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Residential
Property
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Case reference: LON/00AZ/LSC/2009/0798

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

Property: 43 Lee Court, Lee High Road, SE13 5PE

Applicant: Brian Webb

Respondent: Grandpex Company Limited (represented by
Bude Nathan Iwanier, solicitors)

**Determination without an oral hearing in accordance with regulation 13
of the Leasehold Valuation Tribunals (Procedure) (England) Regulations
2003**

Tribunal: Margaret Wilson
Jenna Davies FRICS

Date of the tribunal's decision: 9 March 2010

1. This is an application under section 27A of the Landlord and Tenant Act 1985 ("the Act") by Brian Webb ("the tenant"), the leaseholder of Flat 43, Lee Court. Lee Court is a block of 48 flats of which Grandpex Company Limited is the landlord. The purpose of the application is to determine whether the tenant is liable to pay to the landlord a charge of £2000 in respect of the year 2008/2009.

2. Neither party has asked for an oral hearing and this determination is made on the basis of written representations alone and without an oral hearing in accordance with the procedure set out in regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003. Pre-determination directions were made on 13 January 2010 by which the respondent landlord was directed to serve on the tenant a statement of case, together with service charge accounts for the years 2003/2004 to 2008/2009, service charge demands issued to the tenant, and any other relevant documents. The landlord, though represented by solicitors, has not complied with the direction in any respect. The tenant has produced documents which suggest that the landlord's practice is, through its managing agent, to demand payments of £500 in April and October of each year as payments of service charges on account. The charges which are the subject of the application are set out in a statement dated 25 November 2009 from the managing agent of what are described as "outstanding arrears" of £2000.

3. The reddendum at page 3 of the tenant's lease requires him to pay:

such proportion of the total cost to the Lessor of the expenses outgoings services and matters mentioned in the First Schedule hereto or of otherwise fulfilling the obligations on the part of the Lessor hereinafter contained as the rateable value of the Flat bears to the total rateable values of all the flats in the Building the amount payable by the Lessee to be certified from time to time by the Lessor's surveyor whose decision shall be final and which sum shall be paid within 14 days next following the receipt by the Lessee of a Notice certifying the aforesaid amount

4. It is clear from the lease that the tenant is not obliged to pay service charges other than in accordance with the provisions set out in the previous paragraph. He cannot, therefore, be asked to pay service charges in advance or to pay any sum towards service charges until 14 days of receipt of a certificate from the landlord's surveyor. Payments on account are not permitted by the lease and if, as appears to be the case, the sum demanded comprises only service charges demanded on account, not certified by the landlord's surveyor as the lease requires, it is not payable.

5. It is clear from the correspondence that the landlord does not dispute that payments cannot properly be demanded in advance. The tenant has included correspondence passing between him and the managing agent which show that the managing agent has regularly demanded service charges in advance, on threats of legal action, notwithstanding that the managing agent had acknowledged in a letter dated 28 September 2004 that the landlord could not insist on payments in advance but required such payments to be made by leaseholders because *without payments on account recovered from lessees, service account expenditure would have to be underwritten by the freeholder. We are not permitted to do this and will therefore continue to request payments on account.* In a further letter dated 9 April 2008 to the tenant on the same subject the managing agent wrote:

We apologise for any inconvenience caused relating to letters previously sent to you. We have amended our records to show that the payments on account which have been set up on your account are voluntary contributions, although you may still receive demands for payment as we cannot put a 'Stop' to this on the system. You shall not receive any further strongly worded letters.

5. The position taken by the landlord, through its managing agent, is in our view unacceptable. Despite the practical difficulty for the landlord of managing a building where all or some of the leases do not allow for the payment of service charges in advance, the leases govern the payment of service charges and it is inappropriate to demand service charges other than

in accordance with the lease. The managing agent must find a way to "put a Stop" on the system by which service charges are demanded otherwise than in accordance with the lease.

6. In these circumstances we are satisfied, on the evidence, that the tenant is not liable to pay the sum of £2000 which is the subject of the application.

7. The more difficult question is whether an order should be made under section 20C of the Act to prevent the landlord from placing any costs it has incurred in connection with the application on any service charge and whether an order should be made under paragraph 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 that the landlord reimburse the application fee of £200 which the tenant has paid. The directions made it plain that the tribunal would consider these questions. It could be argued that the application was unnecessary in the light of the managing agent's letter dated 9 April 2008 acknowledging that the payment of advance service charges is voluntary. On the other hand we consider it quite wrong that the agents have continued to demand such payments, and. We have come to the conclusion that this application was justified, and that if (which we doubt) the landlord has incurred any costs in connection with it they should not be placed on any service charge, and that the landlord should reimburse the application fee of £200 to the tenant.

CHAIRMAN.....

DATE: 8 March 2010