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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**

<b>Case Reference:</b>	LON/00AL/LSC/2012/0530
<b>Premises:</b>	Flat 33, Wood Wharf Apartments, Horseferry Place, London SE10 9BB
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<b>Applicant(s):</b>	Mr David Smith
<b>Representative:</b>	In person
<b>Respondent(s):</b>	Woodwharf Properties Limited (Landlord)
<b>Representative:</b>	Michael Laurie Magar Limited ("MLM") (Managing Agents)
<b>Date of hearing:</b>	6 <sup>th</sup> December 2012
<b>Appearance for Applicant(s):</b>	Mr Smith in person
<b>Appearance for Respondent(s):</b>	None
<b>Leasehold Valuation Tribunal:</b>	Mrs N Dhanani LLB (Hons) Ms.S.Coughlin MCIEH Mr C.S. Piarroux JP
<b>Date of decision:</b>	10 <sup>th</sup> December 2012

### **Decisions of the Tribunal**

- (1) The Tribunal determines that the Applicant is liable to pay no more than the sum of £100 inclusive of Vat per annum in relation to the service charge item relating to the Door entry phone and CCTV rental contract for the service charges that are the subject of this application.
- (2) In so far as the Applicant has paid to the Respondent a sum in excess of £100 per annum in relation to the Door entry phone and CCTV rental contract for any of the service charge years in question the Tribunal determines that the excess is reimbursed to the Applicant forthwith.
- (3) The Tribunal makes 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.
- (4) The Tribunal determines that the Respondent shall pay the Applicant £350 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.

### **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 relation to the Door entry phone and CCTV rental contract in respect of the following service charge years:
  - (i) 2007 to 2012, and
  - (ii) all future years for the duration of the agreement between Weybridge Landsdowne Limited (1) and Woodwharf Properties Limited (2) relating to the Door entry phone and CCTV at the Premises ("the Agreement").
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The Applicant appeared in person at the hearing and the Respondent did not attend and was not represented at the hearing.
4. At the start of the hearing the Tribunal received a letter sent by email on the morning of the hearing from Mr Michael Jacobs of MLM He apologised for not being able to attend the hearing and submitted representations.

### **The background**

5. The property which is the subject of this application is a two bedroom flat on the fourth floor of a purpose built block of flats.
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 Applicant 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 "Lease" is dated 9<sup>th</sup> February 2007 and made between Woodwharf Properties Limited(1) and David Michael Smith(2). The specific provisions of the lease will be referred to below, where appropriate.

### **The issues**

8. At the start of the hearing the Tribunal identified the relevant issues for determination as follows:
  - (i) The payability and/or reasonableness of service charges for years 2007 to 2012 and all future years for the duration of the agreement relating to Door entry phone and CCTV rental contract ("the Agreement");
  - (ii) Whether the Respondent was under an obligation under S.20 of the 1985 Act to consult tenants before entering into the agreement, or not;
  - (iii) If consultation was required, whether the landlord has complied with the consultation requirements;
  - (iv) Whether an order under S.20C of the 1985 Act should be made;
  - (v) Whether an order for reimbursement of the application and hearing fees should be made.
9. It was agreed that the issue was solely in relation to the costs related to the rental of the door entry phone and CCTV as opposed to the costs relating to the maintenance and repair of the door entry phone and CCTV.

### **The Law:**

10. S.20 limits the financial contributions of leaseholders in respect of qualifying long term agreements entered into by landlords unless the consultation requirements have been complied with or, alternatively, dispensed with by a Tribunal under S.20ZA(1).

11. A "qualifying long term agreement" is, subject to certain exceptions which do not apply in this case, an agreement entered into, by or on behalf of a landlord for a term of more than 12 months.
12. The detailed consultation requirements are set out in Schedule 1 to The Service Charges (Consultation Requirements) (England) Regulations 2003. They apply to agreements which result in an individual lessee being required to contribute more than £100 in any accounting period (Regulation 4).
13. There are two main stages in the required consultation process. The first stage is for the landlord to serve a notice of intention setting out what is proposed and giving lessees an opportunity to inspect relevant documents and to make observations, to which the lessor must have regard (Schedule 1 Paragraph 1).
14. The second stage is for the landlord to prepare a full detailed proposal which must be notified to all lessees so that they may make observations (Schedule 1 Paragraph 3)
15. S.20 limits the financial contributions of lessees in respect of qualifying long term agreements entered into by landlords unless the consultation requirements have been complied with or, alternatively, dispensed with by a Tribunal under S.20ZA(1) to the sum of £100 inclusive of Vat in any accounting period.
16. The relevant legal provisions are set out in the Appendix to this decision.

