**LON/00AJ/LBC/2006/0062**
**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTIONS 27A OF THE LANDLORD AND TENANT ACT 1985, COMMONHOLD & LEASHOLD REFORM ACT 2002-SECTION 168 (4)**

| | |
|---|---|
| Address | Flat 27 Mount View, Mount Avenue, London W5 1PR |
| Applicant | Mountview (Ealing) Limited |
| Respondent | Mr Mohammad Nasser Jannati |
| Hearing date | 18th January 2007 |

| | | |
|---|---|---|
| Appearances | Mr J Winfield<br>Professor Peters<br>Mr R Hornung<br>Mr Beale | For the Applicant |
| | No appearances | For the Respondents |

| | |
|---|---|
| The Tribunal | Mrs S O'Sullivan Chairman<br>Mr R Potter FRICS<br>Mr D Wilson JP |

**IN THE LEASEHOLD VALUATION TRIBUNAL**

**LON/00AJ/LBC/2006/0062**

**AND IN THE MATTER OF FLAT 27 MOUNT VIEW, MOUNT AVENUE, LONDON W5 1PR**

**BETWEEN**

**MOUNTVIEW (EALING) LIMITED**

**Applicant**

**-and-**

**MOHAMMAD NASSER JANNATI**

**Respondent**

## THE TRIBUNAL'S DECISION

**Hearing:** **18 January 2007**

**Tribunal:** **Mrs S O'Sullivan Solicitor**
**Mr R Potter FRICS**
**Mr David Wilson JP**

## Background

1. The Respondent is the lessee of Flat 27 Mount View, Mount Avenue London W5 1PR (the "Property") further to a lease made between Mountview (Ealing) Limited (1) and Stanley Wood Frankson and Marie Louise Frankson (2) dated 7 March 2002 (the "Lease"). The Property is situate in a block of 32 flats known as Mount View, Mount Avenue, Ealing, London W5 1PR (the "Block").

2. The Application dated 15 September 2006 sought a determination that breaches of covenant in the Lease have occurred under section 168 (4) of the Commonhold and Leasehold Reform Act 2002 ("CLRA"). Under s.27A of the Landlord and Tenant Act 1985 (as amended) (the "Act") the Applicant also sought a determination of the Respondent's liability to pay service charge for the years ending 31 December 2004, 2005 and 2006.

3. A pre-trial review was held on 11 October 2006 and directions made. In accordance with those directions a statement of case was served by the Applicant and a bundle of documents prepared for use at the hearing ("AB"). All references to page numbers in this decision are references to pages contained within that bundle.

4. The Respondent has not served any response to the Applicant's statement of case nor has he lodged a bundle as provided for by the directions dated 11 October 2006. At the pre trial review the Respondent informed the Chairman that he did not dispute the reasonableness nor his liability to pay the service charges for any of the years in question. He confirmed that he was in the process of selling the Property and offered to pay the total sum claimed of £10,1112.63 on completion of the sale, which he anticipated would take place within 6 weeks of the directions. The Applicant agreed to this proposal.

## Hearing

5. The hearing in this matter took place on 18 January 2007. The Applicant was represented by Mr J Winfield of Counsel. Professor Peters (Chairman of the Applicant) and Mr R Hornung (Secretary of the Applicant) also attended the hearing together with Mr Beale, trainee solicitor in the employ of Elliots, Bond and Banbury, solicitors acting on behalf of the Applicant together with Miss O'Meara on work experience.

6. The Respondent did not attend the hearing. Shortly before the hearing commenced the Tribunal received a telephone call from someone calling on behalf of the Respondent who informed the Tribunal that the Respondent was in hospital with heart problems and was therefore unable to attend the hearing. The caller did not identify herself or provide any details of the Respondent's medical condition or the hospital to which he had been admitted. No application was made for an adjournment on the Respondent's behalf and accordingly the Tribunal proceeded to hear the application.

7. The Tribunal heard from Mr Winfield that no payment had been received from the Applicant since the pre trial review as promised and that the Applicant had received no communication from him at all. The Applicant had no further information regarding the progress of the Respondent's sale of the Property to which he had referred at the pre trial review. However the Tribunal also heard that the Property remained advertised for sale with a local estate agent.

**The Service Charge**

8. The Tribunal was referred to the lease documentation relevant to the Property. Mr Winfield confirmed that the Respondent held the Property pursuant to the Lease. The Lease was assigned to the Respondent in or around June 2004 but the Applicant did not become aware of this assignment until February 2005. The Tribunal heard that the relevant clause within the Lease was at clause 6 on page 166 of AB which provides that;

***"This lease is made on the same terms and subject to the same covenants, conditions, and provisions in all respects as those contained in the Old Lease save as modified herein and shall be read and construed as though those covenants conditions and provisions were set forth verbatim in the Lease with such modifications only as are necessary to make them applicable to the demise created by the Old Lease."***

9. The Tribunal was the referred to a lease dated 11 May 1983 and made between Swallow Securities Limited (1) and Stanley Wood Frankson & Marie Louise Frankson (2) (the "Old Lease") which Mr Winfield submitted contained the operative provisions in relation to the service charge. Pursuant to clause 4 (4) at page 172 the Respondent covenanted to ..."***pay the Interim***

