

# **EASTERN RENT ASSESSMENT PANEL LEASEHOLD VALUATION TRIBUNAL**

**Landlord & Tenant Act 1985, Section 27A**

**Re: 3 Shirehall, Swaffham, Norfolk, PE37 7TU**

Case Number: CAM/33UB/LSC/2005/0022

**Applicant: Paul Green**

**Respondents: Mr. Joao Clemente and Mrs. C. Clemente**

**Tribunal Members: D S Brown FRICS MCI Arb (Chair)  
B M Edgington**

## **DECISION**

**of the Tribunal which met on 29<sup>th</sup> July 2005**

1. The Application is in respect of service charges for the year 2004.
2. The Tribunal considers that the application is suitable for determination without an oral hearing and neither party has made a request to be heard.
3. The Applicant forwarded with the application a copy of a lease, dated 24th September 1999, between Paul Green and Violet Flinders, in respect of "Flat No 7". In the absence of any information to the contrary, the Tribunal assumes that this is the lease of the subject premises or that the subject premises are let on identical terms.
4. The Applicant has forwarded invoices relating to the service charges. He states that all of the other 16 leaseholders have paid the charge. The Respondents have not responded to the application or the Directions and have forwarded no documents or statement of case. Having given the parties 28 days notice of its intention to determine the application without a hearing, the Tribunal has determined the application on the basis of the documents received.
5. Expenditure on services is recoverable by the landlord under the provisions of the Sixth Schedule of the Lease in respect of his obligations set out in The Fifth Schedule. Expenditure is therefore only recoverable for those matters which are set out in The Fifth Schedule. Neither the landlord nor the Tribunal can infer any other liability upon the tenant to pay for services which are not set out in The Fifth Schedule. The drafting of the Fifth and Sixth Schedules produces a situation where the landlord's inability to recover some of the

expenditure is irrational and, in some cases, unreasonable. It is presumably to the advantage of the tenants that the landlord provides lighting to common parts and it is not unreasonable to expect the landlord to be able to recover the cost of producing the service charge accounts. Application may be made for variation of the lease under s.35 of the Landlord & Tenant Act 1987. In the meantime, the parties are bound by the existing terms of the lease.

6. The items claimed by the Applicant have been considered in turn, as follows:-

Insurance of dwellings, £1,000,000 - £1,244

7. The Applicant has produced an Invoice from Insurewise Limited for £1,243.94, comprising, a premium on the premises of £617.40, property owner's liability premium of £586.54 and an administration fee of £40. The amount of cover and level of premium have not been challenged by the Respondents. The Tribunal considers that the charges are reasonable. Paragraph (c) of the Fifth Schedule obliges the landlord to insure and keep the development insured. The Sixth Schedule defines "expenditure on services" as *"the expenditure of the Lessor in complying with his obligations set out in the Fifth Schedule"*. The Tribunal finds that the premiums are recoverable but that the definition does not include the administration charge. Paragraph (i) of the Fifth Schedule allows the landlord to recover fees and disbursements paid to any managing agent or, if there is no managing agent, to charge a sum not exceeding 10% of the total expenditure incurred under the provisions of the schedule. This is the only provision relating to administration or management charges. If it was intended that the tenants would be liable to pay fees or disbursements paid to brokers, the lease should have been drafted to specifically provide that. The Tribunal therefore finds that the administration fee paid to the insurance broker, not being a fee or disbursement paid to a managing agent, is not recoverable.
8. The Tribunal determines that the sum of £1204 is payable in respect of insurance.

Electricity £132

9. The Applicant has provided four invoices from Powergen, totalling £132.36. This is presumably for lighting of common parts. As such, the amounts appear to be reasonable. However, there is no obligation in The Fifth Schedule for the landlord to provide lighting of the common parts or any other service entailing the supply of electricity. The lease does not therefore create any entitlement for the landlord to recover these charges.
10. The Tribunal finds that this charge is not payable.

Accountancy £186

11. No supporting invoice has been produced in respect of this charge. In any event, although The Sixth Schedule requires the service charge statement to be prepared by a Chartered Accountant, that preparation is not included in The

Fifth Schedule obligations and is not therefore recoverable under the provisions of the Sixth Schedule. Although it may seem irrational, the accountancy charge is not therefore recoverable.

12. The Tribunal finds that this charge is not payable.

#### Repairs £542

13. The Applicant has produced invoices totalling £536. These relate to works which are covered by the obligations set out in paragraph (d) of The Fifth Schedule, *"to repair and keep in good repair and condition the Development and each and every part thereof"* and paragraph (e), *"to repair and keep in good condition the Service Media"*. The amounts charged in these invoices appear to be reasonable and are recoverable.

14. The Tribunal determines that a charge of £536 is payable under this heading.

#### Management Fee £210

15. As previously indicated, The Fifth Schedule permits the landlord to charge not more than ten per cent of the total expenditure incurred by him under the provisions of the Schedule. The Tribunal has determined that charges totalling £1740 were so incurred. Ten per cent of that sum amounts to £174, which the Tribunal finds is a reasonable management charge.

16. The Tribunal determines that £174 is payable under this heading.

#### **SUMMARY**

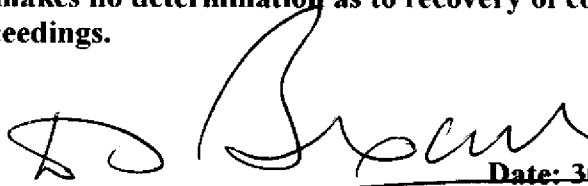
**17. The Tribunal determines that the following charges are payable under the service charge provisions of the lease:-**

<b>Insurance</b>	<b>£1,244</b>
<b>Repairs</b>	<b>£ 536</b>
<b>Management fee</b>	<b><u>£ 174</u></b>
<b>Total</b>	<b>£1,914</b>

**and that the service charge payable by the Respondents for the year ended 31<sup>st</sup> December 2004, being one seventeenth, is £112.60.**

**18. No application has been made in respect of section 20C and so the Tribunal makes no determination as to recovery of costs in connection with these proceedings.**

**Signed:**



**Date: 30<sup>th</sup> July 2005**

**D S Brown FRICS MCI Arb (Chair)**