

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL FOR THE SOUTHERN RENT  
ASSESSMENT PANEL**

**Case Number CHI/43UH/LSC/2007/0008**

**Landlord and Tenant Act 1985 (as amended) section 27A ("the Act")**

**In the matter of 59 Avondale Avenue, Staines, Middlesex, TW18 2NG**

**Parties:**

<b>Mr and Mrs E O'Neill Represented by Rowberry Morris</b>	<b>Applicants</b>
<b>Adam Choice Limited</b>	<b>Respondents</b>

**Tribunal members:**

**Mrs H C Bowers MRICS Chair  
Mr R Athow FRICS MIRPM  
Ms J Morris**

**Decision date:** 29<sup>th</sup> May 2007

## **Background**

1. By an application dated 2<sup>nd</sup> February 2007 Mr and Mrs O'Neill applied to the Tribunal for determination of several issues relating to service charges in respect of 59 Avondale Avenue, Staines. A determination was sought for service charges for the years 2000 to 2007. An oral pre-trial review was held on 9<sup>th</sup> March 2007 at which Mr and Mrs O'Neill were represented by Mr Hughes of Messrs Rowberry Morris, Solicitors. The Respondent, Adam Choice Limited did not attend the pre-trial review. The following matters were identified as being in dispute:

Debt accumulated to 2000	£200
Administration Charge	£300
Insurance 2000 – 2005	£1,134.06
Insurance 2004/5 and 2005/6	£434.72
Management Charge	£150

2. Following the pre-trial review directions were issued, setting out a timetable for the exchange of case and requesting that all supporting documentation that was to be relied upon should be served on the other party.

## **Inspection**

3. The Tribunal inspected the property on 27<sup>th</sup> April 2007. The subject flat is a ground floor flat situated in a purpose built terrace of flats. The property would appear to date from the 1930's and is of brick with pebbledash construction under a tiled roof. The accommodation comprises a living room, double bedroom, kitchen and bathroom. The flat is quite basic, but benefits from central heating. There is no off-street parking, but there are small gardens to the front and rear of the property.

## **Lease**

4. The lease for the subject property is dated 14<sup>th</sup> May 1981 and the original parties are John Neils Eismark, Bruno Raphael Myring Eismark, Alfred Sandel Stephen Eismark and Suzanne Ruth Julie Miller as the Lessors and Paul Rice and Janet Elizabeth Rice as the Lessees. The lease is for a term of 99 years from 24<sup>th</sup> June 1976 at a fixed rent of £15 per annum, that is payable by equal half yearly installments on 24<sup>th</sup> June and 25<sup>th</sup> December each year.
  
5. The Lessees' covenants under the lease are contained in clause 3 and include the following matters:
  - i) Clause 3(6) of the lease states "Forthwith on demand to pay to the Lessors one half of the costs and expenses incurred by the Lessors in connection with the carrying out by them of their obligations contained in clause 5(3) hereof (the other half being contributed by the lessee of the Upper Maisonette".
  
  - ii) Clause 3(7) of the lease states "Forthwith on demand to pay to the Lessors one half of the sum or sums which the Lessors shall from time to time pay by way of premiums (including any increased premiums payable by reason of any act or omission of the Lessees) for having the buildings comprising the maisonette and the Upper Maisonette insured against loss or damage by fire and such other risks as the Lessors may at their discretion insure against under the Lessors' covenant in that behalf hereinafter contained".
  
  - iii) Clause 3(18) of the lease states "To pay all expenses (including solicitor costs and surveyors fees) incurred by the Lessors incidental to the preparation and service of a notice under Section 146 of the law of Property Act 1925 notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court".

6. The Lessor's obligations under the lease are contained in Clause 5 and include:

i) Clause 5(2) states "To insure and keep insured the buildings comprising the upper and lower maisonettes and other maisonettes against fire and such other risks as the Lessors shall determine in a reputable insurance office to the full value thereof and to make all payments necessary in respect thereof and to produce to the Lessees on demand the policy of insurance and the then current premium receipt ....."

ii) Clause 5(3) states "To keep in tenantable repair the exterior parts of the building comprising the Maisonette and the Upper Maisonette and all additions thereof (except the aeriels referred to in the Schedule hereto) and the drains roof foundations walls and fences thereof and to paint such exterior parts as and when in the opinion of the Lessors the same ought from time to time to be painted SUBJECT to payment by the Lessees as hereinbefore provided".

### **Hearing**

7. A hearing was held on Friday 27<sup>th</sup> April 2007, in Ashford. Mr and Mrs O'Neill, the Applicants, attended the hearing and were represented by Mr Hughes of Messrs Rowberry Morris, Solicitors. Mr Choudrany attended the hearing on the behalf of the Respondent, Adam Choice Limited.

