that it was proposed to deal with the application on the paper track on the basis only of written representations without a formal hearing and that the determination would be by a Chairman sitting alone or alternatively with another member of the panel rather than by a full Tribunal of 3 members. Any objections to the use of this procedure were to be submitted no later than 28 days from the date of the issue of the directions. No such objections were received.

- 1.3 The Applicants submitted a statement of case and supporting documents on 29th July 2008. Although this was later than the date provided for in the directions it would still have allowed the Respondent 21 days in which to file his response prior to the determination taking place on 26th August 2008. No response, however, was received by the Tribunal prior to the determination.

2. The Application

The service charge years for which a determination as to reasonableness is sought are the years 2006/2007 and 2007/2008. The service charge year ends on 24th June of each year. For the year ending 24th June 2007 the service charge sought from the Respondent is £269.13 and for the year ending 24th June 2008 the service charge sought from the Respondent is £774.88.

3. The Applicant's Evidence

- 3.1 This comprised a statement of case submitted by the Applicant's solicitors, a witness statement containing a statement of truth by Mr Kenneth Francis Dunn who is the Treasurer of the Applicant company to which was attached a copy of the Respondent's Lease, a copy of the service charge breakdown for 2006/2007 and 2007/2008 and a copy of the Applicant's accounts for the years in question. As previously stated, there was no

evidence from the Respondent challenging any of the evidence produced by the Applicants.

4. The Lease

- 4.1 By Clause 2 of the Lease between the Applicant (1) West Bay Developments Ltd (2) and Graham Charles Evans (3) in respect of the premises the lessee covenanted with the lessor that the lessee would observe and perform the obligations on its part set out the 6th Schedule to the Lease.
- 4.2 By paragraph 16 of the 6th Schedule aforesaid the lessee covenanted to keep the lessor indemnified from and against a due proportion (such proportion to be determined by an independent expert [to be appointed by agreement between the parties or in default nominated by the President of the Royal Society of Chartered Surveyors] in the event of dispute) of all costs, charges and expenses reasonably incurred by the lessor in carrying out its obligations under the 7th Schedule to the Lease.
- 4.3 By paragraph 17 of the said 6th Schedule and without prejudice to the 16th paragraph it is required that "the lessee shall on 24th June in each year during the continuance of this demise pay to the lessor on account of the lessee obligations under the immediately preceding clause hereof such annual amount as shall be certified in writing by the lessor as a proper amount payable in accordance with clause 8 of the 7th Schedule hereto any such payment being credited to the liabilities under the immediately preceding clause hereto the earliest being satisfied in priority to the latter (sic) liabilities and any excess of such payments over such liabilities being taken into account in accordance with the said clause 8 of the 7th Schedule hereto."
- 4.4 By paragraph 18 of the 6th Schedule to the Lease the lessee covenanted "within 21 days after the service by the lessor on the lessee of a notice in writing stating the proportionate amount... due from the lessee to the lessor pursuant to the clause 17 of this schedule for the accounting period to which the notice relates pay to the lessor or be entitled to receive from the lessor the balance by which the said proportionate amount respectively exceeds

or falls short of the total sum paid by the lessee to the lessor pursuant to the last preceding clause during the said period".

- 4.5 By the 7th Schedule to the Lease the lessor covenanted, by paragraph 2, to insure flats and other buildings forming part of the estate communal parts.
- 4.6 By paragraph 4 of the 7th Schedule to the Lease the lessor undertook to "keep the reserved property and all fixtures and fittings therein and additions thereto in a good and tenable state of repair, decoration and condition including the renewal and replacement of all worn or damaged parts and shall where necessary paint with a good quality paint in a workman like manner all the wood and iron work and other parts of the reserved property usually painted and shall in addition grain varnish distemper wash stop whiten and colour all such parts of the reserved property as are usually or ought to be so treated and repaper the parts now papered with suitable paper of as good quality as that now in use..."
- 4.7 By paragraph 6 of the 7th Schedule the lessor undertook to "keep the front and outside steps and paved areas, stairs and balconies forming part of the estate properly cleaned and in good order and shall keep adequately lighted all such parts of the estate as are normally lighted or as should be lighted and the gardens, roadways, pedestrian ways, paths and forecourts property planted and in good order and condition and the hedges and boundary walls thereof in good repair and condition."

5. The Law

Section 27A of the Landlord & Tenant Act 1985 ("the 1985 Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

- (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
- (e) the manner in which it is payable.

5.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

6. The Determination

6.1 The Tribunal considered carefully the items of expenditure that have been incurred by the Applicant during the service charge years 2006/2007 and 2007/2008 as supplied by the Applicant and, in the absence of any challenge from the Respondent considered that all the items of expenditure were reasonable.

6.2 The Tribunal therefore determines that the Respondent is liable to pay to the Applicant the following sums by way of outstanding service charges:-

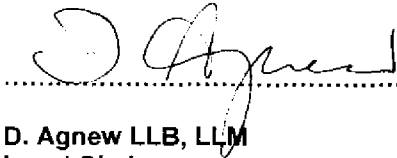
For the year 2006/2007 the sum of £269.13

For the year 2007/2008 the sum of £774.88

6.3 Although the Applicant in its statement of case asked for a determination that the Respondent pay the Applicant's costs of the application to the Tribunal and although in certain limited circumstances the Tribunal does have jurisdiction to award costs the Applicant did not supply the Tribunal with any details as to the costs it had incurred in respect of the application and therefore the Tribunal does not make any determination with regard to costs. However the Tribunal notes that the Applicant has had to pay a fee of £200.00 to the Tribunal for it to consider the application. Under the Leasehold Valuation Tribunals (Procedure)(England) Regulations 2003 at paragraph 9 the Tribunal does have jurisdiction to require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings. As the application to the Tribunal was necessitated by the Respondent's total unresponsiveness to demands for payment without any indication that the Respondent challenged any of the amounts being sought the Tribunal considers that it is appropriate for the Respondent to be liable to reimburse the fee of £200.00 to the Applicant and hereby so determines. The Respondent is therefore required to pay to the Applicant the

sum of £200.00 in addition to the sum of £1,044.01 (that is £269.13 plus £774.88) for outstanding service charges.

Dated this 26th day of August 2008

A handwritten signature in black ink, appearing to read 'D. Agnew', is written over a horizontal dotted line. The signature is fluid and cursive.

D. Agnew LLB, LL.M
Legal Chairman