

**HM COURTS & TRIBUNALS SERVICE****MIDLAND LEASEHOLD VALUATION TRIBUNAL****DECISION****LANDLORD AND TENANT ACT 1985  
SECTION 27A (AND 19)****APPLICATION FOR THE DETERMINATION OF LIABILITY TO PAY  
AND REASONABLENESS OF SERVICE CHARGES**

Applicant	Ikechukwu Agbasi
Respondent	Wolverhampton City Council
Property	3A Purslet Road Wolverhampton WV1 2NG
Date of application	17 June 2012
Members of the Committee	V Ward BSc Hons FRICS P Hawksworth
Date of determination	19 December 2012

**Application**

- 1 On 17 June 2012, the Applicant, Ikechukwu Agbasi, applied to the Leasehold Valuation Tribunal ("the Tribunal") for a determination under Section 27A (and 19) of the Landlord and Tenant Act 1985 ("the Act") for liability to pay and for reasonableness of a service charge in respect of 3A Purslet Road Wolverhampton WV1 2NG ("the Property") levied by the Respondent, Wolverhampton City Council.
- 2 By Directions issued by procedural chairman on 8 August 2012, the Tribunal directed that the application be dealt with on the basis of written submissions unless either party requested an oral hearing. Neither party requested an oral hearing hence the matter was determined on the basis of written submissions. Representations were received from both parties and these were copied to either side.

## **Background**

- 3 The Applicant is the lessee of the property and holds the residue of a 125 year term from 18 July 2005 granted by a Lease ("the Lease") made between the Respondent as lessor and the Applicant as lessee. The rent under the Lease is £10 per annum.
- 4 The Application Form states that the Applicant objects to a charge of £239 levied by the Respondent as part of the service charge relating to the property in connection with the installation of a digital aerial that serves the subject property. The Applicant queries the manner in which the consultation regarding the aerial was carried out between himself and the Respondent and secondly considers the cost excessive.

## **Inspection**

- 5 On 30 October 2012 the Tribunal inspected the property externally and noted that the subject property essentially comprises of a first floor flat. The aerial itself is mounted on the properties known as 10 and 10A Purslet Road and is wired to the subject property where it enters at the soffit level.

## **Representations**

- 6 The Applicant in his submission explained that at the time the Respondent claimed to be communicating with him about the installation of a digital aerial, he was not residing at the property. The result of this was that he was not receiving any mail and hence did not receive the consultation letter sent out by the Respondent. Further, the Applicant stated that he did not want to receive the service as his own television set had built-in digital channels for which no special aerial was required and he did not see the necessity to pay for additional expenses for something he already had and which was sufficient for his needs. As an additional comment he did however state that if he accepted the service offered he would have challenged the cost and offered to provide his own at two thirds of that quoted by the Respondent.
- 7 In their bundle the Respondent provided details of the consultation correspondence they sent out to the Applicant and also to those other lessees who occupied properties that were part of their programme to enable the provision of a digital aerial. This explained that the proposed system would enable occupiers to receive free to view and satellite television (the latter subject to subscription) and further, would enable the reception of television signals when the analogue service was turned off. The consultation contained a warning that if the lessees decided not to "buy into" the service they may be left without television reception in the future with the caution that once the proposed works had been carried out the Respondent would not be providing a second opportunity.
- 8 The Respondent gave the Applicant three options in their consultation document:
  - (1) To "buy into" the service at a cost of £264.82.

- (2) To have the aerial brought to your front door or any other convenient location (this will enable you to have the digital aerial brought onto your property at a later date) at a cost of £239.
- (3) To totally opt out of the programme.
- 9 The consultation letter stated that if the lessee chose option (1) they needed to do nothing and would be automatically included in the scheme, however if the lessee wished to chose option (2) or (3) they needed to respond in writing within fourteen days of the date of correspondence (4 December 2008) indicating their preferred option.
- 10 The Respondent's bundle contains summary details of the tenders they received in respect of the provision of digital satellite services to the subject property and others within their portfolio. The Respondent's bundle also included information given at groups and meetings of residents with regard to the aerial upgrade.
- 11 The summary of the quotations received on the basis of a cost per dwelling was as follows:
- |     |           |                      |
|-----|-----------|----------------------|
| (a) | MDTV      | £264.82 per dwelling |
| (b) | Chapmans  | £319.25 per dwelling |
| (c) | Sky Homes | £323.43 per dwelling |
| (d) | Avon Line | £379.12 per dwelling |
- MDTV were chosen as the preferred provider.
- 12 The Respondent confirmed that in their opinion clause 1.14 of the Lease, which enables landlords to carry out "improvement" works from time to time to both the building and the estate as defined in the Lease, and clause 1.15 with regard to the payment of a service charge by the lessee gave them the authority to carry out the works then charge for them.
- 13 Included within the original application was a copy of the invoice from the Respondent in the sum of £239 for the installation of the digital aerial which was dated 4 April 2012. There was additionally a letter dated 13 April 2012 from the Respondent which appears to respond to a query by the Applicant in respect of the charge which can be summarised to the effect that the Applicant either chose Option 2 (see paragraph 12 (b) above) or did not respond to the above letter which would therefore indicate that the property was included in the programme.

