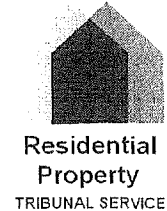


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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON A TRANSFER OF PROCEEDINGS BY THE COUNTY COURT FOR A DETERMINATION UNDER SECTIONS 27A OF THE LANDLORD AND TENANT ACT 1985 & SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Case Reference: LON/00AM/LSC/2012/0014

Premises: 6 Aster Court, Woodmill Road, London, E5 9GB

Applicant(s): Altius One (Hackney) Management Company Limited

Representative: PDC Solicitors

Respondent(s): Ms Lilian Chiza

Representative: In person

Date of hearings: 11 May 2012
25 July 2012

Appearance for Applicant(s): Ms Jennifer Lee, Counsel (11.5.12)
Ms Eleanor Bruce, Counsel (25.7.12)

Appearance for Respondent(s): In person

Leasehold Valuation Tribunal: Mr Robert Latham (Chair)
Ms Sue Coughlin (Professional Member)
Mr Paul Clabburn (Lay Member)

Date of decision: 22 August 2012

Decisions of the Tribunal

Case No.1EC00345

- (1) The Tribunal determines that none of the administrative charges demanded (£486.04) by the Applicant are payable.
- (2) The Tribunal determines that the sum of £558.37 demanded for advance service charges for the year 2010 were payable. However, these findings are largely academic as the annual accounts have now been prepared and the appropriate reconciliations have been made in respect of the actual expenditure as against the estimated expenditure.

Case No.1BE01348

- (3) The Tribunal determines that none of the administrative charges (£228.50) demanded by the Applicant are payable.
- (4) The Tribunal determines that the sum of £1,173.13 demanded for advance service charges for the year 2011 were payable. However, these findings are largely academic as the annual accounts have now been prepared and the appropriate reconciliations have been made in respect of the actual expenditure as against the estimated expenditure.

Further Matters

- (5) The Tribunal are satisfied that both sets of proceedings were issued prematurely in the County Court.
- (6) 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.
- (7) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Clerkenwell and Shoreditch County Court.

The Applications

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 Applicant in respect of the service charge years 2010 and 2011.

2. Two sets of proceedings have been issued in the County Courts which have been transferred to this Tribunal:

(i) On 25 February 2011, the Applicant issued Claim Form (1EC.00345) in the Clerkenwell and Shoreditch County Court claiming service charges of £558.37 and administration charges of £486.04 for the year 2010. On 14 December 2011, District Judge Cooper transferred these proceedings to the Tribunal. No defence was filed in these proceedings.

(ii) On 8 June 2011, the Applicant issued a second Claim Form (1BE01348) in the Bedford County Court claiming service charges of £1,173.13 and administration charges of £228.50 for the year 2011. The Applicant was unable to justify their decision to issue this second set of proceedings in a second County Court. On 23 June 2011, the Respondent filed a defence in these proceedings. These proceedings were transferred to the Clerkenwell and Shoreditch County Court. On 19 April 2012, District Judge Stary transferred this case to the Tribunal to be consolidated with the first action.

3. On 1 February 2012, Mr Powell gave directions for the first application. The Respondent's case was that administration charges had been levied even though she was unaware that she was in arrears. Mr Powell noted that the Applicant had refused mediation. He also noted that the Applicant had conceded that a credit of some £200 "may be due" as the Applicant had failed to carry out the required reconciliations between estimated and budgeted expenditure. Pursuant to these directions, the Applicant filed its Statement of Case on 23 February and the Respondent her case on 20 March 2012.
4. On 30 March, the Applicant applied to adjourn the hearing which had been fixed for 11 May. This application was opposed by the Respondent and was refused.
5. On 11 May, we convened to hear the first application. The Applicant was represented by Ms Lee who informed us that the second set of proceedings had been transferred to the Tribunal. With the agreement of the parties, we heard the first application. We heard evidence from Ms Claire Gibson (the Head of Collections for the Residential Management Group ["RMG"], the managing agents) and from the Respondent, Ms Chiza.
6. We adjourned the second application to be heard on 25 July. We gave directions for the determination of the second application. We agreed to defer our judgment on the first application until we had determined the second application.
7. Pursuant to our directions, the Applicant filed its Statement of Case on 11 June and the Respondent her case on 14 June.

