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LONDON RENT ASSESSMENT PANEL

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

Case Reference: LON/00AH/LSC/2012/0421

Premises: Flat 3, 22 Nicholson Road, Croydon, Surrey, CR0
6RA

Applicant: Mr. G. A. Sharpe (the Tenant)

Representative: N/A

**Appearances for
Applicant:** Mr. Gary Sharpe

Respondent: Southern Land Securities Ltd (the Landlord)

Representative: Hamilton King Management Ltd (the Managing
Agents)

**Appearances for
Respondent:** Mr. B. Taylor (Property Manager)

**Leasehold Valuation
Tribunal:**

- (1) Mr. A Vance LLB (Hons) (Chair)
- (2) Mr. K. Cartwright, JP FRICS
- (3) Mrs. S. Justice, BSc

Date of Hearing: 12.10.12

Date of Decision: 15.11.12

Decision of the Tribunal

1. The sum demanded from the Applicant in respect of the 2011/12 service charge year (£425.81) is reasonable and payable by the Applicant to the Respondent in full.
2. The sum demanded from the Applicant towards the 2012/13 interim charge (£307.67) is reasonable and payable by the Applicant to the Respondent in full.
3. An order is made under s.20C Landlord & Tenant Act 1985 limiting the amount of the Respondent's costs of these proceedings that are to be regarded as relevant costs to £500 plus VAT.

Introduction

4. The Applicant is the leasehold owner of Flat 3, 22 Nicholson Road, Croydon, Surrey, CR0 6RA ("the Property") a first-floor flat located in a 3-story converted Victorian house ("the Building"). The Respondent is his landlord and has the benefit of the freehold reversion of the Property.
5. The Applicant applies under section 27A Landlord & Tenant Act 1985 ("the 1985 Act") for a determination as to his liability to pay service charges for 2011/12 and also in respect of the 2012/13 interim charge.
6. He also seeks an order under s.20C of the 1985 Act limiting the costs recoverable by the Respondent.
7. The relevant statutory provisions are set out in the appendix to this decision.
8. Numbers appearing in square brackets below refer to pages in the hearing bundle as numbered by the Tribunal and the parties at the start of the Tribunal hearing.

The Lease

9. The relevant lease is dated 14.10.74 [68] granted by Pleythorne Limited to Kenneth Michael Pauw and Elizabeth Pauw for a term of 99 years from 25.03.73.
10. An earlier application to the Leasehold Valuation Tribunal involving the same parties as the current application ("the Previous LVT Proceedings") (LON/00AH/LSC/2009/0630) culminated in a decision dated 08.12.09.
11. According to paragraph 2 of that decision the original lease referred to in paragraph 10 above was replaced by a new lease dated 21.02.02 for a term of 99 years from

25.12.01 made between Pleythorne Limited (1) and Denise Walsh (2). This new lease was not before us but we note that the previous tribunal concluded that it was on the same terms as the original lease save for certain modifications that were not material to the application. Given that neither party sought to argue to the contrary, we proceeded on the same basis namely that all relevant lease terms are as per the original lease.

12. The relevant provisions of Clause 2 of the lease can be summarised as follows:
- 12.1. The Tenant covenants to pay a proportionate part of the Landlord's expenses and outgoings incurred in repair maintenance, renewal and insurance of the Building and for the provision of services and other heads of expenditure as set out in the Third Schedule to the lease (*clause 2 (iii)*).
 - 12.2. The service charge year is the period 1st April to the following 31st March;
 - 12.3. The amount of the service charge is to be ascertained and certified by a certificate signed by the Landlord's auditors, accountants or managing agents (at the discretion of the Landlord) annually and so soon as practicable after the end of the Landlord's financial year;
 - 12.4. A copy of the certificate is to be supplied to the tenant on request;
 - 12.5. The certificate should contain a summary of the Landlord's expenses and outgoings during the financial year to which it relates together with a summary of the details and figures forming the basis of the service charge and the certificate;
 - 12.6. Landlord's expenses and outgoings include not only actual expenditure incurred during the year in question but also reasonable provision for anticipated expenditure;
 - 12.7. If required by the Landlord the Tenant is to pay to the Landlord on 25th March and 29th September such sum in advance as the Landlord or its accountants or managing agents shall specify at their discretion to be a fair and reasonable interim payment.
 - 12.8. As soon as practicable after signature of the certificate the Landlord is to provide to the Tenant an account of the service charge payable for the year in question, giving credit for any interim payments made and showing any relevant adjustments. Any debit balance is payable by the Tenant and any

