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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION  
UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985**

**Case Reference:** LON/00AH/LSC/2011/0770

**Premises:** Flat D, 37 Penge Road, South Norwood, London SE25 4EJ

**Applicants:** David Cannon Properties Limited

**Represented by:** Mr Spiro, a Director of the Applicant  
Mr Langton; Crabtree Property Management, Managing Agents

**Respondent:** Ms E. P. Goring

**Represented by:** In person, with Ms D. Goring

**Tribunal:** Mr L. W. G. Robson LLB(Hons)  
Mr M. A. Mathews FRICS  
Mr J. E. Francis QPM

**Hearing Date:** 2<sup>nd</sup> March 2012

**Decisions of the Tribunal**

- (1) The Tribunal finds that the amounts noted in the calculation in Appendix 2 are payable by the Respondent. The Tribunal makes the determinations as set out under the various headings in this Decision
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, limiting the Applicant's costs of this application to NIL.
- (3) Since the Tribunal has no jurisdiction over court costs and fees, this matter is now referred back to the Barnet County Court.

## The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the Major Works contract noted above, under the terms of a lease (the Lease) dated 25<sup>th</sup> September 1986 a copy of which is attached hereto as Appendix 3.
2. Proceedings were originally issued in the Barnet County Court under claim no. 1UD24911. The claim was then transferred to this Tribunal by order of the Court, dated 5<sup>th</sup> November 2011.
3. The relevant legal provisions are set out in the Appendix 1 to this decision.

## The hearing

4. The Applicant was represented jointly by Mr Spiro and Mr Langton, who made written representations and oral submissions at the hearing. The Respondent made extensive written representations, and oral submissions at the hearing. The Tribunal informed the parties that its jurisdiction in this case was limited by the statement of claim made in the County Court to the period from 3<sup>rd</sup> March 2010 to 18<sup>th</sup> July 2011, the charges in issue being conveniently summarised in a statement of account dated 18<sup>th</sup> July 2011 (page 318 of the bundle). The Applicant confirmed that the amount of £5,903.40 showing as both a debit and a credit relating to Major Works, was correct. The proposed works had not been carried out. The Respondent agreed that the four half yearly service charge items noted there were not in dispute. Her concerns at the hearing were:

3.3.10 - brought forward from previous managing agent's account -	£605.03
8.11.10 – Balancing charge to 25.12.09	334.59
4.4.11 – Balancing charge to 25.12.10	311.61
24.6.11 – Additional Management Fee	240.00

The Tribunal then heard evidence on these items. The figure of £605.03 related to service charge accounts for earlier years, which the Tribunal also examined. Thus the service charge years to be examined were those commencing on 26<sup>th</sup> December 2008, 2009 and 2010. Although the Applicant helpfully provided a copy of the accounts for 2011, no service charge item in that period fell within the period over which the Tribunal had jurisdiction.

At the start of the substantive hearing, the Tribunal noticed that the Respondent was using a different bundle to the one submitted by the Applicant. There was then some discussion as to why the Respondent's bundle had not been sent to the Tribunal. Apparently it had arrived at the Applicant's office after the date set out in the Tribunal's Directions dated 30<sup>th</sup> November 2011 and thus had not been forwarded to the Tribunal by the Applicant. The Tribunal then ordered a short adjournment for the parties to

agree and copy the documents in the Respondent's bundle. The substantive hearing then recommenced.

A. Power to charge

5. Mr Spiro submitted that Schedule 4, particularly paragraph 7, gave the Applicant the power to levy the charges in issue.
6. The Respondent put forward a very extensive, repetitive, but not particularly specific skeleton argument. At times it was difficult to follow, and occasionally muddled. It had been prepared by an adviser, and the Respondent admitted that she did not fully understand it. However on this point, It was submitted that the governing clause in the Lease was clause 4(ii) "*to contribute and pay on demand one quarter of the costs expenses outgoings and matters mentioned in the Fourth Schedule hereto ...*". It was submitted that the list in the Fourth Schedule was exhaustive. There had to be clear and unequivocal authority in the Lease for the cost to be recoverable from the tenants. Clause 3(d) had been referred to in general terms in the Particulars of Claim, referring to the landlord's entitlement to the costs of steps leading to proceedings under Section 146 and 147 of the Law Property Act 1925, but no claim had actually been made under either Section. The Respondent agreed that the Lease required the tenant to pay an advance charge totalling £100 in each service year.
7. The Tribunal considered the evidence and submissions. It preferred the submissions of the Applicant. Paragraph 7 of the Fourth Schedule seems quite clear;  
*"7. Any other reasonable expenses of a recurring nature which the Lessor may deem expedient in the interest of good management The Lessor shall be entitled to add to all and any of the above items the reasonable administration expenses of the Lessor and its Managing Agents and where any repairs decorations or renewals are carried out by the Lessor he shall be entitled to charge as the expenses or costs thereof his reasonable charges (including profits) in respect of such work."*  
The Tribunal noted in passing that the draftsman had studiously avoided punctuation in the Lease, but nothing seemed to turn on that point. The Respondent suggested that the phrase "administration expenses" was restrictive, as it had been statutorily defined (presumably by the Commonhold and Leasehold Reform Act 2002, Schedule 11, although this was not made clear). The Tribunal found the words clear. In any event it would be incorrect to apply the 2002 Act retrospectively, and even if that were possible, the position of the phrase in a provision relating to service charges seemed to negate any assumption that the charge was an administration charge levied on individual lessees, as opposed to a service charge levied on the lessees collectively. **The Tribunal thus decided that there was adequate power to charge reasonable management and other professional fees to the service charge in the Lease.**

