



## REASONS/DECISION

### A. BACKGROUND:

1. As a result of an Order made by the Lambeth County Court on the 8 July 2007 in an action between the parties, the Applicant Council being the claimant, this matter was transferred to us from that court for the purposes of determining the liability to make service charge payments pursuant to s27A of the Landlord and Tenant Act 1985 ("the Act").
2. In the extensive bundle of documents before us was a copy of the Particulars of Claim showing the sum of £3,334.78 as being due and owing. In the case of the demands for the service charge year 2005/2006 this totalled £1,732.83 but included the ground rent of £10 and for the service charge year 2006/7, for which only  $\frac{3}{4}$ 's was claimed, this amounted to £1489.05 and again this included the ground rent of £10. For the earlier year of 2004/5 there is only the sum of £112.90 outstanding and it is unclear whether that represents any amount payable in respect of ground rent or purely relates to service charge matters. It is clear however we have no jurisdiction to deal with any ground rent matters and if that is included within that service charge year for 2004/5 it should be removed from the amount claimed before this Tribunal. In addition the local authority claimed interest at 8% pursuant to s69 of the County Courts Act 1984. We will refer to that item of claim later in these Reasons.
3. The Applicants had provided a statement setting out the basis of the claim before us and highlighting the relevant sections of the lease. In addition amongst the papers were copies of the service charge demands for the three years in question.

### B. HEARING

4. At the hearing Mr Dudhia assisted us by explaining the method by which the gas was purchased. We are familiar with the procedure. As with a number of local authorities it appears that outside brokers provide advice as to the best price obtainable on the market on a spot rate basis. The local authority then has to move quickly to accept that rate which then applies, usually for a period of two years. It appears in this case that a price was agreed sometime in 2004 although did not appear to actually impact on the gas prices until mid-October of that year. There appears to have been some confusion with the local authority as to the accounting process in respect of the fuel costs. Some British Gas invoices that were separate to the main gas supply appear to have been omitted for the year 2004/5 and may have found their way into the following year's demand which has resulted in a relatively substantial increase in gas costs. This also coincided with a large increase in the base price for the gas.

5. We were told that the central heating is supplied from October to May and hot water for the year. The provision of the service is quite complicated. The gas is supplied by one boiler housed in what is known as the North Peckham Boiler House. This boiler which is substantial provides heating for a large area of North Peckham which includes Daniel Gardens of which Danube Court is but one building. The maintenance of the boiler is also dealt with on a similar area basis.
6. On the question of maintenance we were told that outside contractors dealt with the upkeep of the boiler and the provision of heating to the various buildings within the area served by the Boiler House. The contract included preventative maintenance and a daily check on the boiler. We were told that the boiler served some 900 properties. The contract was for five years and it was thought it had been extended for a further year. During the course of the hearing it became apparent that the local authority was not administering the costs in accordance with the terms of the lease. The Respondent's lease requires him to make contributions in respect of matters relating to the building which is Danube Court and the estate, which is Daniel Gardens. It appeared clear from questioning Mr Dudhia and from matters raised by Mr Joseph that in fact the maintenance costs are distributed on a far wider area than just Daniel Gardens. We accepted that it would not be possible to break down the fuel costs on a estate basis as provided for in the lease. We were assured however that the percentage applicable to the Respondent's flat had been calculated utilising the number of properties that were served and on a bedroom basis which appears to be the accepted apportionment basis for the London Borough of Southwark.
7. The Council however accepted that insofar as a number of items of maintenance charges these were not being properly allocated and confirmed that henceforth they would do their best to ensure that repairs which could be allocated to a particular block or estate would be dealt with on that basis rather than left within the overall North Peckham Boiler House repairing arrangements as presently exist.
8. We were also told that the local authority, if requested, could provide certified accounts for individual lessees. We were also told that no payments had been made by the Respondent although there was a credit of £44.39 against the year 2006/7.

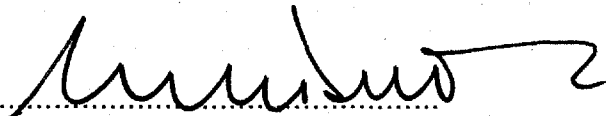
**C. DECISION**

9. The Respondent has taken no part in these proceedings. In the Defence filed at the county court he queried the costs of gas and the increase of same from the first year. We

have however investigated with the local authority both the gas charge and the maintenance expense.

10. We are aware of the system that the London Boroughs apply for fixing the cost of gas. It has, on a number of occasions been approved by Tribunals and we are satisfied that the actual cost of gas is the only sum that is claimed from the tenants. In those circumstances we accept that the actual gas charge is reasonable and is recoverable.
  
11. With regard to the maintenance costs both for the repair and maintenance of the boiler but also additional heating costs associated with non-boiler repairs, we are somewhat concerned that the local authority were not apportioning those correctly. The lease is quite clear. It requires the Respondent to contribute towards costs associated with the building and the estate. The estate is defined as Daniel Gardens and not that which is covered by the North Peckham Boiler House. However we are satisfied on the evidence given to us at the hearing that prejudice has not been caused to the Respondent in this case. It is, we suspect, a bit of swings and roundabouts. However, it seems to us that it is not beyond the wit of man for the local authority to create some form of scheme which enables them to specify items of repair which are particular to Daniel Gardens or indeed Danube Court. It is accepted that there may be some repairs which are for the wider area and a fair system of apportionment based on the bedroom numbers which is used for the apportionment of gas seems appropriate. However it does seem to us that where possible the local authority should in future seek to allocate expenses associated with Daniel Gardens and Danube Court correctly to those two elements. This would ensure that the Respondent is not being required to make contributions towards other estates for which he has no responsibility under the terms of his lease.
  
12. We find that the sum claimed by the Applicants in the Lambeth County Court action under case number 6LB08255 is properly due and owing, save insofar as it relates to the annual ground rent of £10 which is not within our jurisdiction to consider.
  
13. On the question of interest it seems to us that this is not a service charge matter. However we note from the terms of the lease that interest could be charged at a higher rate than that which is included within the Particulars of Claim and in those circumstances, insofar as we are able, it seems to us that the claim for interest sought would be reasonable.

Chair.....



Dated.....

25.7.08