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LON/00BK/LSC/2007/0064

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER S27A OF THE LANDLROD AND TENANT ACT 1985

Property: **4E Aldridge Road Villas, London W11 1BP**

Applicant: Ms Sarah Waldron (tenant)

Respondent: Beitov Properties Limited (landlord)

Determination without an oral hearing in accordance with the procedure set out in regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003

Tribunal: Lady Wilson
Mrs E Flint DMS FRICS IRRV

Date of the tribunal's decision: 25 April 2007

1. Ms Waldron, the tenant of Flat 4E Aldridge Road Villas, (who will be called "the tenant" in this decision) has applied to the tribunal under section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination that she is not liable to pay a sum of £772.75 out of a total of £1737.69 which has been demanded of her towards the cost of damp proofing works which are required to the basement of the property. The respondent named in the application was the landlord's managing agents who does not appear to be the correct respondent. The freeholder, who is responsible under the lease for the provision of services and to whom the service charges are required to be paid, is the correct respondent and has been substituted as respondent. It is clear that the freeholder is or should be aware of these proceedings, which have hitherto been conducted by its managing agents.

2. Neither of the parties has asked for an oral hearing, and we are satisfied that the application can be disposed of without an oral hearing or an inspection, and accordingly this determination is made on the basis of written representations in accordance with the procedure set out in regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003. Both parties have sent written representations in accordance with the tribunal's pre-trial directions.

3. The essential facts do not appear to be in dispute, and are as follows.

4. On 11 April 2002 Bryhill Technical Services inspected the basement flat in the building on the landlord's instructions. They found dampness and dry rot and recommended that works be undertaken to eradicate them. On 22 May 2002 notices under section 20 of the Act were given to the leaseholders of the flats in the building, including the applicant tenant, whose flat is on an upper floor. The notices included two estimates for the work. The lower estimate, which the landlord proposed to accept, was from Bryhill and was in the sum of £4101 which, with the appropriate fees, brought the estimated cost of the necessary work to £5445.69. It was said that further section 20 notices would be given for the necessary reinstatement works and we assume, and the contrary has not been suggested by the landlord's managing agents, that the cost of any necessary reinstatement works does not form any part of

the subject of this dispute. The specification for the current works has not been provided by the respondent although it was directed by the pre-trial directions.

5. In June 2002 the tenant paid in full the sum which she had been asked to pay for the proposed works, which was £964.94.

6. On 5 July 2002 further works required to rectify the problems in the basement were identified which resulted in an extra charge of which the tenant promptly paid her share in full.

7. However, some or all of the other tenants, in particular, it appears, the tenant of the basement flat, did not pay promptly and proceedings were taken by the landlord in the county court to establish the liability of at least one other tenant to pay the sums demanded. The landlord decided not to proceed with the works until the likely cost had been paid by all the tenants, and for that reason the works have not yet been carried out. Their cost will now considerably exceed what it would have been if the works had been carried out in 2002, partly because the works required are now more extensive, the dry rot having spread throughout the basement, and partly, it is assumed, because building costs have increased.

8. The tenant objects to having to pay any additional cost. She says, and the landlord's managing agents do not dispute, that the money she paid in 2002 was not returned to her until 2006, so that she lost the use of the money in the interim.

9. The landlord's managing agents do not dispute that the tenant paid promptly, or that the scope and cost of the works has increased because of the delay in carrying them out. They say that the landlord has been unable to carry out the works until court and tribunal proceedings against other tenants have been completed. By a letter dated 30 January 2007 they say that the projected costs will be increased by 5% because the works are not due to start until ten months after the tender date.

10. We are satisfied on the evidence that the additional cost of the works was caused by the delay in carrying them out and that the additional cost will not be reasonably incurred. The tenant's lease imposes, at clause 3(iii), a liability on the landlord to

keep the structure of the property in "good and substantial repair and condition". Although this covenant is expressed to be subject to the payment by the tenant of the service charge, we are satisfied that payment of the service charges in advance by all the tenants is not a condition precedent to the landlord's obligation to keep the building in repair (see, for example, *Yorkbrook Investments Limited v Batten* [1985] 2 EGLR 100 (Court of Appeal)) and, in any event, the applicant tenant paid the relevant service charges promptly and in full. It does not appear to be disputed, and it is not surprising, that the delay in carrying out the necessary works caused them to increase in scope and cost, because it is well known that the treatment of dry rot and its underlying causes is usually urgent because the rot is likely to spread. Nor can it be said in the present case that the tenant had the benefit of the use of her money in the interim because it was not returned to her until recently.

11. Service charges are payable only in respect of costs which have been or will be reasonably incurred (section 19(1) and 19(2) of the Act). We are satisfied either that the additional cost of the works which was occasioned by the landlord's delay in carrying them out was either not reasonably incurred or, if the reasoning of the Lands Tribunal in *Continental Property Ventures Inc v White* (LRX/60/2005) is to be followed, that the tenant is entitled to an equitable set-off against the extra service charges demanded of her in respect of the damages to which she would be entitled for the landlord's breach of its covenant to repair.

12. Accordingly we determine that the tenant is not liable to pay the sum which she disputes, and that her liability is limited to £964.94.

CHAIRMAN.....

25 April 2007