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Ref: LON/00BE/LSC/2006/0273

LEASEHOLD VALUATION TRIBUNAL
LONDON RENT ASSESSMENT PANEL

DETERMINATION

OF ISSUES UNDER SECTION 27A OF THE LANDLORD AND TENANT
ACT 1985 (as amended)

PROPERTY: 2 AVONMOUTH STREET, LONDON, SE1 6NX

Applicant: MR LOUIS LEACH

Respondents: MR NEAMA SHENAVAR

Hearing: 28TH SEPTEMBER 2006

Inspection: N/A

Appearances:

Applicant: Mr L Leach (Landlord)

Respondent: Ms S Shenavar (Representative)

Members of the Tribunal:

Professor J M Driscoll
Mr J M Power MSc FRICS FCI Arb
Mrs L West JP

Tribunal Decision (LON/00BE/LSC/2006/0273

Re: 2 Avonmouth Street, London, SE1 6NX (the premises)

Applicant: Louis Leach (Applicant in person)

Respondent: Neama Shenavar (represented by his Mother, Ms S Shenavar)

The Tribunal consisted of: James Driscoll (Chair), John Power (Surveyor Member) and Lucy West (Lay Member)

Preliminary

- 1 This is an application made under Section 27A of the Landlord and Tenant Act 1985 (Liability to pay Service Charges) to determine the reasonableness of service charges.
- 2 The claim originated in the Lambeth County Court when the Applicant brought proceedings against the Respondent to recover unpaid service charges. In response the Respondent filed a defence and a counter-claim. The Respondent defended the claim on the basis that he had not been consulted over the service charge expenditure and that the sum claimed was unreasonable. He counter-claimed to recover service charges relating to works that he had carried out to the roof of the building. In this counter-claim he also claimed damages in relation to internal works to his flat. On 5 July 2006 the Lambeth County Court ordered transfer of the proceedings (including that element of the Respondent's counter-claim relating to damages) to the Tribunal.
- 3 The premises consist of a building, which was converted into four flats on a date unknown in the 1980s. The premises consist of a ground floor flat (Flat 1); a first floor flat (Flat 2); a second floor flat (Flat 3) and a third floor flat (Flat 4). There is a separate main external entrance to that part of the building containing Flats 2, 3 and 4 and a separate entrance to Flat 1.
- 4 The Applicant is the owner of Flats 2 and 3. The Respondent was formerly the owner of Flat 4 having completed the sale of that flat on or about the 22 September 2006. The freehold to the premises

is owned by a company known as "2 Avonmouth Street (London SE1) Residents Management Limited" (the "company"). The Applicant is a shareholder, a director and the secretary of the company. The Respondent is also a shareholder and a director of the landlord company. It appears that over the years the landlord's obligations have been carried out with a considerable degree of informality. The company does not, for example, have a bank account.

5 The Applicant's claim relates to the carrying out of repairs to the entrance door to that part of the building containing Flats 2, 3 and 4. In authorising these works and seeking to recover part of the charges as a service charge the Applicant was acting as a director and secretary of the company. Acting as such, the Applicant seeks recovery of part of the expenditure from the Respondent under the service charge obligations in the lease of Flat 4.

6 The Respondent's claim against the Applicant relates to the cost of carrying out emergency repairs to the roof to the building. In authorising these works and seeking to recover a contribution from the Applicant, the Respondent also acted as a director of the landlord company under the terms of the Applicant's leases of Flats 2 and 3.

Matters in dispute

The Applicant's claim for the costs of works carried out to the building

7 In evidence to the Tribunal the Applicant stated that there had been a burglary to the building early in September 2005. At the time of the burglary the main door to the parts of the building containing Flats 2, 3 and 4 consisted of a wooden door with a glass fanlight above. A Yale-type lock could secure the door. The Applicant also claimed that intruders had entered the building and then broken into Flat 3 by breaking the front door to it. A laptop belonging to the Applicant was stolen. The Applicant said that there was, however, no sign of forced entry to the main door. He could not explain how the intruders gained access to the building.

8 The Applicant also gave evidence that he engaged the services of a company called Banham Pavement Locks Limited. He employed this company to carry out works of repair to the front door to Flat 3 for which he, as the leasehold owner, was responsible. He said that he was also advised by that company to carry out works to the main door to that part of the building to make it more secure. He relies on an invoice detailing these works dated 19 September 2005. The works consisted of:

- Installation of an internal steel diamond mesh grill to protect the glass skylight
- The replacement of the current lock by high security mortice deadlock key to the main door with nine registered keys
- Installation of a pair of concealed steel hinged reinforcing bolts
- Fitting of a brass letterbox protector.

