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Service**



Residential  
Property  
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**LONDON LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/00AH/LSC/2012/0219**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON  
APPLICATIONS UNDER:**

**(1) SECTION 27A OF THE LANDLORD & TENANT ACT 1985**

**(2) SCHEDULE 11 OF THE COMMONHOLD AND LEASEHOLD REFORM  
ACT 2002**

**Applicant: Seamoat Ltd**

**Respondent: Bluegate Housing Ltd**

**Property: Flat B, 375 Bensham Lane, Thornton Heath, Surrey, CR7 7ER**

**Date of Hearing: 18 June 2012**

**Appearances**

**Applicant**

**Mr S Tucker Legal Support Administration, BLR Property Management**

**Respondent**

**Mr B Blau Director**

**Leasehold Valuation Tribunal**

**Mr I Mohabir LLB (Hons)**

**Mr S A Manson FRICS**

**Ms J Dalal**

## *Introduction*

1. The Applicant issued proceedings against the Respondent in the Reading County Court to recover estimated service charges of £664.76 for the period 1 July to 31 December 2011 and a sinking fund contribution of £164.30 in respect of the same period. The Applicant also claims various administration charges totalling £445.25. Each of these matters is particularised and dealt with below.
2. Subsequently, the proceedings were transferred to the Tribunal to determine the Respondent's liability to pay and/or the reasonableness of the various charges in issue.
3. The Tribunal's determination in relation to the service charges and sinking fund contribution is made pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act"). The determination in relation to the administration charges is made under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (as amended)
4. The Respondent is the lessee of Flat B, 375 Bensham Lane, Thornton Heath, Surrey, CR7 7ER ("the property") by virtue of a lease dated 16 March 1987 made between Gracezone Ltd and Sidney Roy Robinson for a term of 99 years from 29 September 1986 ("the lease"). The Respondent is the present freeholder and lessor.
5. The relevant contractual terms of the lease can be summarised as follows. By clause 4(2), the lessee covenanted to pay the interim charge and service charge as provided for in the Fifth and Seventh Schedules. Both charges are payable on demand and recoverable as rent in arrears. Paragraph 8 of the Particulars states that the lessee's contribution is to be 33.3%.
6. The Fifth Schedule sets out the heads of expenditure incurred by the lessor in respect of which the lessee is required to pay a service charge contribution. Paragraph 1 of the Seventh Schedule provides that the total service charge costs is the aggregate amount incurred by the lessor in each year commencing

on 1 January and shall include the cost incurred by the lessor pursuant to its obligations under clauses 5(4) and (5) and any other heads of expenditure set out in the Fifth Schedule. The lessee is also required to pay a contribution for a reasonable amount in respect of reserves (if demanded) and also in respect of any administration, professional, management fees and the cost of auditing the service charge accounts.

7. Paragraph 2 of the Seventh Schedule provides that the interim charge shall be payable by the lessee by equal payments in advance in 1 January and 25 June in each year.
8. By a demand dated 18 May 2011, the Applicant claimed an estimated service charge and sinking fund contribution from the Respondent for the amounts set out above. Upon those amounts remaining unpaid, it issued these proceedings.

### ***The Law***

9. The substantive law in relation to the determination regarding the service charges can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

*"(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."*

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges. Where the reasonableness of service charge costs falls to be considered, the statutory test is set out in section 19 of the Act.

10. The relevant law to be applied in relation to the administration charges is to be found in Part 1 of Schedule 11 of the Act. Paragraph 1(1) defines an administration charge as:

*"1(1)... and amounts 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 application for such approvals,*
- (b) ...*
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord...*
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.*

*(2) ...*

*(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 the formula specified in his lease."*

11. The Tribunal must, firstly, determine the issue of liability to pay administration charges under the terms of an Applicant's lease in the manner required by paragraph 5(1) of Schedule 11.

12. Once a Tribunal has determined the extent of any liability, it can go on to consider the reasonableness, under paragraph 2, of any administration charges claimed. Paragraph 2 simply provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable. Regrettably, the Act does not provide any statutory definition of what amounts to reasonableness. Nevertheless, the approach taken by this and other Tribunals is that the test of reasonableness (by extension of the test under section 19 of the 1985 Act) is satisfied where the costs or administration charges claimed have been reasonably incurred and are reasonable in amount.

### ***Hearing and Decision***

13. The hearing in this matter took place on 18 June 2012. The Applicant was represented by Mr Tucker from BLR Property Management (“BLR”), the managing agent. The Respondent was represented by Mr Blau, a Director of the company.

