

LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL

DETERMINATION BY THE LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985, AS AMENDED

REF: LON/00AY/LSC/2007/0346

Address: 21B St. Julians Farm Road, London SE27 OJJ

Applicant: NAB Properties Ltd

Respondent: Desmond Ronald Keith Sullivan

Tribunal: Mrs JSL Goulden JP
Mrs J McGrandle BSc MRICS MRTPI

1 The Tribunal was dealing with a referred county court application under S27A of the Landlord and Tenant Act 1985, as amended ("the Act") made by NAB Properties Ltd ("NAB") for a determination as to the reasonableness of service charges. The Respondent is Desmond Ronald Keith Sullivan ("Mr Sullivan").

2. The Applicant had originally claimed the sum of £2,898.60 in the Croydon County Court (Claim No: 7CR03773), being £2,698 amount claimed including interest, £120 court fee and £80 solicitors' costs. The claim was stated to be in respect of arrears of rent and service charges. Mr Sullivan had, by a Defence dated 8 August 2007, admitted the amount of £1,693.25.

3. The matter was transferred to the Leasehold Valuation Tribunal ("the Tribunal") by an Order of District Judge Mills dated 29 August 2007. The Tribunal has no jurisdiction in respect of the issues of rent, interest, court fees or solicitors' costs. Its jurisdiction is limited to the service charge issues only. Further, of those service charge issues, in a letter to the Clerk to the Tribunal dated 2 January 2008, Mr Sullivan confirmed that he admitted owing the insurance. This being a matter agreed or admitted by the Respondent, the Tribunal has no jurisdiction in respect of the insurance.

4. Directions of the Tribunal dated 26 September 2007 were issued in which it was stated that a paper hearing was considered appropriate. No request was received either from or on behalf of the Applicant or Respondent requesting an oral hearing, and therefore a paper hearing took place on 8 January 2008.

5. A copy of the Mr Sullivan's lease of 21B St Julians Farm Road SE7 ("the property") was provided. This was dated 10 October 1972 and was made between Pikeriver Properties Ltd (1) and D G Watkins and M Watkins (2) and was for a

term of 99 years from 10 October 1972 at the rent and subject to the terms and conditions therein contained.

6. The service charges issues on which a determination is required of the Tribunal is as follows:-

- Service charges
- Managing agents' fees

7. The salient parts of the evidence are given under the appropriate head.

8. The Tribunal is satisfied that, in the circumstances, it is not necessary to inspect the property.

The Applicant's case

Service charges

9. The Applicant claimed £100 for the year ending 23 June 2006.

10. In the Applicant's statement of case dated 22 October 2007 it was stated "*the Applicant renders service charge accounts in June and December in the sum of £50 ie £100 per annum.....the Applicant's principal case is that the (service charge) clause is sufficient to enable the Applicant to collect these extremely modest sums in anticipation of future expenditure. Alternatively the Applicant's practice (introduced for good management of the property) was introduced with the agreement of the Respondent and the previous owner of Flat 1A. There has been no default in payment by the Respondent prior to incurring the sums which are the subject of these proceedings*".

11. No specific representations were made by the Respondent on this issue.

12. The clauses referred to by the Applicant were clauses 3(4) and 2(6), both of which are set out in full below at paragraphs 19 and 20.

13. The sum demanded, although modest, is by way of a sinking fund, and therefore to be ring fenced for future specific expenditure rather than general maintenance. The lease is the contract between the landlord and the tenant and must be considered by the Tribunal in the first instance. In this particular case there is no specific clause which relates to the setting up of a sinking fund and/or contributions thereto and the Tribunal does not consider that clauses 3(4) and 2(6) are wide enough to encompass such a charge.

14. The Tribunal determines that the sum of £100 for the service charge year ending 23 June 2006 is not relevant, since it is not charged in accordance with the lease terms, and is therefore not reasonably incurred and not properly chargeable to the service charge account.

Managing agents' fees

15. The Applicant claimed £235 (inclusive of VAT) in respect of the Applicant's surveyors, Webb & Associates for each of the years ending 23 June 2004, 23 June 2005 and 23 June 2006, making a total of £705.

16. In the Applicants' statement of case dated 22 October 2007 it was stated, "a charge made by Webb & Associates is a modest virtually nominal charge representing (in respect of each flat) not much more than an hour's professional time. The landlord instructs agents, as it is cost effective to do so. In particular, the landlord's agents experience is that it is more difficult to manage buildings converted into flats as opposed purpose built. There is no Residents Association to deal with. Access to the property can be difficult. The subject building has proved difficult to manage. The landlord's experience is that the lessees do not respond to correspondence and have to be continually chased. Demands to lessees have to be made every 6 months, a receipt sent when payments made, insurance premiums assessed and demands raised but all money received having to be banked, rent ledgers kept correctly in accordance with RICS regulations which in term (sic) requires ledgers to be inspected and balanced by an accountant on an annual basis but the fee is payable. In addition on 2 or 3 occasions each year an internal inspection takes place. Prior to the present proceedings the Respondent has discharged managing agents fees".

17. In a letter dated 12 August 2007 (which presumably was in relation to the county court proceedings) Mr Sullivan made general complaint as to the way the property had been managed by the managing agents.

18. On behalf of the Applicant, its solicitors, M B Allen and Co., in a letter to the Tribunal dated 13 December 2007 stated "the only point raised by the Tenant that may be relevant is his contention...that no management duties were carried out".

19. The Tribunal has considered the terms of Mr Sullivan's lease. The landlord's obligations are set out in clause 3(4) as follows:-

"That the Lessor will so often as is necessary rebuild repair cleanse point maintain support and replace the exterior of the demised premises and the main structure and foundations and roof of the Building and all party walls party structures gutters sewers drains pipes watercourses cisterns tanks stopcocks gas electricity and water supply installations entrance hall passageways pathways and other easements or appurtenances used or to be used or capable of being used in common by the occupier of the demised premises and the other flat in the Building"

20. Mr Sullivan's obligations are set out in clause 2(6) of his lease as follows:-

"At all times during the said term to pay to the Lessor on demand one half of the cost including surveyors; fees and legal costs and any other expenses incurred by the Lessor in carrying out its obligations under Clause 3(4) hereof and to permit the Lessor or its servants or agents at reasonable times of the day upon giving reasonable notice to enter upon the demised premises for the purposes of carrying out its said obligations"

21. Under the terms of the lease, the landlord is entitled to appoint managing agents, and their fees at £235 per annum per unit are within an acceptable band.

22. The Tribunal determines that the managing agents fees of £235 inclusive of VAT for each of the service charge years ending 23 June 2004, 23 June 2005 and 23 June 2006 (totalling £705) are relevant and reasonably incurred and properly chargeable to the service charge account.

23. As a general point, it is noted that the Respondent has raised other issues, but the Tribunal's jurisdiction flows from the county court and it is only able to deal with matters which have come from the county court. Therefore, without a separate application, it is unable to deal with any other issues. Further, it appears from the Respondent's correspondence before the Tribunal that the Respondent may have financial difficulties. Unfortunately, this is not a matter which can be considered by the Tribunal. The Tribunal can only deal with the question of reasonableness of the costs incurred by the landlord and not the ability of the tenant to pay those costs.

Service charges determined by the Tribunal as payable are binding on both parties and may be enforced through the county court if they remain unpaid.

CHAIRMAN..........

DATE.....8 January 2008.....