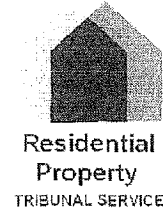


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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985 AND SCHEDULE 11 OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

<b>Case Reference:</b>	LON/00BB/LSC/2012/0200
<b>Premises:</b>	17 Swallow Street Becton London E6 5JX
<b>Applicant(s):</b>	London Green (68-73) Management Limited
<b>Representative:</b>	PDC Solicitors
<b>Respondent(s):</b>	Mr Modinat Omobolanle Ibrahim
<b>Representative:</b>	N/A
<b>Date court transfer received</b>	16 <sup>th</sup> March 2012
<b>Appearance for Applicant</b>	Ms Gilbert of Counsel instructed by PDC Solicitors appeared at the hearing on 6 <sup>th</sup> July 2012 and prepared written representations for the reconvened Tribunal
<b>Appearance for Respondent</b>	Mr Modinat Omobolanle Ibrahim appeared at the hearing on 6 <sup>th</sup> July and prepared written representations for the reconvened Tribunal
<b>Leasehold Valuation Tribunal:</b>	Dr Helen Carr  Mr M Taylor FRICS  Mr C Piarroux JP
<b>Date of decision:</b>	13 <sup>th</sup> September 2012

### **Decisions of the Tribunal**

- (1) The Tribunal determines that the sums of £4205.41 in respect of service charges and £240 in respect of administration charges are payable.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision
- (3) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Chelmsford County Court.

### **The Background**

#### **The application**

1. The Applicant seeks (and following a transfer from the Chelmsford County Court the Tribunal is required to make) a determination pursuant to s.27A of the Landlord and Tenant Act 1985 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as to the amount of service charges and administration charges payable by the Respondent in connection with major works carried out in 2009 – 10.
2. Proceedings were issued in the Chelmsford County Court under claim no. 1BE01337. The claim was transferred to this Tribunal, by order of District Judge Silverwood Cope on 16<sup>th</sup> December 2011.
3. The relevant legal provisions are set out in the Appendix to this decision.

#### **The hearing**

4. An oral pre-trial review took place on 4<sup>th</sup> April 2012 at which neither party appeared. The Tribunal was not able at that stage to identify the issues in dispute. The matter was set down for hearing on 6<sup>th</sup> July 2012. Both parties attended the hearing when the issues in dispute were clarified.
5. Both parties expressed their willingness for the matter to be determined without a further hearing. Further directions were issued to enable the matter to be determined on the basis of the documents provided by the parties.
6. The Tribunal therefore reconvened on 10<sup>th</sup> September 2012 to determine the matter on the basis of documents before it.
7. The property which is the subject of this application is a one bedroom flat within a three storey purpose built block of six flats.
8. 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.
9. The Respondent 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.

### The issues

10. At the hearing on 6<sup>th</sup> July 2012 the parties identified the relevant issues for determination as follows:
  - (i) whether the consultation procedures required in connection with major works carried out in 2009 – 2010 were complied with
  - (ii) whether the costs of those major works are reasonable, in particular in relation to the nature of the works, the contract price, the supervision and management fee and the affordability of the works
  - (iii) whether the administration charges of £240 are payable under the terms of the lease
  - (iv) whether an order under section 20C of the 1985 Act should be made.
11. The Respondent agreed the following sums (part of the original claim by the Applicant) as not in dispute:
  - (i) The general service charge demand for the service charge year ending 30<sup>th</sup> September 2011 of £1,249.17
  - (ii) The reserve fund payment of £200
12. Having considered all of the documents provided, the Tribunal has made determinations on the various issues as follows:

### Compliance with statutory consultation procedures

13. The Applicant provided copies of the consultation documents in its original hearing bundle which was served on the Respondent on 15<sup>th</sup> June 2012. In addition the Applicant provides a full account of its compliance with the consultation procedures in its written submission to the Tribunal in compliance with the directions issued on 6<sup>th</sup> July 2012. The Applicant therefore asserts that the statutory procedures have been complied with. The Applicant asks the Tribunal to note that the Respondent did not raise the issue of failure to consult until the hearing on 6<sup>th</sup> July 2012.
14. The Respondent in his witness statement provided subsequent to the 6<sup>th</sup> July hearing argues that the consultation documents were sent to the wrong address and that he had provided the Applicant with an alternative address – The Gatehouse, Colchester Road, Chemsford CM2 5PB. He states that this address had been provided and the documents should have been sent there. In his written statement to the Tribunal the Respondent argues that the exhibits to his statement demonstrate that the Applicants were updated with his new address. The exhibits are a series of documents sent to the Respondent by the Applicant which are other than the 17 Swallow Street address.
15. The Applicant responds that despite the Exhibits A – E, the Respondent has failed to establish that he provided an alternative address as:
  - (a) none of the exhibits refer to the Gatehouse address
  - (b) The exhibits are not evidence that the Respondent constantly updated the Applicant with new addresses but are simply evidence that on those occasions he provided an address to which those letters should be sent. There is no

evidence that he requested all correspondence to be sent to these addresses in the future

16. The Applicant has a note of a telephone conversation dated 15<sup>th</sup> February 2012 which gave the address of the Gatehouse as a correspondence address. This note is subsequent to the service of the consultation documents.
17. The Applicant further argues that Part 2 of Schedule 4 of the Service Charge (Consultation Requirements) (England) Regulations 2003 does not specify the address at which a notice of intention should be served. It therefore argues that since the Regulations are silent on this point, service upon the property concerned is effective.
18. The Applicant also refers the Tribunal to the requirement of the lease in connection to service of notices. Paragraph 5(a) of the 7<sup>th</sup> Schedule states that notice will be sufficient if left on the demised premises.
19. The Applicant notes that the Respondent has responded to correspondence sent to the Swallow Street address as late as February 2011.

