4939

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LANDLORD AND TENANT ACT 1985

LON/00BB/LSC/2009/0769

Premises:	Flat 6, Vineyard Studios, 18 Shaftesbury Avenue, London E7 8PY
Applicant / Tenant:	Miss Feroza Begum
Respondent / Landlord:	Quadron Investments Ltd
Tribunal:	Ms F Dickie, barrister Mr R Shaw, FRICS
Date of Preliminary Hearing	15th February 2010
Date of Decision	17th March 2010

Summary of Determination

1.

a. The Tribunal has no jurisdiction under s.27A in relation to the service charges that form the subject of this Application since they have been agreed.

b. The Tribunal orders the Respondent to pay to the Applicant:

i. A refund of her application fee of £100

ii. Costs of £200

c. The order sought by the Applicant under s.20C is granted.

Preliminary

2. The Application was made on 24th November 2009 for a determination under s.27A of the Landlord and Tenant Act 1985 ("the Act") of liability to pay service charges for electricity and water supply for the year 2004. The Applicant also sought an order under s.20C of the Act, limiting the Respondent's ability to recharge the costs of these proceedings through the service charge account.

3. The Applicant is the leaseholder of Flat 6 within this purpose built block (comprising 14 residential units) known as Vineyard Studios, forming part of a development called Trebor Works. The Respondent is the freeholder. Within the same development the adjoining property is known as Bridgepoint Lofts, Shaftesbury Road. The background to this dispute is the determination by the Leasehold Valuation Tribunal made on 19th January 2007 (case number LON/00BB/LSC/2006/0233) regarding the liability of the residents of Bridgepoint Lofts to pay for water and electricity charges. In essence, both Vineyard Studios and Bridgepoint Lofts have a joint supply for these utilities but until the Tribunal's determination in that case only the leaseholders of Bridgepoint Lofts were charged for the entire supply for the year 2004. As a result of the Tribunal's determination, in 2007 the residents of Vineyard Studios were retrospectively charged £1008.55 for their share of water and electricity costs for the year 2004. This Applicant then disputed those charges with the managing agent on the basis that they had not been made in accordance with s.20B of the Act, which provides:

(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.

4. The Tribunal issued Directions on 6th January 2010 and identified the following issues in dispute:

a. Whether the Applicant is liable to pay water charges and electricity charges for the service charge year 2004.

b. There was an error in the supply of the electricity and water which was charged to the adjoining property by the utility suppliers and the error was only identified in 2007. Accordingly the Applicant maintains that the liability is limited in accordance with Section 20B(2) of the Landlord and Tenant Act 1985.

c. The Applicant contested that a dispute over these service charges had been agreed.

5. The Tribunal directed a preliminary hearing to deal with the following matters:

a. Whether the letter of 10th December 2007 and the email of 14th January 2009 constituted an agreement and that the Tribunal has no jurisdiction

b. Whether the determination of the Tribunal dated 19th January 2007 is binding on the Applicant in view of the fact that the question of s.20B was not addressed

c. Whether the demand for water rates fell outside the requirements of Section 20B(2).

The Preliminary Hearing

6. The Applicant attended the hearing in person and the Respondent was represented by Mr Preko of Salter Rex, the managing agents.

Applicant's Submissions

7. Ms Begum disputed the debit of £1008.55 applied to her account as a service charge adjustment on 3rd September 2007, being the adjustment for the water and electricity provided to the block since 2004. In response to a letter from Salter Rex dated 1st November 2007 explaining its request for payment of these charges, the tenants in a letter dated 10th December 2007 disputed them and expressly offered to pay specified amounts only - £288 for water and £59.94 for electricity for each of 10 tenants. There was no reply from Salter Rex until, after a residents' meeting in January 2009, Mr Kwame Darkwah in an email to the Applicant of 14th January 2009 wrote:

> "Further to our conversation pm today, with reference to the water charges please accept my apologies for misinterpreting your calculations as per your letter dated 10 December 2007. I did not take into account that the £7,396.39 included charges for 2004. Having taken this into consideration, we accept your proposal of 10 December 2007 as acceptable and credits in respect of the relevant accounts will be made immediately."

The relevant credits were not made and 5 months later the Respondent issued a further invoice.

8. The Applicant also raised challenges to unrelated miscellaneous items on her service charge account:

    a. £354.47 service charge adjustment 13th June 2008

    b. £315.94 receipt debited 6th February 2008

9. Ms Begum said she had incurred costs and lost earnings (of £500 fee per day for 2 days) in bringing this Application and attending the hearing and the Pre Trial Review. She sought an order that the Respondent pay these costs. She produced no documentary evidence to support the figure for her self-employed earnings.

