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LON/00AG/LIS/2005/0110
LON/00AG/LIS/2006/0124

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER SECTION 27A
OF THE LANDLORD AND TENANT ACT 1985 SECTION 27 &
20C

Applicant: Mr L Goldstein

Respondent: Mr R Conley

Re: Hall Floor Flat, 27 Belsize Park Gardens London NW3 4JH

Application received: 21 November 2005

Hearing date: 18 and 19 January 2007 9 March 2007

Appearances: Mr L Goldstein (Applicant)
Mr C Tibber Oury Clarke Solicitors

Mr R Conley (Respondent)
Mr E Crowther

Members of the Leasehold Valuation Tribunal:

Mrs F Silverman LLM
Mr M Cairns MCIEH
Mr A Ring



**Residential
Property**
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AG/LIS/2005/0110

LON/00AG/LIS/2006/0124

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATIONS UNDER SECTION 27A & 20C OF THE
LANDLORD AND TENANT ACT 1985 (AS AMENDED) AND SECTION 42
LANDLORD AND TENANT ACT 1987**

Premises: Hall Floor Flat , 27 Belsize Park Gardens London NW3 4JH

Tenant : Mr R Conley

Landlord Mr L Goldstein

Appearances for Tenant: Ms E Crowther, friend

Appearances for Landlord : In person, and on 9 March only, Mr Tibber, solicitor

Date of Hearing: 18 and 19 January 2007 and 9 March 2007

Date of Decision:3 May 2007.....

Leasehold Valuation Tribunal: Mrs F J Silverman LLM

Mr M Cairns MCIEH

Mr A Ring

DECISION

- 1 The Tenant's application for a declaration as to overpayment of service charges fails . (Application no 124).
- 2 The parties having reached agreement on all but four issues relating to service charges contained in Application no 110, agreed to withdraw those applications..
- 3 The Tribunal gives leave to the Landlord to present a fresh application (if required) in relation to specific items of service charge still in dispute relating to service charge years 2004, 2005 and 2006 (as detailed below).
- 4 No order is made as to costs , both parties having withdrawn their applications in this respect.
- 5 A request by the Tenant for an order under Regulation 22 of the Tribunal Rules of Procedure was declined.
- 6 A request by the Tenant for an order for Disclosure by the Landlord was refused.
- 7 The Tenant's application to strike out the Landlord's applications was refused.
- 8 The Tenant's application to debar the Landlord's evidence was refused.
- 9 The Tenant's application for the Chairman to recuse was refused.
- 10 The Tenant's application for an adjournment was refused.

REASONS

1 This decision relates to the three conjoined applications whose numbers appear at the head of this document.

2 Application number 110 consists of two separate applications both brought by the Landlord (Mr Goldstein) in relation to unpaid service charges which he claimed were owed by the Tenant (Mr Conley). These related to the years 2000- 20004 (first application) and to 2005-2006 (second Application).

3 Application number 124 was brought by the Tenant who claimed an overpayment of service charges for the years 1981-1996.

4 To avoid confusion, the parties are referred to in this document as Landlord and Tenant rather than as Applicant and Respondent .

5 The Tribunal inspected the property at 10.00am on 18 January 2007. Mr Conley was present at the inspection.

6 The property comprises a ground floor flat (called 'hall floor') in a large five storey semi-detached Victorian house situated on a quiet residential street in north London. Other properties in the street were of similar design and age. The property is reasonably close to shops and transport facilities.

7 From the exterior the property appeared to be in fair condition but looked a little faded and in need of external decoration.

8 The Tribunal's attention was drawn to the state of the front entrance and steps which were composed of a mosaic of black and white tiles (similar to the entrances to several other houses in the street). The entrance way was in fair condition but some of the tiles were chipped or missing and there was an area close to the pavement which was in poor condition.

9 We were shown the interior of one rear room of the Tenant's flat where he pointed out to the Tribunal an area of a large curved bay window which had been treated for dry rot.

10 We inspected a skylight at the top of the communal staircase which appeared to be in working order but had not been painted.

11 We gained access to the garden area at the rear of the property (via and with the consent of the owner of the basement flat) to inspect the rear of the house where the Tenant claimed that he had been asked to pay for re-rendering of a portion of wall at first floor level. No part of that wall had been rendered, it being of brick construction.

