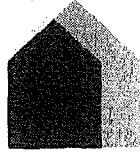


5188



Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case References: LON/OOAW/LSC/2010/0008 & 0167

Premises at Flat 2, 20 Stanhope Mews West, London SW7 5RB

**AN APPLICATION UNDER SECTION 27A and SECTION 20C of the LANDLORD
AND TENANT ACT 1985 ('the 1985 Act') & SCHEDULE 11 COMMONHOLD AND
LEASEHOLD REFORM ACT 2002 ('the 2002 Act')**

Applicant	Mr Simon Calhaem (leaseholder)
Representation Respondent	(In person) Sinclair Gardens Investments (Kensington) Limited (head leaseholder and landlords)
Representation	Mr J Summers (counsel) instructed by P Chevalier & Co (solicitors) with Mr M Kelly (First Management Limited)
Hearing Date	3 June 2010
Inspection Date	There was no inspection
The Tribunal	James Driscoll, solicitor (Lawyer Chair), C P Gowman, MCIEH, MCMI, BSc O N Miller
Decision Date	15 July 2010

THE DECISIONS SUMMARISED

1. The service charges for the year ending September 2008 were reasonably incurred save for the charges for repairs to the entry phone system which are reduced by 25%.
2. The service charge for the year ending September 2009 were reasonably incurred save for two elements. First, the charges for repairs to the entry phone system which are reduced by 25%. Second we determine that the sum of £4,885.33 is reasonable for the landlord's costs for the previous application to the tribunal to be charge as a service charge. The Respondent's liability is in the sum of £952.64 (representing the agreed proportion of those costs at 19.5%).
3. No order is made under Section 20C of the Act limiting recovery of any professional costs incurred by the respondent as future service charges.
4. An advance service charge of £1,000 is reasonable.

Introduction

5. There are two applications. The Applicant is the owner of the lease of flat 2, one of four flats in the building all held on long leases. It appeared from the bundle of papers produced by the Respondent that the Respondents are the owners of the freehold and the landlords under the leases. First Management Limited have been appointed by the landlords to manage the building. In fact it emerged during the hearing that the Respondents hold a head lease of the residential part of the building and that they are the landlords under the Applicant's flat lease and under leases of the other three flats in the building. We were sent a copy of the head lease after the hearing.
6. It also became apparent during the hearing that the building is in mixed-use with a takeaway restaurant occupying the whole of the ground floor which faces Gloucester Road with the entrance to the residential part of the development which is on Stanhope Mews West. The building forms part of a terrace of buildings on numbers 18, 19 and 20 Gloucester Road all in mixed use. The freeholder of the subject premises is Long Life Limited. We will call the parties to this application the 'leaseholder' (that is the Applicant) and the 'landlord' (that is the Respondent) respectively.
7. Both applications were dated 24 December 2009. One is made under section 27A of the 1985 Act as to liability to pay service charges for the years 2007 to 2015. His complaint here is that he has not received any documents relating to service charges. The second application seeks a determination to pay administration charges. No

specific complaints or challenges to the charges were identified in either of these two applications.

The previous application to the Tribunal

8. There was a previous application to this Tribunal (LON/OOAW/LSC/2008/0139) in relation to service charges which was settled. As a result no determination had to be made. We have seen a copy of the hand-written agreement signed by and on behalf of the parties. In this document the parties agreed (a) that the leaseholder would pay the sum of £6,000 within 28 days of the date of the agreement (that is 9 October 2008) which would settle any outstanding service charge claims for the service charge years 2005, 2006 and 2007; (b) the landlord could claim 19.5% of its costs in relation to the application and (c) the leaseholder admits for the purposes of section 87 of the Housing Act 1996 that the sums due are service charges (this Tribunal concludes that this is a mistaken reference). There is no further reference to the landlord's costs in this agreement.
9. As no determination was made the Tribunal was not asked to make an order under section 20C of the Act in relation to the landlord's professional and other costs occasioned by dealing with that application. Since reaching this agreement two matters have emerged. It is common ground that the leaseholder has paid the sum of £6,000 to discharge the arrears of service charges for the years 2005, 2006 and 2007. However, the landlord claims interest on the arrears. Although it is common ground between the parties that interest can be claimed for late payments, the parties do not agree if interest can be claimed for the charges for which the leaseholder paid £6,000. The leaseholder says that the agreement reached means that no interest can now be claimed. However, the landlord says that it did not exclude interest when it negotiated the settlement. A second area of disagreement over that settlement relates to the landlord's costs. The leaseholder considers that they are far too high.

