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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985, section 27A

LON/00BA/LSC/2007/0487

Premises: **Flat B, 308 Haydons Road, London SW19 8JZ**

Applicant: **Alban Thurston**

Respondents: **Alexander Strom and Harold Weisenfeld**

Determination without a hearing in accordance with the procedure set out in regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003

Tribunal: **Lady Wilson**
Mr P Tobin FRICS MCIArb

Date of the tribunal's decision: 5 February 2008

1. This is an application under section 27A of the Landlord and Tenant Act 1985 "the Act" by Alban Thurston, the leaseholder of Flat B, 308 Haydons Road London SW19, who will be called "the tenant" in this decision. The respondents to the application are Alexander Strom and Harold Weisenfeld ("the landlords") who jointly own the freehold.

2. The determination is made without a hearing according to the procedure set out in regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003, the parties having consented to such disposal and lodged written statements in accordance with the tribunal's directions.

3. 308 Haydons Road comprises four flats, with shop premises on the ground floor. The tenant's complaint is that in November 2006 the landlords demanded of him, but not of the leaseholders of the other flats or of the shop premises, a sum of £174.65 by way of a retrospective uplift of 15% on the management fees demanded and paid for the previous four years. The tenant maintains that such a charge cannot be justified under the lease and asks for an order that the sum, which he paid to avoid the risk of forfeiting his lease, should be reimbursed by the landlords, with interest, and for an order that no such selective demands should be made in the future. He makes a number of complaints about poor and aggressive, and, indeed, unscrupulous, management by the landlords over a number of years.

4. The landlords respond that paragraph 9 of the eighth schedule to the lease entitles them to employ a managing agent and that there is nothing in the lease which precludes them from using their own time, including Mr Weisenfeld's time as a chartered surveyor which they consider justifies a charge of £80 per hour, or staff, to manage the property, and that nothing in the lease prevents the landlords from charging retrospectively. They agree that they have not demanded similar payments from the other leaseholders, but they assert that the tenant is particularly difficult and time-consuming to deal with. They deny that the tenant is being victimised but say that an equivalent charge to the other tenants has been waived, a decision which they consider to be reasonable in the circumstances..

5. In his reply to the landlord's statement the tenant says that he does not dispute the landlords' right under the lease to employ and charge for the services of a managing agent, which he would welcome, but that the landlord has not done so, but has unilaterally and discriminatorily imposed retrospective charges of him, which cannot be justified.

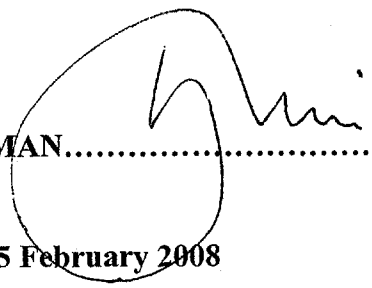
6. We do not consider that these charges are justified and recoverable under the tenant's lease. Clearly they cannot be justified as the charges of a managing agent, because it is not disputed that there is no managing agent. Paragraph 11 of the eighth schedule to the lease does entitle the landlords to charge to the service charge "*All legal and proper costs incurred by [the landlords] (a) in the running and management of The Property ...* " but we see no warrant in Part 1 of the fifth schedule for retrospective charges. Paragraph 2 of Part 1 of the fifth schedule provides that the maintenance charge which the tenant must pay is a proportion of the expenses which the landlords shall "reasonably and properly incur in each year". It requires that the amounts of such payments must be "certified by the landlords' managing agent or accountant as soon as conveniently possible after the expiry of each maintenance year (which corresponds to the calendar year)". There is no evidence that that has happened here.

7. Furthermore, section 20B(1) of the Act provides that "*if any of the relevant costs taken into account in determining the service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then, subject to subsection 2* [which is not relevant] *the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred*". The pre-hearing directions required the landlords to submit any documents on which they rely, and we would have expected that any previous demands for payment would have been included in the documents which they submitted. Indeed, it is clear from the evidence that these charges were made retrospectively because the landlords had lost patience with the tenant.

8. Accordingly we determine that the sum of £174.65 was not payable by the tenant. We do not have jurisdiction under section 27A or at all to order

restitution, which would, if refused, be a matter for the county court, nor do we have jurisdiction to make an order preventing recurrence of such demands, although we would hope that, in the light of our decision, they would not be made again . Nor do we have jurisdiction to award interest.

9. The tenant has asked for reimbursement of the fee of £50 paid to the tribunal in respect of the application. In view of our finding and in the exercise of our discretion, and bearing in mind that, as a surveyor, Mr Weisenfeld should have been expected to know that retrospective demands for service charges cannot normally be made, we make that order under regulation 9(1) of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.



CHAIRMAN.....

DATE: 5 February 2008