12 We also viewed from pavement level the party chimney stack which was the subject of a contested service charge bill.

13 At the hearing, which commenced at 1.30pm on 18 January 2007, the Landlord represented himself and the Tenant was represented by his partner Ms Crowther.

14 Five bundles of documents were before the Tribunal for their consideration.

15 The Tribunal outlined their procedures and told the parties that they intended to commence by examining the Landlord's applications in relation to unpaid service charges.

16 A number of procedural issues arose throughout the hearing and these matters are discussed below (paragraphs 43 et seq).

LANDLORD'S APPLICATIONS

17 The Landlord's applications related to the alleged non-payment of service charges by the Tenant for the years 2000-6 inclusive.

18 Initially the Tribunal had difficulty in dealing with these applications because neither party was familiar with the bundles of documents which had been placed before the Tribunal nor with which items were currently being disputed under the Scott Schedule. On the third and final day of the hearing, after an adjournment, the parties reached an agreement by which these applications could, with the Tribunal's consent, be withdrawn.

19 The details of the parties' agreement are set out below.

20 The Tenant did not dispute any items arising from service charge year 2000 (total charge to be split between the various tenants = £2047.92).

£352.50 and for 2006, £37,957 and £14,108.71. The 2004 items relate to survey fees and a dry rot investigation commissioned by the Landlord.

31 The Tribunal accepts the withdrawal of the Landlord's two applications (number 110) but gives leave to the Landlord to present a fresh application in respect of the outstanding items as listed above from years 2004-6 if such should become necessary. .

TENANT'S APPLICATION RELATING TO OVERPAID SERVICE CHARGES

32 The Tenant brought an application requesting the Tribunal to make a declaration that the tenant had overpaid his service charges for the years 1981-1996 inclusive.

33 The Tenant's representative relied on the fact that the total percentage of service charges as set out in the leases of the flats contained in the building known as 27 Belsize Park Gardens amounted to over 100%. She maintained that this and the fact that the Landlord had not entered a response to this application, entitled her to a declaration in the terms requested .

34 The Landlord's evidence relating to service charge proportions was unhelpful inconsistent and misleading. For a substantial proportion of the years in dispute the Landlord had been both the freeholder and the tenant of one of the flats in the block. The Tribunal accepts that the service charge proportions set out in the various leases of the whole building did indeed total more than 100% during the years in question . The Tenant's lease at the relevant time (1995 and preceding years) required him to pay 25% of the total service charge and that was what he had paid. However, the Tenant did not demonstrate that the Landlord had demanded more than 100% of the total service charge in any year nor that he had received more than 100% in any year. At the hearing the Landlord said that he had adjusted the service charge proportion of his own flat to ensure that he did not receive more than 100% although he could not produce documentary evidence to support this. There was no evidence at all to support the tenant's claim which was in any event unquantified. The Tenant's representative agreed that the

figures shown on page 8 of the original hearing bundle were inaccurate saying that figures were not her strong point.

35 The Tenant's new lease, granted in 2000, was retrospective to September 1995 and reduced the proportion of service charge payable by the Tenant from 25% to 20%. It is possible that the Landlord might during the period between the latter half of 1995 and 1997 have charged the Tenant a 25% share of the service charge expenses which would have resulted in an overcharge for this period. This could have happened because during this period the old lease was still extant. However, an order was made in the proceedings leading to the grant of the new lease taking security for unpaid service charges and it appears improbable to the Tribunal that, in the light of this order, the new lease would have been completed had service charge issues remained outstanding at that time. It is normal for such matters to be adjusted and apportioned on completion and the Tribunal, in the absence of evidence to the contrary, makes that assumption in this case.

36 It was accepted that since September 1997 the Tenant had only paid 20%.

37 This means that the only possible overpayments would relate to years prior to September 1995 ie outside the statutory limitation period. Ms Crowther argued that equity should allow these claims to be made. The Tribunal is a creature of statute and has no equitable jurisdiction. Even if it had, the doctrine of laches would have barred this claim.

38 The Tenant's representative also argued that recovery of a residue (ie an overpayment) was not subject to any limitation period under the Limitation Acts. However, since she failed to establish that there was any residue this point is irrelevant. She also failed to appreciate that the burden of proof rested on the Applicant.