8. On 6 July, the Applicant applied to adjourn the hearing which had been fixed for 25 July. This application was opposed by the Respondent and was refused.
9. We reconvened to hear the second application on 25 July. As stated, these proceedings had been transferred by the County Court on 19 April. The Order was drawn up on 28 April. The file had not yet been received from the County Court. On 23 July, the Tribunal faxed the County Court to request an urgent transfer of the papers. Attempts were made to telephone the Court. No response was received.
10. The Tribunal are satisfied that it is the Order made on 19 April which gives them jurisdiction to hear this matter pursuant to Schedule 3, paragraph 3 of the Commonhold and Leasehold Reform Act 2002. The transfer of the Court file is merely procedural. The parties agreed that we had jurisdiction and should proceed. The parties confirmed that we had the relevant pleadings and that the Directions that we had given at our earlier hearing had ensured that the parties had had an adequate opportunity to prepare their cases.
11. On 25 July, the Applicant was represented by Ms Bruce. The Applicant adduced evidence from Ms Gibson, Ms Hannah Watt (RMG's Business Development Manager) and from Mr Tom Madge (RGM's Accountant). We were provided with Ms Watt's witness statement at the hearing. We had no witness statement from Mr Madge. At the hearing, Mr Madge produced a schedule which sought to explain a sum of £183.12 which had been credited to the Respondent's service charge account. When this schedule was analysed, it was apparent that a further sum should have been credited. We granted an adjournment so these matters could be clarified.
12. The Respondent, Ms Chiza produced her own bundle with additional papers at the hearing. She gave evidence. She was assisted in presenting her case by Mr Amir Mashkur. The Respondent also adduced evidence from Siraba Tounkara, the lessee at 21 Aster Court.
13. On each occasion, the Respondent appeared in person.
14. The Tribunal have been provided with four Bundles of Documents to which we refer in this decision:
 - (i) The Application Bundle filed by the Applicant for the hearing on 11 May pursuant to the directions given on 1 February. References to this will be prefixed by the letter "A".
 - (ii) The Supplementary Bundle filed by the Respondent at the hearing on 11 May. References to this will be prefixed by the letter "B".

(iii) The Further Bundle filed by the Applicant for the hearing on 25 July pursuant to the directions given on 11 May. References to this will be prefixed by the letter "C".

(iv) The Supplementary Bundle which the Respondent brought to the hearing on 25 July. References to this will be prefixed by the letter "D". This Bundle is not numbered.

15. The Tribunal have reminded themselves that our jurisdiction is restricted to the matters transferred to them in the two County Court actions (see *John Lennon v Ground Rents (Regisport) Limited* [2011] UKUT 330 (LC)). However, each action seeks recovery of arrears of service and administration charges. The Respondent disputes those arrears. We have had no option but to analyse the history to the Respondent's service charge account. This would not have been necessary had the Applicant maintained the account in a proper manner.
16. The relevant legal provisions are set out in the Appendix to this decision.

The Current Statement of Account

17. Even by 25 July, the Respondent had failed to produce an accurate statement of account. At this second hearing, the Applicant produced a Statement of Account in respect of the Respondent's service charge account dated 24 July 2012. We will refer to this as "the Statement of Account". It records arrears of £2,086.01. It is extremely difficult to reconcile this with the earlier statements. It is not the role of the Tribunal to do the landlord's job for it. It immediately became apparent that this was not an accurate statement of account. Ms Bruce struggled valiantly to assist the Tribunal with the correct picture in the face of wholly inadequate instructions from her client. It is impossible from this account to compute what sums were due on either 25 January 2011 or 8 June 2011, when the two actions were issued in the County Court. We make the following observations on this account:

(i) Somewhat bizarrely, it purported to debit a "court fee" of £40 for the period "1 Oct 2012".

(ii) The account included entries and counter entries which merely confused. Thus a land registry search fee of £20, legal fee of £192 and administration fee of £48 were debited on 15 March 2012. These were re-credited to the account on 3 May 2012. We were given no explanation as to how this error arose.

(iii) On 23 July 2012, £183.11 had been credited to the account in respect of the reconciliations in respect of service charge accounts for the five years between 2007 to 2011. We were given no explanation as to why the appropriate reconciliations had not been made as soon as reasonably practicable at the end of each financial year.

