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LON/00AX/LSC/2006/0018

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATIONS UNDER SECTIONS 27A AND 20C OF THE LANDLORD
AND TENANT ACT 1985 (AS AMENDED)**

Applicant: Mr Korian Sarafian
Respondent: Mr E A V Thompson & Mrs D Thompson
Re: 3 Scariff Court, 39 Sycamore Grove, New Malden, Surrey,
KT3 3DH

Application received on 23 January 2006

Paper hearing date: 3 April 2006

Members of the Leasehold Valuation Tribunal:

**Mrs J S L Goulden JP
Mr L Jarero BSc FRICS
Mrs S S Friend MBE JP**

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PROPERTY: 3 SCARIFF COURT, 39 SYCAMORE GROVE, NEW MALDEN,
SURREY, KT3 3DH

BACKGROUND

1. The Tribunal was dealing with:

(a) an application under Section 27A of the Landlord and Tenant Act 1985, as amended (hereinafter referred to as "the Act") for a determination whether a service charge is payable and, if it is, as to:

- (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

(b) an application under Section 20C of the Act to limit landlord's costs in connection with proceedings before the Tribunal.

(c) an application for a determination of the Applicant's liability to pay an administration charge under Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

THE LEASE

2. The lease under which the Applicant holds 3 Scariff Court, 39 Sycamore Grove, New Malden, Surrey is dated 16 April 1981 and made between Addley Homes Ltd(1) and S J Hankins and L P King (2) for a term of 80 years from 12 November 1979 at the rents and on the terms and conditions therein mentioned.

HEARING

3. An oral hearing was arranged for 3 April 2006. The Applicant, Mr K Sarafian, did not appear, was not represented and had not paid the hearing fee.

4. The Respondents, Mr E A V Thompson and Mrs D Thompson were represented on 3 April 2006 by Mr C W Flight of Castle Wildish, managing agents.

5. On 3 April 2006, the Tribunal's Clerk telephoned the Applicant's representatives as shown in his application, namely White & Haywards 157 South Lane New Malden Surrey. They advised that they had not been instructed to attend a hearing on behalf of Mr Sarafian or pay the hearing fee, but they confirmed that all correspondence had been sent on to their client and they had spoken to him on the telephone. The Tribunal accepted that Mr Sarafian was aware of the hearing date.

6. Mr Flight and the Tribunal discussed the various options in order that the matter should progress and in view of the fact that the hearing fee had not been paid by the Applicant.

7. Mr Flight indicated that he wished the case to proceed by way of a paper hearing and a short adjournment was given to him so that he could prepare a list of clauses in the lease on which he wished to rely.

8. Mr Flight confirmed that he did not intend to place landlord's costs of proceedings on the service charge account and, on that assurance, no determination is required of the Tribunal under S20C of the Act.

9. The matters which required determination by the Tribunal related to the following issues:

- (a) **Section 158 Notices**
- (b) **Debt Collection Agency fees**
- (c) **Replacement locks**
- (d) **Application for reimbursement of application fees**

10. The salient parts of the evidence and the Tribunal's determinations are given below.

(a) **Section 158 Notices**

11. The Respondents wished to charge £50 in respect of each S158 Notice (ie £100 in total).

12. On 8 September 2005 the managing agents wrote and advised the Applicant that if arrears in respect of the communal timberwork were not received within 7 days, "*an administration charge will be applicable*".

13. On 25 October 2005, the managing agents wrote to the Applicant under S.158 of the Commonhold and Leasehold Reform Act 2002 (hereinafter referred to as "*the 2002 Act*") with a charge of £50 in respect of "administration charges as a result of late payment on account for replacement of communal timberwork".

14. On 26 October 2005 the managing agents wrote and advised the Applicant that if arrears in respect of the half yearly maintenance charge from 5 October 2005 to 4 April 2006 were not received within 7 days "*an administration charge will be applicable*".

15. On 9 November a further S158 Notice under the 2002 Act was served with a charge of £50.

16. S11 of the Commonhold and Leasehold Reform Act 2002 states:-

"(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly.

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals.

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant.

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.”

