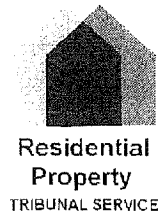


8240



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/2012/0465
Premises:	Ground Floor Flat 86 Longley Road Harrow Middlesex HA1 4TQ
Applicants:	Raymond Paul Green and Zoe Jayne Green
Representative:	N/A
Respondents:	R.S. Best and A.R. Pickering as executors of the estate of John Henry Wardlaw Benjamin Best Deceased
Representative:	Streeter Marshall Solicitors and Notaries
Date of determination:	24 th September 2012
Appearance for Applicant(s):	N/A
Appearance for Respondent(s):	N/A
Leasehold Valuation Tribunal:	Dr Helen Carr Mr Robin Potter FRICS

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £ 459.88 is payable by the Applicant in respect of the insurance premiums for the years 2005 and 2006
- (2) The Tribunal determines that the service charges in respect of insurance premiums for the years 2008, 2009 and 2010 are payable by the Applicant in accordance with the demands.
- (3) The Tribunal makes the determinations as set out under the various headings in this Decision
- (4) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985

The Background

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 respect of insurance premiums for the service charge years 2005, 2006, 2008, 2009 and 2010.
2. The relevant legal provisions are set out in the Appendix to this decision.
3. The parties agreed that the application be determined by the Tribunal on the basis of papers alone and without an oral hearing.
4. The property which is the subject of this application is a semi-detached house converted into two flats.
5. 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.]
6. During the service charges years in question the Applicants held a long lease of the property which required the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

7. The Tribunal identified the relevant issues for determination as
 - (i) The reasonableness of service charges for service charge years 2005 and 2006 relating to insurance premiums
 - (ii) The payability of service charges for service charge years 2008, 2009 and 2010

8. The Tribunal indicated at the Directions hearing on July 17th 2012 that the issue of the jurisdiction of the Tribunal to determine the application would be considered by the Tribunal determining the matter.
9. The Tribunal determining the matter considered whether it should issue a notice that it was minded to dismiss the application. However it considered that it had jurisdiction to determine the matters set out in the Application for the reasons given below.
10. Having considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The reasonableness of the service charge demands for insurance premiums in 2005 and 2006

11. The Applicants argue that the demands for insurance premiums made in 2005 and 2006 are excessive. There are two bases for their argument (i) in 2007 the landlord obtained a quotation that was considerably lower than that demanded in the previous two years (ii) the insurance premium was inflated because the other flat in the house was let on an AST.
12. The Respondents argue the Tribunal should determine that the tenants have admitted or agreed that the service charges for the years 2005 and 2006 are payable and reasonable. They refer the Tribunal to the case of Julian Shersby v Grenehurst Park Residents Co Ltd [2009] UKLT 241 in which it was decided that payment of insurance payments could be taken to be an admission of the payability and reasonableness of the premiums when a long period of time had passed without challenge and because other service charges had previously been the subject of dispute yet the insurance premiums had not been raised.
13. They argue that the facts of the case at hand and the Shersby case are very similar as the Applicants paid the premiums levied as they fell due. They further argue that the Applicants could have been expected to raise this dispute when they asked the landlord to obtain a new quote in 2007. Although the Respondents accept that the Shersby case can be distinguished on the basis that the Applicants have not brought a claim in respect of other service charges, two additional factors should be taken into account in this particular case: (i) there was a notice circulated by the Respondents in connection with claims against the estate of the freeholder which required all parties who wished to bring claims to do so before 30th July 2010 and the Applicants did not do so (ii) the Applicants had an opportunity to raise the issue of the insurance premiums at the time they sold their leasehold interest as part of the conveyance.
14. In the alternative the Respondents argue simply because the landlord managed to secure a lower insurance premium in 2007 that does not in itself demonstrate that the previous years' premiums were unreasonable as there

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;

- (b) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (c) 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;
 - (d) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (e) 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.