(iv) We had been provided with no explanation as to how this figure of **£183.11** had been computed. We were told that Mr Madge was present and could give evidence on this. We had no witness statement from him. At our request, Mr Madge produced a hand written schedule explaining these reconciliations. The schedule suggested that credits of **£800.11** had been due for the years 2007 to 2011, but that credits of only **£616.99** had been raised and these only for the years 2007 and 2008. It is not clear to the Tribunal where these credits of £616.99 appear in the Statement of Account. Mr Madge conceded that a further credit of **£183.12** was due. (The Tribunal are not concerned with an error of 1p).

(v) However, when the Tribunal analysed Mr Madge's schedule, it became apparent that this was inaccurate. We highlight the following:

(a) 2007: a credit of £424.29 was due.

(b) 2008: the schedule suggested that a credit of £386.94 was due. However, on 3 May 2012, Ms Gibson had signed a witness statement, with a statement of truth, acknowledging that £462.19 should have been credited to the account for this year ([8] at A329). Ms Bruce conceded that the Respondent should be credited with the higher sum of **£462.19**.

(c) 2009: actual expenditure exceeded the budget by £37.01. However, Ms Bruce conceded that since the appropriate demand had not been demanded within the requisite period of 18 months required by s.20B of the 1985 Act, this sum was not now recoverable.

(d) 2010: a credit of £113.29 was due.

(e) 2011: expenditure exceeded the budget by £90.40, so there is potentially a further liability.

Thus credits totalling **£999.77** should have been made up to the close of the 2010 accounts, with the Applicant potentially being liable for an additional charge of £90.40 for 2011. This is **£199.66** more than suggested by Mr Madge, or **£109.26**, if the 2011 liability is taken into account. This adjustment is largely explained by corrections in (b) and (c) above (**£112.26**).

(vi) We note that these credits relating to the reconciliation of the accounts for the years 2007 to 2011 should extend to all lessees. The lessor has been under a fiduciary duty to account for these sums to its lessees. These accumulated surpluses should have been invested on behalf of the lessees who are entitled to the benefit of any interest earned thereon.

(vii) After an adjournment, Ms Bruce realistically conceded that the Applicant could not justify the claim for many of the administration charges. The Respondent agreed to abandon the following: (a) 22.4.10: deferred payment charge (£30.14); and (b) 23/25.11.10: land registry search (£16.45); legal fee (£176.25) and administration fee (£35.25). Two sums of £176.25 + £35.25 were credited to the Statement of Account on 24 July 2012. Only one of the credits of £176.25 + £35.25 relates to this concession; the second rather seems to relate to the charges levied 2/3 March 2010 (see paragraph 37(i) below). Thus the Respondent is entitled to further credits in respect of the sums of £30.24 + £16.45 (**£46.59**). These charges were claimed in 1EC00345.

(viii) Ms Bruce further indicated that the Applicant would credit the following sums to the Respondent's account: (c) 26.1.11: court fee - £150; (d) 6.4.11: administration fee £42 (there is a counter entry for the legal fee of £180). (e) 25.5.11: court fee (£175); (f) 8.2.12: court fee (£150); (g) 28.2.12: reminder fee (£15); (h) 25.4.12 – court fee (£150); and (i) 1.10.12 – Court Fee (£40). These sums total **£722**. Some of these sums were claimed as the administration charge of £228.50 in 1BE01348. It is unclear which were claimed.

(ix) Ms Bruce stated that the Applicant was thus proposing to credit **£768.59** to the Respondent's account in respect of the concessions in (vii) and (viii) above.

(x) On 11 May, the Respondent established that she had paid sums of £228.48 by credit card on 22 June and 23 July 2011 to Property Debt Collection ("PDC") the Applicant's debt collectors. It is understood that PDC deducted £2.25 because the payment was made by credit card. However, we can only see one credit of £226.23 on the service charge account (credited on 4 August 2011). It seems that a further credit of **£226.23** is due. Again, the Applicant was unable to give us any explanation as to why this had not been resolved by the second hearing on 25 July.

The Background

18. The Respondent is leaseholder of 6 Aster Court, Woodmill Road, London E5 9GB (The property"). This is a one bedroom flat. The development consists of some 129 self-contained flats. There are 73 parking spaces. An additional service charge is paid by lessees who rent a car park space. The Respondent is liable for 1/129 of the service charge relating to the estate, and 1/73 of the parking costs.
19. The Respondent derives her title from lease dated 6 June 2007, between George Wimpey East London Limited (described as "the Company"), Altius One (Hackney) Management Company Limited ("the Management Company") and the lessee (described as "the Buyer"). Her leasehold interest was

registered on 18 December 2007. RMG are managing agents for the Management Company. RMG were previously known as CPM Management Limited, but changed their name in 2009.

