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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/00AY/LSC/2010/0838

Premises flat 17 Elder Gardens, London SE27 9TJ

Applicants: Ms K Morrison & Mr D Field
Represented by in person

Respondent: Elder Gardens Freeholding Company Limited

Represented by Mr Bamforth of Stapleton Long – Managing Agents

**Date of
Hearing:** 9 June 2011

Tribunal: Ms M Daley LLB (Hons)
Mr F Coffey FRICS
Mr O Miller BSc

Date of decision: 15 July 2011

Background

- (a) The property, which is the subject of this application, is flat 17 Elder Gardens, London SE27 9TJ.
- (b) This application was made by Ms Morrison and Mr Field for a determination under sections 27A and 20C of the Act and secondly in respect of two administration charges under the provisions of the 2002 Act.
- (d) Directions were given on 18 January 2011, setting the matter down for hearing on 5 May 2011; the hearing of this matter was subsequently postponed until 9 June 2011.
- (e) At the hearing of this matter there were four issues:-: the reasonableness and payability of service charges of £467.30 which accrued prior to the Applicant's purchase of the premises on 21 April 2006. (ii) the reasonableness and payability of service charges for the periods 2007-2009 (iii) whether the determination in respect of LON/00AY/LSC/2009/0279 (in respect of Elder Gardens) should be applied in respect of the reasonableness and payability of the sums demanded for that period (iv) the reasonableness and payability of the administration charges in the sum of £575.00.

The law

1. Section 18(1) of the Landlord and Tenant Act 1985 ("the Act") provides that, for the purposes of the relevant parts of the Act, "service charge" 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) 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 or works 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 or subsequent charges or otherwise.

Section 27A (1) of the Act provides that 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.]

The Hearing

The Applicants case on 2005 balancing charges

2. The Applicants appeared in person, and Mr Balmforth of Stapleton Long represented the Respondent.
3. The Applicant's stated that prior to purchasing the property on 21st April 2006 the Applicant's solicitor and the solicitor acting for the mortgagee in possession had written to Stapleton Long asking for information concerning the outstanding service charges.
4. This information was not provided and the Applicants did not receive a demand until 11 December 2006. They claim that they were concerned about this and considered that they were misled about the service charges that were outstanding, given that the service charge accounts for 2005 had been finalised on 15 February 2006.
5. The Applicant's further relied upon the provisions in section 20B of the Landlord and Tenant Act 1985, as they stated that some of the items of expenditure which made up the excessive service charges had been incurred over 18 months before the sums were demanded.

The Respondent's reply

6. Mr Balmforth did not accept this, as he stated that the demand had been served upon the leaseholder Mr Lawal, and that the Respondents had served the demand for the excess service charges. There was an attendance note relied upon in the Respondent's bundle which had been prepared by Mr Paul Ngotho, In this note Mr Ngotho stated that he informed Miss Catherine Morrison that there had been no record of a Transfer under the terms of the lease, and given this the managing agents had corresponded by serving demands by posting them to the flat, and copying them to the solicitors for the mortgagees in possession.
7. Mr Balmforth stated that the notice of transfer was not served until 19 September 2008.
8. In respect of the service charges that made up the balancing charge this included £55.00 plus VAT for the call out of a contractor. There was also work undertaken to the Bin Stall at a total cost of £3950 and also

work of diverting a rainwater pipe to a gulley. The invoices for this work were from A& C Contractors.

9. There was also the sum of £141 for purchasing and erecting three notice boards for the common parts (the boards cost £30.00 each). The Applicant's stated that they had not seen the notice boards at the premises. In reply Mr Balmforth stated that they had been stolen from the premises.
10. The final item that made up the cost was £123.35 for management fees. The Applicant stated that they were prepared to accept this. In respect of the bin stall the Applicants were asked what they consider to be the reasonable cost of the work to the bin stall. Although they did not have any comparable evidence for the cost of this work, they both considered the charges to be too expensive.