The current application to the Tribunal

10. The current application we are dealing with started with proceedings issued in the West London County Court in which the landlords claim £7,715.49 for unpaid service charges, unpaid ground rents, unpaid administration charges, interest and other charges. These proceedings were stayed and the claims for £4009.14 and another claim for £130.33 were transferred to this Tribunal for a determination. The disposal by the Court of the remaining sums claimed is therefore stayed pending the outcome of these applications.
11. For the present applications this Tribunal gave directions on 17 March 2010. Bundles of documents were produced by those advising the landlords.

12. In his written statement dated 19 April 2010 the leaseholder claims that since bringing this application the managing agents and the landlord's solicitors have refused to respond to his correspondence. He referred to the hand-written agreement (which we refer to in paragraph 6 above) and claims that the managing agents have reneged on that agreement by bringing proceedings in the Chichester County Court for the full amount plus £5000 in interest. He claims that the managing agents also failed to properly raise requests for payment, to credit his account for payments he has made and that there are charges which are 'erroneous, and unreasonable' (6 v) of his statement). He also submits that many of the charges now claimed are barred by section 20B of the 1985 Act as he was not notified of the charges within the period required under that section and he believes that other charges may be irrecoverable as well for this reason. He also submits that some of the charges may be irrecoverable under the terms of his lease. However, he does not specify which of these charges are irrecoverable under the lease. The leaseholder also challenges the provisions for including interest on late payments.
13. In further complaints, he challenges the managing agent's costs in relation to the earlier proceedings and the costs of bringing proceedings in the County Court. He claims that his requests to install wooden floors, for a tenant's association to be recognised and various other matters have been ignored. More generally he would like to see documentary evidence of expenditure and claims that the figures claimed do not tally with those in the Chichester County Court claim. He says that he is interested in using mediation to try to resolve these disputes and that he will seek an order under section 20C of the 1985 Act. As an addendum to this statement he appends copies of various letters sent to the landlord's solicitors.
14. The case for the landlords is set out in a statement dated 11 February 2010 made by Mr Mark Kelly a director of the managing agents. He claims that a total of £8156.46 is owing in service charges for the years ending 28 September 2008, 28 September 2009 and 28 September 2010. He says that two payments totalling £3500 have been received from the leaseholder. Mr Kelly adds that County Court proceedings are pending seeking service charge arrears which allowing a payment of £1500 leaves a balance owing of £4009.14. As to the denial that the leaseholder has been sent service charge demands he sets out a schedule of these demands followed by copies of the documents he says were sent. Turning to the agreement, Mr Kelly says that the sum of £6000 was paid and that the landlord's 19.5 % of the costs before this Tribunal came to £1270.18. As to interest, he submits that this is claimed under clause 23 of the fifth schedule to the lease and that the £6000 paid did not include interest. He estimates that interest of £878.30 is owing on that £6000 and that the total of an additional £1,049.28 is payable for late or non-payment of charges since the resolution of the previous tribunal proceedings in 2008. Mr Kelly goes on in his statement to set out details of his professional qualifications and experience. Mr Summers, counsel for the landlords, made a number of legal submissions. In summary, he submits that the burden of proving that the service charges are not

recoverable lies with the leaseholder. In the absence, as he sees it, of any such challenges, he argues that the costs are reasonable.

15. In a later statement dated 5 May 2010 Mr Kelly responded to the points raised in the leaseholder's statement. He sets out in a schedule the various replies he says were made to the leaseholder's letters. Mr Kelly argues that the agreement reached in the earlier Tribunal proceedings was for the arrears for 2005, 2006 and 2007 and did not include the advance payment for the year starting 29 September 2008. Nor did the ground rent arrears form part of the settlement. More generally he does not accept that the leaseholder has been notified of demands outside the period specified in section 20B of the 1985 Act. He points out that some of the statutory references relied on by the leaseholder, changes made under Part 2 of the 2002 Act, are not in force. He adds that no formal request for a summary of costs (under section 21 of the 1985 Act) has been received. He denies that interest was waived when the parties reached agreement in 2008 over the previous proceedings.

