

**SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL**

Case Number **CHI/43UB/LIS/2005/0025**

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

Re: **22 / 22A Pemberton Road, East Molesey, Surrey**

Applicant: **Mr G Smith**
 C/O Mackrell Turner Garrett, Solicitors

Respondents: **Mr D Baker (No.22); Mrs K Meisuria (No. 22A)**

Date of Application: **6 June 2005**

Date of Hearing: **19 October 2005**

Venue: **Bourne Hall, Spring Street, Ewell, Surrey**

Appearance
For the Applicant **Ms Hannah Chapman (Counsel)**

Appearance
For the Respondents **None**

Members of the Tribunal: **Mr J H S Preston JP FRICS**
 Mr A D McC Gregg
 Ms J Dalal

Clerk to the Tribunal: **Miss N Bennett**

Date of Decision: **1 November 2005**

The Application

1. This is an application under Section 27A of the Landlord and Tenant Act 1985 made by Mr Duncan Scott of Mackrell Turner Garrett solicitors of Church Street West Woking Surrey on behalf of the Landlord Mr G Smith. The application is in respect of Service Charges for past years: 1997-98; 1998-99; 1999-2000; 2000-2001; 2002-2003; 2003-2004; 2004-2005. and for current year 2005-2006.
2. In respect of each year the items of service charge in issue were stated to be the insurance premium and the ground rent. The tribunal was asked to decide whether the insurance premiums were reasonable.

The Property

3. The tribunal inspected the property before the hearing. Neither party was present or represented. Access to the interior was not possible; it appeared that the ground floor accommodation was vacant and unoccupied. The property is a two-storey house converted into two units to which there are separate side doors. It is built of rendered brickwork with a slate roof. There is a concrete yard with garages to the rear.

The Leases

4. The lease for No. 22, a first floor flat, dated 18 December 1987 was understood to have been assigned to Mrs Meisuria. The lease for No. 22A, a ground floor flat, dated 16 September 1983 was stated to have been assigned to Mr Baker. There was no documentation as to these assignments. Both leases are for a terms of 99 years from 24 June 1983 at a rents of £25 per annum for the first 20 years and £40 per annum for the next 20 years payable in advance on 24 June and 25 December in every year. There are lessees' covenants (Clause 2.19) to pay "a rateable proportion of the amount which the Lessor may from time to time expend ... in performing the Lessor's obligations as to repair maintenance and insurance....." There is provision for the Lessor (Clause 3.4) to keep the building insured to its full value. There is also provision for the Lessor (Clause 3.7) to "employ a reputable firm of managing agents to manage the building....."

The Law

5. This is contained in the Landlord and Tenant Act 1985 ("the Act") as amended by the Commonhold and Leasehold Reform Act 2002. The following are particularly relevant to this case: - Section 19 (1) *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.* Section 20B re. Limitation of service charges: time limit on making demands: *(1) if any of the relevant costs...were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection 2), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred. Subsection (1) shall not apply if*

within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of this lease to contribute to them by the payment of a service charge. Section 27A Liability to pay service charges: jurisdiction. (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to- (a) the person by whom it is payable, (b) the person to whom it is payable, (c) the amount which is payable, (d) the date at or by which it is payable, (e) the manner in which it is payable.

The Hearing

6. This was held at the Bourne Hall, Ewell. It was attended by Ms Hannah Chapman, Counsel instructed by Mackrell Turner Garrett for the applicant. Neither of the respondents was present nor were they represented.