B. Brought Forward Figure of £605.03

8. Mr Spiro confirmed that Crabtree had taken over the management on 1<sup>st</sup> August 2008. Thus he was relying upon the information passed over by Trust Property Management, the previous agents. In the 2007/8 service charge year there were four accounts making up the service charge, an account for £495 to repair the front steps, a Fire Safety Inspection fee for £343.10, Management £763, and Accountancy £184. The Respondent's share was 25% or £446.28. None of the fees were subject to long term qualifying agreements with contractors. Mr Spiro took us to many documents, but the £605.03 remained elusive. Mr Spiro submitted that part of the problem was that the previous agents had been billing for advance service charges, but the Lease did not provide for estimated payments in advance, only a £50 charge every 6 months. According to the Lease, the landlord had to fund the costs until a final demand was made. The Report had been made to comply with the Regulatory Reform (Fire Safety) Order 2005.
9. The Respondent submitted that she had been unable, despite much correspondence, to discover how the brought forward charge was made up. She had been consulted on no items relating to the service charge at all, although she considered that she was entitled to be consulted on every item. The Respondent further considered that she had not received the statutorily prescribed information which should have been served with every demand. Demands had not been served within 18 months of being incurred. She initially agreed in one statement that some work had been done on the step in 2008, but at the hearing submitted that she only agreed that work had been done on the step in the 1990s, and the person who had drafted her statements had misunderstood the position. No invoices had been produced to her. She doubted whether the work had been done in 2008. The Fire Safety Report did not record the need for the report, and the landlord had produced no explanation either. The report produced in evidence was not a substantive report for which payment should be made, in her view. The accounts produced by the landlord did not present a reliable or accurate account of expenditure or services actually received. The management charges were too high, the agents did not respond to correspondence or calls, and no works had been carried out despite the urgent need for work to be done on the roof.
10. The Tribunal considered the evidence and submissions. Contrary to the submissions of the Respondent, she was not entitled to be consulted over every item of expenditure, only items over such sum as is required by the Service Charges (Consultation Requirements) (England) Regulations 2003. There was evidence that the prescribed information had been served. There seemed no substance in the claim that any item of costs had been notified more than 18 months after being incurred. There was circumstantial evidence that the work to the step had been done in 2008, against a general denial by the Respondent. The fire safety report was also a statutory requirement, and the report seemed satisfactory for its purpose. **These two accounts for work were therefore payable in full.** There seemed no particular problem with the accounts, apart from the fact that the Respondent disputed individual items. On the other hand, the Tribunal decided that the accounting records showed

that the money for the Accountancy charge in 2008 had not in fact been paid from the service charge account, and had effectively been recredited later. **Thus the accountancy charge for 2007/8 must be NIL.** The Tribunal agreed with the Respondent that the accounts were confusing and poorly explained. It had taken much time in the hearing for the Tribunal to extract the necessary information. These were not complex accounts. There was no evidence of the agreement with the previous agent as there should have been. However some management had been carried out. **The Tribunal decided that the Management fee should therefore be reduced by 50%.** Further, the brought forward charge of £605.03 had never actually been proved by the Applicant, despite much evidence and copies of the running account. **The Tribunal decided that the best way to tackle the problem was to start with a Nil balance for the Respondent at the start of the 2007/8 year, as the parties had agreed that point at the hearing, and work forwards, using the figures noted in Appendix 2 below.**