The hearing

16. We were given several documents on the morning of the hearing. The leaseholder handed us his own version of a Scott schedule and we were also handed a long skeleton argument on behalf of the landlord. Those representing the landlord sought an adjournment to consider the documents. They complained that the late service of these statements had caught them unawares. It would be only fair, they argued, that the hearing was adjourned to enable them to consider the various points the leaseholder was now raising. They also complained that the leaseholder had not complied with the directions. In particular, he had not commented (as required by the directions) on their Scott schedule. In response the leaseholder said that the landlords had failed to respond to his letters. We considered the application for an adjournment to another date and refused it. The issues now being raised by the leaseholder could be considered by the landlord's managing agent, who was present, so we adjourned the hearing for one hour to allow the landlord's representatives to take further instructions. Nonetheless We were concerned at the very late submissions and documents by the leaseholder which made the task of determining the charges all the more difficult.
17. We then heard from the leaseholder who was cross-examined by counsel for the landlord and from Mr Kelly who was cross-examined by counsel for the landlord. Each party made closing statements. The leaseholder told us that he no longer challenges the charges for alleged non-compliance with section 20B of the 1985 Act.
18. Those representing the landlord made the point both before the hearing and during it that it is for the leaseholder to support a challenge to service charges by arguments and supporting evidence. We agree with this and share their concern that until the hearing the leaseholder had not given particulars of his challenges to the charges. These were produced just before the start of the hearing.

19. We now turn to the various challenges that were made by the leaseholder. We deal first with the matters that remain in dispute following the written agreement referred to in paragraph 6 above. The parties disagree over the scope and the interpretation of the agreement. However, this Tribunal does not have jurisdiction to make a determination. Issues over the written agreement are in our view matters that can only be litigated in the Courts. This includes that part of the agreement relating to the leaseholder's contribution to the landlord's costs.

20. We have also concluded that the leaseholder's complaint about certain administration charges. These are the charges the landlord seeks to recover from the leaseholder (and the other leaseholders in the block). An example is a statement of account on page of the bundle.

21. 'Administration charges' can be challenged in this Tribunal under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 where an administration charge is defined as:

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly--

(a) for or in connection with the grant of approvals under his lease, or applications for approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

22. We do not think that including a management charge in service statement or demand is an administration charge. It was not a charge made for the grant of an approval under the lease, in connection with the provision of information or documents, or a failure to make payments in time or in connection a breach of covenant or condition on the lease.

Service charges: 2008 and 2009

23. Turning now to the specific challenges, for the 2008 charges the leaseholder claims that the cleaning charges were too high. The cleaning is undertaken in the common parts of the residential section of the building and involves cleaning the hall and

stairs. He says that he could find a cleaner who would carry out the work for £10 per visit. For the landlord, Mr Kelly argued that it would be impossible to find a cleaner to work for such a sum. We do not think that these charges (totalling £992.94 for the year at an average monthly rate of £76.38 for six months increasing to £89.11 for the other six months) can be said to be unreasonable.

24. The leaseholder questions charges of £423 for the cleaning out of gutters of leaves. He argues that is not cost-effective to use a contractor from outside London. A further complaint is it would be more cost-effective to install grills to catch the leaves. Mr Kelly countered this by claiming that out-of-London contracting is cheaper than employing London contractors. He doubts if the installation of grills (which would carry a cost) would make the work any easier. On balance we consider that this element of the service charge was reasonably incurred.
25. Another challenge to the 2008 charges was to the entry phone which the leaseholder claims is not working. He is of the view that no charge should be made. Responding to these criticisms Mr Kelly told us that the landlord has a contract for the rental of the entry phone and the service includes the carrying out of repairs. He added that when he receives a complaint, he refers it to the company and unless he receives a further complaint he assumes that the necessary works have been carried out. We consider that Mr Kelly should have checked with the leaseholder to see if the complaint had been remedied. Nevertheless, the landlord is entitled to recover some of the costs of this service which benefits all the leaseholders. There will be a 25% reduction in this element of the service charge.
26. Turning to the management charges, the leaseholder claims that they are far too high considering that this is a relatively simple property to manage as it has just four flats. In response Mr Kelly told us that his firm charged at the rate of £286 per flat in 2008. We consider that this charge is on the high side but not so high as to make it unreasonable.
27. The final matter in dispute was the costs of employing a company to deal with pest control. According to the leaseholder neither he nor the other leaseholders have ever seen pests in the building. Mr Kelly countered this by suggesting that the absence of pests indicated the success of the pest control. He added that this contract could be discontinued in future if all the leaseholders agreed, though as there is an establishment selling cooked food on the ground floor which is capable of leading to pest infestation, the leaseholders might take the view that it is sensible to continue with the contract. We conclude that the provision of pest control is a sensible decision and the costs are recoverable as service charges.
28. This brings us to the charges for 2009 where the leaseholder challenged exactly the same individual charges as for the previous year (except for the legal and profession charges) that is the cleaning, gutter works, entry phone (which he claims is still not working for his flat), pest control and management charges (which had increased to

£298 per unit). With the exception to a reduction in the entry phone charges of 25% we do not consider these charges to be unreasonable.

