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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

Case Reference:	LON/00AZ/LSC/2011/0800
Premises:	20 Camellia House, Idonia Street, London SE8 4LZ
Applicant(s):	Ms Katarzyna Janina Jones
Respondent(s):	Lewisham Homes
Date of hearing:	25 January 2012
Appearance for Applicant(s):	In person, accompanied by Mr L Many
Appearance for Respondent(s):	Ms M Sahota (leasehold legal officer)
Leasehold Valuation Tribunal:	Mr T Powell LLB Mr L Jarero BSc FRICS
Date of decision:	20 February 2012

Decisions of the tribunal

(1) The tribunal determines that the sum of £9,608.57 is payable by the Applicant in respect of the service charges for the lift refurbishment costs for the 2011/2012 service charge year;

(2) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

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 her for the service charge year 2011/2012 in respect of lift refurbishment costs.

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 was accompanied by Mr L Many, who assisted her in the presentation of her case. The Respondent council was represented by Ms M Sahota, leasehold legal officer.

4. At an early stage in the hearing Ms Sahota indicated that the Respondent had not received the Applicant's bundle of documents in this matter, which the Applicant had apparently sent by special delivery. However, Ms Sahota said that she already had copies of all the relevant documents in her possession, she was happy to continue with the hearing and she did not request or require a postponement.

The background

5. The property which is the subject of this application is a first floor, two bedroom flat in a purpose built block of about 30 flats. Neither party requested an inspection and the Tribunal did not consider that one was necessary.

6. 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 and will be referred to below, where appropriate.

The issues

7. At the start of the hearing the parties identified the sole relevant issue for determination, namely the payability of service charges for 2011/2012 relating to lift refurbishment costs. The total cost incurred by the Respondent was £204,328.80. The cost was divided between 24 of the 30 flats in the block, it being the policy of the Respondent not to charge the ground floor flats for the cost of lift works as, in the Respondent's opinion, the ground floor flats do not make use of and do not benefit from the lifts.

The evidence

8. The Applicant's share of the total cost was £9,608.57, calculated as follows:

		£
Proportion of cost of works (£204,328.80 ÷ 24)		8,513.70
Add 2.6% professional fees		221.36
	Sub-total:	8,735.06
Add 10% management charge		873.51
	Total:	£9,608.57

9. As recorded at the pre-trial review held on 14 December 2011, the Applicant did not dispute the level of charges for the new lift. She did, however, dispute the manner in which the cost of the lift was apportioned between the long leaseholders of the flats in the building. In particular, the Applicant argued that the installation of a new lift would enhance the value of all the flats in the building and that the ground floor occupants should also contribute to the cost of the lift replacement.

10. In the alternative, if the ground floor were to be excluded from contributing to the costs of the lifts, the Applicant provided the tribunal with two schedules, setting out two different calculations of the service charge costs. These calculated costs on the basis that the first floor to fourth floor flats would contribute in differing proportions according to (a) usage, determined by floor level (so that the first, second, third and fourth floors contributed 10%, 20%, 30% and 40% of the costs respectively), or (b) the floor level of the flat and the number of bedrooms in the flat (so, for example, a flat with three bedrooms would pay three times as much as a flat with one bedroom, but overall each floor would still contribute 10%, 20%, 30% or 40% of the total cost as appropriate).

11. The share payable by the Applicant's flat under the above alternatives varied as follows:

	£
As charged by the Respondent (24/30 flats)	9,608.57
(i) If the ground floor were included (30/30)	7,686.85
(ii) Ground floor excluded, other floors by level	3,834.57
(iii) Ground floor excluded, other floors by level and number of bedrooms	3,286.77

12. In addition to the above, the Applicant complained that having bought the flat in 2007, she had not been made aware of the impending works to the lifts in the block, either by her vendor or by the council. She claimed that the council should have been aware of the planned works and should have provided

information about them. However, the council had failed to reply to her solicitors' pre-contract enquiries at all and when she telephoned the council herself, she was told that there was 'no information' about any pending works.

13. The Applicant also complained the lift in this block had been there for 27 years, during which time it had been used 'by everyone else' and yet, only four years after buying her flat, she was forced to pay for its renewal for an 'outrageous amount'. That was compounded by the fact that her flat was on the first floor, with only 13 steps to her floor, and she had never used the lift (or at least, she said in oral evidence, no more than once or twice in three years).

14. Had she been aware of a potential liability of nearly £10,000 the Applicant 'would have thought twice before making the purchase'. As it was, she was under a 'huge strain' to pay an additional £240 per month, under an arrangement with the Respondent to spread cost over 36 months. Her position was made worse by recent news that she had fallen pregnant and the likelihood that she would lose her employment as an accountant in a few months' time.

15. Lastly, at the hearing, the Applicant said that she had not received the council's Notice of Intention to carry out the works, as part of the consultation procedure, although the hearing bundle contained a copy of the council's Notice of Estimate and a letter sent to 'The Lessee' of 20 Camellia House dated 26 October 2010. The Applicant explained that someone had carried out 'a fraud on my address,' with the result that for a considerable time a lot of her post had gone missing, a problem which apparently continues to an extent even today. Despite this, she confirmed that her objection to payment was based on the way the charge had been shared between flats in the block.

16. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made the following determination.

The Tribunal's decision

17. The tribunal determines that the sum of £9,608.57 is payable by the Applicant in respect of the service charges for the lift refurbishment costs for the 2011/2012 service charge year.