## **The Law**

- 14 The Act provides:

### **Section 19 Limitation of service charges: reasonableness**

- (1) 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 provisions 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.

(2) 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.

## 15 **Section 27A Liability to pay service charges: Jurisdiction**

(1) 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.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also 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 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.

(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;
- (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.

(5) But the tenant is not to be taken as having agreed or admitted any matter by reason only of having made a payment.

Subsections (6) and (7) are not relevant to this Application.

## Determination

16 Clause 4.01 of the lease contains the following obligation:

“the Tenant hereby covenants with the Council to observe and perform the Tenants covenants at all times during the term”.

Clause 2 of Schedule III “The Tenant’s Covenants” states

“The Tenant covenants with the Council to pay the Service Charge on demand (and in advance of all or any part of the component costs of the Service Charge being incurred if the Council so requires) **PROVIDED** that during the Initial Period of this Lease the Tenant will not be required to pay in respect of Repair Service Charges and Improvement Charges a sum exceeding the estimated charges for the same set out in the Landlords Offer Notice together with an allowance for inflation calculated in accordance with the provisions of the Order”

17 Clauses 1.14 and 1.15 state as follows:

“1.14 The “Services” shall mean those works of repair maintenance and improvement which the Council shall from time to time carry out or procure to be carried out to the Property the Building the Estate and any other property over which the Tenant has a right pursuant to the provisions of Schedule 1 hereof AND shall also include the provision from time to time by the Council of :-

- (a) insurance pursuant to paragraph 4.00 of Schedule IV hereto, and
- (b) insurance against the risks involved in carrying out the aforesaid works of repair maintenance and improvement
- (c) management and administration
- (d) such other facilities works or amenities as the Chief Landlord Services Office shall deem necessary or desirable at any time throughout the Term

1.15 The “Service Charge” shall mean a reasonable part of all the costs directly or indirectly incurred or to be incurred by the Council in providing the Services and shall also include:-

- (a) all overheads and
- (b) a reasonable sum in lieu of the cost of the insurance referred to in Clause 1.14(b) above if the Council does not take out such insurance and
- (c) where all or any part of the cost of providing the Services is based upon an estimate the amount of the shortfall should the estimate have been an under-estimate”

- 18 The Tribunal therefore concludes that the Respondent lessor had the authority within the Lease to carry out repairs and recharge them to the lessee.
- 19 The Tribunal then considered whether or not a digital television upgrade could be construed as a work of repair, maintenance or improvement. As a responsible lessor, the Tribunal considers that the Respondent had a duty to make available the provision of a digital television service, particularly in light of the fact that the analogue service is due to be switched off. The Tribunal therefore concluded that the digital aerial could be considered either maintenance or an improvement.
- 20 In terms of the consultation carried out by the Respondent and the circumstances that prevented the Applicant from engaging with the same, then whilst this was unfortunate, a formal consultation as required under Section 20 of the Act was not required due to the fact that the cost to the Applicant was under £250, i.e. in the sum of £239.
- 21 From the information provided it appears that the Respondent had carried out a full tendering process and appointed the contractor whose proposed costs (both installation and maintenance) were the cheapest offered by the four parties that actually submitted bids. The Applicant states that he could have procured a similar installation at two thirds of the price but unfortunately does not provide any specific details in this regard. The Tribunal considers therefore that the cost of providing the digital aerial service to the property was reasonable.

### **Summary of Decision**

- 22 The Tribunal finds that the Applicant is liable under the terms of the Lease to pay the cost of the digital installation and that the cost of £239 is reasonable.
- 23 Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal you must apply, in writing, to this Tribunal for permission to appeal within twenty one days of the date of issue of this decision which is given below stating the grounds upon which you intend to rely on in the appeal.

V WARD BSc Hons FRICS



DATE **21 DEC 2012**