credit balance is to be allowed or credited to the Tenant's service charge account;

- 12.9. The Tenant covenants to pay the Landlord *"all costs charges and expenses (including legal costs and fees payable to a Surveyor) which may be incurred by the Lessor incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 or incurred in or in contemplation of proceedings under Sections 146 or 147 of that Act notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court"*;
- 12.10. The items of expenditure that comprise the service charge are set out in the Third Schedule and include:
- 12.10.1. *"The expense of maintaining repairing redecorating and renewing.....the Reserved Property..." (paragraph 1 of the Third Schedule) and;*
- 12.10.2. *"The fees of the Lessor its Managing Agents and Surveyor for the collection of the rents of the flats in the Building and for the general management thereof and any legal costs incurred by the Lessor in connection therewith" (paragraph 4 of the Third Schedule)*
- 12.11. The definition of "Reserved Property" at clause (a) (ii) to the preamble to the lease includes *"the main structural parts of the Building including the roof foundations structural walls and all internal walls and beam structures of the Building"*.

The Pre-Trial Review

13. A pre-trial review ("PTR") took place on 18.07.12. Neither party attended. An order for directions was made by the Tribunal the same day.

Inspection

14. Neither party requested that the Tribunal inspect the Property and we did not consider it necessary to do so.

The Hearing, Decision and Reasons

15. The Applicant conceded that whilst he had made payments towards ground rent he had not paid anything towards his service charge since January 2011. He relied upon his Statement of Case dated 06.09.12 in which he sets out a chronology of interactions with the Respondent between March 2011 and May 2012 and in which he asserts that he had been withholding service charge payments because he considered the Respondent had failed to comply with its statutory obligations.
16. At the hearing, both parties agreed that certain sums previously demanded including interest charges and legal costs had been re-credited to the Applicant's service charge account. During the course of the hearing Mr. Taylor confirmed that the only remaining item relating to legal costs (a court fee of £70 for proceedings that had been prepared but not issued) was also to be re-credited to Mr. Sharpe's account and was therefore no longer in issue.
17. In addition, the Applicant's concern over the reasonableness of the sum demanded by way of a buildings insurance premium in the 2011/2012 service charge year (£719.34) was resolved during the course of the hearing. Mr Sharpe initially queried this sum as it appeared to him from an invoice from Reich Insurance [59] that the sum insured had decreased from £571,024 to £368,155 without a corresponding fall in the premium demanded.
18. Mr. Taylor explained that the invoice from Reich Insurance contained an error. The figure of £368.15 was the declared value of the property for reinstatement purposes and not the sum insured. He showed Mr. Sharpe a letter from the insurance company acknowledging this error. The Applicant accepted this explanation and did not pursue this challenge further.
19. We were able to clarify that this left the following service charge items in dispute: -

2011/2012 Service Charge Year [37]

(a) Surveyors & Professional fees £120.00

20. This charge related to costs incurred in relation to an asbestos re-inspection. The Applicant did not challenge the Respondent's contention that an asbestos survey was

originally carried out in 2009 that identified the presence of asbestos. Since that original survey the Respondent has commissioned annual re-inspections.

