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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/00BK/LSC/2010/0083**

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<b>Property</b>	<b>:</b>	<b>717 St John's, 79 Marsham Street London SW1P 4SA</b>
<b>Applicant</b>	<b>:</b>	<b>St John's Westminster RMT Company Limited</b>
<b>Represented by</b>	<b>:</b>	<b>Mr James Thornton, Hurford Salvi Carr Property Management Limited</b>
<b>Respondent</b>	<b>:</b>	<b>Ms Ivana Novakovic</b>
<b>Represented by</b>	<b>:</b>	<b>Ms Ivana Novakovic      In person Assisted by Mr Reeves Knight</b>
<b>Date of Referral</b>	<b>:</b>	<b>5 February 2010</b>
<b>Date of Hearing</b>	<b>:</b>	<b>13 May 2010</b>
<b>Date of Decision</b>	<b>:</b>	<b>2 June 2010</b>
<b>Tribunal</b>	<b>:</b>	<b>Mr John Hewitt              Chairman Mr Dallas Banfield        FRICS</b>

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**DECISION**

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## Decision

1. The decision of the Tribunal is that:
  - 1.1 The balance of £2,832.39 in respect of the on account payment of service charges due on 1 January 2009 was payable by the Respondent to the Applicant by 16 June 2009 when it should have been apparent to the Respondent that the credit in the sum of £2,832.39 on the demand dated 8 January 2009 was an error and that the demand should have been for the full sum of £3,710.84;
  - 1.2 The following administration charges claimed by the Applicant are not payable by the Respondent to the Applicant as variable administration charges within the meaning of Schedule 11 to the Commonhold and Leasehold Reform Act 2002:

13.05.09	Legal Services – Letter before action	£ 57.50
13.05.09	Legal Services – Letter before action	£ 57.50
09.06.09	Additional Management Fee	£230.00
10.06.09	Interest on Service Charges	£136.92
10.06.09	Interest on Legal Fees	£ 0.88
30.10.09	Court Fee	£108.00
  - 1.3 The Tribunal requires the Respondent to reimburse to the Applicant the sum of £75.00 being one half of the fees paid by the Applicant to the Tribunal in connection with these proceedings;
  - 1.4 The following matters, which are in the exclusive jurisdiction of the court, be remitted back to the court for determination:

The court fee of £108.00; and

The costs of the court 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 Respondent is the current lessee (by assignment) of flat 717 St John's, 79 Marsham Street, London SW1P 4SA. The flat is one of several within the development known as St John's. It was not disputed the right to manage the development is vested in the Applicant.
3. Material provisions of the lease are referred to below. For the present we simply record that the lease obliges the lessee to pay service charges. Such service charges are payable by the Respondent to the Applicant.
4. On 5 November 2009 the Respondent issued county court proceedings against the Respondent and claimed the sum of £3,895.66 [31]. A breakdown of this is set out on a statement of account at [32]. The claim comprised a mix of alleged service charge arrears and variable administration charges levied by the Applicant. The administration charges claimed are those listed in paragraph 1.2 above. The claim was transferred to the Tribunal pursuant to an order made by District Judge Price dated 21 January 2010 [79].
5. Directions were duly given and by the time of the hearing before us the parties were agreed that the matters in dispute for the Tribunal to determine were:
  - 5.1 Whether the balance of £2,832.39 in respect of the on account payment of service charges due on 1 January 2009 was payable by the Respondent to the Applicant;
  - 5.2 Whether the administration charges claimed were payable by the Respondent to the Applicant; and
  - 5.3 Whether the Respondent should be required to reimburse the Applicant the sum of £150 paid by the Applicant in respect of the hearing fee in these proceedings.

#### **The Lease**

6. We were told that the relevant lease is at [3]. The lease is dated 21 January 2000. It was granted by St John's Square Company Limited to

Dayfold Limited. The lease defines the demised premises as flat 2.10 on the second floor of the block. The lease grants a term of 999 years from 24 June 1998 at a ground rent of £150 pa (rising to £1,200 pa) and on other terms and conditions therein set out.

