

**IN THE LEASEHOLD VALUATION TRIBUNAL**

**LON/00BJ/LBC/2006/0049**

**IN THE MATTER OF SECTION 168(4) OF THE COMMONHOLD AND  
LEASEHOLD REFORM ACT 2002**

**AND IN THE MATTER OF FLAT 8, 2 BOUTFLOWER ROAD, LONDON,  
SW11 1RE**

**BETWEEN:**

**MR A P HALL**

**Applicant**

**-and-**

**Ms K EDWARDS**

**Respondent**

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**THE TRIBUNAL'S DECISION**

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**Background**

1. This is an application made by the Applicant pursuant to s.168(4) of the Commonhold and Leasehold Reform Act 2002 (as amended) ("the Act") for a determination as to whether the Respondent has breached a covenant of her lease. The breach complained of by the Applicant is the non-payment of a registration fee of £200 and additional administration costs of £360 in pursuing the collection of the registration fee.

2. The Respondent occupies the subject premises by virtue of a lease dated 8 March 2006 granted by the Applicant to Ivan Bruce Williams for a term of 189 years from 29 September 1985 (“the second lease”). However, an earlier lease dated 15 November 1985 had been granted by Clive John Ilett to Stewart Alexander Pyke and Jane Margaret Cowan for a term of 99 years from 29 September 1985 (“the first lease”). The extended term granted by the second lease was as a consequence on the then lessee, Mr Williams, exercising the right to do so by Chapter 2, Part 1 of the Leasehold Reform, Housing and Urban Development Act 1993 (as amended). Clause 4 of the second lease provides that it was granted:

*“...on the same terms and subject to the same covenants provisos and conditions on the parts of both the Landlord and the Tenant as contained in the Principal (first) Lease.....so that this (second) Lease shall be construed and take effect as if such terms covenants provisos and conditions were...repeated in this Lease in full...and provided that the covenants given by the Landlord and the Tenant shall be construed as so they have been given at the date of the Principal (first) Lease.”*
3. By clause 5 of the second lease, the Applicant and the lessee covenanted to observe and perform all of the covenants and conditions on their part in the first lease. It is, therefore, clear that the second lease was expressly granted subject to the terms, covenants, conditions and obligations contained in the first lease save for the matter of the rent payable.
4. On 8 March 2006, the Respondent took an assignment of the second lease. Clause 2(f) of the first lease required the lessee, *inter alia*, to produce within one month of execution to the lessor’s solicitors a certified copy of any transfer, mortgage, legal charge or any other instrument affecting or evidencing a devolution of title of the lease and to pay the lessor’s solicitors a

registration fee of £10 plus VAT in respect of each such document. Clause 6(3) of the first lease sets out the methods by which any documents or notices served pursuant to clause 2(f) could be effected.

5. Prior to completion of the assignment of the second lease to the Respondent, the vendor's solicitors, Glazer Delmar, sent leasehold enquiries to the Applicant on 19 October 2005. One of the enquiries of the Applicant was who was authorised to accept Notice of Assignment and Charge and the amount of any registration fee payable for serving and such notices. In his reply dated 25 October 2005, the Applicant stated that service of any such notices should be effected on him personally and that the registration fee would be £200.
6. By a letter dated 24 January 2006, the Applicant's solicitors, Leon Kaye, informed the vendor's solicitors that clause 2(f) of the first lease only provided for a registration fee of £10 plus VAT per transaction and asked them to seek the Applicant's confirmation that he would register the assignment and charge upon payment of that fee. The vendor's solicitors, Glazer Delmar, duly sought this confirmation of the Applicant who did not consider himself bound by the provisions of clause 2(f) of the first lease. Nevertheless, completion took place on 8 March 2006. On the same day, the Respondent's solicitors served the Applicant with a Notice of Charge and Assignment and enclosed a cheque in his favour in the sum of £20 in respect of each notice. By a letter dated 10 March 2006, the Applicant returned the cheque for £20 and claimed that he was entitled to a registration fee of £200, as managing agent also, pursuant to paragraph 7 of the Fourth Schedule of the first lease. The parties were unable

to reach agreement on this matter and on 5 July 2006 the Applicant issued this application.