17. In the view of the Tribunal the S158 Notice is in respect of an administration Charge under the 2002 Act.

18. The landlords are entitled to impose an administration charge in this respect. The Landlords' covenants state, inter alia:-

“(1)(j) to do all such acts matters and things as may in the Landlord’s reasonable discretion be necessary or advisable for the proper maintenance or administration of the demised premises and of the Building including in particular (but without prejudice to the generality of the foregoing) the appointment of managing or other agents Surveyors Solicitors and Accountants and the payment of their proper fees in connection with the supervision and performance of the Landlord’s covenants contained in this Lease

(2) The Landlord shall be entitled to employ such persons as shall be reasonably necessary for the due performance of the covenants contained in sub-clause (1) hereof”

19. Mr Sarafian had been given adequate notice that he was to be served with S158 Notices if payments were not made by him. He had received details of Schedule 11 of the Act. The sum is considered reasonable.

20. Accordingly the Tribunal determines that the sum of £100 in respect of both Notices is due from the Applicant to the Respondent.

(b) **Debt collection agency fees**

21. The fees were in the sum of £146.88. In a letter dated 25 October 2005 to Mr Sarafian, the managing agents set out the sums outstanding from him which they said were still unpaid despite reminders dated 3 August 2005 and 8 September 2005. The last paragraph of this letter stated:-

"if outstanding monies are not received in full, within 7 working days, we will have no alternative but to instruct our Property Debt Collection Agency to recover monies due. They will levy a charge of £146.88 for debt collection costs, which will also be added to your account"

22. The relevant invoice was dated 30 January 2006 and stated as follows:

"In account with Mr K Sarafian

Re: 3 Scariff Court

To: Yearly Ground rent	£ 75.00
To: Half Year Service Charge for period 05.10.05 – 04.04.06	£615.27
To: Section 158 Notice dated 09.11.05	£ 50.00
To: Apportioned cost of replacement of Communal timberwork due 30.06.05	£1327.94
To: Section 158 Notice dated 25.10.05	£ 50.00
To: Debt Collection Costs	£ 146.88
Total Outstanding	£2265.09 "

23. In the view of the Tribunal, the sum of £146.88 is not an administration fee under the terms of the lease but possibly a service charge item under Clause (1) (j) and (2) referred to above, the cost of which would then be borne by all the tenants (including the Applicant). There appears to be no challenge as to reasonableness.

(c) **Replacement locks**

24. The invoice was in the sum of £498.20 and related to the changing of two communal locks after the police were called and considerable sub tenants of the Applicant's flat were evicted.

25. Mr Sarafian argued that there was no need to change the locks since he had the keys and in addition, the replacement locks were superior to those originally in site.

25. The locks were replaced as a direct result of the activities of Mr Sarafian's tenants and he is responsible therefor under Clauses 1 and 5 of the Second Schedule to the lease which state:-

"1. Not throughout the said term to use or occupy or permit to be used or occupied the demised premises otherwise than as a single private residence and not to do or permit or suffer to be done on the demised premises any act or thing which may be or become a nuisance or annoyance or inconvenience to the

Landlord or its tenants or the occupiers of the Building or the owners tenants or occupiers of any adjoining or neighbouring flats or premises.

5. No tenant shall use his premises or permit them to be used for any purpose or an illegal or immoral improper unpleasant noisy or noxious nature.”

26. In the view of the Tribunal, the Applicant has breached his lease terms.

27. Mr Sarafian also said that his agents' locksmiths considered replacement locks on a like for like basis would be no more than £250.00.

28. The Respondents' managing agents have accepted this sum and the Tribunal determines the sum of £250 is due from the Applicant to the Respondent.

(d) Application for reimbursement of application fees

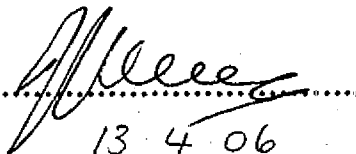
29. In accordance with paragraph 10 of Directions issued by the Leasehold Valuation Tribunal on 7 December 2005, the Tribunal considered whether to exercise its discretion under Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.

30. It is felt that to make an order to the Respondents to reimburse any part of the Hearing fees would be punitive, particularly since the Applicant has been largely unsuccessful.

31. The Tribunal does not intend to exercise its discretion in this case and declines to make an Order for reimbursement by the Respondents to the Applicant of the application fee or any part thereof.

32. The Tribunal's determination is binding on the parties and can be enforced through the county courts if sums determined as payable remain unpaid.

CHAIRMAN



DATE

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