

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

**Reference number:** LON/OOBC/LSC/2004/0098

**Property:** Flat 2, 99 Grove, Road, London E18 2JY

**Applicant:** Overseas & Real Estate Holding Co. (Lessor)

**Respondent:** Mr M Sadiq (Lessee)

**Appearances:** For the Applicant:  
Mr P Dunford of Barnes Allen (Managing Agents)

**Tribunal Members:** Mr A Andrew  
Mr P S Roberts DipArch RIBA  
Mr J J Tomalin

**Application date:** 24<sup>th</sup> September 2004

**Directions:** 7<sup>th</sup> October 2004

**Hearing:** 2<sup>nd</sup> December 2004

**Decision** 13<sup>th</sup> December 2004

## **Application**

1. This is an application by Barnes Allen Ltd on behalf of the freeholders of the Property, Overseas & Real Estates Holding Corporation ("Overseas"). The Respondent is Mr Mohammad Sadiq ("Mr Sadiq") the lessee of the 1<sup>st</sup> floor flat, flat 2, 99 Grove Road, London E18 2JY. The application is for a determination of the Service Charge payable by Mr Sadiq in respect of the period from 25<sup>th</sup> June 1998 to 24<sup>th</sup> June 2004.

## **Facts**

2. On the basis of the documents produced to it and the submissions made at the hearing the Tribunal found the following facts: -
  - a. The Property is a two storey terraced house that has been converted into two flats (one on each floor) both of which have been sold on a long residential leases, the terms of which are considered below.
  - b. Mr Sadiq was registered as the proprietor of the leasehold title to the 1<sup>st</sup> floor flat on 28<sup>th</sup> July 1998 and the flat must therefore have been transferred to him prior to that date.
  - c. At all material times Overseas owned the freehold reversionary interest in the Property which has been managed by Barnes Allen Ltd.
  - d. The Service Charge cost under consideration can be summarised as follows:

Cost	1998/99	1999/00	2000/01
Insurance premium	£664.05	£701.27	£768.00
Survey costs			
Insurance revaluation			
Repairs	£960.00	£742.00	
Management fees	£250.00	£250.00	£260.00
<b>Total</b>	<b>£1,874.05</b>	<b>£1,693.27</b>	<b>£1,028.00</b>
Cost	2001/02	2002/03	2003/04
Insurance premium	£955.50	£1,015.63	£1,403.22
Survey costs			£100.00
Insurance revaluation			£75.00
Repairs			
Management fees	£280.00	£290.00	£300.00
<b>Total</b>	<b>£1235.50</b>	<b>£1,305.63</b>	<b>£1,878.22</b>

- e. In addition to the above sums Overseas also demanded interest on the service charge arrears at a rate of 2% above base rate. By the date of the application the total interest demanded amounted to £835.51.
- f. Demands for Mr Sadiq's half share of the above sums had been issued by Barnes Allan Ltd to Mr Sadiq within two months of the relevant year-ends.
- g. Mr Sadiq had by letter to Barnes Allan Ltd dated 16<sup>th</sup> March 2004 contested the total service charge costs and in particular the interest claimed. He did not however explain why he considered

the service charge costs to have been unreasonably incurred. He failed to comply with the directions issued by the Tribunal which, amongst other things, required him to provide a full response by 28<sup>th</sup> October 2004. He did not appear before the Tribunal at the hearing.

- h. Barnes Allan Ltd had obtained the agreement of both lessees to the repairs undertaken in 1998/1999 1999/2000.

### **The Lease**

- 3. Mr Sadiq holds the 2<sup>nd</sup> floor flat under a lease dated 11<sup>th</sup> January 1985 and made between Town Towers Ltd and Julie Eleanor Bowen ("the Lease"). Under clause 5(b) of the Lease the Lessor is responsible for insuring and keeping insured the Property *"against loss or damage by fire and such other risks (if any) as the lessor shall from time to time think fit in some office of repute in the full reinstatement value thereof"*. One half of the insurance premium is recoverable by the lessor from the lessee as rent on the next 24<sup>th</sup> June or 25<sup>th</sup> December after the premium is paid.
- 4. The repairing scheme contained within the Lease envisages that the lessees of the two flats will be jointly responsible for the repairs and maintenance of the common parts, main structure and the exterior of the Property. However if the lessees default or cannot agree the obligations pass to the lessor who can then recover the costs incurred through the service charge provisions of the Lease.
- 5. The provisions relating to the payment of the service charge are to be found in clause (4)(c) of the Lease. In summary (and the Tribunal not being concerned with the demands issued for interim on account payments) the lessee must pay to the lessor one half of the costs incurred and authorised by the Fourth Schedule to the Lease, such payment becoming due at the end of each service charge year on 24<sup>th</sup> June. The relevant provisions of the Fourth Schedule are considered in the text of the decision.

