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REF LON 00BE/LSC/2010/0078
IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE-MATTER OF THE LANDLORD AND TENANT ACT 1985 SECTION
27A

AND IN THE MATTER OF 17 Wendover Thurlow Street London SE17 2UD

Applicants

London Borough of Southwark

Respondent

Linda Haggerty

The Tribunal

Mr P Leighton LLB (Hons)

Mrs A Flynn MA MRICS

Mrs J Clark JP

Hearing Date

8th July 2010

Date of Decision

8th July 2010

Introduction

- 1 By proceedings dated 16 November 2009, the Applicant commenced proceedings in the Lambeth County Court for the sum of £4038.71 being alleged arrears of service charge payable by the Respondent in respect of the property at 17 Wendover, Thurlow Street, London SE17 covering a period from January 2008 to September 2009
- 2 The proceedings were transferred by District Judge Zimmels on 29 January 2010 to the Tribunal and directions were given at a pre trial review for the conduct of the application on 24 February 2010. At the pre-trial review Mr Strauss appeared on behalf of the Applicant but unfortunately the Respondent did not appear on that occasion and detailed directions were given by the Tribunal which involved the preparation of a Scott Schedule setting out the various heads of service charge claimed by the Applicant to which the Respondent was required to reply
- 3 The only response from the respondent was a letter in which she indicated that the heating system at the property had failed to function for many years since she had purchased the property in 1998
- 4 At the hearing, Mrs Haggerty explained that the system had not worked at all until on 20th January 2010 it began to work correctly and has apparently worked since that date. She has not challenged the other service charges claimed by the applicant but merely sought compensation for the fact that the heating system was not functioning and sought to offset the charges made in respect of that system.
- 5 At the commencement of the hearing the Tribunal established that Mrs Haggerty has been paying regularly since the commencement of proceedings at the rate of £60 per week and the current arrears stand at £2328.71 taking account of all the present payments for the period covered by the proceedings. . That sum does not however reflect any deduction for the heating costs which are comprised within those figures

and amount to approximately £2560. If that figure were deducted there would be a credit in Mrs Haggerty's favour.

- 6 The charges are set out at page 89 of the bundle and reflect fuel costs and maintenance charges in respect of the boiler and other apparatus comprised in the heating system. Her share of the heating costs amount to 15/36766 of the total costs.
- 7 Mrs Haggerty had not prepared any documents or provided any other evidence in support of her claim for compensation and the tribunal had to consider whether it would deal with that claim.
- 8 The Tribunal has jurisdiction to consider a claim for compensation where it amounts to an equitable set-off against a claim for service charges (see the decision of the Lands Tribunal in *Continental Ventures v White* in which His Honour Judge Rich held that the Tribunal has power to consider a claim amounting to a claim for damages where it is necessary to determine liability for service charges but has a discretion in each case as to whether or not to exercise its jurisdiction.
- 9 In the County Court Mrs Haggerty indicated in her defence that she had a counterclaim in the sum of £4300 for which she paid a fee of £50. That counterclaim would have been stayed automatically by the District Judge when he made the decision to transfer the proceedings to the Tribunal.
- 10 The Tribunal has considered what evidence Mrs Haggerty had or could have produced in support of her counterclaim before deciding whether or not it would make a determination in respect of that claim.
- 11 There is some evidence produced by the Applicant to the effect that on a number of occasions engineers were called to inspect Mrs Haggerty's flat and according to the records there were occasions when they were unable to obtain access and that on other occasions they left the system working.
- 12 It appears that in 2006 an application was made to the County Court as a result of which an order was made by District Judge Worthington ordering Mrs Haggerty to give access to the London Borough of Southwark upon

their undertaking to give her 14 days notice of their intention to inspect the premises.

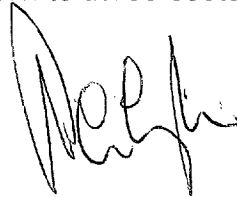
- 13 According to Mr Hines the engineer employed by Southwark who is in charge of the boiler system at Aylesbury, there is no record that there is anything wrong with Mrs Haggerty's heating system and he states that the heating system , although old and requiring occasional repairs , is working for the overwhelming majority of residents in the block.
- 14 He is unable to offer any explanation as to why the system is not working. A report was prepared some time in 2006 on the heating system to the Respondent's flat but according to Mr Strauss that report cannot presently be found.
- 15 The Tribunal having considered the evidence which would be available has decided that it would be inappropriate for it to reach a determination bearing in mind that no documents have been produced, that the report which was made in 2006 appears to have been lost and that Mrs Haggerty has not had the benefit of any legal advice as to how to present a counterclaim of this kind.
- 16 The Tribunal accepts her statement that she has not been receiving heat from the system over many years but that does not conclude the matter and does not necessarily indicate that the Applicant was in breach of duty and there is no evidence upon which the Tribunal could quantify any claim for compensation even if the Respondent was successful.
- 17 Accordingly the Tribunal has decided that it will determine the liability for service charges for the period covered by the proceedings in the sum of £2328.71 and that it will refer the matter back to the County Court so that the County Court may consider lifting the stay on the counterclaim and Mrs Haggerty will have an opportunity of presenting her case together with such evidence as she is able to bring before the County Court.
- 18 There is also a claim for interest. The applicants have claimed interest of 8% under the County Court Act that the Tribunal has noted that under the terms of the lease (clause 2(3)(b)) the rate of interest payable is 5% above

the rate charged by National Westminster Bank. This would result in a slightly lower sum being due on the service charges and Mr Strauss has undertaken to investigate this question to see whether the council will charge at the contractual rate rather than under the statutory provisions.

19 The effect of this decision is that the Applicant is entitled to recover the sum of £2328.71 but that any enforcement should not take place for a period of at least 28 days during which time Mrs Haggerty will have the opportunity of bringing her counterclaim before the County Court. If Mrs Haggerty brings the matter before the court it will no doubt extend any stay until the final disposal of the counterclaim.

20 Mr Strauss has indicated that he is not seeking recovery of any costs or fees arising out of the proceedings and the only issues relating to costs are those incurred in the County Court and that court will make any decisions it thinks proper in relation to those costs.

Chairman Peter Leighton



Dated 8th July 2010