The Case for the Applicant

7. With regard to ground rent Ms Chapman agreed that it did not come within the provisions of section 27A and that matter was withdrawn.
8. Ms Chapman referred to Cornhill insurance cover notes for the year to 3 January 1998 (£103.82), to 3 January 1999 (£107.98), to 3 January 2000 (£130.19), to 3 January 2001 (£141.96), to 3 January 2002 (£147.64), to 3 January 2003 (£166.33), Abacus certificates from 29 May 2003 to 29 May 2004 (£288.74), to 29 May 2005 (£352.62). She accepted that there was no evidence of any insurance cover for the period from 3 January 2003 to 28 May 2003. She was unable to provide any evidence as to whether these sums had or had not been demanded in accordance with the Act.
9. Ms Chapman tabled a photocopy of a fax copy of a Rentguard Insurance Policy cover note for the period from 2 June 2005 to 1 June 2006 at a premium of £266.00 + insurance tax. This referred to cover of £175,000 for the building. It appeared that no demand for payment had been served on the tenants. It was noted that there was no cover in place for the period from 29 May 2005 to 2 June 2005.
10. Ms Chapman tabled a number of photocopies of file copies of letters from Sherwood Wheatley, solicitors who had previously acted for the applicant, to Mr Baker relating to ground rent and insurance premium sums due between 1998 and 2000. She was unable to provide any evidence as to whether any of the sums due had or had not been paid. Mackrell Turner Garrett had been instructed from about May 2004. It had not been possible to obtain files or financial records relating to the property from Sherwood Wheatley. She maintained that Mr Smith had not received payments for the years 1997, 1998, and 1999 and acknowledged that these were in any case statute barred.

11. Ms Chapman stated that no demands for payment had been made in respect of the years 2004-2005 and 2005-2006 and requested withdrawal of these items from the application.
12. Ms Chapman requested an adjournment for the production of documents. The tribunal refused this application on the grounds that it was not reasonable to do otherwise, there being no persuasive reasons for an adjournment, having regard to the length of time elapsed since the submission of the application last June.
13. Ms Chapman tabled a letter from Mackrell Turner Garrett dated 11 May 2004 to Mr Baker and a similar letter to 'Mr K Meisuria'. This listed gross insurance premiums claimed to be owed for the years 1996- 2001 and a further sum for year to 29 May 2004, a total of £1,086.66 of which half was stated to be payable by each tenant.
14. Ms Chapman requested that the tribunal confine its determination solely to the matter of whether the insurance charges were reasonable. The tribunal decided that the matter should be considered fully in accordance with Section 27A.

The Case for the Respondents

15. In the absence of both respondents their cases were treated as being the written response by Mr Baker dated 17 August 2005. He stated that (1) part of the claim was statute barred by being over 6 years old. (2) He wrote to the applicant's solicitors on 24 May 2004 explaining that up to 2001 he had paid rent and insurance premiums to Sherwood Wheatley. Since then having received no communications from them he had taken out his own insurance cover with Northern Rock Insurance. (3) He attached a copy of their policy schedule for the period from 1 July 2000 to 30 June 2001. He also attached copies of NIG Corporation Plc policy schedules for a block policy including flat 22A for the following periods: -18 February 2002 to 17 February 2003; 18 February 2003 to 17 February 2004; 18 February 2004 to 17 February 2005;
16. On behalf of the second respondent, he asked the tribunal to dismiss the application.

Findings and Decisions

17. The landlord had not provided invoices and accounts in respect of service charges in accordance with the Act and the Service Charge Residential Management Code under the terms of Section 87 of the Leasehold Reform, Housing and Urban Development Act 1993 and in accordance with Clause 2 (19) of the Lease.

18. The landlord had not managed the property in accordance with either the prescriptions in the lease or those set out in statute and the associated code of practice, neither had he provided the tenants with details of insurance cover effected.
19. No evidence had been produced by the applicant as to accounting records of demands made or payments received during the periods in question.
20. Counsel for the applicant conceded that payment of the charges for the years 1997-98, 1998-99, and 1999-2000 could not be enforced. The application in respect of those charges is accordingly dismissed.
21. Payment of the charges for the years 2001-02, 2002-03 cannot be enforced, as demands had not been made in accordance with Section 20B of the Act. The application in respect of those charges is accordingly dismissed.
22. Payment of the charges for the year 2003-04 cannot be enforced, as some of the demands in the letters dated 11 May 2004 were unfounded and no documentary evidence was provided that cover had been effected and the costs incurred. Furthermore the letter does not constitute a demand for the purposes of Section 20B. The application in respect of these charges is accordingly dismissed.
23. The tribunal assented to the withdrawal of the items for the years 2004-05 and 2005-06, in the absence of the respondents to make any representations on the matter and on the basis that the applicant was not precluded at this stage from seeking payment.
24. These decisions by the tribunal apply in the cases of both respondents.

SignedJ H S Preston JP FRICS Chairman

Dated 1 November 2005