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**Residential
Property**
TRIBUNAL SERVICE

Ref: LON/00AH/LSC/2010/0384

LEASEHOLD VALUATION TRIBUNAL

LONDON RENT ASSESSMENT PANEL

**DECISION ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD
AND TENANT ACT 1985 (AS AMENDED)**

Property: 10 Heath House, 163 Brigstock Road, Thornton Heath, Surrey
CR7 7JP

Applicant: Terrace Investments Limited

Respondent: Ms GR Turner

Hearing Date: 4th October 2010

Appearances: Mr A Smith, director of Symon Smith (managing agents for the
Applicant)
Mr A Reifer, director of Applicant company
Mr M Reifer, employee of Applicant company

The Respondent was not present and was not represented

Members of Tribunal

Mr P Korn (chairman)
Mr A Lewicki MRICS
Mrs R Turner JP BA

10/11

INTRODUCTION

1. This is an application under Section 27A of the Landlord and Tenant Act 1985 (as amended) (“**the 1985 Act**”) for a determination of liability to pay service charges (including insurance premiums).
2. The Applicant issued a claim in the Clerkenwell & Shoreditch County Court on 1st October 2008 (Claim No. 8E007769) for recovery of service charge, insurance premiums and ground rent under the Respondent’s lease of the Property. The matter was transferred to the Croydon County Court and then on 16th February 2010 the claim (other than the element relating to ground rent) was transferred to the Leasehold Valuation Tribunal by order of District Judge Freeborough.
3. The Property is one of 12 flats in a block, all held on 99 year leases. The lease of the Property (“**the Lease**”) is dated 9th January 1964 and was made between AJ Wait & Co Limited (1) and Lawrence Ronald Page and Patricia Ann Page (2). The Applicant is the current landlord and the Respondent is the current leaseholder.
4. Aside from the ground rent (which is outside the jurisdiction of the Leasehold Valuation Tribunal) the disputed items are as follows:-

<i>Outstanding service charge prior to June 2008</i>	<i>£787.49</i>
<i>Service charge due on 24th June 2008</i>	<i>£371.41</i>
<i>Land Registry charge</i>	<i>£3.00</i>

5. A pre-trial review at the Leasehold Valuation Tribunal was held on 21st July 2010. The Respondent did not attend either the pre-trial review or the full hearing, and nor was she represented at either.

RESPONDENT’S DEFENCE

6. Whilst it is more usual to summarise the Applicant’s case and then the Respondent’s response, in this case the Respondent was not present or represented at the hearing and therefore not in a position to respond. However, she did file a defence to the original County Court claim.
7. Much of the contents of that defence is not considered by the Tribunal to be relevant to the payability or reasonableness of the sums claimed by the Applicant. As regards those elements which are **potentially** relevant, it appears that the Respondent’s main complaints are that:-
 - insurance details were never provided
 - the managing agents have never complied with their obligations under the Lease (presumably she means the

Applicant, as the managing agents are not a party to the Lease)

- the managing agents owed money to her to reimburse payments made by her to repair the Property
- there is no management
- she was charged twice or three times for the same item
- there are extortionate fixed service charges, which are not provided for in the Lease
- she has suffered from harassment
- Flat 12 has been used as a brothel
- 29 psychiatric patients have been housed in the driveway.

APPLICANT'S CASE

8. Mr Smith took the Tribunal through the Applicant's case. The charges which formed the subject matter of the claim related to insurance premiums, management fees, bank charges, interest payments, electricity charges and gardening.
9. The unpaid insurance premiums amounted to £245.87 for the period March 2006 to March 2007 and £266.71 for the period March 2008 to March 2009 (it appeared that the insurance premium for the period March 2007 to March 2008 has been paid). It was noted that the hearing bundle contained copies of relevant invoices and of the schedule to the insurance policy. Mr Smith referred the Tribunal to the terms of the Lease and argued that there was a mechanism for recovering service charges and insurance premiums, that these were properly payable, that the Respondent has been provided with the relevant insurance information and that therefore the Respondent had no justification for withholding payment.
10. Mr A Reifer said that he was very careful to make sure that money was only paid out to third parties after receipt of the relevant invoice, although he conceded that up until now the service charge costs had not been certified by an accountant.
11. Specifically in relation to the insurance premiums (which are charged as part of the service charge) Mr Smith took the Tribunal through the calculation of the amount due from the Respondent based on the copy insurance schedules and the percentage payable by the Respondent.
12. In relation to service charge expenditure generally, Mr Smith referred the Tribunal to the Certificates of Income and Expenditure for the period 26th December 2005 to 24th June 2008 and to supporting copy invoices.
13. In response to a request by the Tribunal, Mr Smith commented on the items listed in each Certificate of Income and Expenditure. In relation to

cleaning, gardening, picking up litter and outside sweeping, Mr Smith said that the Applicant had received no complaints from other residents as to cost or quality of service. Gardening was done monthly in the winter, more frequently in the summer. The Applicant has periodically inspected the block. Mr Smith was unable to comment specifically on whether another gardener would charge less. Bank charges, which have appeared as items on the Certificate in the past, are not expected to be payable in the future due to a renegotiation with the bank. There were invoices in respect of the electricity used for the electric lamppost.