21. The Applicant queried whether or not these costs should be passed on to the Leaseholders and queried the reasonableness of the amount incurred given the size of the property and given that no actual work was carried out by the company [30]. In his view it may have been cheaper to use a local company as opposed to one based in Harpenden.
22. The Applicant's request to submit in evidence estimates he had obtained from alternative companies for the costs of an asbestos survey was refused by the Tribunal on the basis that (a) we considered that there was no good reason as to why this information was being submitted so late thereby depriving the Respondent of the opportunity to contact the companies or to obtain alternative quotes; and (b) we considered them of limited relevance given that they related to the costs of an asbestos survey and not a re-inspection.

Decision and Reasons

23. The asbestos survey carried out by Development Survey Services Ltd in 2009 identified small amounts of asbestos present within the common parts of the Building, notably the roof/loft space [66].
24. We consider it entirely appropriate for the Respondent to commission annual re-inspections of the Building in order to determine whether or not the asbestos identified remained in good condition.
25. Given that the initial report cost £295 plus VAT in our determination the re-inspection fee of £120 is reasonable given the amount of time that the contractor is likely to have to spend on site. The fact that no remedial work was carried out is irrelevant. What was commissioned was a re-inspection to identify if the asbestos had been damaged to such an extent that remedial works were necessary.
26. We also consider this sum to be payable by the Applicant under the terms of his lease as the costs incurred fall within the scope of his obligation under clause 2 (iii) and the Third Schedule of the lease. His apportioned contribution is 1/3 of the total sum as per clause 2(e) of the lease).

(b) Management Fees £438.08

27. The Applicant asserted that the fees demanded were excessive given the management services provided and the size of the Building. He informed us that he was paying a fee of £220 per annum in respect of a 5-flat building two streets away where (unlike in this Building) the managing agents had to oversee services such as window cleaning and communal gardening.
28. The Respondent's position was that the fee was calculated on the basis of £121.69 per unit plus VAT and whilst they did not have a daily management function the services provided included matters such as organising buildings insurance; dealing with possible repair issues; setting the service charge budget; preparing the end of year accounts and carrying out an annual inspection of the Building.

Decision and Reasons

29. In our view the sum demanded is reasonable. We noted the Applicant's oral submissions regarding the sum he pays for the management of a nearby property but we had no evidence before us as to the management portfolio for the management company in question or any documentary evidence concerning the property itself.
30. It was not disputed that the services provided by the Respondent included sending out service charge demands and reminders; compiling the annual service charge accounts; dealing with the asbestos re-inspection, securing buildings insurance, and responding to repair issues.
31. In the absence of any alternative written quotes for the provision of similar services and having regard to the services provided and our own expert knowledge we consider the sum reasonable and at the lower end of the scale for the management of a property of this size and type.
32. We also determine that the sum is payable under the provisions of paragraph 4 of the Third Schedule to the lease. The Applicant's apportioned contribution is 1/3 of the total sum.

2012/13 Interim Charge [41]

(a) Repairs £485.00

33. The Applicant disputed the basis on which the Respondent had calculated the estimated sum for this item, namely that it was based on their "experience of managing properties of a similar size and nature".[42]. He was concerned that no breakdown as to any anticipated repairs had been provided.
34. At the Tribunal's request Mr. Taylor obtained copies of the 2008/09 and 2009/10 service charge expenditure statements during the lunch interval. Copies were provided to the Applicant and we allowed these as admissible in evidence given their relevance to this item. The Applicant was given the opportunity to consider and comment on these statements. They identified that the same sum of £485 had been included in the budget for repairs and general maintenance for both of those service charge years but that no expenditure had actually been incurred in respect of this item in either year. Mr. Taylor was unable to identify any planned repairs but submitted that the sum involved was reasonable given their experience of managing other properties of a similar size.
35. Mr. Sharpe indicated that the tenants usually carried out minor repairs themselves and shared the cost. They had, for example, recently paid for the guttering to be cleared at their own cost. This is work which, Mr. Taylor confirmed, is something the managing agents would normally be expected to undertake.

