

## Leasehold Valuation Tribunal: reasons

### Landlord and Tenant Act 1985 section 27A

**Address of Premises**

Flat 2 Victoria House,  
Victoria Street,  
Harwich CO12 3AR

**The Committee members were**

Mr Adrian Jack  
Mr Stephen Moll FRICS  
Mr David S Reeve MVO

**The Landlord:**       **Waterglen Ltd**

**The Tenants:**       **David Anthony Osborn and Amanda Jane Osborn**

#### Procedural

1. By a claim form issued on 17<sup>th</sup> September 2009 in the Colchester County Court under action number 9CO02492 the landlord sought recovery of £1,943.50 plus interest and costs against the tenants. The sums were said to be due in respect of the property pursuant to a lease dated 29<sup>th</sup> June 1988. A print-out showing how the £1,943.50 figure was calculated was submitted with the Particulars of Claim.
2. The tenants served a defence to the claim and by order of 7<sup>th</sup> June 2010 District Judge Mitchell transferred the matter from the Colchester County Court to this Tribunal.
3. The Tribunal gave directions on 11<sup>th</sup> August 2010. These were substantially ignored by the landlord, who failed to prepare a paginated bundle in accordance with the directions.
4. The Tribunal inspected the property on the morning of 8<sup>th</sup> October 2010 in the presence of Mr Rann of Countrywide, the landlord's current managing agents, and Mr Osborn. Since there were no matters which either the landlord or the tenant wished to draw to our attention, the inspection was brief.
5. The Tribunal subsequently held a hearing at the Tower Hotel in Dovercourt. Mr Rann appeared on behalf of the landlord and Mr Osborn appeared on his own behalf and on behalf of his wife.

#### The law

6. The Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 by section 27A gives the Tribunal the power to determine the payability of service charges.
7. Sections 47 and 48 of the Landlord and Tenant Act 1987 provide that demands for payment of service charge must contain the landlord's address and an address for the

service of notices. In addition with effect from 1<sup>st</sup> October 2007 any demand must contain a summary of the tenant's rights and obligations: see Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007. In each case a failure to comply means that the sum demanded is irrecoverable until the relevant provision is complied.

8. Section 20B of the 1985 Act prevents the recovery of costs incurred more than 18 months before demand for payment is made.
9. The lease in this matter only permits an interim service charge of £100 on 25<sup>th</sup> March of each year. There is no provision for the payment of the landlord's legal and other fees, save in respect of a notice given under section 146 of the Law of Property Act 1925.

### **Our decision**

10. The Tribunal went through the various invoices which comprised the £1,943.50 in dispute. Mr Rann was unable to produce any invoices complying with sections 47 and 48 of the 1987 Act or (in respect of the post-1<sup>st</sup> October 2007 demands) the statement of tenant's rights and obligations.
11. After discussion with the Tribunal Mr Rann withdrew all items comprising £1,943.50 except the demand for service charge on account due on 25<sup>th</sup> March 2009 totalling £100.00.
12. The Tribunal notes the abandonment of £1,843.50 of the sum claimed. In respect of the balance of £100.00, Mr Rann was unable to produce an invoice complying with section 47 and 48, nor was he able to produce evidence of any summary of rights and obligations having been served. In these circumstances the Tribunal finds that the £100 remaining in dispute is not payable.
13. The Tribunal did not have to consider any further grounds of defence advanced by the tenants, since the concessions by Mr Rann and its determination in respect of the £100 suffice to determine the matter. Since the defects identified above were in principle remediable by the landlord, but the landlord failed to do so prior to the hearing before us, it may well be that any further attempt to recover these monies would be an abuse of process and liable to be struck out under the principle in *Henderson v Henderson* (1843) 3 Hare 100. That, however, will be a matter for the Court or Tribunal dealing with any future application.

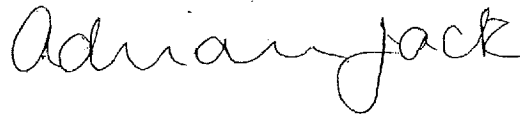
### **Costs**

14. In relation to the fees payable to the Tribunal, comprising £15 application fee (after giving credit for the County Court issue fee) and £150 hearing fee, both paid by the landlord, the Tribunal has a discretion. Since the landlord has lost comprehensively, the Tribunal considers that the landlord should bear these costs. There were no other applications for costs, so the Tribunal makes no order for costs.

## DECISION

The Tribunal accordingly determines:

- a. that none of the sums claimed by the landlord in the current action are recoverable from the tenants or either of them;
- b. that there should be no order in respect of the costs in the Tribunal;
- c. that the matter be transferred back to the County Court.

A handwritten signature in cursive script that reads "Adrian Jack".

Adrian Jack, chairman

13<sup>th</sup> October 2010