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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL UNDER SECTION  
27A OF THE LANDLORD & TENANT ACT 1985**

**Case Reference:** LON/00BE/LSC/2011/0726

**Premises:** 100 Delawyck Crescent, Herne Hill,  
London SE24 9JD

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**Applicant(s):** London Borough of Southwark

**Respondent(s):** (1) Matthew Chester Rawson Briggs  
(2) Severine Thriet Briggs

**Leasehold Valuation  
Tribunal:** Ms F Dickie, Barrister

**Date of decision:** 10 February 2012

**Summary of Decision**

- (i) The amount of claimed in respect of the year 2008/09 £88.53 is not payable by the Respondents in light of the landlord's concession under s.20B of the Act.
- (ii) Estimated expenditure of £151.08 for the year 2010/11 is reasonable and payable in full.
- (iii) The precise account balance and any credit to be carried forward from 2008/09 is not a matter for this tribunal.

**Preliminary**

1. The subject premises are a terraced house within a staggered row of six houses situated in the Delawyck Crescent Estate, which itself comprises 115 units (both houses and bungalows), with communal roads and pathways. The Applicant local authority is the landlord under an underlease granted on 4 May 1998 for 125 years from that date. The Respondents are the joint leaseholders as assignees of that underlease, that assignment having taken place on 1 December 2009. A copy of the underlease has been produced.

2. On 26 July 2011 the local authority issued a claim in the Lambeth County Court, Claim Number 1UD15458, for recovery of unpaid service charges and ground rent in the sum of £239.61. The service charges claimed comprised:
  - a) Actual Service Charges for Year 2008/09 - £88.53 outstanding in respect of total expenditure of £335.53, according to an invoice dated 15 March 2010.
  - b) Estimated Service Charges for Year 2010/11 - £151.08, according to an invoice dated 7 April 2010.
3. Save for ground rent of £10 for the year 2010/11, all of the sums in dispute represent service charges in respect of expenditure or estimates for unitemised repairs. The matter was transferred to the Leasehold Valuation Tribunal by an order of District Judge Zimmels made on 4 October 2011. The Leasehold Valuation Tribunal has no jurisdiction in respect of ground rent. On 24 October 2011 the tribunal issued directions to the parties, pursuant to which and in the absence of a request for an oral hearing, I have considered the evidence produced and issue this determination on the papers.

#### **2008/09 Service Charge**

4. The Applicants have conceded the Respondents' contention that many of the costs taken into account in determining the amount of the service charge are not payable by virtue of section 20B of the Act since they were incurred more than 18 months before a service charge demand was served. The invoice dated 15 March 2010 falls within 18 months of expenditure incurred from 15 September 2009. The Applicants have produced a schedule of the conceded costs, representing an account adjustment for 100 Delawyk Crescent of £224.32. No challenge has been brought by the Respondents to the manner of their recalculation, which I accept is correct. The credit exceeds the sum claimed in the County Court for the year 2008/09. The tribunal's jurisdiction derives from the County Court claim transferred to it, and that claim was for the sum of £88.53 outstanding. I am satisfied in view of the s.20B concession that the sum claimed is therefore not payable as a service charge.
5. It accordingly appears that it is unnecessary for me to reach a determination as to the service charges payable for the year 2008/09. I have however formed the following conclusions on the issues in dispute:
  - a) The Respondents assert that they are not liable to pay arrears incurred by the previous leaseholder since they have no privity of estate between themselves and the Applicants in respect of such sums. They cite provisions of the Landlord and Tenant (Covenants) Act 1995 and the decision in *Parry and Another v Robinson-Wyllie Ltd.* (1987) P.&C.R.

187. However, that case refers to amounts becoming due and payable before the date of the assignment, which the court found only the assignor was liable to pay. Those facts are not relevant to the present circumstances.

