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Residential
Property
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

Landlord and Tenant Act 1985 – Section 27A

LON/00AL/LSC/2010/0275

Property	:	The Vista Building, 30 Calderwood Street London SE18 6QW	
Applicant	:	Vista Building Limited	Landlord
Represented by	:	Mr James McDonnell, Secretary Vista Building Management Limited, Managing Agents	
Respondent	:	Mr Ibosa Oshodin	Tenant
Represented by	:	None	
Date of Referral	:	20 April 2010	
Date of Hearing	:	5 August 2010	
Date of Decision	:	5 August 2010	
Tribunal	:	Mr John Hewitt Mr Hugh Geddes Mrs Lucy West	Chairman JP RIBA MRTPI JP

Decision

1. The decision of the Tribunal is that:

- 1.1 As at 16 May 2010 the net arrears of service charges payable by the Respondent to the Applicant in respect of Flat 106 The Vista Building is the sum of £652.27. No administration charges are payable in respect of this flat.
- 1.2 As at 16 May 2010 the net arrears of service charges payable by the Respondent to the Applicant in respect of Flat 122 The Vista Building is the sum of £1,006.65. No administration charges are payable in respect of this flat.
- 1.3 The claim be referred back to the Woolwich County Court for the court to determine the claims to:
 1. ground rent payable by the Respondent to the Applicant in respect of Flats 106 and 122 The Vista Building and Car Park Spaces 67 and 75 in The Car Park, the
 2. the court fee of £108.00; and
 3. costs in the court proceedings.
- 1.4 The Respondent shall by 4pm Friday 3 September 2010 reimburse the Applicant the sum of £150 in respect of fees paid by the Applicant to the Tribunal in connection with these proceedings.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

Background

2. The Applicant is the landlord of a development known as The Vista Building. Adjacent to The Vista Building is a multi-storey car park known as The Car Park.
3. The predecessor in title of the Applicant let long leases of flats within The Vista Building and of car parking spaces within The Car Park.
4. It was not in dispute that (by assignment) there is vested in the Respondent the leases of:

Flat 106 Vista Building
Flat 122 Vista Building
Car Park Space 67
Car Park Space 75.

5. The flat leases granted terms of 150 years from 1 January 2004 and provided for the payment of a ground rent and other sums. The car park space leases granted terms of 125 years (less 1 day) from 17 April 2002 and provided for the payment of a ground rent of £500 (subject to review) and other sums. The rent review provisions are set out in the Fourth Schedule and provide for a review on 17 April 2007 and every 5 years thereafter. A rent review formula is provided for but the minimum amount is £500 more than the rent payable prior to the review date.
6. A sample flat lease is at [27]. A sample car park space lease is at [1].
7. The leases oblige the landlord to insure the respective buildings and to carry out repairs and to provide services as therein set out. The leases oblige the tenant to contribute to the costs incurred by the landlord in complying with its obligations. It was not in dispute that the sums so payable are service charges within the meaning of s18 of the Act.
8. The leases set out a detailed regime for the calculation and payment of service charges. The details were not in dispute. In essence the landlord is to prepare a budget and calculate the tenant's potential liability. The amount of that liability is payable by two equal payments on 1 January and 1 July in each year. There is provision for a final account to be taken after the year end and for balancing debits or credits as the case may be.
9. The precise mechanics of the service charge regime were not in issue.

The court claim

10. In January 2010 the Claimant commenced proceedings against the Respondent in the Woolwich County Court and claimed [60-61]:

Flat 106

01.07.09	Interim service charge	£598.27
01.01.10	Interim service charge	£837.10
	Ground rent	£100.00
	Administration fee	£ 30.00
	Interest	£ 74.67

Also claimed (paragraph 12) were further administration fees relating to the alleged cost of a letter before action £50.00 and preparation of the particulars of claim £35.00.