***Charge and the Service Charge at the times and in the manner provided in the Fifth Schedule hereto both such Charges to be recoverable in default as rent in arrear".*** Pursuant to clause 4(7) at page 172 of AB the Respondent covenanted to pay interest on the rent or any other monies due under the lease in the event of the tenant failing to pay rent or other monies within 21 days of the due date. The Fifth Schedule at page 184 of AB sets out the mechanics of the service charge. The Tribunal noted that at paragraph 7 of the Particulars of the Old Lease on page 168 of AB the Respondent's share of total expenditure is stated as 3.63% per annum whereas on the annual certificates contained within the bundle the Respondent's share of expenditure is shown to be 3.59%. The Tribunal heard from Mr Hornung that two basement flats at the Block which had formerly been used to house staff had been sold some time ago and the new rate of 3.59% of the total expenditure had been applied from that date as the basement flats now shared in the expenditure. The Tribunal heard that this new rate had been applied for over 30 years and the Respondent had never objected to it and further the rate was lower than that stipulated in the Old Lease. Accordingly the Tribunal was satisfied that no point should be taken in relation to the rate applied.

10. The Tribunal was assured that no other leaseholders had made any challenge to the service charges for the years in issue of 2004, 2005 and 2006.

11. The Tribunal was provided with copies of the service charge demands but were not provided with copies of the original invoices in respect of 2004 and 2005. However it was confirmed by Mr Winfield that these invoices had been sent to the Respondent at the Property and the Tribunal noted that all outstanding invoices for the years in question were subsequently sent to the Respondent at both the Property and his alternative address provided under cover of a letter dated 28 July 2006 at page 123a of AB.

12. The Tribunal was satisfied that the provisions of the Old Lease and the Lease entitle the Applicant to demand the service charge and that demands had been sent to the Respondent. As the reasonableness of the service charge was not disputed by the Respondent the Tribunal did not go on to consider the reasonableness of the sums charged and allowed the total sum claimed in the application and set out in the Applicant's statement of case at page 5 of AB in the sum of £10,112.63.

13. At the hearing the Applicant also asked the Tribunal to give judgment for the further service charge which had fallen due on 1 January 2007. The

Tribunal was not provided with a copy of the demand in relation to this further amount and was concerned that the Respondent had not had sufficient time to make a challenge to this charge. Accordingly the Tribunal did not allow the further sum falling due on 1 January 2007 although it would note that in the absence of any subsequent challenge being made as to the reasonableness of this amount it would have been minded to give further judgment in this sum.

14. At the hearing the Applicant also produced a schedule of interest which it sought on the outstanding service charges due. The Tribunal has already noted that Applicant's entitlement to interest on monies due under pursuant to clause 4(7) (see paragraph 9 above). The Tribunal finds that interest can be properly claimed on the amounts due.

**Breach of covenant – unlawful subletting**

15. The Tribunal was referred to the relevant provisions in the Old Lease. Clause 3 (7)(a) contains an absolute prohibition on parting with possession of part of the Property. Clause 3 (7)(b) prohibits the assignment subletting or parting with possession of the Property without the execution of a Deed of Covenant. It was alleged that the Respondent remains in breach of both clauses.

16. In support of the Applicant's assertion that the Respondent had parted with possession of part of the Property Mr Winfield referred the Tribunal to the witness statement of Caroline Fry at pages 160-162 of AB. In Miss Fry's statement evidence was given of conversations which had taken place between Miss Fry and an alleged Polish tenant at the Property who had resided at the Property with upto 12 tenants between September 2005 and the summer of 2006. Miss Fry did not attend the hearing and the Tribunal was therefore unable to ask her any supplemental questions. This was the only evidence offered in support of the case on illegal subletting contained within the Applicant's bundle although oral evidence was also given by Mr Hornung at the hearing of occasions upon which he had knocked on the door to the Property and attempted to obtain information from people who appeared to be living in the Property.

17. Mr Winfield submitted that it was difficult to prove a case of illegal subletting and that the Applicant had not wanted to expend funds on obtaining what it called incontrovertible evidence. Mr Winfield

acknowledged that the position had now changed in any event as the Property was now occupied by persons who may well be part of the Respondent's family.

18. On the evidence before the Tribunal it was not satisfied that a prima facie case of an illegal subletting had been proved as the evidence provided had been limited and Miss Fry had not been present to answer the Tribunal's questions. Accordingly the Tribunal did not make a declaration that a breach of either clause 3(7)(a) or 3(7)(b) had occurred under section 168(4) of CLRA.

**Inspection**

19. Counsel for the Applicant submitted that an inspection of the Property would not assist the Tribunal as the position had changed in relation to the alleged illegal subletting as set out above and also that an inspection would add nothing to the Applicant's claim in relation to the service charges. The Tribunal agreed with these submissions and did not find it necessary to inspect the Property.

**Costs**

20. The Tribunal received no application pursuant to section 20(C) of the Act and accordingly no order was made pursuant to section 20(C). However the Tribunal noted that clause 5(5)(s)(vi) of the Old Lease provides that the cost of fees and disbursements charged by any solicitor involved in recovering arrears of rent and/or service charge may be included in calculating the sum charged as total expenditure pursuant to the provisions contained in the Old Lease.

CHAIRMAN

**DATE** 8 February **2007**