

LON/00AY/LSC/2006/0359

**DECISION BY THE RESIDENTIAL PROPERTY
TRIBUNAL SERVICE ON APPLICATION UNDER
SECTIONS:
LANDLORD AND TENANT ACT 1985 – SECTION 27A.**

Applicant: **Mr Arthur W Blackwell**

Respondent: **Ms N May**

Address: **Flat 3, 60/62 Palace Road, Tulse Hill, London SW2 3NR.**

Application date: **10 October 2006**

Hearing: **20 December 2006**

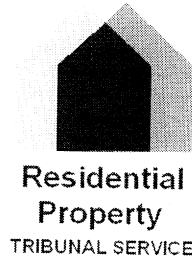
Appearance: **Mr Arthur W Blackwell**

For the Applicant

Ms N May

For the Respondent

**Members of the Leasehold Valuation Tribunal:
Mr Adrian Jack (Chairman)
Mr C White (FRICS)
Mrs G Barrett (JP)**



**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
(LONDON PANEL)**

LANDLORD AND TENANT ACT 1985 Section 27A

Property: Flat 3, 60-62 Palace Road, Tulse Hill, London SW2 3NR
Applicant: Mr Arthur W Blackwell
Respondents: Ms Natalie May

Tribunal Members:
Mr Adrian Jack (Chairman)
Mr White FRICS
Mrs Barrett JP

Ref :LON/00AY/LSC/2006/0359

1. This is an application by Mr Arthur W Blackwell for the determination of certain service charges due in the service charge year 2003/04 by Ms Natalie May. Although Mr Blackwell sold his interest in the property in March 2005, we shall still refer to him in this decision as the landlord.

Procedural

2. By a claim form issued on 26th July 2006 in the Bristol County Court under action number 6BS08270 the landlord claimed £569.18 plus costs plus interest as the tenant's share of payment made for buildings insurance plus a share of the cost of electricity. The attached Particulars of Claim said that the landlord was the freeholder of the block until March 2005.
3. The tenant filed a Defence and by order of 19th September 2006 the action was transferred to the Lambeth County Court. On 28th September 2006 District Judge Zimmels at Lambeth County Court transferred the matter to the Leasehold Valuation Tribunal.
4. The Tribunal held a pre-trial review on 7th November 2006. The tenant appeared but the landlord did not. The pre-trial review ordered the landlord to send copies of all receipts and invoices in respect of disputed items and in particular the insurance certificate.

5. At the hearing before us on 20th December 2006, both the tenant and the landlord appeared. The landlord did not produce the documentation which had been ordered. He explained that he was living in Thailand. Arrangements for the collection of post at his address for service in Bristol had been unsatisfactory and he had not been aware of the pre-trial review. In consequence he explained he had not seen the Tribunal's directions.

Facts

6. The lease was granted in 1988 and contains standard service charge provisions.
7. There had been a previous dispute between the landlord on the one hand and the tenants of five flats at the property including Ms May on the other. This had resulted in a hearing before this Tribunal in August and October 2003 under the chairmanship of Mr Nicol. The tenants were seeking the appointment of a manager and there were various service charge issues in the service charge years 2001/02 and 2002/03.
8. By a decision of 4th November 2003 the Tribunal determined the various service charge issues and appointed Mr Robert Aitken-Sykes of Prior Estates Ltd as manager of the block for a period of three years.
9. In the current action the landlord claims service charges from the tenant as 9.90 per cent of the following sums:
- | | |
|---------------------------------|-----------|
| Building insurance renewal | £4,499.34 |
| London Electricity common parts | 27.08 |
| London Electricity common parts | 53.15 |
| Additional item | 69.47 |
10. The tenant said that she had already paid Prior Estates Ltd insurance and electricity in 2003/04. The additional item she said related to a matter in respect of which the Tribunal had already adjudicated in its 2003 decision.
11. The landlord produced no documentation to show that he had paid the insurance premium. The tenant (not the landlord) produced an insurance schedule dated 31st July 2003 with the landlord indicated as the assured, but it was impossible to relate the sums on this schedule to the £4,499.34 claimed by the landlord.
12. The landlord produced no documentation to justify the electricity charges on the common parts.

The law

13. Section 19(1) of the Landlord and Tenant Act 1985 provides that:
"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."
14. Section 27A of the Act gives this Tribunal jurisdiction to determine by whom, to whom, how much, when and how service charges are payable.
15. Section 141(1) of the Law of Property Act 1925 provides that:
"Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter

thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of the reversionary estate, and without prejudice to any liability affecting a covenantor or his estate."

16. In relation to leases made after the coming into force of the Landlord and Tenant (Covenants) Act 1995 the position is different, but the lease in this matter pre-dates the 1995 Act.

Reasons

17. The landlord accepted before us that he had sold his interest in the property. Accordingly any outstanding claim which he had against the tenant was prima facie transferred to the new purchaser of the freehold.
18. The landlord provided no evidence that as part of the terms of the transfer he retained the benefit of any outstanding claims against the tenant. Indeed such a term would in our experience be unusual. The ordinary conveyancing procedure is for outstanding arrears from tenants to be taken into account as part of the completion statement, with the purchaser giving an allowance for such part of the arrears as the parties consider reasonably recoverable. Moreover the landlord said that the auction particulars gave full details of the outstanding disputes between him and the tenants at the block. That would have been unnecessary if the claims were not to be transferred to the purchaser.
19. The Particulars of Claim aver the sale of the freehold but plead no facts to show that the landlord retained the right to sue for arrears of service charge. As such in our judgment the Particulars of Claim disclose no cause of action in the legal sense.
20. Thus both as a matter of the evidence before us and as a matter of the pleading served by the landlord the landlord fails to show that he now has a claim for arrears against the tenant. Any claim for the arrears vests in the new landlord.
21. It follows that the tenant in this matter owes the landlord no monies.
22. We should add that, if we were wrong about this, we should have had grave difficulties deciding what, if anything, the landlord was owed due to the almost complete absence of relevant documentary evidence from him. As we have set out above the landlord failed to comply with the Tribunal's directions as to filing evidence. His living in Thailand explains, but does not excuse, this failure.
23. The landlord is clearly an intelligent man who had managed a number of blocks of flats. It must have been obvious to him that in order to justify the service charges he was demanding he needed to produce the documentary evidence in support. He should not be surprised if the Tribunal had determined the issues as to service charge adversely to him on this ground alone.
24. In the event, however, we do not have to determine this issue.

Costs

25. In this matter the landlord has lost comprehensively. We therefore make no order in respect of any fees paid by the landlord to the Tribunal. The costs in the County Court are a matter for the County Court.

DECISION

- a. The Tribunal determines that the respondent tenant is not liable to pay the applicant landlord any of the monies claimed in action number 6BS08270.
- b. The Tribunal makes no order for costs in respect of the fees payable to the Tribunal, but for the avoidance of doubt this order is without prejudice to the powers of the County Court to make orders in respect of the costs before it.



Adrian Jack, chairman

20th December 2006