8. Accumulated Debt      £200

i) At the hearing it was identified that the first sum under dispute, a sum of £200 related to a debt up to the year 2000 and was a claim for outstanding ground rent. It was explained to the parties that the Tribunal had no jurisdiction to consider this matter.

9. Administration Charge    £300

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9. Administration Charge    £300

11. Management Charge £150

i) At the hearing Mr Choudrary stated that he was prepared to concede the sum of £150 for the management charge. Mr Hughes acknowledged this concession, but still sought a determination from the Tribunal on this amount.

**Costs and Fees**

12. The Applicants made an application under Section 20(C) of the Act that any costs incurred by the landlord in respect of bringing this matter to the Tribunal, should not be included on the service charge accounts. Mr Hughes stated that it had been necessary to bring this application to the Tribunal in order to resolve what sums were payable by the lessees. There had been no co-operation from the Respondent and his past behaviour had been demonstrated by the copied correspondence from 1996 onwards.

13. Mr Choudrary stated that he would leave it up to the Tribunal to decide on the question of the Section 20(C) application. However he stated that the behaviour of the Applicants should be noted and the fact that they had never made any offer should be taken into consideration.

14. Mr Hughes made an application under paragraphs 9 (Fees) and 10 (Costs) of Schedule 12 of the Commonhold and Leasehold Reform Act 2002. These applications were made on the basis that the Respondent had not acted reasonably and had been vexatious and that had necessitated the application to the Tribunal. We were also asked to note that the Respondent had not complied with the issued directions.

15. Mr Choudrary also made an application under paragraph 10 (Costs) of Schedule 12 of the Commonhold and Leasehold Reform Act 2002. It was his opinion that it was the behaviour of the solicitors that had resulted in

this matter being brought to the Tribunal. There had been mistakes made, as documentation had been sent to the incorrect address.

### **Decision**

#### 16. Accumulated Debt £200

i) As expressed at the hearing, the Tribunal has no jurisdiction to deal with the issue of the ground rent. However, the Tribunal noted that under the terms of the lease the ground rent was fixed at £15 per annum.

#### 17. Administration Charge £300

i) We agree with Mr Hughes that there does not appear to be any provision in the lease for the recovery of administration charges per se. Therefore conclude that the element that Mr Choudrany ascribes to the general administration of the property is not recoverable. Turning to the second element relating to the Section 146 Notice, it was acknowledged that this notice was invalid. It would seem unreasonable for a landlord to serve such a notice on any occasion and be able to recover the cost of doing so from the lessee. In these circumstances we consider that it would be unreasonable for the Respondent to recover these costs from the Applicant.

**We determine that the sum of £nil.**

#### 18. Insurance 2000– 5, £1,134.06; Insurance 2004/5 and 2005/6, £434.72

i) The documentation provided by Mr Choudrany was very poor. We were only supplied with the insurance policy for the period 1<sup>st</sup> March 2007 to 8<sup>th</sup> August 2007. All the other documents either related to insurance quotations or block policies that did not appear to include the subject property. We were not provided with any demands for the insurance premium that should have been sent to the Lessee. We agree with Mr Hughes that the effect of Section 20(B) of the Act prevents any

expenditure that was incurred 18 months prior to a demand from the Lessee, from being recovered from the Lessee.

ii) As we have no evidence of any demands being made of the Lessee in respect of the insurance and as there only appeared to be one insurance policy that was valid and this was for a period outside the scope of this application (1<sup>st</sup> March 2007 to 8<sup>th</sup> August 2007), then we determine the insurance premiums being sought by the Respondents are not recoverable from the Applicants.

**We determine that the sum of £nil.**

#### 19. Management Charge £150

i) Although this issue was conceded by the Respondent, for the sake of clarity the Tribunal determines that this sum should not be recoverable from the Applicants.

**We determine that the sum of £nil.**

#### **Costs and Fees**

20. In this case the Applicants have been totally successful in the issues that they raised before the Tribunal and that the Tribunal had jurisdiction to consider. It would appear to the Tribunal that although there had been some discussion between the parties prior to the application, this matter would not have been resolved without a hearing of the various issues. Accordingly we determine pursuant to section 20C of the Landlord and Tenant Act 1985 that none of the costs incurred by the landlord in connection with these proceedings are to be considered as relevant costs to be taken into account determining the amount of any service charge payable by the lessees of 59 Avondale Avenue, Staines.



21. As we consider that the Applicants' only means to resolve this issue was to apply to the Tribunal for a determination, we order that the Respondent should pay to the Applicant the application fee that was incurred in respect of this matter.

22. Although this has been a frustrating experience for both parties, we do not believe that either party has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with these proceedings and therefore we do not award any costs against any party to this matter.



Chairman  
Helen C Bowers

Date 29/5/07