### **The Applicant's Case:**

17. The Applicant reiterated the points made in his application and statement of case. He stated that the landlord had entered into the agreement without undertaking the statutory consultation. He submitted that the agreement is between two companies that are connected and so he suspects that the agreement is not a transaction at arms-length and so it may not be on reasonable commercial terms. He submitted that the Respondent has over charged the leaseholders for the door entry phone and CCTV rental under the agreement.
18. The Applicant produced quotations for a similar door entry phone and CCTV system from PQS Associates dated 26<sup>th</sup> September 2012 and MD electrical Company Limited dated 27<sup>th</sup> September 2012 in support of his claim. The Applicant submitted that the capital cost at 2007 prices for the door entry phone and CCTV system is approximately £50,000 to £60,000 including Vat, as opposed to £177,072 under the Agreement.

19. The Applicant produced a copy of the Lease and questioned whether he is liable for the rental costs of the door entry phone and CCTV under the provisions of the Lease.
20. The Applicant stated that he cannot recollect any consultation in respect of the Agreement.
21. The Applicant vehemently denied that he had reached an agreement with MLM in relation to the issues and he sought a determination from the Tribunal. He stated that over the last six weeks and possibly longer he has requested information from the Respondent and MLM in relation to the Agreement and they have failed to provide the information requested. He confirmed he had been in negotiations with MLM in order to try to reach an agreement on the issue. He clarified that as the proposed agreement did not include full details as to what amounts had been already been paid in respect of the door entry phone and CCTV and in addition as it did include proposals as to how any over payments were to be refunded, he did not accept the proposal so there was no agreement.

### **The Respondent's Case**

22. The Respondent did not submit a statement of case. The Respondent failed to comply with the Directions issued by the Tribunal. In their letter sent on the morning of the hearing MLM stated that the need for the hearing today had taken them by surprise as there had been considerable meetings, discussion and essentially agreement reached on the issues that are the subject of the application before the Tribunal.
23. MLM confirmed that the undated contract sent to the Applicant on the 26<sup>th</sup> July 2012 is the contract in force, (i.e. it is the Agreement), albeit that they were not able to produce a signed and dated copy of the contract. MLM in their email of the 24<sup>th</sup> September 2012 informed the Applicant that they had requested a copy of the dated Agreement from the Respondent but they had not produced a signed and dated copy as they were having difficulty in trying to track it down.
24. MLM in their letter of the 6<sup>th</sup> December to the Tribunal stated "...In the absence of further documentation in relation to the contract for the provision of the service set out in the contract (undated) and presented in the applicants pack, the Respondent has had little option but to agree that the rules relating to long term qualifying agreements are effective in so much as the landlord is limited in recovery of more than £100 per unit as set out in the draft agreement attached."

### **The Tribunal's decision**

25. 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.
26. The Applicant under Clause 2 of the Lease covenants to pay the Provisional Service Charge and the Service Charge as set out in Schedule 1 Part 2.
27. The Service Charge is defined in the Lease under Clause 1.24 as the Service Charge Proportion of the Annual Expenditure. The Service Charge Proportion is defined in Clause 1.25 of the Lease as being 2.08%.
28. Clause 1.8 of the Lease defines the "Financial Year" as meaning "the period from 1<sup>st</sup> January to 31<sup>st</sup> December in each year".
29. Clause 1.2 of the Lease defines the "Annual Expenditure" as:  
  
" a all costs expenses and outgoings incurred by the Landlord during a Financial Year in or incidental to providing all or any of the Services and  
  
b any VAT payable on those sums costs expenses and outgoings  
  
but excludes any expenditure in respect of any part of the Building for which the Tenant or any other tenant is wholly responsible"
30. Clause 1.26 of the Lease provides that "Services" means the service facilities and amenities specified in Schedule 1 Part 1"
31. Schedule 1 Part 1 of the Lease provides that "... the relevant expenditure to be included in the Services shall comprise all expenditure reasonably incurred by the Landlord in connection with the repair management insurance or maintenance of and provision of services at the Development and shall also include (without prejudice to the generality of the foregoing):-....." and paragraph 13 provides "... to pay all hire or other charges for and to service maintain repair and replace (or arrange for this to be done )the main door entry system, lift and communal aerial to the Building (if any)."
32. The Tribunal upon construing the Lease finds that the Applicant as lessee is liable for the costs including the rental costs under the Agreement in relation to the door entry phone and CCTV.
33. The parties admit and the Tribunal finds that the Agreement is a qualifying long term agreement and that the Landlord failed to comply with the relevant consultation requirements. Accordingly the Tribunal determines that the amount payable by the Applicant to the Respondent in respect of the rental costs of the door entry phone and CCTV for the service charge years from 2007 until the expiry of the Agreement shall be limited to £100 inclusive of Vat.

34. In so far as the Applicant has paid to the Respondent a sum in excess of £100 per annum in relation to the Door entry phone and CCTV rental under the Agreement for any of the service charge years in question the Tribunal determines that the excess is reimbursed to the Applicant forthwith.

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

35. At the end of the hearing, the Applicant 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 application/hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund £350 in respect of the fees paid by the Applicant within 28 days of the date of this decision.
36. In the application form, the Applicant applied for an order under section 20C of the 1985. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal 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 Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Chairman: \_\_\_\_\_  
Mrs N Dhanani

Date: 10<sup>th</sup> December 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 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.