

5074

London Leasehold Valuation Tribunal File Ref No.

LON/OOAG/LSC/2010/0061

## Leasehold Valuation Tribunal: reasons

### Landlord and Tenant Act 1985 section 27A

**Address of Premises**

Flat 7,  
156 Haverstock Hill,  
London NW3 2AT

**The Committee members were**

Mr Adrian Jack  
Mrs A Flynn MRICS

**The Landlord:**

**Mr M M Khan**

**The Tenant:**

**Mr Stephen Joseph Keane**

#### Procedural

1. By a claim commenced in the Northampton County Court under action number 9QT60987 the landlord sought to recover arrears of service charge from the tenant. By an order made on 14<sup>th</sup> December 2009 District Judge Silverman of the Central London County Court (to which the action had been automatically transferred) in turn transferred the action to the Leasehold Valuation Tribunal.
2. The Tribunal held a hearing on 15<sup>th</sup> June 2010. The landlord was represented by Ms M Khan, an in-house solicitor with the current property managers. With her was Mr M J Finch, who now had management of the property. The tenant appeared in person.

#### The law

3. 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 by a tenant of a dwelling as part of or in addition to the rent-
  - (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.
- (3) for this purpose
  - (a) costs includes overheads and
  - (b) costs are relevant costs in relation to a service charge whether they are

incurred or to be incurred in the period for which the service charge is payable or in an earlier period

### Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period-
- (a) only to the extent that they are reasonably incurred; and
  - (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

### Section 27A

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-
- (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to---
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable."

### The issues

4. After the landlord opened its case, the parties were able to agree the amount of the disputed service charges as follows:

Invoice date	Amount claimed	Amount agreed
1.1.2004	£344.62	£261.09
22.12.2005	584.58	500.00
25.12.2008	740.10	740.10

5. In relation to this last sum of £740.10, the tenant had paid this amount in about October 2009.

6. This left the only issue for the Tribunal to determine the incidence of the costs. The costs comprise a number of elements. Firstly the landlord paid fees to the County Court of £184.00. Secondly he had to pay an additional £20.00 to the Tribunal (being the difference between the County Court issue fee and the application fee otherwise payable to the Tribunal). Thirdly, he had to pay the hearing fee of £150.00 to the Tribunal.
7. The Tribunal only has jurisdiction to determine these last two elements, which total £170.00; it has no jurisdiction over the incidence of costs in the County Court. In our judgment there was a marked lack of transparency in the landlord's conduct of this matter. Documents were (in breach of the Tribunal's directions) produced on the morning of the hearing. It was clear that the former managing agents had failed to engage with the tenant on his queries over a long period. Further the tenant has had some, albeit modest, degree of success in reducing the amounts claimed by the landlord.
8. In these circumstances the fairest result in our judgment is that the costs should be borne £100 by the tenant and £70 by the landlord. In the result, therefore, the tenant needs to pay the landlord £100 in respect of the fees payable to the Tribunal.
9. The Tribunal has no jurisdiction to determine the interest payable under section 69 of the County Courts Act 1984 (nor as noted above) to determine the costs in the County Court. Both parties invited the Tribunal to give an indication of the likely order in the County Court. The Tribunal in a bid to assist the settlement of the entire action was willing to give an indication, but on the basis that it would not be binding on the parties.
10. The view expressed by the Tribunal was that the County Court would not award the Judgment Act rate of interest claimed by the landlord. In the light of the very substantial decline in interest rates over the relevant period an interest rate of 4 per cent per annum might be awarded. The tenant was willing to accept that rate, but the landlord was not, Ms Khan indicating that they wanted the full 8 per cent per annum.
11. The Tribunal also expressed the view that the County Court was likely to award the full amount of the County Court fees of £184 against the tenant. The landlord was obviously happy with that (Ms Khan accepting that as a claim on the small claims track no legal fees would be payable), but the tenant was not.
12. In consequence the parties were unwilling to accept the Tribunal's indications. Since the indications were not binding on them, they were of course within their rights to take that position. The case must accordingly go back to the County Court to determine interest and the County Court costs.

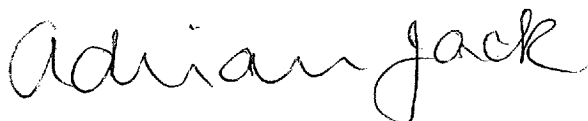
## **DECISION**

**The Tribunal accordingly:**

- a. records the parties' agreement on the sums payable as set out in paragraph 4

above;

- b. determines that in respect of the fees payable to the Leasehold Valuation Tribunal the tenant shall pay the landlord £100; and
- c. remits the matter to the Central London County Court.

A handwritten signature in cursive script that reads "Adrian Jack". The letters are fluid and connected, with a prominent 'A' and 'J'.

Adrian Jack, chairman

15<sup>th</sup> June 2010