20. The lease of the property is at A216-230. The Sixth Schedule specifies the covenants by the Management Company and the lessee in respect of the maintenance charge. The Management Company shall as soon as practical after 1 January prepare "estimated management costs" for the year and shall forthwith notify the lessee of such "estimated management costs". The lessee is obliged to pay the "maintenance charge" within 14 days of demand.
21. The Management Company shall keep accounts and shall notify the lessee of the actual management costs as soon as reasonably practicable at the end of each calendar year. The estimated management cost for the current year is to be amended to take account of any excess or deficiency. Problems have arisen because a proper reconciliation has not been made for the years 2007, 2008, 2009, 2010 and 2011. In some years, there has been no reconciliation. In other years, the wrong reconciliation has been made. The Respondent has failed to provide any adequate explanation for this.
22. Further problems have arisen because of the manner in which the Applicant have sought to maintain their service charge accounts. The Tribunal have seen a number of different statements of account. It is extremely difficult to reconcile these. There are numerous errors which result in counter entries. Various debits and credits are made on different dates in different accounts. The statements of account have not afforded the lessees the transparency to which they are entitled. Further, the Respondent has paid sums to the Applicant's debt collectors, which have not been credited to the service charge account.
23. It is apparent that problems started to arise in 2009. Mr Madge attributed the problems that had arisen to a change of software. The Respondent believed that this was because there had been a change of managing agent. However, it is now apparent that they merely changed their name. More significantly, the managing agents changed the manner in which they maintained the Respondent's service charge account. This seemed to be one of many changes which have made it almost impossible for the Respondent to monitor her service charge account. The dispute has become the more entrenched given the manner in which the Applicant have added various administration charges when the Respondent has declined to pay sums which she has not believed to be due.
24. In the event, it is the Respondent who has been largely vindicated. However, she has not been entirely vindicated. It is apparent that she has had financial difficulties and has got into arrears with her service charge account. She has not made the regular payments which might be expected of her.

25. When the Tribunal first convened on 11 May, we were confronted by the following:
- (i) A Statement of Account prepared by RMG dated 24 February 2011 (at A234) which recorded that the Respondent's account was in deficit by £231.83 on 27 March 2009. It is to be noted that this was the Bundle prepared by the Applicant for use by the Tribunal.
 - (ii) A Statement of Account prepared by CPM dated 20 May 2009 (at B103) which recorded that the Respondent's account was in credit by £232.98 on 27 March 2009;
26. Ms Gibson gave evidence not only that the Respondent's account was in credit at the end of 2008. Further, on 24 July 2009, she had been due a balancing credit of £462.19 for the year ending 2008 ([8] at A329). This credit did not appear on any account. The Tribunal expected the Applicant to provide an accurate account with appropriate credits for all the annual reconciliations when we resumed on 25 July. The Applicant signally failed to do so.
27. We are satisfied that both sets of proceedings were issued prematurely and that the Applicant should bear the costs of this.

The First Action (1EC00345)

28. On 25 February 2011, the Applicant issued 1EC00345 in the Clerkenwell and Shoreditch County Court. On 15 February 2010 (at A239), the Applicant had written to the Respondent demanding the payment of £1,177.06, representing £1,063.12 for the advance service charge and £113.94 for the reserve fund. We are satisfied that this was accompanied by the statutory Summary of Tenants' Rights and Obligations.
29. The Applicant relied upon a computer print-out of this invoice which is at A239. The original invoice is at A286. This suggests that the Applicant was willing to accept monthly payments of £226.35 and that the first payment was due by 17 March 2010. It also referred to arrears of £231.83. These details do not appear on the computer generated version of the invoice at A239.
30. On 20 February 2010 (at A283), the Respondent wrote disputing the outstanding arrears of £231.83. She sought a summary of the costs upon which the service charge was based. The Applicant denies receiving this letter. We are satisfied that it was sent. On 2/3 March, the Applicant debited a land registry search fee of £16.45, a legal charge of £176.25 and an administration fee of £35.25. We are satisfied that this was premature and that these fees cannot be justified.
31. The Respondent made payments of £226.35 on 23 March, £306.83.83 on 26 March and £196.17 on 21 April. On 22 April, the Applicant debited a deferred

payment charge of £30.14. On 25 July 2012, the Respondent informed the Tribunal that they no longer sought to justify this charge.

