

LON/OOBK/LSC/2006/0355

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 SECTION 27A(1)  
COMMONHOLD AND LEASEHOLD REFORM ACT 2002 – SECTION 168(4)

ADDRESS OF PREMISES: 173A LANARK ROAD  
LONDON  
W9 1NX

LANDLORD (APPLICANT): LANRES LIMITED

TENANT (RESPONDENT): MR. WILSON WEI

COMMITTEE: Ms. F. Dickie  
Mr. Colin White Frics  
Mr. Eric Goss

**Preliminary**

1. The Applicant Lanres Ltd. is the freeholder of 171-189 Lanark Road, London W9 1NX, of which the premises are a part. The Respondent is the current leaseholder of 173A Lanark Road. By applications received on 5<sup>th</sup> October 2006 Lanres Ltd. applied to the Leasehold Valuation Tribunal:
  1. Under s.27A of the Landlord and Tenant Act 1985 ("The 1985 Act") for a determination of the Tenant's liability to pay service charges.
  2. Under s.168(4) of the Commonhold and Leasehold Reform Act 2002 ("The 2002 Act") for a determination that breaches of covenants in the Lease have occurred.

Directions were made by the Tribunal on 15<sup>th</sup> November 2006 at an oral pre trial review, at which the Landlord was represented by Mr. Andrew Cordon of Compleat Property Management. The Tenant was not represented. No acknowledgement of the applications has been received by the Tribunal from the Tenant. Neither party requested an oral hearing of these applications, which the Tribunal has consequently considered on the papers.

**APPLICATION UNDER S.27A LANDLORD AND TENANT ACT 1985**

**Issues**

2. The service charges at issue are for the following years:
  - 25<sup>th</sup> December 2004 – 24<sup>th</sup> December 2005
  - 25<sup>th</sup> December 2005 – 24<sup>th</sup> December 2006

### **The Lease**

3. The Lease is for a term of 125 years from 29<sup>th</sup> September 1982 between (1) R P Taylor Ltd and (2) Robert Arthur and Patricia Anne Tugwell and (3) The Lord Mayor and the Citizens of the City of Westminster. The Lease provides for payment of service charges payable in accordance with the Fourth Schedule. The effect of Paragraph 1(i) and (ii) of that Schedule is to provide that the service charge is 1/35<sup>th</sup> part of the expenditure of the Landlord in complying with his obligations set out in the Sixth Schedule.
4. The Sixth Schedule sets out the Landlord's obligations subject to reimbursement, and includes:
  - 10 *In the management of the Building and the performance of the obligations of the Landlord hereunder to employ or retain the services of any employee agent consultant contractor engineer and professional adviser that the Landlord may reasonably require and in default of the employment of a third party to carry out such obligations the Landlord shall be entitled to add 15% to the cost of performing its obligations.*

### **The Facts**

5. The Landlord has stated that the Tenant has not made payment of service charges since 23<sup>rd</sup> December 2004 and has not responded to any communication. The Landlord's evidence is that as of that date the Tenant's account had been £240 in credit. The Tenant has been served with this Application and the Directions made in relation to it, but the Tribunal has received no communication from him. No dispute as to the service charges claimed has therefore been raised.
6. The Landlord has provided a copy of its financial statements for the years in question, its service charge budget for the year 25<sup>th</sup> December 2004 to 24<sup>th</sup> December 2005 totalling £33,600 and its estimated service charge budget for the year 25<sup>th</sup> December 2005 to 24<sup>th</sup> December 2006, also totalling £33,600. The budgets include provisions for management and secretarial fees, and for reserves. The Landlord has explained that the building has been found to contain asbestos and the reserve is attributable to the estimated costs of work by a licensed asbestos removal company.
7. The Service Charge Statement for 25<sup>th</sup> December 2004 to 24<sup>th</sup> December 2005 to the Tenant includes £150 in "administration charges" relating to non-payment of service charge invoices and failure to repair the leaking overflow. The Landlord also produces an invoice for solicitor's costs of £300 plus VAT, which it seeks to charge to the Tenant. Furthermore, the Landlord seeks costs of £117.50 for attending the pre-trial review, of £145.95 for the preparation of its evidence.

### **Decision**

8. No dispute has been raised as to the reasonableness of the service charges claimed. Having considered the available evidence the Tribunal

finds that service charges for the year 2004 – 2005 of £960 (being 1/35<sup>th</sup> of £33600) are reasonable and payable. Part payment of £240 having been made, the balance of £720 remains outstanding. The Tribunal similarly finds that service charges for the year 2005 – 2006 of £960 are reasonable and payable.