### **Decision**

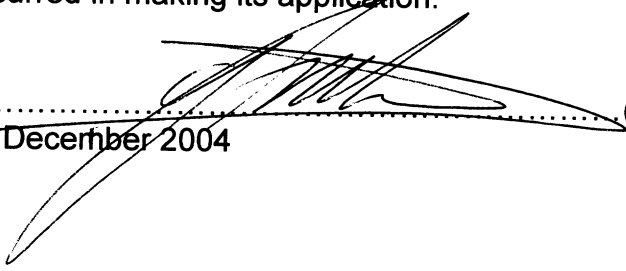
- 6. The Property was insured under a block policy which had at all times been placed with a reputable firm of Brokers, Deacon Insurance, who had each year tested the market. The Tribunal had some concerns that the cover included both residential contents in the sum of £10,000 and legal expenses cover. However it accepted Mr Dunford's evidence that these risks were included free of charge and that their deletion would not have reduced the premium. Furthermore the lessor's covenant quoted above allows for the insurance of *"such other risks as the Lessor shall from time to time think fit"*. The Tribunal therefore concluded that the premiums had been reasonably incurred and that they were recoverable from the lessees.
- 7. The survey and revaluation costs, amounting to £175, had been incurred to comply with the requirements of the insurers which, Mr Dunford said, had in recent years become more stringent. The insurance covenant

required the Lessor to insure the Property "in its full reinstatement value". The Tribunal concluded that reasonable costs incurred by the Lessor in establishing that value must therefore be recoverable. The Tribunal had no hesitation in concluding that the costs themselves were reasonable: indeed having had the opportunity of reading the survey it concluded that they represented excellent value for money.

8. The repairs related in the main to minor roof repairs, replacement of fencing, repairs to window frames, renewal of the front door locks and ultimately the renewal of the front door. The lessees had clearly defaulted in carrying out this work and they had also agreed to it being undertaken by Overseas, and consequently the Tribunal considered that the service charge provisions of the Lease were brought into play. The Tribunal considered that the costs incurred in undertaking these repairs were reasonable. Furthermore it was satisfied that all the costs fell within the fourth schedule to the lease and were recoverable from the lessees.
9. The Tribunal had no hesitation in concluding that the annual management fee which had increased from £125 to £150 per unit over 6 years was reasonable: indeed it was extremely competitive. The Tribunal concluded that it was recoverable by Overseas under the provisions of clause 6 of the fourth schedule which provide for *"all other expenses (if any) incurred by the Lessor in and about the maintenance and proper and convenient management and running of the Building"*.
10. Mr Dunford suggested that the interest claimed by Overseas was also recoverable under clause 6 of the fourth schedule. If a lessor was forced to borrow money to subsidise a lessee's default then it was certainly arguable that any interest paid on those borrowings would amount to an "expense". However there was no evidence that, that was the case here. Mr Sadiq had simply been debited with interest to reflect the fact that Overseas had been kept out of money due to it, for a considerable period of time. That did not amount to an "expense". The Tribunal therefore concluded the interest was not recoverable under the terms of the Lease although if Mr Sadiq failed to discharge the arrears and proceedings were issued in the County Court it may well be that interest would be recoverable in the context of those proceedings.
11. The directions authorised the Tribunal to consider ordering Mr Sadiq to reimburse to Overseas the fee of £350 incurred by it in making the application. The Tribunal had no hesitation in concluding that it would be appropriate to make such an Order. Mr Sadiq had provided no convincing argument for contesting the service charges demanded other than the interest which had only been added as a result of his default. Overseas had been left with no alternative but to make its application to the Tribunal prior to seeking recovery of the arrears through the County Court. In such circumstances it would be wholly appropriate to order the repayment of the fees.

### **Conclusion**

12. In respect of the 6 years under consideration the Tribunal determined that Service Charges of £4,507.35 were payable by Mr Sadiq to Overseas.
13. The Tribunal ordered that Mr Sadiq should reimburse "Overseas" fees of £350 incurred in making its application.

Chairman:.......... (A J Andrew)  
Date: 13<sup>th</sup> December 2004