The Decision of the Tribunal on the sum of £467.30

11. The Tribunal noted that there was an obligation under the lease for the assignee and assignor to notify the freeholder of assignments of the lease. Although we accept that there was communication between the solicitors acting for the applicants and the vendor (the mortgagors, there is nothing that confirms that the freeholder or the managing agents were notified of a sale, given this the managing agents acted correctly in continuing to send details of the service charges to Mr Lawal the former lessee.
12. It was for the solicitors acting for the vendor, and the applicants' solicitors to ensure that the correct procedures had been followed. There is no evidence before the Tribunal that they notified the freeholder, or put them on notice so as to oblige them to notify the Applicants of the charges. Given this we find that the service charges of £467.30 are payable by the Applicants.

The Applicant's case on the service charges for 2006- 2009

13. The Applicants referred the Tribunal to the decision in LON/00AY/LSC/2009/0279, for the previous findings of the Tribunal in relation to the service charges for Elder Gardens for this period. This case

concerned premises at Elder gardens for the same service charge periods, where identical service charge contributions were sought.

14. It also involved a similarly composed Tribunal, in that the lawyer chair and valuer member had also considered the matters put forward by the managing agents in support of the Applicants (Elder gardens Freeholding Limited). The Tribunal had also had the advantage of having inspected the premises.
15. In reply Mr Balmforth stated that there was additional evidence upon which he wished to rely which had not been before the Tribunal, hearing the matter in Application No LSC/2009/0279. Although in general terms a tribunal determination does not create binding precedents for future tribunals. The Tribunal considered that the Tribunal charged with determining this matter ought not to depart from its previous determination unless there was good reason to depart from its previous decision.

The determination of the Tribunal

16. The Tribunal on considering this matter further, are minded to hear further representations concerning the service charges for 2006-2008 from the Respondent, as the Tribunal accept that the Respondent was not invited to make further representations or set out his case as to why the Tribunal ought to depart from the determination made in application no LSC/2009/0279.
17. The Tribunal therefore makes the following direction-: **The Respondent (if minded to make further representations,) shall within 21 days of this decision provide any additional written representations.**
18. **The Applicant may if considered necessary provide a further reply within 14 days of the Respondent's reply. The Tribunal shall consider these further representations along with the statement of case and schedules already provided in the hearing bundle, without the need for a further hearing.**
19. **Should neither party wish to make further representations then the Tribunal shall determine the matter in accordance with the determination made in application no LSC/2009/0279.**

The Admin Charges

20. The Applicant's in their statement of case set out that following the demand for the service charges and the balancing charge in February 2009 they were served with a demand for ground rent, a payment of account and excess service charge. This followed enquiries that the Applicant's had made asking for the accounts. They were also noticed that there were charges of £152.75 costs plus £6.00 for the land registry fee.

21. The Applicant's stated that within 9 days after the demand a further sum was added to their account which was made up of two payments of £287.50. These sums were described as administration of service charge arrears and solicitors charges re arrears.

22. In reply Mr Balmforth stated that:- demand had been properly served, and no payment had been received in compliance with the terms of the lease. Accordingly the Applicant's had taken appropriate steps to recover the outstanding service charges.

23. The Decision of the Tribunal

24. The Tribunal in considering this issue have considered the wording in Schedule 11 part 1 of CLARA, section 1(i) C provides that an administration charge is payable by a tenant in addition to rent 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. Section 2 provides that the charge is only payable to the extent that the amount is reasonable. Section 4 provides that notice must be given to the tenant of the charge and that the notice should be accompanied by a summary of rights and obligations

25. The Tribunal have also considered the wording in the lease, and have noted that the lease does not provide for administration charges save for charges that are incurred in contemplation of forfeiture proceedings. There is little if any evidence, before the Tribunal upon which we can conclude that forfeiture the Respondent contemplated proceedings.

26. Further we note that the Applicants had asked for an opportunity to inspect the invoices, and there were (at least as far as the Applicant

was concerned) matters that required further clarification. Given this we consider that the admin charges, which were incurred were premature. We note that the two sums were made up of Administration of Service Charge arrears, in the sum of £287.50 and Solicitors charges of an identical sum. We find that there is little evidence that the managing agents took anything other than the most basic steps of serving the demand before referring the matter to solicitors, given this we find that these costs were incurred prematurely and that in the circumstances we find that these costs were not reasonably incurred.

