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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] & [SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002]

Case Reference: LON/00AQ/LSC/2011/0577

Premises: Flats 1-10 Albany Court, 408-412 Kenton Road, Harrow HA3 9DW

Applicant(s): Metropolitan Housing Trust Limited

Representative: Mr Gerald O'Toole (in-house solicitor)

Respondent(s): Abacus Land 1 (Propco 1) Limited

Representative: James Andrew Robinson Somerston Warner (managing agent)

Date of hearing: 9 January 2012

Appearance for Applicant(s): Ms E Gibbons, counsel

Appearance for Respondent(s): \ Ms T Silver, counsel

Leasehold Valuation Tribunal: Ms LM Tagliavini, Barrister & Attorney-at Law (NY)
Mr C Gowman BSc MCIEH
Mr P Clabburn

Date of decision: 28 February 2012

Decisions of the Tribunal

- (1) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (2) 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.

The application

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 2007/08; 2008/09; 2009/2010
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented by Ms Gibbons at the hearing, and the Respondent was represented by Ms Silver. At the request of the parties the Tribunal adjourned the proceedings for a short period (circa 30 minutes) while the parties considered newly produced invoices. Further invoices were produced during the course of the hearing and the parties were able to narrow to 15 the total number of invoices disputed.
4. The Tribunal considered and accepted the concession made by the parties that the legal costs, said to have been incurred were more properly classified as administration charges rather than service charges. The Tribunal agreed to treat them as such, and widened the scope of the application to include an application pursuant Schedule 11 of the 2002 Act.

The background

5. The property, which is the subject of this application, is a purpose built block of 34 flats. Flats 1-10 are let on long leases to the Applicant, a Registered Provider of Social Housing, who in turn has sublet these properties on long shared ownership leases. The other flats are let to long lessees and do not form part of a social housing scheme.
6. The Tribunal inspected the property before the hearing in the presence of representatives of both parties.

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 specific provisions of the lease will be referred to below, where appropriate.
8. The parties agreed that invoice Nos. 2381 in the sum of £979.35 should be credited to the service charge account; 25138 (£91.89) was conceded by the Respondent as not due; 13161 (£126.50) properly should have been billed to Flat 34; 150 (£52.88) requires a credit to the service charge account. This resulted in a total re-credit of £271.27. Lastly invoice No. 329 (£90) was to be re-allocated to the lift expenses.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for all years in dispute relating to the lift and their apportionment.
 - (ii) The repair and maintenance costs incurred since 2007.
 - (iii) The reasonableness of the management charges.
 - (iv) The reasonableness of legal costs incurred.
10. 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.

The Tribunal's decision

Legal costs: The Tribunal determines that these are not reasonable and are not recoverable as administration charges as the solicitor's letters, which have incurred these costs were premature in their sending and therefore unreasonable. Further, the Tribunal finds that the writing of 9 identical letters at a cost of £80.50 per letter is in itself an unreasonable expense, when one letter would have sufficed in the circumstances.

Lift: The Tribunal determines that the Applicant is required to pay something towards the cost of the lift. Although it was conceded

by the Respondent that in future years the cost of maintenance would not be added to the service charges of the Applicant, the Respondent maintained that past costs were reasonable and payable and in future years electricity costs would also be payable.

The Tribunal determines there was nonetheless provision in the lease for such charges to be incurred and sought from the Applicant although Flats 1-10 did not have equal access or use of the lift. Consequently, given the complexity caused by attempting to separate out the extent of the use permitted to each of the sub-lessees of the Applicant's 10 flats from the remaining lessees, the Tribunal determined that it was fair and reasonable to apportion the costs of and occasioned by the running of the lift as payable in the sums and proportions submitted by the Respondent. Until such time as the lease was varied, the Tribunal interpreted the provisions of the lease Particulars as providing a warning to the lessees that a contribution towards service charges may be required, even if the Applicant and its sub-lessees did not benefit equally from the service provided. The Applicant failed to demonstrate to the Tribunal that in the grant of sub-leases this clause had been altered and that the sub-lessee were not required to contribute to the Applicant's costs incurred by this service charge or that some other apportionment had been adopted.

Maintenance & Repair:

Of the items remaining in dispute between the parties the Tribunal finds as follows:

- (i) Dummy camera – reasonable and payable in the sum of £340.75.
- (ii) Bird proofing – reasonable and payable as a sensible precaution and maintenance charge (not an improvement) in the sum of £3,427.20
- (iii) Extraclear – sum not likely to have been caused by a developer defect and is reasonable and payable - £70.50
- (iv) Invoice Nos. 31206 (£156); 160060 (£317.25) & 302 (£264.38) are disallowed. The Tribunal finds that the Respondent was unclear as to how and for what these sums were incurred and therefore the Tribunal finds them to be unreasonable and not payable.

- (v) Invoice Nos. 233 (£70.50); 680725392 (£341.13) and 680617728 (£616.52) are reasonable and payable.

Management fee:

The Tribunal finds that the management fee charge of £250 plus VAT per annum per unit is within the range of reasonableness. The Tribunal finds that Ms Robbins demonstrated a high level of activity and responsiveness on the part of the managing agent. The Tribunal noted the small number of invoices that were left in dispute between the parties, the applicant having started from a much more extensive challenge to the service charges.

Application under s.20C

11. 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: LM Tagliavini

Date: 28 February 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 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.