Decision and Reasons

36. We are satisfied that the sum demanded is payable under the provisions of the Clause 2 and the Third Schedule of the lease and that the sum demanded by way of an interim charge is reasonable. Clause 2(g) clearly allows for an interim payment to be demanded. The Applicant's apportioned contribution is 1/3 of the total sum.
37. This Building is a Victorian house. Given its age we consider it appropriate for the Respondent to make allowance for possible expenditure on repairs by way of an interim service charge. We consider the amount demanded to be reasonable.
38. The Applicant accepted that some repairs to the Property are required from time to time but that the lessees paid for these themselves. However, if such repairs fall within the Respondent's repairing obligation it is for it to carry out such repairs and not the lessees.

39. If, as in the last two service charge years, no actual repair work is carried by the Respondent the Applicant will be entitled to a credit for the sum demanded by way of an interim charge when the end of year accounts are finalised.

(b) Management Fees £438.00

40. These were challenged as being excessive on the same basis as for the previous service charge year.

Decision and Reasons

41. We consider the sum demanded to be reasonable and payable by the Applicant in the same amount and for the same reasons as for the 2011/12 service charge year set out above.

End of Year Accounts

42. The Applicant considered that the Respondent had failed to provide certified accounts for the year ending 31.03.12. It appeared to be his position that given this alleged failure he was entitled to withhold service charge payments and/or the sums in question were not payable.
43. In previous years he had received accounts certified by an accountant instructed by the Respondent. He considered that the Service Charge Statements provided by the Respondent for 2010/11 [48] and 2011/2012 [37] were inadequate to meet the Respondent's obligations under the lease and what was required were signed accounts certified by a chartered accountant. In his view the statements provided made it "impossible to reconcile any brought forward or carried forward figures [17]".
44. Mr. Taylor confirmed that the document at [37] was the end of year statement provided to the Respondent and that this would have been sent to him together with a request for payment that included a summary of rights and obligations on the reverse. This was accepted by Mr. Sharpe save that he did not recall receiving covering letters.
45. Mr. Taylor also referred us to the decision in the Previous LVT Proceedings in which the Tribunal concluded that the lease did not require the accounts to be certified by an accountant given the lack of complexity. It found that it was unreasonable for the landlord to have incurred such expenditure and that the costs of management should

include the costs of preparing the year end summary and collating the supporting invoices (*decision, paragraph 24*)

Decision and Reasons

46. As identified by the Tribunal in the Previous LVT Proceedings there is no obligation under the terms of this lease for the Landlord to provide accounts certified by an accountant. It is perfectly acceptable for the amount of the service charge due to be ascertained and certified by a certificate signed by the Landlord's managing agents.
47. We consider that the service charge statements provided by Hamilton King meet the Respondent's obligations under the terms of the lease. The statement contains a summary of the expenditure incurred for the financial year in question and gives credit for the amount invoiced on account together with details of the end of year balancing charge payable
48. It was conceded by Mr. Taylor that these statements were not signed as required under clause 2(a) of the lease. In our view, however, this breach of the terms of the lease is not fatal. Construing the provisions of Clause 2 as a whole we consider that the purpose behind requiring the certificate to be signed is so that the Tenant can be satisfied that these are the final accounts being relied upon and that they have been signed by an appropriate person.
49. Mr. Sharpe did not dispute that he received these service charge statements in question from the Hamilton King nor that they were accompanied with a service charge demand. We consider that the statements sent by Hamilton King meet the certification requirements of Clause 2 notwithstanding the absence of a signature as there is no ambiguity as to who sent them nor that they were a proper person to do so.
50. We are also satisfied that the Respondent has complied with the statutory obligations imposed on it in respect of the contents of service charge demands. Mr Taylor confirmed that the address stated on the demands of 41 Blackfriars Road, Salford, M3 7DB is the Respondent's registered office address. This was not contested by the Applicant and we are satisfied, based on Mr. Taylor's evidence, that the provisions of 47(1) of the Landlord and Tenant Act 1987 (that requires that any written demand to a tenant for rent or other sums must contain the name and address of his or her landlord) have been met.