Respondent's Submissions

10. For the Respondent Mr Preko confirmed that there was no dispute that the email of 14th January 2009 constituted an agreement as to the service charges for water and electricity for 2004. In a fax to the Tribunal dated 12th February 2010 from Altermans, Solicitors for the Respondent, it was asserted that as credits totalling £347.94 for water and electricity had been credited to the Applicant's account on 26th October 2009 she had not been charged for water and electricity for 2004 and accordingly there is no dispute. Mr Preko acknowledged at the hearing that these credits of £288.00 for "LVT water rates" and £59.94 for "LVT electricity" made on 26th October 2009 had in error been made for the amounts offered by the tenants – whereas they should have been for the difference between those amounts and the total charges. He confirmed that the correct credit would be applied.

11. Regarding the miscellaneous queried items on the Applicant's service charge account, Mr Preko explained that the debit of £354.47 relates to a service charge shortfall for the year ending 31st December 2007 between actual and estimated expenditure. He advised that the debit of £315.94 was a legal charge for the recovery of service charge arrears but agreed to remove this charge.

12. Mr Preko was unsure whether the terms of the Applicant's lease allowed the Landlord to recover the cost of these proceedings as service charges. He made clear he would have preferred for the parties not to have attended the hearing, and said he had given definitive instructions to Altermans Solicitors that the Landlord conceded the email of 14th January 2009 did create an agreement as to the service charges in question. He thought this had been made clear to Ms Begum by Altermans, but noted that the contents of the letter dated 18th November 2009 from those solicitors did not refer to the credit given on 26th October 2009 – the arrears figure given being £1920.41 (that on the account on 6th October 2009). Mr Preko recognised that the matter had not been dealt with in a timely fashion. He observed that the notice of the proceedings and Pre Trial Review had been sent to the Landlord Quadron Investments Ltd. and not Salter Rex (who were not named on the Application).

Determination

13. Section 27A of the Act provides:

> *(4) No application under subsection (1) or (3) may be made in respect of a matter which*
>
> *(a) Has been agreed or admitted by the tenant*

14. There is now no dispute between the parties that an agreement was reached by correspondence dated 10th December 2007 and email on 14th January 2009 in relation to the service charges for water and electricity payable for 2004. The Tribunal shares the parties' view and determines that it has no power to determine those service charges under s.27A of the Act.

15. At no point had the Respondent made clear to the Applicant or to the Tribunal that it conceded that the email acceptance of 14th January 2009 created a binding agreement. The Respondent by fax dated 12th February 2010 insisted that a credit of an insufficient amount on 26th October 2009 had settled all matters in dispute, and thus necessitated the Applicant's attendance at the hearing to resolve this matter. Though legally represented at the Pre Trial Review by Altermans solicitors, it was not until the day of the full hearing of this matter that the Respondent conceded the Applicant's case.

16. Schedule 12 of the Commonhold and Leasehold Reform Act 2002 provides:

> *10 (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).*
>
> *(2) The circumstances are where –*
>
> *(a) he has made an application to the leaseholder valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or*
>
> *(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.*

The amount of costs which the Tribunal may allow is limited to £500 by virtue of paragraph 10(3)(a).

17. The Tribunal is satisfied that the Respondent has acted unreasonably in failing to communicate that it conceded the Application until the preliminary hearing itself. The Applicant has certainly been put to inconvenience as a result and the Tribunal is satisfied on her evidence that she has suffered financial loss. The Tribunal orders the Respondent to pay to the Applicant costs in the sum of £200. The Landlord has

agreed not to charge the Applicant for its legal costs for pursuing the unpaid service charges (costs which include steps taken prior to the matter having been settled on 14th January 2009). But for this agreement, the Tribunal would have been minded to order costs against the Respondent in the sum of £500.

18. Regardless of the merits of the Applicant's original argument concerning the tenants' liability to pay service charges for water and electricity for 2004, the dispute was clearly settled on 14th January 2009. It appears to the Tribunal that the necessity of this Application was caused solely by the Respondent's failure to act on the terms of that agreement. In the circumstances it orders (under Regulation 9(1) of the Leasehold Valuation Tribunal (Procedure)(England) Regulations 2003) that the Respondent must refund to the Applicant her £100 application fee. Furthermore, to the extent that the Applicant's lease permits the Landlord to recover the costs of these proceedings as service charges, the Tribunal makes an order under s.20C of the Act that all of the costs incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other tenants of the block.

Signed .....

Dated 17th March 2010