Reasons for the Tribunal's decision

The Applicant had no prior notice of the works before her purchase

18. It was made clear in the directions dated 14 December 2011 that the Applicant's inability to obtain information about proposed works before she purchased the property in 2007 was not a matter within the jurisdiction of the tribunal, as any such enquiries about future expenditure should have been

addressed by the vendor and/or the council. It was for the Applicant to have satisfied herself as to the position before she purchased the flat.

19. The Applicant's evidence was that her solicitor had made enquiries of the relevant council department (though no copy letter was provided), but had not received a reply. The Applicant had then made her own telephone enquiries directly of the council and had been told that there was 'no information available'.

20. On behalf of the Respondent, Ms Sahota said that, first, the council had no record of receiving any solicitor's request for information or of sending out any leasehold information pack and, secondly, even if enquiry had been made the response given would have been that there was no information about the future lift repairs, because there were no plans and no such information at the time the Applicant purchased in 2007.

21. The Applicant had no documents that could substantiate her allegations or contradict the Respondent's evidence. On the Applicant's evidence, she had received no information about future works in 2007 and had therefore assumed that there would be no future costs. She chose to proceed with the purchase without her solicitor having received the leasehold information pack.

22. The tribunal is not satisfied that the council had any plans or information about the proposed lift works at the time in any event and the tribunal cannot see that any blame attaches to the council for the fact that the Applicant was unaware that lift repair costs would be incurred after she purchased the flat. This is not a reason to absolve the Applicant of liability to pay her share of those costs.

How much should the Applicant pay?

23. The Applicant's share of the total cost was £9,608.57. On paper, the Applicant wanted either the ground floor not to be excluded from the calculation or, if it was (and preferably), for the floor levels and number of bedrooms to be taken into account in calculating the respective shares of the various flats in the block. However, in oral evidence the most that she said she would be willing to pay towards the cost of the works was the lowest of her alternative figures, namely £3,286.77.

24. The lease says in para.5 of Part 1 of the Tenth Schedule:

> '5. Contribution Formula
>
> The Lessee's contribution shall be the summation of expenditure incurred on each element of the works or service specified below and shall be assessed in accordance with the following formula: A x 1/B where A is the expenditure incurred and B is the number of Flats/ Maisonettes and other dwellings **receiving the benefit** of the expenditure (B may vary according to the element of expenditure

involved) and by way of example and not limitation the said elements insofar as they are relevant and are capable of applying to the Demised Premises Building or Estate so apply and build up the expenditure' **[bold emphasis added]**

25. The Respondent says that the ground floor flats should be excluded because they do not benefit from the use of the lift. The Applicant said the ground floor flats benefit from the lift because they can use it and do use it, for example, to service their Sky satellite TV boxes higher up in the block. In addition, the Applicant maintained that the values of the ground floor flats increased by about £10,000 each, by reason of the improvement of the lift.

26. Despite the Applicant's assertions, there was no evidence before the tribunal that the ground floor flats did ever make use of the lifts or that they benefited from the lifts in any way. The tribunal considered it fanciful to suggest that the values of the ground floor flats increased by £10,000 each as a result of the improvements to the lifts, and the Applicant produced no evidence to substantiate this.

27. The Tribunal's view is that the ground floor flats do not benefit from the lifts or, if they do, it is a *de minimis* benefit, and the council's policy to exclude such flats from the calculations in accordance with para.5 of Part 1 of the Tenth Schedule of the lease is understandable and reasonable in these particular circumstances.

28. As to the differential rates for flats based on their different levels in the block and on their different numbers of bedrooms, the Tribunal considered that this argument had a superficial attraction but, unfortunately for the Applicant, the terms of the lease do not provide for such a sophisticated approach. The lease merely provides that some flats may be excluded from having to contribute to costs, where they do not benefit from the expenditure.

29. The Tribunal does not consider that it is possible to say the leases do not make satisfactory provision for the computation of the service charge, which would be the test for a variation of the lease under s.35 of the Landlord and Tenant Act 1987. Although this Tribunal was not dealing with such an application, there would appear to be no grounds to say that it was necessary to amend the terms of the lease in the way proposed by the Applicant, to make it fairer or more workable.

30. Ultimately, by accepting a lease in the above terms the Applicant has accepted the method of calculating and apportioning the service charge and there is nothing in the evidence to persuade the Tribunal to disturb the way the Respondent has applied the formula in this case.

31. The tribunal cannot therefore accept any of the Applicant's alternative proposals and determines that she is liable to pay £9,608.57 towards the total cost.

Application under s.20C and refund of fees

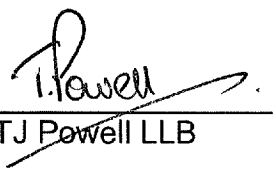
32. In the application form, the Applicant applied for an order under section 20C of the 1985. Since Ms Sahota for the Respondent landlord indicated that no costs would be passed through the service charge the tribunal makes no order.

33. Furthermore, as the Applicant has lost on all points, no order is made in relation to the refund of any fees that she has paid.

Final comments

34. The tribunal is extremely sympathetic to the Applicant's personal circumstances. She bought the flat at the top of the market, she had no idea that these costs would be incurred in the first four years of her ownership, she says that she struggles to meet her outgoings and that the future is bleak, because she now finds herself pregnant and looks at the possibility of losing her job (though the tribunal is surprised by her assertion that she would not be entitled to maternity rights, including the right to return to work after her child is born). She also expressed a concern that she may have to declare herself bankrupt and that she may become homeless, if she cannot afford to pay her service charges.

35. The Applicant has taken up the Respondent's offer to pay off these service charges by 36 monthly instalments. However, given all of the above, the tribunal would ask the Respondent whether it could not, in the circumstances and exceptionally, seek to collect those instalments over a longer period.

Chairman: 

TJ Powell LLB

Date: 20 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 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.