51. It was also not disputed that the service charge demands contained, on the reverse of the document, the summary of rights and obligations required under the provisions of the Commonhold and Leasehold Reform Act 2002, Section 153

Section 20C Application

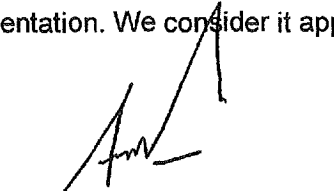
52. The Applicant seeks an order under section 20C of the 1985 Act that none of the costs of the Respondent incurred in connection with these proceedings should be regarded as relevant costs in determining the amount of service charge payable by the Applicant. It does not appear to be in dispute that the lease allows for such costs to be recovered as service charge.
53. The Applicant contends that these costs could have been avoided if the Respondent had responded to his queries promptly and that its' failure to do so meant that he had little option but to pursue his application to the Tribunal. He referred us to his letter of 28.09.11 to Hamilton King [43] in which he requested copies of the service charge statement covering the 2010/11 service charge year; the insurance premium renewal notice and policy documents and the relevant surveyors and professional fees invoice. He also requested a breakdown of the management fees incurred and an explanation as to how the sums billed for repairs and management fees had been calculated for the 2011/12 anticipated service charge.
54. The Applicant accepted that Hamilton King responded to that letter on 07.10.11 [42] enclosing a copy of the insurance summary, policy and an invoice for the asbestos survey. However, in his view the explanation as to how the management fees and repairs item had been calculated was inadequate. It was, he says, insufficient to state that the management fees had been assessed on Hamilton King's minimum fee of £116 plus VAT per unit. He was similarly dissatisfied with the explanation concerning the repairs budget being based on the agents' experience of managing properties of a similar size and nature.
55. The bundle did not contain any earlier letters from the Applicant prior to that dated 28.09.11 querying the service charges demanded for the years in issue. Mr. Sharpe informed us that he may have written to Hamilton King earlier than 28.09.11 but that he had not included all correspondence in the hearing bundle.

56. Mr Taylor, on the other hand argued that letters from lessees were answered promptly and that it appeared as though the Applicant was unwilling to pay towards service charge until the issue was determined by a tribunal. He referred to the Previous LVT Proceedings and the earlier LVT application involving the Applicant's previous freeholder. He indicated that the costs incurred by the lessor in respect of this application were over £1000.

Decision and Reasons

57. We consider it just and equitable to make an order under s.20C limiting the costs the Respondent can recover as relevant costs to no more than £500 plus VAT.
58. The Applicant has not succeeded on any of the challenges he has raised and we do not accept, based on the evidence before us that the Respondent acted unreasonably prior to the issue of these proceedings or thereafter. On the contrary, the documents included in the hearing bundle indicate that his queries were responded to promptly and, in our view with a sufficient degree of particularity.
59. However, it is our view that the sum indicated by Mr. Taylor of over £1000 is excessive for what has been a relatively straightforward LVT application involving limited documentation. We consider it appropriate to limit the costs recoverable.

Chairman:



Amran Vance

Date: 15.11.12

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18 - Meaning of "service charge" and "relevant costs"

- (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 – 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 or subsequent charges or otherwise.

20C. Limitation of service charges: costs of proceedings

- (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;
 - (b) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (c) 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;
- (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.

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 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.

Landlord and Tenant Act 1987

Section 47(1)

- (1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—
- (a) the name and address of the landlord, and
 - (b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.
- (2) Where—
- (a) a tenant of any such premises is given such a demand, but
 - (b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

- (3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court, there is in force an appointment of a receiver or manager whose functions include the receiving of service charges from the tenant.
- (4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Commonhold and Leasehold Reform Act 2002

153 Notice to accompany demands for service charge

After section 21A of the 1985 Act (inserted by section 152) insert—

"21B Notice to accompany demands for service charges

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.