### **Decision**

7. The Tribunal's determination of this application took place on 22 August 2006 without a hearing, at the request of the parties, and is based entirely on the documentary evidence before it.
8. As the Tribunal understands it, the Applicant does not rely on clause 2(f) of the first lease to recover the registration fee of £200 claimed by him as managing agent. In his letter to the Respondent's solicitors dated 10 March 2006, he accepts that and goes on to submit that the registration fee of £20 plus VAT payable under clause 2(f) is limited only to any solicitors instructed by him. Where any notices are served on him in his capacity as managing agent, he is entitled under paragraph 7 of the Fourth Schedule of the first lease to claim such amounts as "*the Lessor may deem expedient in the interest of good management*". The lessee's covenant to pay the costs set out in the Fourth Schedule is contained in clause 3(ii) of the first lease. Although, it has not expressly been stated by the Applicant, it is to be inferred that clause 3(ii) has been breached by the Respondent by the non-payment of the sums claimed by him.
9. It is submitted on behalf of the Respondent that paragraph 7 of the Fourth Schedule places no obligation on the Respondent to pay any greater sum than that reserved by clause 2(f) of the first lease. It is further submitted that the

only costs recoverable under the Fourth Schedule are the management and maintenance expenses by way of service charges.

10. The Tribunal agreed with the submissions made on behalf of the Respondent. From a proper reading of the Fourth Schedule generally, and in particular paragraph 7, it is quite clear that the costs recoverable under this Schedule are those incurred by the lessor on a regular basis either directly or incidental to the maintaining and repairing the building. These costs are in the nature of service charges that are recoverable from the tenants in the property. It is for this reason that clause 3(ii) apportions the total expenditure incurred by the lessor under the Fourth Schedule at 25% per lessee. If the Applicant was correct that paragraph 7 of the Fourth Schedule allowed him to recover the sum claimed by him, he would only be able to recover 25% of the amount as against the Respondent.
11. Even if the Tribunal was wrong in its construction of paragraph 7 of the Fourth Schedule, it is a well known rule of construction that where there is any ambiguity in a document, it is to be construed against the party seeking to rely on any particular provision, that is, *contra proferentem* and the Tribunal does so in relation to paragraph 7 of the Fourth Schedule against the Applicant.
12. Whilst the Applicant is correct that a strict reading of clause 2(f) of the first lease appears to limit the payment of any registration fees to his solicitors, if any, this is not the case. The clause appears to have been drafted badly by the draftsman of the lease. Clause 2(f) has to be read together with clause 6(3),

which qualifies it. The latter provides that *any notice* served under the (first) lease can also be effected on either the lessee or any agent, including a managing agent. In this instance, there is no practical distinction as both the lessee and the managing agent are one and the same. The service of the Notice of Charge and Assignment and the payment of the registration fee of £20 for both notices by the Respondent's solicitors on 8 March 2006 complies with the obligations of clauses 2(f) and 6(3) both as to the method of service of the notices and the amount of the registration fee payable under the terms of the first lease.

13. Accordingly, for the reasons stated above, the Tribunal finds that the Respondent has not breached either clause 3(ii) or paragraph 7 of the Fourth Schedule of the first lease and dismisses this application.
14. Finally, in the Respondent's Response dated 20 July 2006, her solicitors have made an application for costs to be awarded against the Applicant on the basis that the application was frivolous and vexatious. The Tribunal does not grant that application on the basis that there was sufficient ambiguity in the first lease that justified this application being brought thereby requiring a determination from the Tribunal.

Dated the 22 day of August 2006

CHAIRMAN..... 

Mr I Mohabir LLB (Hons)