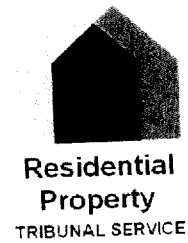


LON/00AL/LSC/2007/443
LON/00AC/LAC/2008/001



LANDLORD AND TENANT ACT 1985 SECTION 27A.

**LEASEHOLD VALUATION TRIBUNALS (PROCEDURE) (ENGLAND)
REGULATIONS 2003.**

Correction Certificate under Regulation 18(7) of the above Regulations:

69A Avery Hill Road, New Eltham, London, SE9 2BJ

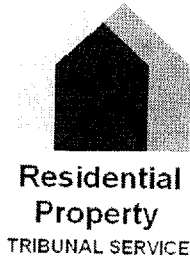
Correction to paragraph 13.

“2005/06” is corrected to read “2006/07”

Chairman:

Date:

W. Taghian
.....
29/2/08.
.....



**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985 Sections 27A (as amended by C&LRA
2002)

Ref :LON/00AL/LSC/2007/0443

Premises: 69A Avery Hill road, London SE9 2BJ
Applicant: Mr. Stanion
Represented by: Mr. Robinson RICS of McConnells Surveyors
Respondent: Ms. J Turner (In person)
Date of Hearing: 21 February 2008-02-21
Tribunal: Ms. L M Tagliavini, LL.M, DipLaw, BA(Hons)
Mrs. A Flynn, MA MIRCS
Mr. L G Packer

1. This is an application by the Applicant seeking the Tribunal's determination of the insurance premiums due for the service charge years 2001/02 to 2007/08 (inclusive) together with a claim for interest accruing and seeking costs of £320. By a lease dated 16th May 1989 for a term of 99 years from 25 March 1989 the Respondent, the long leaseholder of the

subject premises covenanted to pay insurance premiums within twenty-one days of a written demand made by the Applicant landlord.

2. In summary, it is the Respondent's case that although some sums of money are owed, the insurance premiums have not been timely demanded or alternatively had not been properly demanded despite a substantial amount of correspondence starting in 2001 and onwards to date.
3. The parties presented to the Tribunal their own respective bundles rather than one joint agreed bundle, although it appeared to the Tribunal that the bundle produced by Ms. Turner contained most of the relevant information the Applicant wished to rely upon.
4. Mr. Robinson on behalf of the Applicant told the Tribunal that a revised percentage of the insurance premium from 50% to 40% had been effected for all the premiums demanded from 2001 to date. He stated that this variation had not been formerly reduced to writing but the Tribunal could see from the application notice that the Applicant claimed only 40% of the premium for any of the years in dispute.
5. Clauses 3(iv) and 3(vii)(c) of the lease allows for the recovery of interest at either 4% over base or 10% whichever is the greater. In support of his calculations, Mr. Robinson produced a schedule of bank interest rates covering the relevant period showing that the rate of 10% was applicable.
6. Mr. Robinson was unable to point to any clause in the lease that allowed for the recovery of costs and told the Tribunal that he was relying on "equity" for an award of the costs claimed in the sum of £320.
7. Ms. Turner had included in her bundle of documents the copious correspondence generated between the parties, which showed that between 2001 and 2005 Mr. Robinson had not responded to any of her letters of enquiry and concern since 2001. She asserted that no demands for payment of insurance premium had been made in that period after the letter dated 23/03/01 – a fact admitted by Mr. Robinson at the hearing. Ms. Turner drew the Tribunal's attention to the lack of the demands for payment of the insurance premiums, or demands made out of time and later than the 18 months allowed, as well as the lack of information required pursuant to section 47 Landlord and Tenant Act 1987. Ms. Turner stated that she had made efforts to clarify the situation in respect of the premiums due with Mr. Robinson on numerous occasions, and had been waiting to have clarified the issue as to whether the policy was in fact going to be split and a separate policy for her flat and one for the commercial unit below taken out in place of the one policy covering the whole of the building. The Tribunal could see from the both the nature and tone of the correspondence as well as the demeanour of the parties that relations between Mr. Robinson and Ms. Turner had become increasingly strained.
- 8.

Decision:

9. Clause 1(4)(e)(ii) of the lease states in part:

“.....by way of further rent a yearly sum equal to the sum or sums which the Lessor shall or may from time to time pay by way of premium (including any increased premium payable by reason of any act or omission of the Lessee) for keeping the Demised Premises insured in accordance with the Lessor’s covenant in that behalf hereinafter contained the said further rent to be paid within twenty-one days of the Lessor making a written demand therefore from the Lesser.”

10. Section 20B Landlord and Tenant Act 1985 states:

I *“(1) If any of the relevant costs taken into account in determining the amount of any service charge 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.*

(2) 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 his lease to contribute to them by the payment of a service charge.

11. Section 47 Landlord and Tenant Act 1987 states:

“(1) Where any written demand is given to the tenant of premises to which this Part applies the demand must contain the following information, namely-

- (a) the name and address of the landlord, and*
- (b) if that address is not in England or Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.*

(2) Where-

- (a) a tenant of any such premises is given such a demand, but*
 - (b) it does not contain any information required to be contained in it by virtue of subsection (1)*
- then subject to subsection (3) any part of the amount demanded which consists of a service charge or an administration charge shall be treated for all purposes as not being due from the tenant to the*

landlord at any time before that information is furnished by the landlord by notice given to the tenant."

(3).....

(4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

12. The Tribunal finds that the insurance premiums are service charges within the meaning of section 18 Landlord and Tenant Act 1985. Therefore for each of the service charge years in dispute the Tribunal determines the following:
- | | |
|------------|--|
| 2001/2002: | Validly demanded by letter dated 23/03/01 but not due until such information as is required by s.47 L&T 1987 is provided. |
| 2002/2003: | Demanded by letter dated 27/5/05 and therefore out of time as it falls outside of the 18 months allowed; S.20B L&T 1985 |
| 2003/2004: | Demanded by letter dated 27/5/05 and therefore out of time as it falls outside the 18 months allowed; s.20B L&T1985. |
| 2004/2005: | Validly demanded by letter dated 27/5/05 together with a copy of the policy containing the required information. |
| 2005/2006: | Validly demanded by letter dated 27/5/05 together with a copy of the policy containing the required information. |
| 2006/2007: | Demanded in time by letter dated 22/3/06 but not yet due until the required information pursuant to section 47 L&T 1985 is provided. |
| 2007/2008: | Paid by Respondent and no longer in issue. |
13. Drawing on its experience and expertise, the Tribunal finds that the adjusted split of 40/60 payable by the residential flat and commercial property respectively to be reasonable and the level of premiums demanded to be within a range that is acceptable. The Tribunal also notes that since 2005, the Applicant through Mr. Robinson has acquired the services of an insurance broker in an attempt to keep the insurance premiums to a reasonable level.

14. Therefore, the Tribunal determines that the following sums are due and reasonable:

£392.24 for 2004/05

£420.47 for 2005/06

Compound interest @ 10%: £321.20

Total currently due: £1,133.91

13. The premiums for 2001/02 and 2005/06 will become due at such time as the Applicant provides the required information although interest is not chargeable on such sums unless they remain unpaid for more than 14 days after the time provided for payment i.e. 21 days after the written demand for payment.
15. The Tribunal finds, and it is accepted by the Applicant that the lease does not provide for the recovery of costs and therefore the costs of this litigation cannot be added to the service charge account.

Chairman: M. Taghavi

Dated: 22/2/05