7. By clause 3 the tenant covenants to observe and perform the obligations set out in the Fourth Schedule [15]. So far as material the Fourth Schedule provides as follows:

Paragraph 10 is an obligation to pay a service charge; the details are not in issue. The Service Charge Proportion was defined to be 0.36% [4].

Paragraph 11(a) is an obligation to make interim payments on 1 January and 1 July in each year on account of the service charge. Paragraph 11(a)(ii) provides that the sums are due by way of additional rent and are recoverable by the landlord as such following written demand.

Paragraph 12 is an obligation to pay within 21 days after receipt of a certificate the net amount of any balancing charge that may be due. Paragraph 13(a)(i) is an obligation to pay to the landlord all reasonable and proper costs, charges and expenses which may be incurred by the landlord in or in contemplation of proceedings under s146 Law of Property Act 1925

Paragraph 13(a)(ii) is an obligation to pay to the landlord costs incurred in other proceedings in contemplation of enforcement action in respect of any breach of any leasehold covenant by the tenant.

8. By clause 5 the landlord covenants to observe and perform the obligations set out in the Sixth Schedule [23].

So far as material The Sixth Schedule provides as follows:

Paragraph 4 is an obligation to keep or procure to be kept proper books and accounts of all costs, charges and expenses incurred by the landlord in carrying out its obligations under the Schedule in managing and administering the development in each and to issue or procure to be issued a certificate service charge expenditure.

9. Clause 7(b) of the lease [7] provides that if the rent or the additional rent reserved is not paid within 21 days of becoming due the sum due shall bear interest at the rate of 4% above the base rate of Barclays Bank Plc from time to time from the date the sum was due down to the date when actually paid.

### **Assignment of the Lease**

10. It was not in dispute that the lease was assigned to the Respondent on 9 May 2008 and that on 24 September 2008 the Respondent was registered at the Land Registry as the proprietor of the lease. Bircham Dyson Bell LLP acted for the Respondent on the purchase.
11. Evidently the price paid for the assignment of the lease was £1m which was provided by funds remitted from abroad. The completion statement shows £2,000 was retained by the Respondent's solicitors in order to apportion service charge liability (we assume from 1 January to 9 May 2008 to the vendor and 10 May to 31 December 2008 to the purchaser) when the year-end certificate for 2008 was available.
12. It was not in dispute that as at 31 December 2008 the service charge account was clear.

### **The Service Charge Dispute**

13. The Applicant's former managing agents, Crabtree Property, issued a demand for the on account due on 1 January 2009 [48]. It is dated 8 January 2009. The lay out and format is not that clear but we find that it is a demand for £3,710.84 due as the half-yearly payment on account. It records a credit on the account of £2,832.39 and a thus it claimed a net sum payable of £878.45.  
It was not in dispute that the net sum of £878.45 was paid by the Respondent on 23 February 2009 [32].

14. We were told that the credit on the demand was an error due to a misposting. The credit related to a different flat.
  
15. Crabtree Property issued a second demand [49]. It is also dated 8 January 2009 and it is in the sum of £3,710.84. We find that it was sent to the Respondent without any covering letter or any explanation. Evidently some correspondence then passed between the Respondent and Crabtree Property. We were not provided with copies of all of it. Doing the best we can with the materials before us it appears that Crabtree Property was endeavouring to explain to the Respondent that the credit of £2,832.39 recorded on the first demand was an error and that the full amount that should have demanded and paid was £3,710.84. The Respondent seemed reluctant to accept this situation and explained that she was new to the service charge procedures and ongoing matters concerning the property. The Respondent asserted that if an error had been made it was not her error.  
On 16 June 2009 the Respondent wrote in some detail to Crabtree Property [60]. It is clear to us from this letter that at this point the Respondent had all the relevant information before her from which she ought to have been satisfied that she was obliged to pay the shortfall of £2,832.39.
  
