



LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTIONS 27A OF THE LANDLORD AND TENANT ACT 1985

Case Reference: LON/00BE/LSC/2012/0267

Premises: 12 Dombey House, Dickens Estate, Wolsley
Street, SE1 2BL

Applicant (Tenant): Miss Sakina Rehmat Rumani

Respondent (Landlord): London Borough of Southwark

**Leasehold Valuation
Tribunal:** Ms F Dickie, Chairman
Mr F Coffey, FRICS

Date of decision: 26 June 2012

Summary of the tribunal's decision

The Applicant is liable to pay the balancing charge of £371.11 for the year ending 31 March 2011.

The application

1. The Applicant leaseholder seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable. The tribunal issued directions on 23 April 2012 for the determination of this matter on the papers and neither party has requested an oral hearing. The tribunal has received written submissions from both parties and has been provided with a copy of the lease. The subject premises are a self-contained flat in a purpose built block of flats. The landlord is the London Borough of Southwark.
2. The service charges disputed are the balancing service charges of £371.11 for the year 1 April 2010 to 31 March 2011. The Applicant purchased the flat at auction on 28 July 2011 and completion took place on 25 August 2011. The Applicant does not challenge that these are reasonable service charges recoverable under the lease for expenditure on the building, or that they have been properly apportioned to this flat. The only dispute is whether the Applicant is liable to pay them to the Council since she was not the owner of the flat throughout the period during which the relevant expenditure was incurred.

3. The lease demises the subject premises for a period of 125 years from 23 August 1999. By Clause 2(3)(a) the Lessee covenants with the Council to pay the Service Charge contributions set out in the Third Schedule, and the service charge year runs from 1 April to 31 March.
4. The Third Schedule (in paragraph 2) requires the Council to make an estimate of Service Charges which will be payable in the forthcoming year and for the Lessee to pay the amount demanded on account of this estimate. The Schedule furthermore provides:
 - 4 (1) As soon as practicable after the end of each year the Council shall ascertain the Service Charge payable for that year and shall notify the Lessee of the amount thereof
 - (2) Such notice shall contain or be accompanied by a summary of the costs incurred by the Council of the kinds referred to in paragraph 7 of this Schedule and state the balance (if any) due under paragraph 5 of this Schedule
 - 5(1) If the Service Charge for the year exceeds the amount paid in advance under paragraph 2 or 3 of this Schedule the Lessee shall pay the balance thereof to the Council within one month of service of the said notice
5. The Applicant has observed that the lease does not provide for a change of lessee of the property and does not contain an explicit or implied statement as to who would be responsible for the differential between an estimated and actual service charge in the event of a change of lessee. Since the lease is silent on this question she feels it would be unfair and inappropriate for the Council to require a new lessee to pay for services they neither received nor contracted for. The Applicant refers to a letter dated 12 July 2011 from the Council to the solicitors for the former lessee advising that there were service charge arrears on the account.

Decision of the tribunal

6. The balancing service charge does not become payable until the Council serves notice of the amount of such charge under Paragraph 4(1) of the Third Schedule. Such notice cannot be served until after the end of the service charge year when the annual accounts have been prepared. The Council must serve this notice "as soon as reasonably practicable" after the end of each year (and according to Paragraph 1(2) of the Schedule time shall not be of the essence for service of any notice).
7. The Council has served this notice on the Applicant since the date of her purchase, and has provided to the tribunal a breakdown of the balance of £371.11 now sought. Under the terms of the lease this amount did not accrue for payment until it was demanded, and the tribunal finds that it was not (and could not reasonably practically have been) demanded from the former Lessee before the date of the assignment of the lease. According to the terms of the lease it is payable by the person who is the Lessee on the date when the notice is served. That person is the Applicant.

8. The Lease contains no provision for payment of this sum by a person who, on the date of service of the notice, was a former Lessee. It is usual practice for a vendor's solicitors to make a retention of the vendor's funds to set off against any such balancing charge. In any event, the Respondent correctly observes that the lease may still be forfeited for service charges unpaid by a former Lessee.

Chairman

A handwritten signature in black ink, appearing to be 'R. J. L.', written over a horizontal line.

Date: 26 June 2012