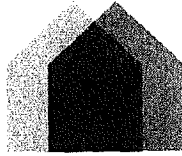


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**Residential  
Property**  
TRIBUNAL SERVICE

**H M COURTS & TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/00AN/LSC/2013/0020**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT  
ACT 1985**

Applicant: Miss Lesley Taylor  
Respondent: Mr Jean Paul Da Costa  
Property: 44A St Elmo Road, London, W12 9DX  
Date of Determination: 3 April 2013

Leasehold Valuation Tribunal  
Mr I Mohabir LLB (Hons)  
Mr P Tobin FRICS MCI Arb

## ***Introduction***

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of her liability to pay and/or the reasonableness of the service charge contribution claimed by the Respondent for the buildings insurance for the year ending 10 August 2012 in respect of 44 St Elmo Road, London, W12 9DX.
  
2. The building is divided into a garden flat known as 44A St Elmo Road ("the garden flat") and a ground and upper maisonette known as 44 St Elmo Road. The two flats have separate entrances and do not share any common parts. Consequently, there is no general service charge. The leases granted in respect of each flat are said to be virtually identical save that the upper maisonette is required to contribute two thirds of the buildings insurance and the garden flat is required to contribute one third of the cost.
  
3. The Applicant is the present lessee of the garden flat, having taken an assignment of the lease at the end of June 2011. The lease is dated 3 August 1982 and was made between Barry John Euler ("the landlord") and Melanie Cherry ("the tenant") for a term of 99 years from 24 June 1981 ("the lease").
  
4. The unfortunate background of this matter can be stated shortly. In early October 2011, the Respondent sent statements to the lessees requesting payment of the ground rent and service charge contributions for the buildings insurance, which he had already effected.
  
5. It seems that the Applicant posted a cheque in the sum of £342.19, but apparently that was delivered to the wrong address. Correct delivery did not take place until April 2012.

6. At the beginning of January 2012, the Applicant wrote to the Respondent raising a number of issues in relation to the level and extent of the buildings insurance cover and some of the (erroneous) terms of the policy. It should be noted that none of these matters fall within the jurisdiction of the Tribunal and, in any event, are not raised as issues by the Applicant.
7. At the beginning of April 2012, when the Respondent eventually received the Applicant's earlier letter containing payment of her contribution for the buildings insurance premium for 2011/12, it transpired that the cheque had in fact expired. The Respondent then sent a request to the Applicant for a replacement cheque. In response, he received a cheque in the sum of £50 for the ground rent. The Applicant refused to pay her contribution for the buildings insurance premium because she was not satisfied with the replies she had received in response to her letter dated January 2013.
8. Subsequently, the Respondent demanded interest in the sum of £17.73 for the unpaid buildings insurance contribution.
9. By an application dated 3 January 2013, the Applicant made this application seeking a determination of her liability to pay and/or the reasonableness of the disputed costs. The issues raised by the Applicant within the Tribunal's jurisdiction are:
  - (a) her liability to pay the contractual interest claimed by the Respondent.
  - (b) whether she should have been consulted by the Respondent on the insurance policy changes.
10. The Tribunal does not have jurisdiction to make any determination to ensure that changes are evidenced in the policy, give an assurance that the insurance will be guaranteed to be in place at all times or ensure that a copy of the buildings insurance policy will be provided

with each service charge statement. The latter obligation is already contained in sections 21 and 22 of the Act.

### ***Hearing and Decision***

11. The Tribunal's determination took place on 3 April 2013. There was no oral hearing: the hearing took place on the basis of the papers which appear to have been submitted solely by the Applicant. It is unfortunate that, for whatever reason, mediation did not take place even though both parties indicated their willingness to do so.

### ***Contractual Interest***

12. No explanation was given by the Respondent in his statement of case as to how contractual interest was claimed under the terms of the lease. Similarly, the Applicant made no specific submissions on the point, save to generally deny her liability to pay the interest.
13. Having carefully considered the terms of the lease and, specifically, the covenants given by the lessee, the Tribunal found there was no term in the lease that allowed for contractual interest to be claimed by the landlord. The only possible term is clause 3(21), but this expressly deals with the costs of forfeiture and not interest.
14. Accordingly, the concluded that contractual interest could not be recovered by the Respondent.

### ***Consultation***

15. The Tribunal found, as correctly submitted by the Respondent, that there is no statutory obligation, under section 20 of the Act or otherwise, to consult the Applicant on any insurance policy changes. Whilst it is open to the parties to do so on an informal basis, there is no strict obligation on the part of the Respondent to consult. In the event that a landlord fails to effect adequate buildings insurance, then a tenant's potential remedy lies in a claim for damages for breach of covenant.

**Costs & Fees**

16. The Applicant had also made an Application under s20C of the Act for an order that the Respondent be prevented from recovering all or part of any costs he may have incurred in responding to this application through the service charge account.
17. Section 20C gives the Tribunal a discretion to make an order in relation to such costs where it is just and equitable to do so.
18. In the present case the Applicant has partially succeeded in the Application and therefore we consider it just and equitable that costs should follow the event. Accordingly, if the Respondent has incurred any such costs, we find that he is entitled to recovery 50% of those costs through the service charge. The lease does not, however, appear to provide for the landlord's costs to be recovered as a service charge.
19. Applying the same reasoning, the Tribunal makes an order that the Respondent reimburse the Applicant 50% of the fees he has paid to have the Application issued and heard.

Dated the 3 day of April 2013

CHAIRMAN..... J. Mohabir  
Mr I Mohabir LLB (Hons)