16. At the hearing the Respondent submitted that she ought not to have to pay the shortfall of £2,832.39 because it was not her error. She paid the net sum demanded and she should not be required to pay any more. The Respondent also submitted that she was a PhD student on a limited stipend and would need time to effect payment if she was now obliged to pay the money. She said that if she had been told of the correct amount by the original demand she would have budgeted for it. The Respondent said that she was not surprised to see the credit on the account. She was unfamiliar with the service charge accounting regime but she was vaguely aware of a retention of monies at the time of purchase and assumed the credit was connected with that. Evidently

the Respondent did not refer back to her solicitors for clarification or endeavour to obtain any other legal advice.

The Respondent was not able to cite any legal authority to support her proposition that she was not obliged to pay the shortfall.

17. We find that the error was a simple posting error. Regrettable but in our experience it happens from time to time in the best of regulated offices. It would have been helpful if Crabtree Property had given a clearer explanation, and perhaps apology, at the outset.

There can be no question of an estoppel here.

If the Respondent had sought legal advice we have no doubt that she would have been advised that the sum was due and payable.

Further the demand was for an on account payment. If it was not paid at year-end any shortfall would have featured in and would have been included in the balancing debit. We find that plainly one way or the other the shortfall of £2,832.39 is payable by the Respondent to the Applicant.

18. Looking at the correspondence before us we are satisfied that by 16 June 2009 the Respondent had been given a full explanation and by that date she ought to have appreciated the nature of the error and that she was liable to pay the shortfall of £2,832.39. We therefore find that the sum of £2,832.39 was payable by the Respondent to the Applicant by 16 June 2009 at the latest.

#### **The Administration Charges**

19. The Applicant was represented by Mr James Thornton of Hurford Salvi Carr who are the Applicant's new managing agents. Mr Thornton was in some difficulty because on handover he was not provided with a full set of records and correspondence.
20. The statement of account annexed to the court proceedings claim form [32] lists a number of debit entries which are evidently variable

administration charges imposed by Crabtree Property acting for the Applicant. For ease of reference they are as follows:

13.05.09	Legal Services – Letter before action	£ 57.50
13.05.09	Legal Services – Letter before action	£ 57.50
09.06.09	Additional Management Fee	£230.00
10.06.09	Interest on Service Charges	£136.92
10.06.09	Interest on Legal Fees	£ 0.88
30.10.09	Court Fee	£108.00

21. The Respondent denied that she had received from Crabtree Property or the Applicant demands for payment of any of the charges. Mr Thornton was unable to provide us with copies of the demands. Mr Thornton was unable to provide us with any information concerning the charges. He was unable to explain why there were two letter before action charges, both dated the same day. He was unable to explain to what the 'Additional Management Fee' related. Mr Thornton was unable to satisfy us that compliant demands had been served on the Respondent in respect of any of the charges claimed. Mr Thornton was unable to satisfy us that the amount of each charge claimed was a reasonable amount. We accept the evidence of the Respondent that she did not receive any demands for any of the charges claimed. These findings alone are sufficient to enable us to decide that the charges claimed by the Applicant are not payable by the Respondent.

22. Mr Thornton made submissions to us about the administration charges and it may be helpful to the parties if we comment on them briefly. Mr Thornton's starting point was that the Applicant RTM company had incurred costs in pursuing the Respondent for service charge arrears which were payable. He said that it was only fair that the Respondent should pay those costs. He said it would be unfair if the costs were passed through the service charge. It would be equally unfair if the costs were paid by the members of the RTM company because it would penalise those lessees/RTM company members who paid their



service charges on time. Mr Thornton was unable to provide us with any general authority to support his proposition.

