

5342

London Leasehold Valuation Tribunal File Ref No.

LON/OOBE/LSC/2010/0435

## **Leasehold Valuation Tribunal: reasons**

### **Landlord and Tenant Act 1985 section 27A**

**Address of Premises**

Flat 20,  
3 Market Yard Mews,  
London SE1 3TJ

**The Committee members were**

Mr Adrian Jack  
Mr Andrew Lewicki MRICS

**The Landlord:**

**Galliard Homes Ltd**

**The Tenant:**

**Mr Robin Vela**

#### **Procedural**

1. By an application received by the Tribunal on 23rd June 2010, the tenant sought determination of a number of issues in relation to his service charge account, namely:
  - (a) Whether an invoice issued 26th January 2005 for £588.05 was payable by him;
  - (b) Whether he had been given credit for £1,848.43 consequential on a decision of this Tribunal given on 3rd March 2008;
  - (c) Whether interest in the sum of £1,317.29 was payable;
  - (d) Whether the landlord is responsible for damage caused by water ingress and the consequential loss of rental by the tenant.
2. The Tribunal gave directions on 29th June 2010 and these were complied with to some extent, but the tenant did not serve any bundles. Accordingly the Tribunal has had to read the parties' submissions from the single copy in the Tribunal's file. At the tenant's request the Tribunal directed that the matter be determined on paper unless either party requested a hearing. In the event neither party did, so the Tribunal determines the case on the basis of the documents submitted.
3. No party requested an inspection and none was held.

#### **The law**

4. The Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

#### **Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable

intends to carry out. Further provisions are contained in the Service Charges (Consultation Requirements) (England) Regulations 2003. Failure to consult results in the amount recoverable by the landlord being limited to £250. The Tribunal has a power to dispense with consultation in appropriate cases under section 20ZA.

#### **The lease and the service charges**

4. The tenant holds under a lease dated 13th November 2000 for ninety-nine years from 24th March 2000. The lease contains standard provisions for the payment of estimated service charges on account with a balancing charge once the final accounts are available. (There is an issue between the parties as to whether the lease should have been granted for 999 years with a car parking space, but this is not a matter over which the Tribunal has jurisdiction.)
5. The premises are described in the Tribunal's earlier decision under reference LON/00BE/LSC/2007/0303 between Mr I Lalbeharry (the tenant of a different flat) and Galliard Homes Ltd. The freehold of the estate has been divided between three companies. The front block, which includes the Yard, was in the ownership of Michleham Property Investments Ltd under title number SGL141053. Two properties called ("somewhat poetically" in the Tribunal's words) the Cottages were in the ownership of Trademark Homes Ltd. They play no part in this decision. The rest of the development, including the tenant's flat, is held by Galliard Homes Ltd.
6. The first issue identified by the tenant is his obligation to pay £588.05. This is an invoice from a firm of gas engineers called Oakray Heating Ltd. They were called out because of a smell of gas. The leak was traced to the tenant's flat and fixed by the engineer.
7. Under the lease the landlord has a discretion as to what proportion of expenses should be allocated to particular tenants. In this case, because the leak was solely in this tenant's flat, the landlord allocated the whole of the cost to the tenant. In our judgment that was within the reasonable band of responses of the landlord.
8. The amount of the invoice exceeds the £250 limit for major works, however, this was an emergency. We have no hesitation in granting dispensation under section 20ZA of the 1985 Act, so the amount is recoverable in full from the tenant.
9. The second issue concerns a credit of £1,848.93 arising from Mr Lalbeharry's claim. The landlord concedes that this credit is due. The landlord says, however, that it has given the tenant credit for the amount in the accounts. The statement produced for this tenant's service charge account bears this out. The Tribunal, however, has no jurisdiction to determine what sums a tenant has paid. That is a matter for the County Court, as are all matters concerned with the running account between the landlord and the tenant. The Tribunal can thus only determine that a credit of £1,848.93 is due to the tenant and must leave the determination as to whether the landlord has in fact given the credit to the tenant to the County Court as and when the landlord seeks to enforce any judgment.
10. Likewise the calculation of the amount of interest payable is not a matter for this

Tribunal. It is a matter for the County Court, because it crucially depends on the payments made by the tenant. Paragraph 1 of the Third Schedule to the lease provides for the tenant to pay interest at 4 per cent over Barclays Bank plc's base rate for the time being in force on all sums not paid by the due date. The calculation of the interest due is a matter for the County Court.

11. The last matter concerns extensive damage caused the tenant's flat by water ingress. A report dated 12th August 2010 from Paul Henry & Co says that the problem is caused by an old pavement light, which has been concreted in by a plug. The water proofing has broken down between the old steel frame and the new concrete wall.
12. Our reading of this is that the defect is outside the building and is in fact in the Yard, which is (as noted above) not in the landlord's ownership. Accordingly the landlord cannot in our judgment be liable for the leak.
13. Even, however, if that be wrong, there is no evidence which we have seen that the defect leading to the leak was something which the landlord should have identified earlier, so that the landlord is guilty of failing to honour its repairing obligations. On the contrary it took two visits and further opening up of works for Paul Henry & Co to determine the precise problem.
14. Payment of consequential losses is in our judgment a matter for the insurance policy which is in place. It is not a matter where the tenant has a claim against the landlord for misfeasance or nonfeasance. Accordingly the Tribunal does not need to determine whether (if the tenant did have a claim) he could offset his losses against his service charge obligations.

#### **Costs**

15. In respect of the fees payable to the Tribunal, which consist of the application fee of £200, the Tribunal has a discretion as to who should pay these. Since the landlord has won, in our judgment the tenant should bear this cost. There is an application for an order under section 20C of the Landlord and Tenant Act 1985, but since the tenant has lost in our judgment it would not be just to make an order preventing the landlord from recovering these sums. Accordingly we refuse to make a section 20C order.

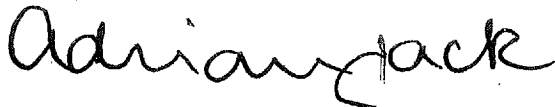
#### **DECISION**

**The Tribunal accordingly determines:**

- (a) That the invoice issued 26th January 2005 for £588.05 is payable by the tenant to the landlord and dispensation is granted under section 20ZA of the Landlord and Tenant Act 1985;**
- (b) That the tenant is entitled to be given credit for £1,848.43 consequential on a decision of this Tribunal given on 3rd March 2008 but the issue as to whether he has in fact been given credit for that sum is a matter for the County Court;**
- (c) That the tenant is obliged to pay the landlord interest at 4 per cent over**

**Barclays Bank plc's base rate on all outstanding monies, but the calculation of such interest is a matter for the County Court;**

- (d) That the landlord is not responsible for damage caused by water ingress and the consequential loss of rental by the tenant;**
- (e) That there be no order as to costs and no order under section 20C of the Landlord and Tenant Act 1985.**

A handwritten signature in black ink that reads "Adrian Jack". The signature is written in a cursive, slightly slanted style.

Adrian Jack, chairman

20th September 2010