The Service Charges for 2009

27. The Applicant had prepared a Scott Schedule that sets out the major items of dispute. In respect of the first heading which was Cleaning provided by Chequers Contract Services Limited, they stated that no invoices had been provided. The Tribunal note that the Respondent had subsequently remedied this. It was accepted that invoices had now been provided for this item and also for EDF Energy. Accordingly, the Applicants no longer dispute these items.
28. This was also the case for the insurance and for the items of repairs and maintenance. However the applicant was not satisfied with all of the maintenance items, and the Applicant queried the reasonableness and payability of the items below-:
29. *Gas Safety heating and plumbing in the sum of £94.88-* The Applicants stated that this item appeared to be duplicated, the Tribunal were referred to invoice 0844.
30. In reply Mr Balmforth stated that this was a separate matter, which required further investigation, and as a result the same plumber was used.
31. *Tullet's Maintenance –preparing and repainting doors in the sum of £750-*: The Applicant's stated that this item seemed disproportionately high. Mr Balmforth stated that this was for repainting four entrance doors. The Respondent had originally received a quotation for this work in the sum of £1200. The quotation from Tullet's worked out at £250 per day. The Applicant's were asked whether they had alternative quotations for this work. The Applicant's confirmed that they did not

have this information, although they still considered the charges to be too high, and they invited the Tribunal to use its knowledge and experience in determining whether this sum was reasonable.

The Decision of the Tribunal on the service charge items for 2009

32. The Tribunal had an opportunity to inspect the invoices, which were included in the bundle. The Tribunal noted that there was no evidence to support the Applicants contention concerning the claim that certain charges were excessive. The Tribunal were also satisfied by the explanations given by the Respondent. Accordingly the Tribunal have used their knowledge and experience and are satisfied on a balance of probability that the charges for 2009 are reasonable and payable.
33. *Service Charges for 2010* -: The Applicants had been given the opportunity to inspect many of the invoices which made up these items however they wanted the Tribunal to consider the following charges-:
The Tree-work in the sum of £1339.50
34. The Applicant queried this item, as there had been previous cost for Tree work in the sum of £2538.00. In reply Mr Balmforth produced a report, which set out the long- term plan for Tree Surgery. It was clear from this report that there were a number of major items of tree surgery. Mr Balmforth stated that this cost had been incurred for lopping, and thinning saplings and crowning a large sycamore tree.
35. The plumbing work-: This was in the sum of two charges of £75.00 for leaks, which were invoiced on 2.2.10 and 19.4.10. The first query was on whether there was a connection between the two items of work, and further in respect of the second item, (which involved the replacement of a water pipe on 24.3.2010, in flat 12,) whether this should have been chargeable as a service charge item, at all, given that it was work to an individual flat.
36. The Applicants raised no queries in respect of the cost of the Electricity, and work to the Gulley and down pipe and the insurance items.

The decision of the Tribunal

37. The Tribunal noted that the Respondent had produced a report that supported the claim that work was undertaken to the Tree, the report detailed a number of separate trees which were in need of maintenance, The Applicant's did not produce any alternative costs for this item of work, given this, and in using the Tribunal's knowledge and experience, the Tribunal accept that the cost of this work was reasonable and payable in accordance with the terms of the lease.

38. The Tribunal having considered the lease, are of the opinion that the cost of fixing the leaking pipe on 2.2.10 was reasonable and payable, in respect of the invoice for work undertaken on 24.3.2010, the Tribunal are not satisfied that the cost of this work was reasonable as the work of fixing a leaking pipe in flat 12, is within the demise of the leaseholder of flat 12, given this the sum of £75.00 should not have been charged against the service charge account.

39. The Tribunal note that the lease does not provide for the recovery of legal costs save where forfeiture is contemplated (clause 3(9)) In this case the freeholder did not bring the action, the proceedings were brought by the leaseholders, given this, the Tribunal have concluded that the cost are not recoverable under section 3 (9) and accordingly cannot be recovered by the landlord under the terms of the lease, accordingly the Tribunal have not made an order under section 20C of the Landlord and Tenant Act 1985.

Signed



Dated

15th July 2011