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**Residential
Property**
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL
LANDLORD AND TENANT ACT 1985 – SECTION 27A

LON/OOBE/LSC/2009/0782

Premises: Flat 5, Stewart House, Leroy Street, London SE1

Applicant: Sinclair Gardens Investments (Kensington) Limited

Represented by: Mr. Mark Kelly, Director of First Management Limited, trading as Hurst Managements

Respondent: Mr. Philip Albanese (did not appear/not represented)

Tribunal: Ms. LM Tagliavini
Mr. J Avery, FRICS
Mr. E Goss

Hearing Date: 26 April 2010

1. This is an application seeking a determination of the reasonableness of service charge costs in respect of insurance premiums in the sum of

£455.27, and administration costs in the sum of £106.92 totalling £562.19. A claim for these sums was issued in the Chichester County Court and transferred to the Lambeth County Court, who in turn by an order dated 6/11/09 by District Judge Zimmels transferred this matter to the Leasehold Valuation Tribunal.

2. By a lease dated 4 October 1984, the lessor granted to the lessee a term of 125 years from 25 March 1984 at an incremental ground rent. Clause 2(5) of the lease makes provision for the payment of administration charges for the purpose of, or incidental to the preparation and service of a notice under Sections 146 and 147 of the Law of Property Act 1925. Clause 3(5)(b) of the lease makes provision for the payment of the *“proper proportion of all reasonable costs charges and expenses as more particularly hereinbefore mentioned”*. The proportion specified in Part V of the lease is 5.46% as being the lessee’s share. An assignment of the lease was made to the Respondent on 3/1/2003. The premises comprise a flat on the second floor of a purpose built block of 18 flats. By Part IV of the lease the service charge year ends 31 March and provision is made for the payment of estimate service charges required for the following year.
3. Mr. Albanese did not attend the hearing of this application, but requested that the application be dismissed and that the Applicant should not be permitted to rely on late service of documents outside the times set in the directions made by the LVT. Initial directions set by the LVT, were varied by letter dated 23/02/10 at the request of the Respondent, and in which the Respondent was directed to serve a Reply to the Applicant’s Statement. No reply from the Respondent was submitted. The Tribunal retains a discretion, as to what evidence it will allow and have regard to, even where submission of that documentation is not within the time periods set in the directions given. The Tribunal also has discretion pursuant to regulation 11 of the

Leasehold Valuation Tribunal (Procedure) (England) Regs 2003, to strike out or dismiss cases in certain limited circumstances. In this case the Respondent has not sought to rely on any prejudice caused to him by later service of the Applicant's documents, nor has he sought to adduce or rely upon any further evidence as a result of these documents. The Tribunal does not consider that any prejudice has been caused to the Respondent, and regards the late submission of the Applicant's documents to have little if any impact either on the Respondent, or on the conduct of the hearing. Therefore, the Tribunal dismisses the Respondent's requests for (i) dismissal of the Applicant's case and (ii) non-reliance on the Applicant's late served documents.

The Applicant's Case:

3. The Applicant provided the Tribunal with a bundle of documents on which it sought to rely, together with two witness statements made by Mr. Mark Kelly dated 8/12/09 and 17/2/10. At the hearing Mr. Kelly spoke to his witness statements and confirmed his reliance on them and the documents exhibited to them. The Tribunal were provided with copies of the lease together with copies of the relevant insurance documents, and an explanation of how the insurance had been placed together with the demands made for payment. The insurance demand made, concerned the insurance cover for the year ended 25 December 2008 (although the renewal date was November 2009), of which the Respondent's share is £455.27. A demand for excess service charge was made on 5/1/09 in respect of this sum. The Tribunal was not however, provided with any certified accounts as provided for by the terms of the lease.

4. In a detailed defence dated 14 August 2009 filed in the County Court, the Respondent disputed the arrears of service and administration charges sought on the basis the demands made were 'invalid' because of:
 - (i) Non-compliance with ss.47 & 48 L&T 1985;

- (ii) Service charges prepared for wrong period;
- (iii) Service charges not certified by landlord's accountant;
- (iv) Failure to comply with s.21 L&T1985;
- (v) Insurance premium excessive and not reasonable; s.19 (1) L&T 1985.
- (vi) A right to set-off of overpaid service charges since 2003.

5. However, the Respondent failed to comply with the LVT directions made and did not serve on the Applicant a Reply, although the Tribunal did have regard to the Defence and Detailed Defence previously submitted. Further, The Tribunal were not assisted by the absence of the Respondent at the hearing and noted also, the Respondent's failure to detail the nature and extent of the alleged overpaid service charges and the Tribunal does not determine these issues.

The Tribunal's Decision:

6. The Tribunal finds that the insurance premiums are reasonable in the sum demanded by the Applicant. The Tribunal accepts Mr. Kelly's evidence and is satisfied that the Applicant has gone through a proper process of obtaining a competitive quote for insurance, and that a copy of the relevant certificate and policy has been provided to the Respondent on request. The Tribunal is satisfied that the Applicant is entitled to make a demand for excess service charges for the previous year, where such service charges have been underestimated. However, in this case the sum demanded concerns a premium covering the period November 2008 to November 2009, which sum was demanded in January 2009. The Tribunal finds that this sum is reasonable, for the reasons stated above, but finds the lease makes no provision for the demand or payment of any service charges, whether excess or estimated until 31 March of any service charge year, or within 2 months of that date; *Part IV of The Schedule to the lease*.

7. Therefore, the Tribunal finds that the sum claimed for insurance although reasonable, is not payable until demanded in accordance with the terms of the lease. It follows that any action taken to enforce payment of a sum wrongly demanded has incurred unreasonable administration costs, and the Tribunal determines that these are not payable in any event. The Tribunal now remits this matter back to the Lambeth County Court for any further determination or orders.



Chairman: LM Tagliavini

Dated: 26 April 2010