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LONDON RENT ASSESSMENT PANEL

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

Case Reference: LON/00AM/LSC/2012/0408

Premises: FLAT 30, 14-15 HOXTON SQUARE, LONDON
N1 6NT

Applicant(s): RUSSELL CHARLES BRANCH

Representative: IN PERSON

Respondent(s): S G LAND LTD

Representative: MONTALT MANAGEMENT LTD

Date of hearing: [PAPER HEARING] 8 OCTOBER 2012

Appearance for Applicant(s): N/A

Appearance for Respondent(s): N/A

Leasehold Valuation Tribunal: (1) MS L SMITH (LEGAL CHAIR)
(2) MR M TAYLOR

Date of decision: 15 OCTOBER 2012

Decisions of the Tribunal

The Tribunal determines that the sum of £2105.67 is payable by the Applicant in respect of the service charges for the year ending 30 June 2011

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 payability of service charges by the Applicant in respect of the service charge year ending 30 June 2011.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The directions given by the Tribunal on 11 July 2012 provided for the application to be dealt with on the papers unless a hearing was requested by either party. Neither party requested a hearing. Accordingly, the matter was dealt with on the papers.

The background

4. The property which is the subject of this application is a 2 bedroomed flat on the 3rd floor within a block of 48 flats ("the Property"). Neither party requested an inspection and the Tribunal did not consider that one was necessary.
5. The Applicant is the Lessee of the Property under a lease for a period of 999 years from 1 May 2001 ("the Lease"). The Lease requires the Lessor to provide services in accordance with the Sixth Schedule to the Lease. The Lessee is required to pay for those services in accordance with the Seventh Schedule to the Lease. The specific provisions of the lease insofar as relevant are referred to below.

The issues

6. In his application the Applicant identified the issue as follows:-
"My liability for the service charge as the certified accounts were not received within six months of the year end"
The Applicant referred in the application to those service charges being for the year ending 30 June 2011 in the sum of £2105.67 and did not otherwise dispute the reasonableness of the charges. This is further confirmed by his statement of case dated 1 August 2012. His application was also confined to the year ending 30 June 2011 even though complaint is made in the documents to the form and date of service of the audited accounts for the year ending 30 June 2010. Accordingly, the Tribunal has determined only the payability for the year ending 30 June 2011.

The Tribunal's decision


7. Having considered all of the documents provided, the Tribunal determines that the sum of £2105.67 is payable by the Applicant for the service charge year ending 30 June 2011.

Reasons for the Tribunal's decision

8. Clause 1 of the Seventh Schedule to the Lease requires the Lessee to make payment of his proportion of the "maintenance expenses" (the service charges) in advance on 1st January and 1st July of each year. This paragraph also provides that the Lessee shall pay any shortfall in those expenses within 14 days from service by the Lessor of a certificate in accordance with Clause 2 of that Schedule.
9. Clause 2 of the Seventh Schedule provides as follows:-
"An account of the Maintenance Expenses (distinguishing between actual expenditure and a reserve for future expenditure) for the period ending on the Thirtieth day of June Two Thousand Three and for each subsequent year ending on the Thirty first day of December during the said term shall be prepared by the Lessor and audited by an independent accountant as soon as is practicable and the Lessor shall serve a copy of such account and of the accountant's certificate on the Lessee"
10. The Tribunal notes at this juncture that the service charge year under the Lease therefore expires on 31 December of each year. However, the parties appear to have been working on the assumption that it ends on 30 June. For the purposes of the Lease, therefore, the certified accounts should be served "as soon as is practicable" after the end of the service charge year which the parties have assumed is 30 June 2011 but which is in fact 31 December 2011. The certified accounts were in fact served on 19 January 2012 albeit revised on 16 February 2012.
11. The Applicant relies in any event not on the provisions of the Lease but on s21 of the Landlord and Tenant Act 1985 ("Section 21"). Section 21 was revised by the Commonhold and Leasehold Reform Act 2002. There was further amendment to this section by the Housing and Regeneration Act 2008. However, these amendments were only brought in force to the extent necessary to enable the Secretary of State to make regulations. The landlord is therefore obliged to provide information demanded by a tenant within 6 months of the end of the accounting period.
12. The Applicant is therefore correct to refer to the obligation on the landlord to supply the statement of account not later than six months after the end of the accounting period. As appears above, as the end of the accounting period in the Lease is 31 December, the Lessor has in fact complied.
13. However, even if the end of the accounting period is subsequently varied by agreement between the parties to be 30 June of each year, section 21A of the 1985 Act only permits the withholding of the service charges until such time as the document is provided. That has now been provided. Accordingly, the

service charge for the year ending 30 June 2011 (or 31 December 2011 as may be) is now payable. That is said to be in the sum of £2105.67.

Chairman:



Ms L. Smith

Date:

15 October 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 21

Request for summary of relevant costs

- (1) A tenant may require the landlord in writing to supply him with a written summary of the costs incurred -
- (a) if the relevant accounts are made up for periods of twelve months, in the last such period ending not later than the date of the request, or
 - (b) if the accounts are not so made up, in the period of twelve months ending with the date of the request,
- And which are relevant costs in relation to the service charge payable or demanded as payable in that or any other period.
- (3) A request is duly served on the landlord if it served on -
- (a) an agent of the landlord named as such in the rent book or similar documents or
 - (b) the person who receives the rent on behalf of the landlord;
- And a person on whom a request is so served shall forward it as soon as may be to the landlord.
- (4) The landlord shall comply with the request within one month of the request or within six months of the end of the period referred to in subsection (1)(a) or (b) whichever is the later.
- (6) If the service charges in relation to which the costs are relevant costs as mentioned in subsection (1) are payable by the tenants of more than four dwellings, the summary shall be certified by a qualified accountant as -
- (a) in his opinion a fair summary complying with the requirements of subsection 5 and

- (b) being sufficiently supported by accounts, receipts and other documents which have been produced to him.

Section 21A

Withholding of service charges

- (1) A tenant may withhold payment of a service charge if-
 - (a) the landlord has not supplied a document to him by the time by which he is required to supply it under section 21, or
 - (b) the form or content of a document which the landlord has supplied to him under that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under subsection (4) of that section.

- (3) An amount may not be withheld under this section -
 - (a) in a case within paragraph (a) of subsection (1), after the document concerned has been supplied to the tenant by the landlord, or
 - (b) in a case within paragraph (b) of that subsection, after a document conforming exactly or substantially with the requirements prescribed by regulations under section 21(4) has been supplied to the tenant by the landlord by way of replacement of the one previously supplied.