SECTION 20C

39 In considering the papers which were before us relating to the Tenant's application for a declaration that the Tenant had overpaid service charges between the years 1981 and 1996, and taking into account the submissions made on his behalf by Ms Crowther the Tribunal concluded that no prima facie case had been made out to support this application which therefore fails.

40 No application was pursued under section 20C of the Act.

COSTS

41 The Tribunal was unhappy about the behaviour of both parties both before and during the hearing. The Landlord had been uncooperative in his response to requests from the Tenant for documentation and had failed to follow Directions issued by the Tribunal. The behaviour of the Tenant's representative during the hearing in January 2007 was such that a costs warning was made against her.

42 However, having regard to the co-operation shown by the parties at the resumed hearing, which had resulted in an agreed settlement of most of the outstanding issues, the Tribunal decided not to make a costs order against either party.

43 The parties' individual applications for costs were both withdrawn as part of the terms of the agreement reached between them.

PROCEDURAL ISSUES

44 At the commencement of the first day of the hearing Ms Crowther questioned the validity of the Landlord's second application (years 2005-6) on the basis that the hearing fee had not been paid and was told by the Chairman that the Tribunal had accepted the application and that it would proceed.

45 During the morning of the second day of the hearing, Ms Crowther asked the Tribunal to make an order under Regulation 22 of the Tribunal Rules of Procedure as a result of the Landlord's failure to follow Directions made by the Tribunal and in response to the Tribunal's indications that they required detailed evidence in relation to the alleged overpayments of service charge.

46 The Tribunal adjourned to consider this request and refused it on the basis that it had no relevance to the issues in the present case.

47 The Tribunal treated the above request as a request for an order for disclosure under paragraph 4 of Schedule 12 of the Commonhold and Leasehold Reform Act 2003, and refused this also on the following grounds. Firstly, that such a request could have

been made prior to the hearing (we noted that the first Directions hearing in this matter had taken place in March 2006). Prior to the hearing the Tenant had made no formal complaint about the Landlord's failure to comply with the Tribunal's Directions which included a Direction for Disclosure. Further she had not made an application either for formal disclosure or for an adjournment of the hearing.

48 Further, there was no reasonable prospect of an order for disclosure being complied with since the documents to which the order would need to relate would for the most part be more than 12 years old and there was no guarantee that the Landlord would have retained his records over such a period.

49 We considered the request for disclosure was by way of a fishing expedition whereby the Tenant sought to discover documents which might help him to prove his case. No specific documents were named or asked for; the request was in generic terms.

50 The Tribunal also considered that the request was not proportionate to the amount being claimed. The amount being claimed had not been accurately quantified but appeared to be in the region of £3000 as a maximum spread over a period between 1981 and 1996.

51 Finally, the Tribunal considered that issues relating to service charges prior to the completion of the grant of the tenant's new lease would in any event have been resolved at that time.

52 No adjournment had been requested by the Tenant either before or at the commencement of the hearing.

53 We also took into account the fact that the Tenant had not sought legal advice until shortly before the hearing and had not attended the advice appointment which had been offered to him by the College of Law on 13 January 2007.

54 The Tribunal considered an application by the Tenant's representative to strike out the Respondent's applications under Regulation 11 of the Tribunal Rules of Procedure.

55 The Tenant had lodged that application shortly after the adjournment of the proceedings in January 2007 and it had been received by the Chairman on 8 February 2007. The Tenant's representative alleged that the Chairman had not given notice of that application to the Landlord in sufficient time to allow it to be dealt with at the present hearing.

56 The Tribunal pointed out that it was on record that the Chairman had dealt with the Regulation 11 application on 8 February 2007.

57 Although the Tribunal had copied the Tenant's request under Regulation 11 to the Landlord, no formal notice had been given under that Regulation .

58 It is only necessary for the Tribunal to give 21 days notice of the application where the Tribunal is minded to strike out all or part of an application.

59 In the present case the Tribunal was not so minded because as at the time of the submission of the application they had not heard sufficient evidence from either party to be able to determine whether or not the application which was the subject of the striking out request was vexatious or frivolous.

60 That being so, the Tribunal was not under any duty to give notice to the Landlord, and the Tenant's request for strike out was refused.

61 The Tribunal also considered the Tenant's request to debar the Landlord from giving evidence in response to the Tenant's application (number 124). This request was also made in the Tenant's letter of 5 February and was conjoined with his application to strike out which is discussed above.