29. By far the largest item in the charges is the professional charges incurred in connection with the previous application to this tribunal. As part of the settlement of that case, the landlords agreed only to charge 19.5% of their charges. They have credited the leaseholder for that element of the charge.
30. There remains, however, the issue of the reasonableness of the charges that have been made as service charges for the management of the block. The details are in pages 37 to 41 of the bundle. The landlord's solicitors have charged to the service charge accounts the sum of £4,327.52 (which includes counsel's fees of £422.25 and VAT on the solicitor's charges). In addition the managing agents have charged their time at a total of £2,186.26. The leaseholder did not make any detailed criticisms of these bills except for generalised comments that they appear to be excessive and unreasonable.
31. We have examined the charges and note that this item exceeds by a considerable margin the whole costs of managing the residential part of the building. Moreover, the bill claims some 13 hours for the solicitor's time with the case (charged at £220 per hour) and some 15 hours of the managing agents' time (charged at £110 per hour). We accept that under the leases the landlord is entitled to appoint solicitors and managing agents. It is also accepted that it is reasonable for the managing agent to charge time for preparation and attendance at the tribunal. On the basis of our knowledge and experience we consider that both the hourly rates seem reasonable. But we are concerned at the size of the charges and what appears to be considerable duplication in the preparatory work. This is particularly so with the time spent by both solicitor and (we assume) by Mr Kelly in preparing statements bearing in mind that the statements are largely statements of fact.
32. The solicitor has charged 1.75 hours in considering section 20 submissions. Our discretion under that section is not difficult to summarise and we do not believe that an experienced solicitor can justify such a charge. Nor do we understand why it is necessary to charge time for either reading counsel's skeleton argument or speaking to counsel who was negotiating a settlement at the tribunal. Those two charges alone amount to about one-half of what counsel has charged for the work. Mr King has also charged time for the preparation of his statements and 7 hours for attending the tribunal even though there was no hearing as the parties reached a settlement at the tribunal.
33. When approaching such charges one should consider whether the landlord would have agreed to bear this scale of charges, if the landlord were paying the costs itself without recovery from other parties. In the absence of more detailed objections from the leaseholder we can do little more than to make these observations and to compare the scale of the charges to the general costs of managing a relatively small block of flats. We conclude that an overall reduction of 25% is a reasonable way of

determining the charges. This reduction gives a figure of £4,885.33 which we conclude is a reasonable charge for the work involved. As the leaseholder's contribution is agreed to be 19.5 % of this, his liability is the sum of £952.64.

34. On the other aspects of costs, the leaseholder did not pursue his application for an order for costs (made under Schedule 12 of the Commonhold and Leasehold Reform Act 2002) with any enthusiasm. We can see no basis for making such an order. On the issue of our jurisdiction to make an order under section 20C of the 1985 Act, we cannot find fault in the landlord bringing proceedings where a leaseholder has not paid service charges. As we pointed out earlier in this decision, the leaseholder failed to particularise his complaints about the charges and these only became apparent on the morning of the hearing.
35. No order limiting recovery of any professional costs as a service charge is made under section 20C of the 1985 Act. Of course any such charges must be reasonably incurred. We simply note that for this hearing counsel prepared a lengthy skeleton argument and produced a lengthy list of legal authorities which were not used for the most part in the course of the hearing.
36. Finally we note that the sum of £2,000 has been demanded as an advance charge for 2010 in relation to possible repairs. Mr Kelly told us that the landlord had taken its outstanding costs out of the existing reserve fund and this is the reason for the charge. We are not convinced that using the reserve fund in this way is entirely legitimate. The landlords were aware that their professional costs were in dispute. They will now have to make adjustments in light of our determinations of their costs. We consider that it is reasonable to make an advanced charge of £1,000 for any repairs that might be undertaken during the current service charge period.

Signed:

James Driscoll LLM, LLB Solicitor (Lawyer Chair)

15 July 2010