Flat 122

01.01.10	Interim service charge	£582.44
	Ground rent	£ 50.00
	Administration fee	£ 30.00
	Interest	£ 72.32

Car Park Space 67

01.07.10	Ground rent	£500.00
01.01.10	Ground rent	£500.00

Car Park Space 75

01.01.10	Ground rent	£500.00
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11. The Respondent filed a defence:

"The amount charged for car park is unfair and unreasonable. To pay £1000pa for a car space in Woolwich is obscene. In other developments with valet parking in The Docklands and City the cost is £600pa.

Initially I paid £500pa all of a sudden this went up by 100% therefore my standing order became insufficient to cover this punitive charge.

I have paid my service charge religious [sic] by setting up a standing order because this is charged in advance, my account may show a deficit by the end of the charged period this would have been cleared. The agents were happy with this arrangement until the very excessive increase in car park maintenance cost. This should be referred to Leasehold Valuation Tribunal.”

12. By order dated 6 April 2010 the judge ordered that the claim be referred to the Leasehold Valuation Tribunal.
13. The Tribunal scheduled a pre-trial review for 18 May 2010. The Respondent did not attend. Directions were given. Paragraph 4 of the Preliminary Section [89] drew the attention of the Respondent to the fact that the Tribunal does not have jurisdiction to deal with ground rent complaints and that the Respondent should consider whether it is appropriate for the Tribunal to continue to deal with the matter or whether the matter should be returned to the court.
14. The Respondent submitted a statement of case [66-67]. The gist of his complaint was that the ground rent of £1,000 pa for the car park spaces was too high. The Respondent appears not to understand that the ground rent and service charges are quite separate obligations and that terminology is not interchangeable.
The Respondent made no specific complaints about any of the service charges claimed; his complaint appeared to be limited to the car park spaces ground rent.
In conclusion the Respondent sought a determination of the reasonableness of the 'service charge amount' and he wished to have the option to 'forfeit' the car parking space ' leases altogether; which we took to mean that he wished to have the opportunity to surrender them.

The hearing

15. The matter came for hearing before us on 5 August 2010. Mr J McDonnell of Vista Building Management appeared on behalf of the Applicant. The Respondent was neither present nor represented. Evidently he had notified the Tribunal that he was unable to attend due to his raised blood pressure. He made no application for an adjournment and said that he would send an email.
16. Part way through the hearing an email timed at 10:56 was delivered to the Tribunal. Mr McDonnell said that he had not seen it previously. The Respondent asserted that he was looking into service charge expenditure in excess of £150 and that he wanted to look into the service charges relating to the commercial element of the development; because he claimed that a number of (unspecified) issues arise from the retail units.

None of the points raised in the email had been mentioned in the Respondent's statement of case. We concluded that we should proceed with the hearing and make our determination on the information and evidence available to us.
17. Mr McDonnell took us through the claims and the detailed cash accounts [84-87]. These were unduly complex because there was one account for flat 106 and car park space 67 and one account for flat 122 and car park space 75. Evidently this form of accounting was set up by the previous managing agents and was inherited by Mr McDonnell. Further the accounts included both ground rent and service charges/administration charges. We needed to separate these out because the Tribunal does not have jurisdiction in connection with ground rents.
18. Mr McDonnell said that the Respondent made frequent payment of small sums but did not specifically allocate them to ground rent or service charges. The managing agent thus allocated them and the practice was to allocate to service charges first and then to ground rent

and in respect of them both to apply the proceeds to the oldest expenditure first.

19. With respect to the administration charges claimed we decided that these were not payable by the Respondent for several reasons:

19.1 In respect of the arrears recovery and letter before action charges Mr McDonnell was unable to identify a specific provision in the lease obliging the tenant to pay such charges. Indeed Mr McDonnell drew attention to clause 4(g)(i) of the flat lease [39] which expressly refers to the costs of computing and collecting the rents and service charges as being recoverable service charge expenditure;

19.2 There was no evidence before us that the Applicant had incurred such charges; Mr McDonnell said they were imposed by the managing agent; and

19.3 The demands for the charges were not compliant with s47 Landlord and Tenant Act 1987 because the landlord's address was not given.