14. The management fees were fixed at £300 per year. There was no formal contract and no statement as to the managing agents' duties, mainly it seemed because there was a longstanding relationship of trust between the Applicant and the managing agents and there was a mutual preference to deal with matters informally. Mr Smith conceded that the Lease did appear to be silent as regards the recovery of management fees.
15. Mr A Reifer said that the Respondent had been extremely abusive and that he could not understand any of her defence (and/or considered it to have no validity). In particular, he rejected the notion that any part of the block was being used as a brothel; on the contrary, it was quite a nice block in quite a nice area.
16. As a general point, the Applicant had not received complaints about the running of the block from anyone other than the Respondent.

NO INSPECTION

17. The Tribunal members did not inspect the block. Neither party requested an inspection and the Tribunal's view was that an inspection was not necessary in order for it to make a determination in the circumstances of the particular issues in dispute in the absence of a clearer statement from the Respondent of her concerns and without her being present to clarify matters.

THE LAW

18. Section 19(1) of the 1985 Act provides:

"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, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard

and the amount shall be limited accordingly."

19. "Relevant costs" are defined in Section 18(2) of the 1985 Act as:

"the costs or estimated costs incurred or to be incurred by or on behalf of the landlord...in connection with the matters for which the service charge is payable."

and "service charge" is defined in Section 18(1) of the 1985 Act as:

"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, improvements, or insurance or the landlord's cost of management, and (b) the whole or part of which varies or may vary according to the relevant costs."

20. Section 27A of the 1985 Act gives a leasehold valuation tribunal jurisdiction to determine (on an application made to it):

"whether a service charge is payable and, if it is, as to...the amount which is payable..."

APPLICATION OF LAW TO FACTS

21. As a general point, the Applicant has provided helpful and reasonable evidence as to the insurance and other service charge costs incurred by it. By contrast, the Respondent has provided a rambling written defence to the County Court claim. Much of the defence is difficult to follow and much of it is not relevant to the issues. In relation to those elements of the defence which are at least **potentially** relevant, none of them has been substantiated by any credible hard evidence. The Respondent has had the opportunity to provide evidence to back up her defence and/or to attend the pre-trial review and/or to attend the full hearing to put her case and to be cross-examined on it, but she has chosen to do none of those things.
22. Therefore, on the basis of the written and oral evidence provided, the Tribunal is satisfied on the balance of probabilities **subject to the other considerations set out below** that the service charge costs of £787.49 and £371.41 referred to in paragraph 4 above have been reasonably incurred.
23. **However**, the question remains as to whether the charges are all properly payable as a matter of construction of the terms of the Lease itself.
24. As regards the insurance premium, sub-clause 3(A) of the Lease contains a tenant's covenant *"to pay the said rents ..."*, and this is a reference to the 'rents' referred to in clause 1. One of these 'rents' is described in sub-clause 1(b) as *"the further rent of a yearly sum equal to the expenditure by*

the Lessor for keeping on foot the insurance of the premises against loss and damage by fire and special perils (including aircraft) normally included in a householders Comprehensive Policy in accordance with the Lessors covenant in that behalf hereinafter contained ...". Sub-clause 5(D) and paragraph 2 of the Sixth Schedule in turn constitute a landlord's covenant to insure. On the basis of these provisions and in the absence of any pertinent arguments being raised by the Respondent on the point, the Tribunal is satisfied that the Lease entitles the Applicant to charge insurance premiums. The Applicant has provided details of the outstanding insurance premiums (£245.87 and £266.71) and the accuracy and reasonableness of these sums have not been challenged by the Respondent in a meaningful way.

25. As regards other service charge items, the Tribunal notes that one of the 'rents' reserved in clause 1 relates to the cost of services, namely sub-clause 1(c). This sub-clause states that there is payable "*the further yearly rent of twenty pounds as a contribution towards the costs and expenses incurred by the Lessor in carrying out the terms of its covenant in respect of the reserved property contained in clause (a) of the Sixth Schedule ...*". There is no clause (a) in the Sixth Schedule, but there is a sub-clause 4(a) and no other sub-clauses containing an '(a)'. Sub-clause 4(a) contains a covenant to keep the block (other than the interior of the Property, which is the tenant's responsibility) in a good and tenable state of repair, decoration and condition. In the Tribunal's view, whilst the relevant provision has been poorly drafted, it would be reasonable to assume (considering the context) that the reference to '(a)' rather than to '4(a)' was simply a small typing error and that the intention was indeed to cross-refer to sub-clause 4(a) of the Sixth Schedule.
26. However, even giving the Applicant the benefit of the above **assumption** still only entitles the Applicant to charge the Respondent £20 a year towards the cost of repair.
27. Mr Smith submitted that the Lease does contain other provisions relating to services and the payment for them, including sub-paragraphs 4(b) to (d) of the Sixth Schedule. These read as follows:-

"(b) The Lessor shall keep proper books of account of all costs charges and expenses incurred by it in carrying out its obligations under this clause and an account shall be taken on the twenty fourth day of June and the twenty fifth day of December in every year during the continuance of this demise and at the determination thereof of the amount of the said costs charges and expenses incurred since the date of the last preceding account (or since the commencement of the demise in the case of the first such account).