The Applicant claimed that he telephoned the Respondent and told him that the works to the main door were to be carried out.

9 The Respondent, through his representative, denied having been consulted about the works. It was also claimed on his behalf that the works were unnecessary and the fitting of the mortice lock was hazardous as visitors to the building who did not have a key to this lock could be locked in. Written evidence was produced that employees of British Gas who had been called to the premises to inspect Flat 3 were locked into the premises for a period of more than one hour.

The Respondent's claims against the Applicant

10 The Respondent's representative explained that emergency works had to be carried out to the main roof of the building (under which the top floor Flat 4 is situated) in or about February 2003 because of water ingress. An invoice was produced from a Len Boyd of a company called Premises Management in the sum of £136. A copy of a letter was also produced and sent to the Applicant dated 9

February 2003 claiming a contribution towards the cost of those works. At that stage the Applicant owned Flat 2 only.

- 11 The Applicant stated that he had not been consulted about the works and he denied having seen the letter, the service charge demand, or the receipts in 2003. He also complained that this documentation was only produced following Directions given by the Tribunal.

The Leases

- 12 Under the terms of the Respondent's lease there is a landlord's covenant in the usual form requiring the landlord to carry out repairs and maintenance to the structure of the building containing the four flats and to the common parts. The four leaseholders are required to pay service charges in relation to the landlord's expenditure. It was agreed that the leaseholder's proportions were as to one quarter of the expenditure for each of the flats. It was also agreed that the four leases were in similar form.

The Decision

- 13 The Tribunal noted that the consultation requirements under Section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003 did not apply here as the demand for service charge payments by both parties against each other was less than £250 (Regulations, paragraph 6) (and the charges claimed by the Respondent were incurred before these Regulations came into force on 31 October 2003). Of the items of expenditure in the Banham Pavement Locks Limited invoice, the Tribunal found that:

- It was reasonable for the landlord to install internal steel diamond mesh grill at a cost of £100,
- It was also reasonable to install (on the advice of the contractors) a pair of concealed steel hinge reinforcing bolts costing £36
- It was reasonable to install a letterbox protector costing £46.

- 14 However, the Tribunal decided that it was not reasonable to replace the lock with a high security mortice deadlock. The Tribunal noted that the Applicant had recently changed the locking arrangements on 25 September following the sale of Flat 4 by the Respondent. The claim for the fitting of the deadlock of £127 and the nine registered keys at a total cost of £89.39 is not reasonable and is not recoverable as a service charge.
- 15 The Tribunal also noted that the Applicant was claiming a contribution of one third of these costs as a service charge from the Respondent. However, under the terms of the leases of the four flats only one quarter per leaseholder is so recoverable. Of the total claim of £468.11 (including VAT) the Tribunal decided that a total sum of £182 plus VAT of £31.85 is recoverable from the leaseholders. This is a total sum of £213.85. The Tribunal also decided that the Respondent's contribution towards this is £53.46 based on one quarter of the total sum.
- 16 Turning to the Respondent's claims the Tribunal decided that the claim for £136 was reasonably incurred on behalf of the landlord. As the Applicant, at the time of this expenditure owned only one of the flats in the block, he was liable to pay one quarter of that expenditure namely the sum of £34. The Tribunal also decided that the Respondent's claim for damages in relation to the internal repairs to his flat is not within its jurisdiction.
- 17 The Tribunal then considered an application from the Applicant for an order that the Respondent reimburse him for the application fee of £200. The Tribunal having decided that the Applicant was justified in seeking a determination of the sum from the Respondent, but noting also that it had not allowed all of that sum, decided that it is reasonable for the Applicant to recover part of the fee. It decided that the Respondent should pay to the applicant £50.00 representing one quarter of the fee.

SUMMARY

The Applicant is entitled, on behalf of the landlord to recover a service charge from the Respondent in the sum of £53.46. The Respondent is also

to pay to the Applicant the sum of £50 as a reimbursement for part of the application fee.

The Respondent on behalf of the company is entitled to recover from the applicant the sum of £34. The Respondent's claim against the Applicant for sums relating to internal repairs to Flat 4 are not recoverable as service charges.

Thus on balance the Respondent owes the Applicant the sum of £69.46.

Dated 18 October 2006

Signed James Brice

(Chair)