19.4 The claims to interest were not correctly calculated because they included ground rents of both the flat and the car park space; and also the demand was not s47 compliant.

20. Since the issue of the court proceedings the Respondent has made some payments on account of his liability. These are shown on [85 and 87]

With the assistance of Mr McDonnell we were able to determine that as regards service charges the arrears as at 16.05.10 were as follows:

Flat 106

Arrears of ground rent and service/administration

Charges for flat 106 and

car park space 67 as at 01.01.10		£2,639.94
Less: Flat ground rent	£ 100.00	
Car park space ground rent	£1,000.00	
Administration charges	<u>£ 104.57</u>	<u>£1,204.57</u>

	£1,435.37
Less cash payments made 04.01.10 to 16.05.10	<u>£ 783.10</u>
Net service charge arrears	<u>£ 652.27</u>

Flat 122

Arrears of ground rent and service/administration	
Charges for flat 122 and	
car park space 75 as at 01.01.10	£2,266.57
Less: Flat ground rent	£ 50.00
Car park space ground rent	£ 500.00
Administration charges	<u>£ 102.32</u>
	<u>£ 652.32</u>
	£1,614.25
Less cash payments made 04.01.10 to 16.05.10	<u>£ 607.60</u>
Net service charge arrears	<u>£1,006.65</u>

Reimbursement of Fees

21. Mr McDonnell made an application for the reimbursement of the hearing fee of £150 paid in connection with these proceedings. We have required that the Respondent should reimburse this sum because the Respondent has lost his case. The only substantive complaint raised by the Respondent was the ground rents payable in respect of the car parking spaces. He was informed by the Tribunal in the Directions that the Tribunal did not have jurisdiction with regards to such ground rents. Nevertheless the Respondent pursued his objection and served a statement of case complaining about the level of the ground rents. This forced the Applicant to incur the hearing fee to bring this matter to a conclusion.
22. In these circumstances we find that it is just and equitable that the Respondent should reimburse the fee.

Ground rents

23. We have referred back to the court the question of the ground rents because we do not have jurisdiction to determine whether they are

- (b) the whole or part of which varies or may vary according to the relevant costs.

Section 19(1) of the Act provides that 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, and
- (b) where they are incurred on the provision of services or the carrying out of works, only if the services are of a reasonable standard;

and the amount payable shall be limited accordingly.

Section 19(2) of the Act provides that where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction of subsequent charges or otherwise.

Section 27A of the Act provides that 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, and
- (e) the manner in which it is payable.

Section 27A(3) of the Act provides that an application may be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance, or management of any specified description, a service charge would be payable for the costs and, if it would, as to

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable.

- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

Landlord and Tenant Act 1987

Section 47 provides that every demand for rent, service charges or administration charges must contain the following information:

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

Where a demand does not contain the required information the sum demanded shall be treated for all purposes as not being due from the tenant to the landlord, until such time as the required information is furnished by the landlord by notice to the tenant.

Commonhold and Leasehold Reform Act 2002

Schedule 11

Paragraph 1 sets out a definition of a 'variable administration charge'.

Paragraph 2 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Paragraph 5 provides that any party to a lease of a dwelling may apply to a Leasehold Valuation Tribunal for a determination whether an administration 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, and
- (e) the manner in which it is payable.

No application may be made in respect of a matter which:

- (a) has been agreed or admitted by the tenant,

- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court. Or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

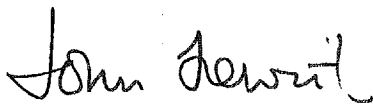
A tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9(1) provides that subject to paragraph (2) a Tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or any part of any fees paid by him in respect of the proceedings.

Regulation 9(2) provides that a Tribunal shall not require a party to make such reimbursement if, at the time when the Tribunal is considering whether or not to do so, it is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Regulation 8(1) makes reference to a number of benefits/allowances including, but not limited to, income support, housing benefit, jobseekers allowance, tax credits, state pension credits and disability related allowances.



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John Hewitt

Chairman

5 August 2010