RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

Case No: CHI/00LC/LSC/2009/0073

Landlord and Tenant Act 1985 sections 27A and 20C

Re: 72A Luton Road, Chatham, Kent, ME4 5AB

Applicant: Amir Laghaei
Respondent: Thain West Limited

Tribunal:
Mr D. R. Hebblethwaite BA (Chairman)
Mr C. C. Harbridge FRICS
Mr T. J. Wakelin

DECISION

1. Reference is made to the document issued by this Tribunal under the heading Note and Directions dated 25 September 2009. The contents of that document will not be repeated in this Decision. Pursuant to para. 5 of that document the Applicant wrote to the Tribunal on 10 December 2009 asking for the application to be restored. He enclosed a copy of an Order of Medway County Court dated 1 December 2009 whereby (inter alia) he was granted relief from forfeiture and possession of the property restored to him.

2. A Hearing was fixed for 24 February 2010 at Lords Wood Leisure Centre. The Applicant was represented by Mr Kerr of counsel and the Respondent by Mr Spalding. Before the Hearing an Inspection was able to take place, the Applicant now having the keys. It is not necessary to set out in any detail the condition of the property. It was bare; there was no floor laid to the rear; there were signs of damage; these matters are still ongoing in the proceedings before Medway County Court.

3. Some preliminary matters were dealt with. Mr Spalding stated that he was authorized to represent the Respondent, which the Tribunal accepted. He assured the Tribunal that the Respondent had not gone into liquidation and that he had not been declared bankrupt. He then sought to issue an application under section 168 of the Commonhold and Leasehold Reform Act 2002 for a determination that a breach of covenant or condition in the lease had occurred. The Tribunal refused to accept this application at the Hearing.

4. It then became apparent that the Respondent had accepted para. 4 (g) of the Note and Directions dated 25 September 2009 as a ruling of the Tribunal and he did not seek to submit further on the issue the subject of

that paragraph. For completeness that ruling will be repeated in this Decision. That left, from the Applicant's application, the sum of £240 for site clearance. Mr Spalding told the Tribunal that the Respondent accepted that this was not payable as no service charge demand had been served on the Applicant.

5. The Tribunal then considered the question of costs. There were two issues for the Tribunal to decide. First, the Applicant's application under section 20C of the Landlord and Tenant Act 1985, that all of the costs incurred by the landlord in connection with this application before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant; secondly, an application by the Applicant for the Respondent to be ordered to pay his costs pursuant to the provisions of para. 12 of Schedule 13 to the Housing Act 2004. In the latter case the Tribunal must be of the opinion that the Respondent acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably and there is a maximum award of £500. The submissions put forward on behalf of the parties covered both costs issues. The Applicant asserted that the Respondent had conceded most of the application; that it had made financial demands after re-entry that it was not entitled to make; that it had conceded unlawful re-entry after three hours in the County Court; that it had on two occasions before the Tribunal delivered documents "at the 11th hour" and that at the very least it had acted unreasonably. Mr Spalding submitted that the application had been ill-founded and premature as the Respondent's demands had not complied with the statute and he particularly criticized the Applicant for proceeding with the Hearing that day as the Tribunal had already decided on everything but the £240. Mr Spalding informed the Tribunal that the maximum figure the Respondent would add to the service charge in connection with this application would be £400. Mr Kerr informed the court that his brief fee was £750 plus VAT and the Applicant had paid the application fee of £350.

6. The Tribunal proceeded to its consideration but invited the parties to remain at the Hearing centre in case a decision could be reached quickly and the parties informed straightaway. That is exactly what happened, so what follows is confirmation of what the parties were told.

7. The Tribunal determined to confirm its decision regarding the amount of £9,000 and to find the sum of £240 for site clearance not payable (which the Respondent had conceded at the Hearing). Accordingly, **none of the amounts set out in the application is payable by the Applicant**. Turning to costs the Tribunal finds in favour of the Applicant on both issues. The original demands from the Respondent had been unreasonable. Reference was made to the letter written to the Applicant by the Respondent dated 10 December 2008 which purported to show service charges of over £18,500 falling due. As the lay member of the Tribunal put it "That letter would have frightened the living daylights out of me". The Respondent's conduct of the application had been unreasonable, failing to comply with the Tribunal's Directions and presenting documents at or immediately before

Hearings. The Applicant had acted entirely reasonably in issuing the application and bringing it back after the order of Medway County Court granting the relief from forfeiture. Accordingly, **all the costs incurred by the Respondent in connection with the application are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant**. Finally, **the Respondent shall pay the Applicant's costs in the maximum figure of £500**.

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Chairman
25 March 2010