9. The Landlord seeks to recover the whole of the solicitor's fees and so called "administration charges" from this Tenant, i.e. not by way of service charges (in respect of which the Tenant's liability is to pay on 1/35<sup>th</sup>). Clause 2(7) of the Lease provides for a covenant by the Tenant to pay all costs (including Solicitor's costs and Surveyor's fees) relating to service of a notice under section 146 of the Law of Property Act 1925, but sums which may be recoverable under this Clause do not fall within the Tribunal's service charge jurisdiction under section 27A of the 1985 Act. In any event, the Landlord may under the Sixth Schedule charge for professional fees in the alternative to management fees as a percentage of the service charges. Having charged a management charge the solicitor's fees are not recoverable under that Schedule.
10. A Leasehold Valuation Tribunal may by virtue of Paragraph 10 to Schedule 12 of the 2002 Act determine that a party to proceedings shall pay the other party's costs in the proceedings (to a limit of £500) where in the opinion of the Tribunal he has acted "frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings". Knowing little of the Tenant's current personal circumstances, the Tribunal is not so satisfied in this case, and makes no such determination as to the Tenant's liability to pay the Landlord's costs in the proceedings.
11. **The Tribunal therefore determines the total amount recoverable under this Application is £720 + £960 = £1680.**

## **APPLICATION UNDER S.168(4) COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

### **The Law**

12. Section 168 of the 2002 Act provides:

(1) *A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of property Act 1925 (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.*

(2) *This subsection is satisfied if –*

(a) *it has been finally determined on an application under subsection (4) that the breach has occurred*

.....

(4) *A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.*

## **The Lease**

13. The Tenant covenants in Clause 3 of the Lease:

- (1) *To keep the whole of the Flat in good repair (damage by any insured risks excepted unless and to the extent that any act or omission of the Tenant renders the insurance money irrecoverable).*
- (2) (a) *To permit the Landlord and any tenant of any other flat in the Building and any person respectively authorised by any such person to enter the Flat upon reasonable notice (except in emergency) to inspect the state of repair thereof and of adjoining and neighbouring property.*  
  
(b) *To permit the Landlord and any tenant of any other part of the Building to enter the Flat upon reasonable notice (except in emergency) with or without workmen to carry out any necessary repair or other work to any part of the Building or the Block for which it is responsible the person exercising such right forthwith to make good at his own expense any damage to the Flat thereby occasioned.*

## **Facts**

14. The Landlord has produced correspondence dated 21<sup>st</sup> March 2005 and 9<sup>th</sup> September 2005 to the Tenant regarding the leaking overflow. In a letter dated 5<sup>th</sup> December 2005 from the Landlord's solicitors the Tenant was asked to allow access to the flat in order to inspect the source of the problem, and telephone within 7 days to suggest a suitable appointment.
15. At the pre-trial review Mr. Conden said that despite numerous attempts the Landlord had been unable to communicate with the Respondent. He understood that there may be health issues but this was only hearsay. The Landlord knows of no other address for the Tenant.
16. The Landlord has identified that the overflow that serves this property has been leaking constantly for approaching 2 years, the wall is stained and the ground saturated. The Landlord considers the likely cause is a failed ball valve. The Landlord's case is that this leak is causing damage to the structure and wants the repair to be carried out and the water damage to the structure treated and cleaned (at the Tenant's expense).

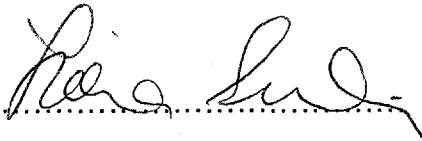
## **Decision**

17. The issues for the Tribunal are (1) whether the Lease does include the covenants / conditions and (2) whether the facts constitute a breach. The Tribunal did not consider an inspection appropriate, because of the Tenant's lack of communication.

18. As no inspection of the premises has been permitted by the Tenant, the exact cause of the overflow leak has not been ascertained. On the uncontested evidence of the Landlord, the Tribunal is satisfied there is a continued overflow from the overflow pipe, and in the absence of evidence from the Tenant as to the cause finds on the balance of probabilities the Tribunal is satisfied that a defect within the Tenant's repairing obligations is responsible for the overflow leak. Consequently, the Tribunal finds that the Tenant is in breach of Clause 3(1). Furthermore, the Tribunal finds that the Tenant is in breach of Clause 3(2)(a) by virtue of his failure to permit inspection of the premises as requested by the Landlord's solicitors in their letter of 5<sup>th</sup> December 2005.

**THE TENANT IS STRONGLY ADVISED TO TAKE LEGAL ADVICE ON THE EFFECT OF THIS DECISION.**

Signed .....



Dated 10<sup>th</sup> May 2007

Fiona Dickie  
Chairman