23. We are not unsympathetic to Mr Thornton's proposition but our view is that, as a matter of law, a lessee is only obliged to pay a variable administration charge if the lease imposes a clear and unambiguous obligation on the tenant to do so.
24. In relation to the charges which appear to relate to arrears recovery Mr Thornton sought to rely upon paragraph 13(a)(i) of the Fourth Schedule to the lease which imposes an obligation on the lessee to pay costs incurred in or in contemplation of proceedings under s146 or 147 Law of Property Act 1925 (LPA 1925).
25. We find Mr Thornton's submission fatally flawed for two main reasons. First the service charge arrears are reserved as being additional rent and recoverable as such following written demand. S146(1) LPA 1925 provides that prior to taking steps to forfeit a lease for breach the landlord must serve on the tenant a notice compliant with the requirements of that subsection. Subsection 146(11) makes it plain that the section does not affect the law relating to re-entry or forfeiture in the case of non-payment of rent. Accordingly service of a s146 notice has never been a condition precedent to the taking of legal steps to exercise a right of re-entry or to forfeit a lease for breach of the covenant to pay rent. The second reason is factually based. The Respondent was able to produce to us the letter before action dated 13 May 2009. It simply demanded a sum of money and threatened debt recovery legal proceedings if payment was not made. It made no mention of re-entry or forfeiture of the lease. We find that it was not a letter sent as a precursor to a s146 notice. Further the court proceedings commenced on 5 November 2009 are simply debt recovery proceedings. There is no claim to exercise a right of re-entry or to forfeit the lease or to recover possession of the demised

premises. Accordingly we find that the Applicant did not incur any costs in or in contemplation of proceedings under 146 LPA 1925.

26. We do however recognise that paragraph 13(a)(ii) is slightly differently worded and that if in an appropriate case costs were incurred and if a compliant demand for them were made such costs might be recoverable by the landlord as a variable administration charge, subject to the costs incurred being reasonable in amount.
27. Similarly with regard to interest. Clause 7(b) of the lease imposes an obligation to pay interest and if a compliant demand for interest were to be made such sum might be payable as a variable administration charge, subject to the amount being a reasonable amount.
28. As it is, on the materials before us we were well satisfied that none of the administration charges imposed on the account are payable by the Respondent.

### **Reimbursement of Fees**

29. Mr Thornton made an application for reimbursement of the sum of £150 being the amount of the hearing fee paid to the Tribunal. The application was opposed.
30. We gave careful consideration to the rival submissions and relevant correspondence.
31. We find that it would be just and equitable to require the Respondent to reimburse one half of the fee, namely £75, to the Applicant for two main reasons. The Respondent failed in her case in relation to the service charge arrears. The Applicant failed in its case as regards the administration charges. Both parties failed to some extent and both succeeded to some extent. We thus find that it is just and equitable for the fee of £150 to be shared equally between the two parties. We have therefore so required.

### **The Court Proceedings**

32. We have dealt fully with those matters transferred to us by the court which are within our jurisdiction. We do not have jurisdiction to deal with the two matters mentioned in paragraph 1.4 above and therefore we remit the claim back to the court to deal with any application which may be made to it in connection with either of those two matters.

### **The Law**

33. Relevant legal principles we have borne in mind when arriving at our decision are set out in the Schedule to this Decision.

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John Hewitt  
Chairman  
2 June 2010

### **The Schedule The Relevant Law**

#### **Law of Property Act 1925**

**Section 146(1)** of the Act provides that a right of re-entry of forfeiture under any proviso in a lease for breach of any covenant or condition in the lease shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice:

- (a) Specifying the particular breach complained of; and
- (b) If the breach is capable of remedy, requiring the lessee to remedy the breach; and

(c) In any case, requiring the lessee to make compensation in money for the breach

and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor, for the breach.

**Section 146(11)** of the Act provides that the section does not, save as otherwise mentioned, affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

### **Landlord and Tenant Act 1985**

**Section 18(1)** of the Act provides that, for the purposes of relevant parts of the Act, 'service charges' means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
- (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.

## **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.

**Paragraph 4(1)** provides that a demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of the tenant in relation to administration charges.

**Paragraph 4(2)** provides that regulations may be made with regard to the form and content of such summaries.

Regulations have been made:

The Administration Charges (Summary of Rights and Obligations)  
(England) Regulations 2007 (SI 2007 No 1258).

The regulations set out the text of the summary of rights and obligations which must be typed or printed in at least 10 point and accompany every demand for the payment of an administration charge.

#### **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.