62 The Tribunal declined to grant this application on the grounds that they had by this stage (the third day of the hearing) already heard all the evidence relating to application number 124, the present application made by the Tenant was therefore too late.

63 Shortly before the resumed hearing the Tenant's representative made a lengthy written complaint. Prior to the resumed hearing on 9 March 2007, the Tribunal told her that her complaint could not be dealt with until after the proceedings had

concluded but that she could instead make an application for the Chairman to recuse . The tenant's representative thus made such an application for the Chairman to recuse at the resumed hearing.

64 The Tenant then addressed the Tribunal on this application and told the Tribunal that she considered that the Rules of Natural Justice had been broken. She had only just discovered the existence of the Rules of Natural Justice and had not known of them at the time of writing her complaint. Her complaint had been fully set out in writing. The Landlord's representative chose not to respond to this application when given the opportunity to do so.

65 The Tenant's arguments contained in her written complaint (treated by the Tribunal as an application to recuse) were misconceived and factually inaccurate. Amongst her arguments were that the Directions issued by the Tribunal were 'dodgy' despite the fact that they were issued in the presence of the parties at the end of the previous hearing day and confirmed to the parties in writing shortly thereafter. She also alleged that she had not been given an opportunity to state her case, despite admitting that she used the time given to her to do this to further berate the Tribunal for its procedural decisions. She asserted that a time limit of 3.30pm had been set so that the Chairman could go home early. She condemned the Tribunal for finishing early on the previous hearing days, failing to mention that the reasons for this were the logistical difficulties in proceeding with the applications because the parties had failed to present her documents in a manner which enabled the Tribunal to progress the matter.

66 Having retired to consider its decision the Tribunal decided to refuse the application to recuse. The Tribunal concluded that there was no reason in law or necessity for the Chairman to stand down from the case.

67 The Tenant is not entitled by making such an application to influence the composition of the Tribunal which hears his case.

68 No actual or potential bias, conflict of interest or breach of the Rules of Natural Justice exist which could prejudice the outcome of the proceedings.

69 The interests of justice would not be served by granting the application because it would result in a lengthy delay and total re-hearing of a case which is already part heard and which has been in progress for over a year.

70 The Tenant's representative then applied for an adjournment so that her complaint could be dealt with as a complaint and not as an application for recusal.

71 The Landlord's representative objected to the application for an adjournment.

72 Having retired to consider its decision the Tribunal refused the application to adjourn.

73 The adjournment request was refused on the grounds that complaints are not entertained until the conclusion of proceedings and this matter is part heard.

74 The complaints leaflet issued by the Tribunals Service and to which the Tenant's representative referred makes it clear that a complaint will not be considered while proceedings are in the course of determination.

75 Further, the Landlord's solicitor opposed the adjournment and it would not be in the interests of justice to delay the proceedings further.

THE CONDUCT OF THE PROCEEDINGS

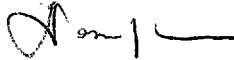
76 The Tenant was represented throughout the hearing by his friend Ms Crowther whose behaviour caused the Tribunal increasing concern and in the Tribunal's view added significantly to the overall length of the hearing.

77 Despite the fact that this matter had been ongoing for over a year, during which two sets of Directions had been issued, a hearing had been held and adjourned to allow mediation (which was unsuccessful) to take place, Ms Crowther appeared at the hearing without having checked that the documents in her bundles (which she had had in her possession since March 2006) were the same as those in the Landlord's bundle or that they were in the same numerical order. .

78 Ms Crowther repeatedly failed to follow the Tribunal's instructions requests and orders which had been made to expedite and progress the conduct of the transaction. . Her attitude towards the Tribunal was disrespectful argumentative and unhelpful. At one

point she threatened the Tribunal by saying that if the Tribunal did not grant her application the Tribunal 'would be very very sorry'. At this point the Tribunal asked the Tenant to retire with his representative and speak to her about her behaviour. Ms Crowther was warned by the Tribunal that she was at risk of a costs order being made against her and that if her behaviour did not improve the Tribunal would seek to exclude her from the proceedings.

79 The Tribunal were equally unimpressed by the Landlord's conduct, in particular the fact that he had ignored and consistently failed to follow Directions made by the Tribunal (eg in relation to disclosure and preparation of bundles) and in relation to one matter gave evidence to the Tribunal which was unhelpful to the point of being misleading.



Frances Silverman

Chairman