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Residential  
Property  
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/00AM/LSC/2009/0804**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION  
UNDER SECTION 27A LANDLORD AND TENANT ACT 1985**

Applicant /Landlord	Barron Properties
Respondents /Tenant:	Mr T Lagzdinis
Premises:	Flat D, 204 Millfields Road, London E5 0AR
Leasehold Valuation Tribunal:	Ms F Dickie, Barrister (Chairman) Mr P Roberts DipArch RIBA
Date of Hearing	15 <sup>th</sup> March 2010
Date of Tribunal's Decision:	15 <sup>th</sup> March 2010

**Preliminary**

1. The Applicant is the freeholder of residential premises situated at 204 Millfields Road, a former public house converted into 5 flats. The Respondent is the leaseholder of one of those flats known as flat D. This application was made on 10<sup>th</sup> December 2009 for a determination of the Respondent's liability to pay actual service charges for the year 2008 and estimated service charges for the year 2009, together with unpaid ground rent and additional management fees in respect of unpaid service charges.

2. The Tribunal issued Directions on 19<sup>th</sup> January 2010 at an oral pre trial review at which Mr M Chuni Kahan appeared on behalf of the Applicant. The Respondent was not present or represented and indeed has not communicated with the Tribunal at all in response to the Application, though it is understood that he has telephoned the Applicant after he had received it. At the hearing on 15<sup>th</sup> March 2010 Mr Kahan again appeared for the Applicant and there was no appearance for the Respondent.

### **The Lease**

3. The Lease for flat D was not available at the hearing. Mr Kahan explained that it was no longer in his possession and he had been unable to obtain it from the mortgage lender. He gave evidence that all 5 flats in the building had been leased on virtually identical leases when it had first been converted into units of accommodation. The particulars of the Lease provide:

(2) *The Lessors intend that each of the flats shall be demised by a lease in identical terms to this lease to the intent that each Lessee may be able to enforce against the other Lessees the restrictions contained in such leases.*

4. The relevant provisions of the Lease are:

2(3) *To pay by equal half yearly payments on the 1<sup>st</sup> day of June and the 1<sup>st</sup> day of December in every year 1/5<sup>th</sup> of the cost of the matters mentioned in part I of the 4<sup>th</sup> Schedule....*

*THE FOURTH SCHEDULE above referred to*

#### *PART I*

1. *The expense (including reasonable profit) of the Lessors in carrying out all their obligations under this lease including the reasonable costs of any managing agents employed in connection therewith.*

.....

3. *The reasonable fees (including profit) and disbursements paid to any solicitor managing agents or other professional person in connection with the collection or recovery of any monies or rents due under this lease or the leases of the other flats in the development.*

- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it

**s27A 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 the person by whom it is payable,
  - (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

**Evidence**

6. The Applicant is a professional managing agent dealing in commercial leases and short residential tenancies, and accordingly was managing the property itself. Mr Kahan said that as required by paragraph 6 of the Tribunal's Directions he had served on the Respondent a statement of case including a copy of the supporting invoices. However, none of these invoices were produced in evidence at the hearing as required by paragraph 11 of the Directions which provided "*that the bundle shall as a minimum include copies of the application form, the Applicant's statement of case, the Respondent's response and the Applicant's reply, in each case with all documents and correspondence forming part thereof;*"
7. At the hearing Mr Kahan had available the figures for actual expenditure for both of the years in question. The 1/5<sup>th</sup> proportion of total expenditure which he sought to recover from the Respondent and in respect of which he now sought the Tribunal's determination was as follows:

2008	£692.17, Comprising:
£178.59	cleaning costs

£59.63	electricity
£152.05	general maintenance
£238.98	insurance
£629.25	Sub total
£62.92	Management fee 10%

2009	£439.14, Comprising:
£91.08	Cleaning
£35.82	Electricity
£272.32	Insurance
£399.22	Sub total
£39.92	Management fee 10%

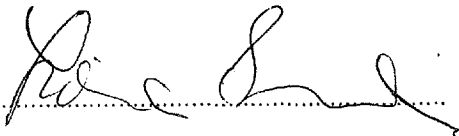
8. Neither of these annual amounts included any additional management or administration charge incurred for late payment of service charges, though Mr Kahan did wish to charge such a fee as set out in the Application. Copies of the service charge demands having been produced at the hearing, Mr Kahan confirmed that none contained a summary of rights in compliance with s.21B of the Act.
9. Mr Kahan said that cleaning costs had reduced in 2009 because he had dispensed with the services of Beechwood Property Services, who had not been carrying out the cleaning to a good standard, and engaged Armour Property Services Ltd at a lower cost. He acknowledged that his annual service charge estimates had been too high owing to an error on his part, but that the 2010 estimate had now come down by 50% to £715 including management fee. Mr Kahan considered that, the Landlord being a professional managing agent carrying out its own management of these properties, 10% was a reasonable fee. Regarding insurance, he confirmed that a broker was used to review the market and make recommendations, and professional advice was sought on the estimated rebuilding cost.

#### **Determination**

10. As identified by in the Directions, the Tribunal has no jurisdiction to determine the payability of ground rent, which is a matter for the County Court.

11. The Respondent has not raised any objection to the Application, nor has he disputed that he is liable for the items claimed under the terms of his lease. The Tribunal has not seen a copy of the actual lease for this property, which presumably it would be in the power of the Respondent to produce. The Tribunal considers it is more than likely that the Lease for flat D would contain identical service charge provisions to those contained in the lease for flat E. The Tribunal is satisfied on the present evidence that all of the annual service charge items claimed as set out in paragraph 7 above are allowable under the terms of the lease, subject to their being reasonable and lawfully demanded.
12. It is understood that the Respondent has been provided with a copy of supporting invoices for the items of expenditure claimed. He has raised no objection or dispute to their reasonableness, as required by the Directions. Indeed no statement of case has ever been received. The Respondent having telephoned the Landlord in response to the Application is sufficient indication that he has been served with it. The evidence demonstrates that the Applicant has sought to obtain good value in respect of the cleaning and insurance and the management fee is modest in the circumstances. Notwithstanding that the Tribunal has not seen the invoices, and in the absence of representations and evidence from the Respondent, it considers the amounts claimed to be reasonable in amount and reasonably incurred.
13. Since 1<sup>st</sup> October 2007, by virtue of an amendment to the 1985 inserted by s.153 of the Commonhold and Leasehold Reform Act 2002, a tenant may legitimately withhold payment of a service charge where a demand for payment has not been made in the form required by s.21B. The form of such a demand is prescribed by regulation (the Service Charges (Summary of Rights and Obligations, and Transitional Provision)(England) Regulations 2007). No demand in the prescribed form has been made in respect of the service charges that are the subject of this Application, and accordingly the Tribunal concludes that at the present time (and unless and until such a demand is served on the Tenant), they are not formally payable. For this reason the Application must be dismissed. Furthermore, by virtue of s.21B(3) the Applicant is not entitled to recover any sums which may otherwise be recoverable under the lease relating to non-payment or late payment of service charge.
14. **For the reasons above, the Application is dismissed.**

Signed .....



15<sup>th</sup> March 2010