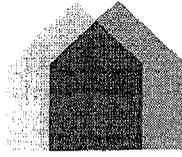


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Residential  
Property  
TRIBUNAL SERVICE

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

**Commonhold and Leasehold Reform Act 2002 Schedule 11**

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**LON/OOAG/LAC/2007/0014**

**Premises:** 11 Embassy House, West End Lane, London NW6 2NA  
**Applicant:** Ms Verica Podgorac  
**Respondent:** Salter Rex, Chartered Surveyors  
**Tribunal:** Mr J C Avery B Sc FRICS

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**Determination**

**The Applicant has no liability to reimburse the landlord's solicitor's costs of £565.94**

**Preliminary**

- A. On 9 August 2007 the Applicant submitted an application for a determination of her liability for an administration charge of £565.94 requested by Salter Rex in a Reminder invoice dated 12 July 2007
- B. On 14 August 2007 a Tribunal issued Directions for the management of the case, including that the matter would be determined without an oral hearing unless either party requested one. Neither party requested an oral hearing and the application was accordingly determined on the basis of the papers submitted by the parties.
- C. Both parties complied with the Direction for an exchange of documents (albeit not within the timetable) and the Tribunal had the benefit of full statements on which to make a determination.

### **The Respondent's case**

1. Mr Ben Preko of Salter Rex submitted a statement dated 30 August 2007 (although it was not delivered to the Applicant until 9 October). His case is
  - that the lease provides for recovery of the costs.
  - that the Applicant's service charges were in arrear,
  - that the Applicant had a history of arrears,
  - that three separate reminder letters were ignored,
  - that it was reasonable for solicitors to be instructed, and
  - that their charges were reasonable

### **The Applicant's case**

2. Ms Podgorac submitted her statement in reply on 11 October 2007. She replies
  - that she had not received the three reminder letters as they had been sent to Embassy House, and not her present address (of which she had informed Salter Rex)
  - that Salter Rex regularly failed to send documents to the right address
  - that the fact that she was in arrear is irrelevant
  - that she had never received any letter from the Respondent's solicitor
  - that there was no balance outstanding on her account on 21 June 2007

### **The lease**

3. The Respondent draws attention to Clause 3 (7) of the lease which provides for the lessee to pay any costs incurred by the lessor incidental to the service of a notice under s 146 and 147 of the Law of Property Act 1925, or costs incidental to a schedule of dilapidations.
4. In the Tribunal's view this clause does not enable the landlord to charge costs of this kind. In the lease the "maintenance charge" is payable as rent and s 146(11) excludes re-entry or forfeiture or relief in case of non payment of rent. The costs are accordingly connected with neither a notice preparatory to forfeiture proceedings nor with dilapidations.
5. Although it was not referred to by either party, the Tribunal has considered whether clause 4 (2)(b) is relevant. It enables the landlord to receive reimbursement of any sums expended "*in fulfilment of their obligations hereinafter contained in respect of which the lessors are unable to obtain reimbursement from the annual service charge*".

6. Those obligations (in Clause 5) are extensive and cover the insurance and maintenance of the building, the supply of various services and (sub clauses 12 and 13) the employment of staff and managing agents.
7. Legal authorities have decided that to enable a landlord to recover legal costs in the service charge the wording must be sufficiently specific. In the Tribunal's view this wording would not be sufficiently specific for such costs to be included in a service charge but that is not necessarily the correct test for the recoverability of an administration charge.
8. The obligations are clearly drafted as a list of tasks and expenses concerned with the physical condition and daily running of the building. Sub clause 21, which is intended to catch any expenditure not specified in the rest of clause 5, limits the costs to those needed for "*the proper improvement, maintenance, safety and administration of the building and of the services in the building and grounds*". Although he may choose to do so, there is no "obligation" on the landlord to employ solicitors to take proceedings to recover arrears of service charge.
9. The Tribunal finds that Clause 4(2)(b) does not provide for the landlord to recover solicitor's costs.

#### **Determination**

10. In the absence of any contractual provision for the reimbursement of legal costs the Tribunal has no jurisdiction to determine their reasonableness or otherwise and it is unnecessary to consider the remainder of the parties' submissions.

Chairman



Mr J C Avery BSc FRICS

30/10/07