(c) The account referred to in the last preceding clause shall be prepared and audited by a Chartered Accountant nominated by the Lessor who shall certify the total amount of the said costs charges and expenses (including his own audit fee in respect thereof) for the period to which the account relates and the proportionate amount due from the Tenant which shall be so calculated as to give credit to the Tenant for the additional or further rent of Twenty pounds payable under clause 1(c) hereof shall be paid by the tenant to the Landlord within twenty one days after demand by the Landlord.

(d) Notwithstanding anything aforesaid the Lessor shall be entitled before undertaking any repairs to the Reserved Property under this Clause to obtain an estimate of the prospective cost of such work and to charge the Tenant with a proportionate amount of the total prospective cost of such work (to be certified by the Accountant as aforesaid) before putting in hand the said repairs and the Tenant shall be bound to pay the proportion certified as aforesaid as if it had been demanded under the last preceding sub clause Provided that in taking the account referred to in sub clause (b) and (c) of this Schedule credit shall be given for any payment in advance made by the Tenant under this Clause during the relevant accounting period."

28. The other provisions that were discussed at the hearing were the provisions of sub-clause 4(2) of the Lease under which the tenant covenants to "pay the amount which shall be certified to be due from the Tenant in accordance with the provisions of the Sixth Schedule hereto upon receipt of the notice referred to in Clause (7) of the said Schedule or upon demand by the Lessor for payment of an advance sum under Clause (8) thereof".
29. There are a number of problems from the Applicant's perspective with the above provisions, being the provisions on which it seeks to rely. First, the overall heading of the Sixth Schedule is "Lessor's (i.e. landlord's) Covenants", not tenant's covenants. Secondly, the cross-reference in sub-clause 4(2) is to clauses (7) and (8) of the Sixth Schedule, but there are no such clauses. Thirdly, the Applicant has conceded that it has not in fact been producing accounts audited by a chartered accountant as required by sub-paragraph 4(c) of the Sixth Schedule.
30. Furthermore, even if it could be established (on the balance of probabilities) that the Respondent was obliged to pay a proportionate part of all costs incurred by the Applicant as set out in the Sixth Schedule there is a further problem. It is an established principle that any head of service charge claimed by a landlord must be clearly provided for in the lease and that if any service charge provision is ambiguous then the ambiguity must be construed in favour of the tenant. There is no presumption that a landlord will be entitled to recover all of its expenditure and each head of

charge will only be payable if there is sufficiently clear wording referring to that head of charge.

31. Whilst the Sixth Schedule contains references to repair, decoration and rates, it does not contain clear references to management charges, bank charges, interest payments, electricity charges or gardening, these being the items (aside from insurance premiums) for which the Applicant is claiming.
32. In conclusion, and with some reluctance, the Tribunal's view is that none of the service charge items other than the insurance premiums is properly recoverable (save for the first £20 per year). It seems to the Tribunal that the Applicant has acted in good faith, and the evidence suggests that the sums charged would have been reasonable if properly provided for in the Lease. The Respondent, by contrast, has provided an unconvincing and abusive written defence to the County Court claim, has not complied with Directions (requiring her to provide a written response to the Applicant's written case served on her) and has failed to attend the pre-trial review and the full hearing. Nevertheless, for the reasons given above, the Tribunal considers that the Lease does not adequately provide for the Applicant to recover management charges, bank charges, interest payments, electricity charges or gardening costs over and above the specific amount of £20 per year provided for in the Lease.
33. As regards the Land Registry charge of £3.00, no particular arguments were advanced in respect of this sum, presumably because it is such a small item. It seems likely that it will have formed part of the Applicant's costs in pursuing the County Court claim, but on the basis of the sparse information available to the Tribunal (and on the assumption that it is either a service charge item or an administration charge and therefore falls within the Tribunal's jurisdiction to determine) the relevant provisions of the Lease (in particular sub-clause 3(D)) are not considered wide enough to allow the Applicant to recover this amount.

DETERMINATION

34. The outstanding insurance premiums of £512.58 are payable by the Respondent in full.
35. The remainder of the service charges forming part of the County Court claim are not payable, save that the Applicant is entitled to charge a service charge of £20 per year.
36. On the assumption that the Tribunal has jurisdiction to determine this issue, the Land Registry charge of £3.00 is not payable.