C. Balancing charge to 25.12.2009 - £334.59

11. In the light of the problems noted in paragraph 10 above with the accounts, this figure cannot be sustained. Again the Tribunal has approached the matter from the actual charges noted in the service charge accounts produced to it.
12. For the Applicant it was submitted that the service charges for the year 2008/9 were an Asbestos Survey Report costing £458.85, and Management Charges of £445.02. A copy of both invoices was produced, and a copy of the management agreement with Crabtree, who had taken over the management in August 2009. It was submitted that the Asbestos Report was also necessary to check the common parts and comply with legislation (Control of Asbestos Regulations 2006). There was no obligation on the landlord to inform leaseholders about contractors working in the common parts. Also, although they had no documentary evidence, they believed that the contractor 4sight was duly licensed and qualified. For various reasons, no accountancy charge had been made for that year. The management charge made had been by the previous managing agents up to the end of their period of management. No charge had apparently been made by Crabtree in this year for the work they had done.
13. The Respondent made very similar submissions to those in paragraph 9 above. In addition the Respondent considered that a survey each year for Asbestos was excessive, that the Report was inadequate, she queried whether 4site was duly qualified to give the report, and that they had entered the property without her knowledge or permission. The management charge was excessive for the work done.
14. The Tribunal considered the evidence and submissions. The Tribunal accepted that the Asbestos Report was necessary. It noted that no asbestos had been found, thus no future report should be necessary unless works were done in the property. The Respondent had apparently not appreciated that the report only covered the common parts. The Report appeared satisfactory for which it was intended, and examination of the reports suggested that the maker was professionally qualified. **The Asbestos Report charge was**

**allowed in full.** The previous management suffered from all the problems noted by the Tribunal for the previous year. **Again the Tribunal decided the management charge should be reduced by 50%.**

D. Balancing charge for period ending 25.12.2010 - £311.61

15. Again, in the light of the problems noted in paragraph 10 above with the accounts, this figure cannot be sustained. As before, the Tribunal has approached the matter from the actual charges noted in the service charge accounts produced to it.
16. For the Applicant, it was explained that the transaction charges on the managing agent's Collections account were charged separately as disbursements. This was considered a useful way of monitoring the account. A small sum of £0.02 in interest had been earned on monies in the account. The accountancy charge of £300 was for Cartwrights' fee for the period ending on 25.12.09. A copy of their invoice dated 30.9.10 was produced at the hearing. In accordance with the Crabtree management agreement, the agents were charging £280 per unit plus VAT. The agents considered this was not an unusual charge for properties in the area.
17. The Respondent made submissions similar to those in paragraph 9, and which were dealt with by the Tribunal in paragraph 10. In response to questions, the Applicant made it clear that the management agreement was effectively renewable yearly. **The Tribunal decided that the agreement was thus not a qualifying long term agreement. The Tribunal also decided that the transactions charges were in fact part of the agent's overheads, and thus should be included in the agent's overall fees, rather than charged separately. They were disallowed.** The Accountancy charge had jumped from £184 in 2007/8 to £300 in 2008/9. This seemed a very large increase, and for the work involved, it was too high. **The Tribunal thus reduced the Accountancy charge to £200 inclusive of VAT.** The management charges for the year had some contractual basis, but it was not clear what had happened to the charge for the previous year for the period 1<sup>st</sup> August – 25<sup>th</sup> December 2009. The Tribunal decided with the benefit of its own knowledge and experience that a unit charge of £280 per year for the work done was too high, despite the management agreement. This is a very small block with very few transactions. It was poor value to the tenant. **The Tribunal decided to reduce the unit fee for management to £185 per unit plus VAT. This represented reasonable value to the tenant.**

E. Additional Management fee of £240 dated 24.6.11

18. The Applicant submitted that this was a charge to the Respondent for the extra work done in connection with the Respondent's arrears. The agent was entitled to this fee under the management agreement. It was a set fee, not a charge based on time.
19. The Respondent submitted that the charge was not properly notified as the statutory information which should have accompanied the charge had not been supplied. The charge was a penalty charge, unrelated to any provision of service, and thus irrecoverable.

20. The Tribunal explained to the Respondent at the hearing that the charge was in fact an Administration Charge under the terms of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, rather than part of the service charge. The Tribunal considered that the Applicant's previous agents had muddied the waters very considerably by lack of communication, and in large part, this problem had been handed on to the new agents, although the new agents should have been more critical of the information they had received, before attempting to obtain payment. It was clear that the landlord had been unable to sustain any of the brought forward figure and balancing charges, and that the Tribunal had also reduced a significant number of individual items in the service charge. The figures found payable by the Tribunal had significantly reduced the Respondent's liability. **The Tribunal decided that the Administration Charge of £240 was not reasonable, and disallowed it totally.**

