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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON/00/AH/LSC/2011/0870

Premises: 113 Ladygrove
Pixton Way
Croydon CRO 9LT

Applicant: Ladygrove (Addington) Management Limited

Representative: Brethertons LLP, solicitors

Respondent: Mr A Hayward

Representative: N/A

Date of hearing: 24th May 2012

Appearance for Applicant(s): Mr Hugh Flanagan Counsel
Ms Amy Bell Solicitor Brethertons
Mr Chris Gardner Managing Agents

Appearance for Respondent(s): Mr Hayward appeared and represented himself

Leasehold Valuation Tribunal: Dr Carr
Mr Casey FRICS
Mrs Hawkins

Date of decision: 13th June 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £4,403.50 is payable by the Respondent in respect of the service charges for the years in dispute. This amount comprises the normal service charges demanded for the years in dispute plus a reduced payment for the additional levy for external redecoration.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985
- (4) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Croydon County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Respondent in respect of the service charge years.
2. Proceedings were originally issued in the Banbury County Court under claim no. 1ZA02973. Subsequently the proceedings were transferred to the Croydon County Court. The claim was transferred to this Tribunal on 8th December 2011.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Mr Flannigan of Counsel at the hearing and the Respondent appeared in person
5. Immediately prior to the hearing the Respondent asked for it to be postponed on the basis that as a result of his ill health he had been unable to prepare for the hearing. He indicated that whilst he was unable to provide specific medical evidence to this effect his general practitioner was going to refer him to a specialist for a report. The Respondent also informed the Tribunal that he had not received a hearing bundle for the hearing.
6. Counsel for the Applicant strongly resisted the application for an adjournment. He pointed out that the Applicant was not a profit making organisation, that it

would not be proportionate to the amount in dispute to further delay the matter, and that the Respondent had had sufficient time to prepare for the hearing. Having taken instructions Counsel informed the Tribunal that the hearing bundle had been posted to the Respondent by his instructing solicitors.

The decision of the Tribunal on the application for the adjournment

7. The Tribunal determined to refuse the application for the adjournment.
8. The Tribunal agreed with the Applicant that it was necessary in the interests of justice, and indeed proportionate for the matter to be resolved as soon as possible. Moreover there was nothing in the information given by the Respondent to the Tribunal, which indicated that the Respondent would feel able to prepare properly for the hearing at any time in the near future.
9. The Tribunal accepted on the balance of probabilities that the Applicant had sent the hearing bundle to the Respondent. However it gave a copy of the hearing bundle to the Respondent and adjourned the hearing for an hour to enable the Respondent to read the hearing bundle.

The background

10. The property, 113 Ladygrove, which is the subject of this application is a one bedroom flat within a development comprising 124 properties. 43 of those properties are 1 bedroom flats, 38 are 2 bedroom flats and 43 properties are houses. The flats are arranged in 14 separate blocks each with either 5 or 6 flats contained within it. The estate was built between 1976 and 1977.
11. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
12. The Respondent holds a long lease of the property, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

13. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for the service charge years 2007-8 to 2010-11
 - (ii) The additional maintenance charge of £620 levied in April 2010

14. The amount in dispute before the Tribunal is £ 4,517.50
15. The relevant clause of the lease for the purpose of the application is clause 3(a). This provides for service charge payments as follows:

3.(a) The Lessee hereby covenants with the Manager that he will pay to the Manager:-

(i) on demand a service charge being one point zero per centum (1.0%) ... of the expense expected to be incurred by the Manager in the ensuing year of and incidental to the performance and observance of its obligations under the Lease from the Lessor to it of the main structures and fulfilling its obligations in the Fourth Schedule hereof (other than Clause 3 thereof) and of creating such reserves in connection therewith to meet its future liabilities as to the Manager in its absolute discretion may seem necessary or desirable

(ii) an equal share per dwelling with all other owners of a house or flat on the Estate of the cost and expenses incurred or to be incurred (estimated or otherwise) of an incidental to:-

- (a) the management and administration of the Manager (excluding any Directors' fees)
- (b) managing insuring maintaining upholding cleansing repairing and renewing (i) the Amenity Lands and (ii) the water standpipes (if any) serving the garage forecourt areas and (iii) the communal television system (if any)
- (c) Performing and observing all obligations entered into by it in the terms of paragraph 3 of the Fourth Schedule hereto
- (d) The performance and observance of all obligations entered into by it for the benefit of the residents of the Estate
- (e) Creating such reserves as to the Manager may seem prudent
- (f) Such other expenses as the Manager may incur in the exercise of any of its objectives as set out in the Memorandum of Association of the Company

16. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The payability and/or reasonableness of service charges for the years 2007 to 2010

17. Counsel for the Applicant produced budgets for each of the years in dispute and provided copies of relevant invoices for the Respondent. Counsel explained that service charges were payable on demand, and that demands were issued on the basis of the budgets. The Respondent had not been able to challenge the accounts on the basis of the invoices as he had been too unwell to prepare his case.
18. The Tribunal asked about what happened to surpluses. Counsel explained that when accounts are in surplus these are not re-credited but transferred to the reserve fund. The lease contains a power to do this.
19. The Tribunal put the points that were relevant to the issues in hand and that the Respondent had made in the letter that he sent to the Tribunal on 15th May 2012 and raised at the PTR to the Applicant.
20. The points were
- (i) Lack of transparency
 - (ii) The level of management fees as little has been done to earn these
 - (iii) The failure to clean the top two floors of the block and the general poor standard of cleaning
 - (iv) Inefficient and ineffective lighting
 - (v) Poor gardening services
21. The Respondent had tried to argue that historic neglect by the Applicant of the garages and the exterior decoration had caused the service charges to be unreasonably high but he had no evidence to support this claim.
22. The Applicant provided full information to justify the demands as part of its preparation for the Tribunal hearing. Therefore the argument about lack of transparency was not pursued.

23. Mr Gardner, for Concept Managing Agents gave evidence on behalf of the Applicant in connection with the other points. He stated that Mr Hayward stored items on the landing outside of his property which meant that the landing was difficult to clean. He also said that there had been disagreements between the cleaner and Mr Hayward which involved allegations of assault and the cleaner had refused to clean in the vicinity of Mr Hayward's property. Cleaning has now recommenced, as far as practical because of the items stored by
24. Cleaning was done on an annual renewable contract which was regularly reviewed.
25. Mr Gardner agreed that lighting had been a problem but it has now been replaced with dusk to dawn lighting operated through sensors.
26. He gave evidence that there was an annual renewable contract for the gardening services provided to the property.
27. Mr Gardner also gave evidence in connection with Concept's fees. They are currently £9000 per annum for the development. There had been during the period in question what looked like a large increase in fees. That was the result of Concept reaching a size where it had to register for VAT. Concept provided the usual management services, including management of arrears.

The Tribunal's decision

28. The Tribunal determines that the amount payable in respect of service charges not including the additional payment for external redecoration is £3,897.50.

Reasons for the Tribunal's decision

29. There was no evidence to substantiate the Respondent's challenge to the service charge accounts.
30. The evidence provided by the Applicant was coherent.
31. The amount charged by Concept appeared to the Tribunal to be reasonable. There was a valid explanation for the apparently large increase in the charges paid to Concept. There is nothing to suggest that Concept's management has been anything other than of a reasonable standard.
32. The cleaning has now recommenced. The lighting issues have now been resolved.

33. The Tribunal was concerned that the Applicant had complied with the specific requirements set out in clause 3(b) of the lease. It recommends that the calculations required by that clause are clearly stated on the accounts so that lessees are fully aware of the decision making process when transferring surpluses to the reserve. It is particularly important to be explicit when the lease gives a broad discretion to the management to make demands for payments for the reserve fund.
34. The Tribunal does not consider however that the failure to be explicit about the process of transferring monies to the reserves means that the money demanded by the Applicant is not reasonable. The Respondent benefitted from the transfers to the reserve fund when the external redecoration was carried out.

The additional maintenance charge of £620 levied in April 2010

35. The additional maintenance charge was levied to cover those costs of external redecoration which were not covered by the reserve fund. The shortfall was £50,600. This sum was divided between the residents of the walk up flats.

The Tribunal's decision

36. The Tribunal determines that the amount payable in respect of the additional payment for external redecoration is £506.

Reasons for the Tribunal's decision

37. The lease requires the Respondent to pay 1% of the costs of external redecoration and not an equal share. This was put to the Applicant by the Tribunal at the hearing and the Applicant agreed.

Application under s.20C and refund of fees

38. The Applicant indicated that it did not intend to put the costs of the hearing on the service charge account and therefore there was no need to make a decision about the Respondent's application under s.20C. The Applicant intends to pursue its legal costs in the County Court.

The next steps

39. The Tribunal has no jurisdiction over county court costs. This matter should now be returned to the Croydon County Court.

Chairman:



Helen Carr

Date:

14-6-2012

Appendix of 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 20B

- (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.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) 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 otherwise than as landlord or tenant, or

- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made 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.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.

- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, 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) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.