#### **The Tribunal's decision**

20. The Tribunal determines that the statutory consultation procedures have been complied with.

#### **Reasons for the Tribunal's decision**

21. The Tribunal agrees with the Applicant that there is no evidence that the Respondent informed the Applicant that his address for service was his Gatehouse address prior to the commencement of the consultation process. Moreover the Tribunal accepts the argument that service of notices at the premises is sufficient for compliance with both the Regulations and the lease.

#### **The major works**

22. The Respondent's arguments are that
- (i) the costs of the major works should have been met from the reserve fund
  - (ii) the costs of the works were excessive because works only included painting of the hallway, replacing the carpet in the hallway and stairs with a budget carpet and painting some of the windows as several windows were double glazed and did not require painting
  - (iii) there was no response from the Applicant in connection with his requests for a breakdown of the costs
  - (iv) it was excessive to employ a project manager to supervise the work
23. The Respondent does not provide any suggestion as to what would have been a reasonable charge for the works carried out. Nor does he elaborate upon his arguments. He does not consider that the affordability argument is relevant to his case.
24. The Applicant argues that in view of the poor condition of the development, the hazards the condition posed, the extensive work that was required and the other estimates provided the sum claimed is reasonable and was reasonably incurred.
25. The Applicant draws the attention of the Tribunal to the site inspections and health and safety reports. It argues that these demonstrate that the works go beyond the painting and carpeting that the Respondent claims represented the full extent of the works.
26. The Applicant also refers to the works specification which particularises the works including repair works to windows and glazing and checking and repairing roofs and rainwater goods.
27. The Applicant points out that the works were carried out following the receipt of estimates from other contractors and that the contractor chosen submitted by far the lowest estimate.
28. In connection with reserve fund argument, the Applicant refers to obligations under the lease set out in paragraphs 1 and 2 of the 6<sup>th</sup> Schedule which are to be met through service charges and notes that the reserve fund provision at paragraph 12 of the 6<sup>th</sup> Schedule to the lease does not limit expenditure to the amount held within the reserve fund.

### **The Tribunal's decision**

29. The Tribunal determines that the amount payable in respect of the major works is fair and reasonable.

### **Reasons for the Tribunal's decision**

30. The Tribunal considers that the evidence that the Applicant obtained estimates for the work and chose the lowest is sufficient demonstration of the reasonableness of the costs of the repair work, particularly as the Respondent has not provided alternative evidence.
31. It agrees with the Applicant that the service charge provisions in the lease entitle the Applicant to make service charge demands for the works carried out.
32. In this particular case the purpose of the reserve fund is to offset the costs of compliance with the Applicant's obligations; the size of the reserve fund does not limit what the Applicant must do, nor is its purpose to fully meet the costs of carrying out the works. . The fact that the Respondent pays only £200 per annum to the reserve fund is further evidence of this.
33. It is appropriate for the Applicant to employ a project manager to supervise the works. The charge of 13% is a reasonable charge for a project of this scale.

**Whether the administration charges of £240 are payable under the terms of the lease**

34. The Applicant argues that the lease entitles it to claim administration charges in connection with its costs incurred because of non-payment of service charges.
35. It refers the Tribunal to the relevant clause of the lease which provides that the tenant will: 'pay to the Landlord all costs charges and expenses (including legal costs and fees payable to a Surveyor) which may be incurred by the Landlord in contemplation of or incidental to the preparation and service of a Notice under Section 146 and 147 of the Law of Property Act.
36. The Applicant refers to *Freeholders of 59 Marina, St Leonards on Sea v Oram and Anor* [2011] EWCA Civ 1258 to argue that as a determination as to the payability of service charges is a necessary precursor to servicing a notice under section 146 and 147

**The Tribunal's decision**

37. The Tribunal determines that the amount payable in respect of the administration charge is fair and reasonable.

**Reasons for the Tribunal's decision**

38. The Tribunal accepts that the Court of Appeal decision in *Freeholders of 59 Marina, St Leonards on Sea v Oram and Anor* is of relevance here. The freeholder was left with no choice other than to issue legal proceedings to obtain the monies due.

**The Application under s.20C**

39. In light of the determination of the substantive issues in this case the Tribunal refuses the Respondent's application under s.20C of the Act.

**The next steps**

40. The Tribunal has no jurisdiction over county court costs. This matter should now be returned to the County Court for determination of any outstanding matters.



Chairman: Helen Carr

\_\_\_\_\_  
[name]

Date:

13<sup>th</sup> September 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;

- (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.