32. The Respondent made a further payment of £196.17 on 17 May 2010. Thereafter regular payments ceased. On 13 July (at A350), the Applicant sent a "final demand" for the payment of £891.46. On 19 October (at A351), a "final request for payment" was made.
33. On 25 October (at A321), the Respondent again wrote challenging that this sum was due. She had computed that she owed £251.54. She had sought to pay the outstanding balance, but this had been refused on the ground that she owed more. She asserted that the service charges were excessive and did not reflect actual costs. She had unsuccessfully sought to make an appointment to inspect service charge documents. Again, the Applicant denied receiving this letter. We are satisfied that it was sent.
34. On 23/25 November 2010, the Applicant debited the following administration charges from the account: land registry search (£16.45); legal fee (£176.25) and administration fee (£35.25). On 25 July, the Respondent informed the Tribunal that they no longer sought to justify this charge.
35. On 25 February 2011 (A1-7), the Applicant issued these proceedings at the Clerkenwell and Shoreditch County Court. We are satisfied that the Applicant issued these proceedings prematurely. The Applicant had failed to make the correct reconciliations for the years 2007, 2008 and 2009. No proper pre-action letter was sent setting out the details of the proposed claim.
36. The following sums are claimed:
 - (i) Administration Charges of £486.04.
 - (ii) Service Charges of £558.37, namely the outstanding sum of the advanced payment for the year 2010.
37. We can deal with the administration charges briefly. None of this claim is due. The Applicant claimed the following:
 - (i) The sum of £227.95 levied on 2/3 March 2010. We are satisfied that these charges were levied prematurely and cannot be justified. In any event, it would seem that a sum of £211.50 was credited to the Statement of Account on 24 July 2012.
 - (ii) The deferred payment charge of £30.14 levied on 22 April 2010. The Applicant has abandoned this claim.
 - (iii) The sum of £227.95 levied on 23/25 November 2010. The Applicant has abandoned this claim.

38. The budget for the 2010 Service Charge is at A94. The total expenditure is £147,389. The accounts for 2010 are at A118-122. They are dated 27 April 2011. The actual expenditure was £119,203. As a result of this reconciliation, the Respondent was entitled to a credit of £113.29.
39. The Respondent makes two complaints:
- (i) The budget sought to raise more than was realistically required for the services which the lessor agreed to provide.
 - (ii) She was not in arrears, because the Applicant had failed to credit her account with the sums to which she was entitled when the required annual reconciliations were made.
40. On the first issue, the Applicant has been justified by events. The actual expenditure was some 19% less than had been budgeted. However, any budget is no more than an estimate. In the previous year, the actual expenditure what been somewhat higher that had been budgeted. On this occasion, the lessor has had to bear the cost of this shortfall. Because, the demand for the requisite sum was not made within 18 months of the cost being incurred, the Applicant concedes that this shortfall is no longer recoverable against the lessees (see s.20B of the 1985 Act).
41. The Respondent's complaint is equally relevant to the 2008 budget. Again, the actual expenditure was substantially less than the budget. As a result of the annual reconciliation, the Respondent was entitled to a refund of £462.19. Ms Gibson had recognised this at [8] of her witness statement of 3 May 2012. This adjustment should have been made in the spring of 2009. Three years later, the correct adjustment had still not been made, albeit that a partial credit was made on 23 July 2012.
42. However, events have now moved on. The accounts for 2010 have been finalised. No challenge has been made to these accounts. The Applicant concedes that the Statement of Account dated 25 July is inaccurate. This must now be corrected.

The Second Action (BE01348)

43. On 8 June 2011, the Applicant issued BE01348 in the Bedford County Court. No explanation has been provided for issuing the proceedings in this Court. The Particulars of Claim are at A131-3. The Respondent filed a defence (at A138-40). She complained that the proceedings had been issued prematurely as on 1 June she had reached an agreement with PDC, the landlord's debt collectors, to clear the admitted arrears by instalments.
44. On 9 February 2011 (at C62), the Applicant had invoiced the Respondent £1,173.13 which included the advance service charges for 2011 of £927.72

and an additional charge of £124.98 for the car parking service. Contributions towards the reserve fund were also demanded. The invoice totalled £2,367.54, including arrears of £1,194.41. We are satisfied that this was accompanied by the statutory Summary of Tenants' Rights and Obligations (at C43).