- b) Pursuant to the Section 23(1) Landlord and Tenant (Covenants) Act 1995, the assignee of a new lease is not liable to pay service charge arrears accruing before the assignment. However, in the present case any balancing charge for the 2008/09 service charges did not accrue until after the assignment had taken place (though as a result of the section 20B concession, no such balancing charge is in any event due). Under Paragraphs 2 and 3 of the Third Schedule of the Lease the tenant covenants to pay an estimated service charge in advance. According to the Third Schedule of the lease, the balance (the amount by which the service charge for the year exceeds the amounts paid in advance) is not payable under paragraph 5(1) until the actual service charge has been ascertained – i.e. when the Council has produced its annual accounts. This would have fallen due on the day of the demand (15 March 2010), and not before. The Respondents' challenge on this ground had no merit. Upon a conveyance it is usual for the purchaser of a flat to make a retention from the purchase price to cover this situation.
- c) The Respondents also argue that there was a failure to comply with the consultation requirements in Section 20 of the Landlord and Tenant Act 1985 in respect of qualifying works charged in respect of the service charge year 1 April 2008 to 31 March 2009, in that 98% of the estate expenditure for the year related to a project carried to renew underground drainage and related works. The Applicant asserts that the provisions of the section do not apply to the aggregate total of various distinct repair works carried out over that 12 month period, and I accept their position. The works were carried out in three separate episodes and, whilst all was of a similar nature, I accept the Applicant's explanation that since the estate is comprised entirely of houses, the only areas upon which estate maintenance would take place are the extensive roads and pathways. I have seen the list of unitemised repairs for that year, and find the tenants' contribution did not exceed the relevant statutory amount of £250 in respect of any item. I am satisfied that the works represent discrete individual items of expenditure and not major works, and that statutory consultation was not required.
- d) The Respondents also contend that the costs invoiced for paving, drainage and fencing works were not reasonably incurred. However, in the absence of alternative quotations I am not persuaded on this point. Some items of expenditure referring to roof repairs are disputed. The total of such repairs I can identify is about £420. When apportioned to the Respondents this figure is negligible. The Applicants assert they are

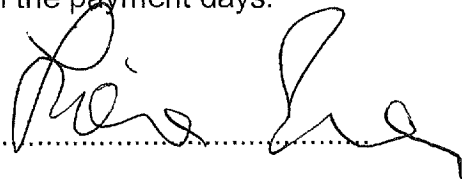
responsible to repair the roofs, while the Respondents assert they are not. Neither party has addressed me on the precise interpretation of the lease, though the lease demises the "house" and the tenant's obligation is to keep "the house and every part thereof" in good and tenable repair. In light of the section 20B concession, it is not necessary for me to seek representations from the parties on the construction of the lease, and in the absence of these it is not appropriate for me to reach a conclusion on this point, though there does appear to be significant doubt that the landlord is responsible for roof repairs.

- e) The Respondents disputed the Applicant's method of apportionment of expenditure, in that a number of unspecified unitemised repairs have been apportioned between the leaseholders of the six staggered terraced houses in their "block", rather than across the estate as a whole. The Applicant has latterly clarified that the apportionment formula was erroneously stated as being 7/42, but is in fact 7/560. The Respondents have not expressed any continued dispute as to apportionment or suggested their own calculation. On the evidence I am satisfied that the apportionment of the service charges in dispute is reasonable and correctly calculated.

#### **2010/11 Estimated Service Charge**

6. Owing to the credit arising from the s20B concession, it appears there will be a credit brought forward in respect of payments made in the year 2008/09. Pursuant to Paragraph 2(1) of the Third Schedule to the Lease the Applicant shall make a reasonable estimate of the amount which will be payable by the Lessee by way of Service Charge in that year. The Respondents are required pursuant to Paragraph 2(2) to pay to the Applicant in advance on account of the Service Charge the amount of such estimate by equal payments on 1<sup>st</sup> April 1<sup>st</sup> July 1<sup>st</sup> October and 1<sup>st</sup> January in each year. The estimated demand in question was made on 7 April 2010 and is for a sum which is plainly reasonable given the reasonable expenditure on unitemised repairs in the year 2008/09, and was payable in full on the payment days.

Signed .....



Ms F Dickie, Barrister

Chairman

Dated 10 February 2012