### ***Heads of Service Charge Expenditure***

#### ***Bank Charges***

14. The sum of £30 is claimed by the Applicant, being the cost to BLR of maintaining the client account. It is charged by the bank when the client account is overdrawn. Mr Tucker said that his firm did not have a separate client account for each property it managed. All of the client money was held in a general account. The bank charge is apportioned across the portfolio of properties his firm managed. He submitted that it was a cost of management and was recoverable under paragraph 3 of the Fifth Schedule of the lease.
15. Mr Blau submitted that the charge was not reasonable because it was being charged by BLR even when payment of any service charge demands had been made.
16. The Tribunal found that the bank charge was not a cost of management *per se*. it is a penalty charge by the bank for BLR allowing its client account to become overdrawn. Further, and in the alternative, the Tribunal found that this charge had not been reasonably incurred because the RICS Management Code expressly provides that a client account cannot be allowed to become overdrawn. In addition, the charge does not represent a cost incurred in relation to this property, but a cost apportioned across BLR’s portfolio of properties. Accordingly, it was disallowed entirely.

#### ***Buildings Insurance***

17. An estimated premium of £1,750 was claimed by the Applicant. However, Mr Tucker explained that the actual overall premium had in fact been reduced to £1,332.38.

18. Mr Blau submitted that the premium was excessive on the basis that he had obtained a like for like quote from his broker, Allianz, for under £600 and contended for that figure as being reasonable. However, he was unable to provide evidence of the e-mail from his broker about this quote because he had been unable to print it.
19. The Tribunal found the buildings insurance premium of £1,332.38 to be reasonable. The Applicant had provided evidence that the insurance was placed through a broker and, having regard to the premiums paid in relation to previous years, the premium here appeared to be consistent with those figures. In addition, the quote relied on by the Respondent had not been disclosed to the Applicant prior to the hearing even though it had been obtained since the previous Wednesday. Furthermore, Mr Blau had not provided any actual evidence at the hearing to support his assertion that he had in fact obtained a cheaper quote on the same terms. Accordingly, the sum of £1,332.38 was allowed as being reasonable.

#### *Management Fee*

20. The sum of £936 is claimed by the Applicant for the management fees of BLR. A further sum of £150 is claimed for “non-contractual management fees”.
21. Mr Tucker explained that his firm charged a unit cost of £260 plus VAT as a minimum for its management charges. He referred the Tribunal to the management agreement and the various management services provided. When asked by the Tribunal, he said that he had not been aware of any repairs having been carried out in 2011 because major works were being proposed in 2012. He confirmed that in 2011 the management functions carried out by BLR had been the issuing of demands, recovering service charge costs and dealing with the preparation of the year end accounts.
22. He went on to explain that when his firm had taken over the management in 2006, there had been substantial service charge arrears from all of the tenants, which had to be recovered. Two flats had in fact been repossessed.

23. The Respondent complained that there had been little or no management carried out by BLR and it was not required to any great extent because of the small size of the property. He, therefore, contended for a figure of no more than £50 per flat as being reasonable.
24. The Tribunal found the management fee of £260 plus VAT per unit to be reasonable. It was clear to the Tribunal that when BLR took over the management of the property in 2006, there were a number of management difficulties that had to be faced, including the extensive and substantial service charge arrear that had to be pursued and recovered. It seems that the problem of service charge arrears still persists. The Tribunal concluded that all of these matters were properly reflected in the management fee charged.
25. As to the non-contractual management fee of £150, it appeared that this was an additional provision made for anticipated costs payable to third parties to deal with, for example, recovery of arrears or emergency repairs. The Tribunal did not understand why this sum was being claimed as a “non-contractual management fee”. If it was “non-contractual” then, by definition, it cannot be recovered under the terms of the lease. Indeed, Mr Tucker accepted that there was no direct covenant in the lease that provided for the recovery of this expenditure.
26. Further, and in the alternative, the Tribunal found that this cost had not been reasonably incurred because if it was a contingency provision for other eventualities such as emergency repairs, then provision should be made within the budget figure for repairs and maintenance and not in this way. If it was being claimed as an additional management fee for BLR providing management in relation to various contingencies occurring, then the Tribunal found that the management fee above encompassed these matters and no further sum was allowed. Accordingly, the sum of £150 was disallowed entirely.