45. The agreement to clear the arrears by instalments is confirmed by the letter dated 2 June 2011 (at C63). Whilst the Respondent disputed the sums claimed, she agreed to pay £200 per month over the next 6 months. The first payment was to be made on 20 June. Pursuant to this agreement, the Respondent made credit card payments to PDC of £228.48 on 22 June and 23 July (see B115-6). The Applicant was unable to explain why proceedings had been issued, despite this agreement. No proper pre-action letter was sent. The letter dated 6 April (at C49) rather threatens to notify the Applicant's mortgage company if the debt is not paid.
46. The following sums are claimed:
 - (i) Administration Charges of £228.50.
 - (ii) Service Charges of £1,173.13, namely the advanced payment for the year 2011.
47. We can deal with the administration charges briefly. Although the sum of £228.50 is claimed in the pleading, this was reduced to £40 in the Applicant's Case ([13] at C9). This seems to appear in the Statement of Account as "Court Fee" for the period "1 October 2012". Not surprisingly, Ms Bruce did not pursue this claim.
48. At the hearing, the Applicant provided us with budget for the 2011 Service Charge. This totals £131.677. The accounts for 2011 (C107-14) indicate that the actual expenditure was higher at £164,250.
49. In her defence, the Respondent's primary concerns related to the decision to issue proceedings when she had agreed to clear arrears by instalments and her concerns about the administration charges. For the year 2011, the draft budget underestimated the expenditure that would be necessary for the year. The Respondent is now liable for an additional sum of £90.40, namely £36 in respect of the service charge and £54.40 in respect of the parking. The Respondent took issue with the increase in expenditure on insurance. However, it became apparent that this was due to the fact that whilst different figures had been included for terrorism and building insurance, these figures had now been combined.
50. One issue of concern is the suggestion that the Respondent is liable in the sum of £216.51 in respect of the installation of CCTV. This sum was not included in the draft budget. It is not therefore a matter which has been referred to us by the County Court. It is therefore not open to us to determine

whether this work falls within the scope of the Respondents' lease or whether this sum has been reasonably incurred.

Application under s.20C and refund of fees

51. Both Ms Lee and Ms Bruce informed the Tribunal that the Applicant would not be seeking reimbursement of its fees in respect of the current applications relating to the 2010 and 2011 service charges. 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.
52. Counsel also informed the Tribunal that they would not be seeking any reimbursement of the fees paid to the tribunal in connection with the application.

The Next Steps

53. This Tribunal has no jurisdiction over the county court costs. This matter should now be returned to the Clerkenwell and Shoreditch County Court who will determine this issue in the light of our findings.
54. In so far as the claim for administration charges is concerned, the Applicant largely abandoned their claim.
55. Whilst the Tribunal have found that the sums demanded for advance service charges for the years 2010 and 2011 were payable, these findings are largely academic. The annual accounts have now been prepared and the appropriate reconciliations have been made in respect of the actual expenditure as against the estimated expenditure. For the year 2010, this has resulted in a significant refund to the Respondent; for the year 2011, expenditure exceeded the estimate and the Respondent will be liable for an additional sum.
56. This Tribunal has only had jurisdiction to determine the matters referred to it by the County Court. It has therefore had to focus on the demand for the advance service charges, based on estimates, rather than the sums actually expended. In particular, the Tribunal has had no jurisdiction to consider the expenditure of the CCTV.
57. As is apparent from this decision, the Applicant has been in breach of its obligations to make a lawful reconciliation between the estimated and the actual expenditure for the years 2007, 2008, 2009 and 2010. It is possible that no reconciliation would have been made for 2011 in the absence of these proceedings.

58. It is always open to the Respondent to bring separate proceedings under s.27A of the 1985 Act in so far as she seeks to contend that any actual expenditure in 2011, or in the years prior to 2010, has not been reasonably incurred. Section 21, gives a tenant the right to request a summary of the relevant costs, and section 22 the further right to inspect the accounts, receipts and other documents supporting the summary. There is, however, a six month time limit. The Respondent has made a number of requests to inspect the accounts. The problem is that the accounts in dispute now go back over many years. We understand that the Applicant has made an appointment for the Respondent to inspect the accounts.
59. The Applicant must now prepare an accurate Statement of Account. It seems that significant arrears of service charges will be due. We hope that these can be cleared by agreed instalments. This case has illustrated the need for transparency and accuracy in the maintenance of service charge accounts. Both have proved wanting.

Chairman: _____

Robert Latham

22 August 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 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).

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.