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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON A MATTER TRANSFERRED FOR DETERMINATION BY THE COUNTY COURT PURSUANT TO REGULATION 3(1) OF SCHEDULE 12 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

**Case Reference:** LON/00AJ/LSC/2012/0336

**Premises:** 34C Cumberland Park, Acton, London W3 6SX

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**Applicant:** London Borough of Ealing

**Representative:** Mr D Harris, solicitor

**Respondent(s):** Mr & Mrs Ryan

**Representative:**

**Date of hearing:** 1<sup>st</sup> October 2012

**Appearance for Applicant(s):** Mr D Harris, solicitor, Ms R Sheik, capital works manager, Mr N Wilson, projects manager

**Appearance for Respondent(s):** DNA

**Leasehold Valuation Tribunal:** Ms E Samupfonda  
Mr K M Cartwright  
Mr L Piarroux

**Date of decision:** 2<sup>nd</sup> October 2012

### **Decisions of the tribunal**

- (1) The tribunal determines that the sum of £2,825.72 is payable by the Respondents in respect of the major works carried out in 2007/8.
- (2) The tribunal does make an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (3) The tribunal determines that the Respondents shall pay the Applicant £150.00 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.
- (4) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Brentford 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 Respondents in respect of the major works carried out in 2007/8.
2. Proceedings were originally issued in the Brentford County Court under claim no. 1UD72383. The claim was transferred to this tribunal, by order of District Judge Plaskow on 3rd May 2012.
3. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

4. Mr D Harris, solicitor, represented the Applicant at the hearing. The Respondents did not attend and were not represented. Their request for a postponement was considered and refused on 26 September for the reasons set out in that decision of the same date.

### **The background**

5. The property, which is the subject of this application, is situated in a two-storey block of flats with front elevation pebbledash finish. The roof is pitched with interlocking clay tiles. Windows are PVCu units.
6. 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.

7. The Respondents hold 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 and will be referred to below, where appropriate.

### **The issues**

8. At the start of the hearing the tribunal identified the relevant issues for determination from the Particulars of Claim and defence received from the Court to be as follows:
  - (i) The payability and/or reasonableness of the sum of the service charge in respect of external refurbishments and repairs.
  - (ii) Whether the landlord has complied with the consultation requirements under section 20 of the 1985 Act.
  - (iii) What works were actually carried out.
  - (iv) Whether the works were carried out to a reasonable standard.
9. Having heard evidence and submissions from Mr Harris and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

### **The tribunal's decision**

10. The tribunal determines that the amount payable in respect of the major works is £2,825.72.
11. The Applicant has complied with the consultation requirements.
12. The Applicant has carried out the work as set out in the schedule of works attached to Mr Nugent, Clerk of Work's witness statement.
13. The works were carried out to a reasonable standard.
14. The Respondents must pay to the Applicants the sum of £150 within 28 day in respect of the reimbursement of the tribunal fees paid by the Applicants.

### **Reasons for the tribunal's decision**

15. According to the Defence filed at the County Court, the Respondents disputed their liability to pay the amount claimed on the grounds that "the works carried out were not approved by me and were substandard. There is also the

question of what exactly we are being charged for as many items shown on the invoice were never actually provided."

16. Mr Harris referred to the Applicant's detailed statement of case setting out the chronology of events and to clause 2 and the Eighth Schedule of the lease. In summary he explained that the Respondents have failed to fully engage with the Applicants. He added that the Respondents are liable to pay the service charge in accordance with the terms of the lease.
17. From this the tribunal agreed that the Applicant has attempted to actively engage with the Respondents. The initial sum claimed of £3,445.82 was reduced by £71.01 to take account of the Respondents' assertion that no repairs were carried out to the windows as planned. Although the Respondents assert that they did not "approve the work" the Notice of Intention was served on 12 April 2007 and they did not make any observations. The Respondents claim that the work is substandard but have not elaborated or specified which works. Mr Nugent, the Applicant's Clerk of Works attended the property with the Schedule of works on the 8th and 9th August 2012 and compiled the report that is attached to his witness statement. He stated that he took a pragmatic approach in marking items that he considered to be non-chargeable where he believed that the Respondents could reasonably contest the charge. He concluded that the service charge claimed should be amended to £2,825.72 in order to reflect that.
18. The tribunal considered the terms of the lease and concluded that the Respondents are liable to pay service charges in accordance with Clause 2(iii) read together with the Eighth Schedule. The Respondents, as all lessees are entitled to challenge the reasonableness and payability of service charges. However it is simply not enough to make unsupported or unsubstantiated assertions such as in this case. The Respondents have failed to comply with the Directions and have not attended the hearing. Moreover, they have not particularised their grounds for objecting to the service charge.
19. In all the circumstances the tribunal has determined that the service charge as claimed is reasonable and payable and that the works as specified in the schedule of work was carried out to a reasonable standard. .

#### **Application under s.20C and refund of fees**

20. At the end of the hearing, Mr Harris made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that he had paid in respect of the hearing. Having heard his submissions and taking into account the determinations above, the tribunal orders The Respondents must pay to the Applicants the sum of £150 within 28 day in respect of the reimbursement of the tribunal fees paid by the Applicant.
21. Although Mr Harris indicated that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless

determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

22. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Brentwood County Court.

Chairman: Evis Samupfonda  
2<sup>nd</sup> October 2012

Date:

## **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 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
  - (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
  - (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

### **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).