### **Application under s.20C fees and costs**

21. The Respondent had effectively made such application in her statements. The Respondent submitted that she had attempted to obtain clarification from the Applicants about the charges on many occasions. She considered that the responses had been unhelpful and slow. The Applicants suggested that they had been listening, but that was not the Respondent's experience. They had only produced invoices after being directed to do so by the Tribunal. She invited the Tribunal to make an order under Section 20C.
22. The Applicant submitted that they had tried to deal with the Respondent's queries, there was a long trail of correspondence showing in the bundle. The work done was reasonable and in accordance with the Lease. We were referred to the cases of *Plantation Wharf Management v Jackson & Irving (UKUT) LRX 31/2011* and the *Freeholders of 69 Marina, St Leonards on Sea v Oram & Anor [2011] EWCA Civ 1258*. The Applicant considered that these cases supported the view that the Applicant should be able to charge its costs of the application to the service charge.
23. The Tribunal considered the evidence and submissions. The Applicant's reference to the two cases noted above seems misguided. Relating to *Plantation Wharf*, the Tribunal has yet to make a decision under Section 20C before it can be challenged, and relating to *69 Marina*, that case dealt with the costs of service of a Section 146 Notice in a case of non-payment of an amount of service charge previously found due by the LVT. No suggestion was made to this Tribunal that a Section 146 Notice had been issued. Again the relevance of the case is not apparent. The Respondent has succeeded on a number of issues and the Tribunal has consequently significantly reduced the sums demanded by the Applicant. The previous agents had not performed well. While the current agents had attempted to engage with the Respondent's legitimate

complaints, they had not been able to resolve quite simple issues, notwithstanding the fact that the Respondent appeared at times to overplead her case. It was telling that it had taken two hours of questioning at the hearing for the Tribunal to extract the necessary information from the Applicant's evidence, so as to be able to understand the accounts and documents produced. The Applicant, having started from a "brought forward" figure which was unreliable if tested using information within the Applicant's own files, was never able to justify it. The Respondent had grounds for concern, expressed at length over an extended period. These were not assuaged by the Applicant's explanations, and she had succeeded in part in defending the claim. **The Tribunal decided to make an order under Section 20C, limiting the Applicant's costs of this application which can be passed on to the Respondent through the service charge to NIL.**

- 24, The Tribunal also decided that no question of reimbursement of fees arose, as none had been paid to the Tribunal under the terms of Schedule 12, paragraph 9 of the Commonhold & Leasehold Reform Act 2002. Also, it decided that neither side appeared to have acted in a way which would attract the Tribunal's jurisdiction to award costs for unreasonable behaviour under Schedule 12, paragraph 10 of the 2002 Act.

Signed: Lancelot Robson

Mr L. W. G. Robson LLB (Hons)  
Chairman

Dated: 27th March 2012

## **Appendix 1 - relevant legislation**

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

#### **Section 18**

- (1) In the following provisions of this 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.



- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

### **Section 19**

- (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 or subsequent charges or otherwise.

### **Section 27A**

- (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 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.
- (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 to have agreed or admitted any matter by reason only of having made any payment.

**Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration 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 person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
  - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

**Commonhold and Leasehold Reform Act 2002  
Schedule 12**

**Paragraph 9**

*“(1) Procedure regulations may include provision requiring the payment of fees in respect of an application or transfer of proceedings, or oral hearing by, a leasehold valuation tribunal in a case under-*

- (a) *The 1985 Act (service charges and appointment of managers)*
- (b) – (e) .....

(2) *Procedure regulations may empower a leasehold valuation tribunal to require a party to proceedings to reimburse any other party to the proceedings the whole or any part of any fees paid by him*

- (3) *The fees payable fees payable.....shall not exceed-*
  - (a) *£500....”*

**Paragraph 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 leasehold 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.*

- (3) *The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed-*
  - (a) *£500, or*
  - (b) *.....”*

**Appendix 2**

Landlord & Tenant Act 1985 (as amended) Section 27A

Calculations for 37 Penge Rd

Year ending 25<sup>th</sup> December 2007/8

Repairs & maintenance steps – all allowed -	£495
Health & Safety Assessment – all allowed –	343.10
Management Fees – Reduce £763 by 50% -	381.50
Accounting Not paid – Nil	Nil
	-----
	<b>£1219.60 (25% = £304.90)</b>

<b>2008/9</b>		
Asbestos Survey – All allowed	458.85	
Management Fees – Reduce 445.02 by 50%	222.51	
	-----	
	<b>£681.36 (25% = £170.34)</b>	
<b>2009/10</b>		
Transaction Fees – part of overheads – Nil	Nil	
Management Fees – 1344 Reduce £280 per unit to £185 per unit (740 + 20%)	888	
Accounting – 300 – Reduce to £200	200	
Bank Interest - £(0.02)		(0.02)
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	<b>1087.98 (25% = 271.99)</b>	

Credit for those sums actually paid should also be given.

Court Fees – not in Tribunal’s jurisdiction

Additional Administrative fee 24.6.11 - £240 – Reduced to Nil

**2010/11**

Not in Court claim – No Jurisdiction

### APPENDIX 3

Lease dated 25<sup>th</sup> September 1986 – See attached