### ***Repairs and Maintenance***

27. A provision of £800 was made for repairs and maintenance. It was accepted by Mr Tucker that none were in fact carried out. He also accepted that historically little or no maintenance had been carried out to the property. However, he submitted that it was reasonable to have this provision at the time for responsive repairs that might have been needed. Furthermore, given that approximately £15,000 of major works had been proposed, a figure of £800 was eminently reasonable.
28. Mr Blau simply submitted that the sum of £800 was not reasonable because the Applicant knew that no repairs and maintenance were going to be carried out in 2011 in the light of the proposed major works.
29. The Tribunal accepted the evidence given by Mr Tucker on this issue and for the reasons given by him found the sum of £800 as a provision for repairs and maintenance to be reasonably incurred and reasonable in amount.

### ***Postage & Stationery***

30. A sum of postage and stationery is claimed by the Applicant, as being part of the cost of management of BLR and was not included in the overall management fee. Mr Tucker explained that the sum of £30 had been apportioned over BLR's entire portfolio. Mr Blau submitted that this cost was not recoverable under the terms of the lease and/or had not been reasonably incurred.
31. The Tribunal found that there was no term in the lease that allowed this cost to be recovered as a separate item of expenditure. It was an overhead of BLR discharging its management duties and, as such, properly formed part of its overall management fee. Accordingly, the sum of £30 was disallowed entirely.

### ***Health & Safety Inspection***

32. The sum of £350 claimed was conceded by Mr Blau as being reasonably incurred and payable for this head of expenditure.



### ***Administration Charges***

33. The administration charges claimed by the Applicant are:
- (a) Bounced cheque fee - £35.25
  - (b) Arrears recovery fee - £20 and £69
  - (c) Fees for court action - £320
34. Mr Tucker said that the bounced cheque fee related to a cheque sent by the Respondent in payment of service charge arrears, which had bounced. The arrears recovery fees related to reminder letters sent to the Respondent. The court action fee related to the costs of having to commence debt recovery proceedings. He submitted that all of these costs were contractually recoverable under clause 3(j) of the lease.
35. Mr Blau conceded that the bounced cheque fee was recoverable by the Applicant. Otherwise, he submitted that none of the other costs were recoverable under clause 3(j) and, in the alternative, were unreasonable.
36. The Tribunal found that, save for the bounced cheque fee conceded by the Respondent, none of the other administration costs claimed by the Applicant were contractually recoverable under clause 3(j). This clause is only concerned with the lessor's costs incurred in relation to forfeiting the lease. The administration costs claimed are not costs so incurred, but relate solely to debt recovery. None of the evidence relied on by the Applicant reveals that the steps taken were a precursor to forfeiting the lease. Indeed, Mr Tucker accepted that the Applicant's only intention was to recover the arrears and nothing else.
37. For the avoidance of doubt, the Tribunal also found the bounced cheque fee was a cost of management and was recoverable under clause 3(j) and was also reasonable in amount and, therefore allowed as claimed.

### ***Sinking Fund Contribution***

38. Mr Tucker said that the sinking fund contribution of £164.30 had been sought in relation to the proposed major works. He referred the Tribunal to the

Schedule of Works prepared by H R Surveyors. The estimated cost of the works was placed at £15,000 and it was intended to commence these in the current year. However, they had been delayed because of these and other proceedings to recover arrears. He submitted that the contribution claimed was nominal.

39. Mr Blau submitted that the sinking fund contribution had not been reasonably incurred because the proposed major works were not required.
40. The Tribunal found that the sinking fund contribution had been reasonably incurred. The schedule of works was clear evidence as to the necessity and extent of the repairs and maintenance that needed to be carried out to the property. Having regard to the estimated cost of the proposed works, the Tribunal also found the contribution claimed by the Applicant to be reasonable. Accordingly, the sum of £164.30 was allowed.

#### *Section 20C & Fees*

41. It was not necessary for the Tribunal to consider any application made under section 20C of the Act because the Applicant would be seeking an order for costs against the Respondent on a party and party basis in the County Court once the remaining sums claimed in those proceedings had been determined.
42. As to the matter of fees paid by the Applicant in these proceedings, being £170, the Tribunal determined that the Respondent should reimburse the Applicant one half of the fees on the basis that it had been obliged to seek recovery of the arrears and had succeeded on approximately half of the issues.
43. Accordingly, the Tribunal orders that the Respondent to reimburse the Applicant the sum of £85 within 28 days of service of this decision.

Dated the 29 day of August 2012

CHAIRMAN: Mr I Mohabir LLB (Hons)