

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: LON00AS/LSC/2013/0152

Premises: Flats 1,23,4,11,14 15
17,18,19,20,24,25,26,27,28,29,34 Burlington House
2 Park Lodge Avenue West Drayton Middlesex
UB7 9FE

Applicant(s): St George West London Limited

Representative: J B Leitch Solicitors

Respondent(s): Mr Brian MacGoey
Mr Desmond O'Malley

Representative: In Person

Date of hearing: 3rd June 2013

Appearance for Applicant: Mr Simon Allison counsel instructed by J B Leitch solicitors

Appearance for Respondent(s): Not appearing

Leasehold Valuation Tribunal: Mr P L Leighton LLB
Mr C Gowman BSc MCIEH
Mrs L Hart BA

Date of decision: 3rd June 2013

2015

Decisions of the Tribunal

- (1) The Tribunal determines that the estimated service charges for the year 2013 are payable in full by the Respondent in respect of the service charges for Flats 1, 2, 3, 4, 11, 14, 15, 17, 18, 19, 20, 24, 25, 26, 27, 28, 29 and 34 Burlington House, 2 Park Lodge Avenue West Drayton Middlesex UB7 9FE ("the properties")
- (2) [The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985] [
- (3) The Tribunal determines that the Respondents shall pay the Applicant £500 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant]

The application

1. By an application dated 4th March 2013 the Applicant seeks a determination of the on account service charges for 2013 in respect of Burlington house, 2 Park Lodge Avenue West Drayton, UB7 9FE against two respondents Mr P MacGoey and Mr D O' Malley who are the leaseholders of 18 flats within the block.
2. Directions were given on 9th March 2013 and the respondents were required to provide a statement of case but have failed to do so and the application appears to be unopposed. Mr Allison of counsel appeared on behalf of the applicant to explain the basis of the claim. The respondents have paid a sum of money which represents a significant proportion of the on account service charge and have indicated that they consider the application to be a waste of the tribunal's time and unnecessary. They did not submit a statement of case and did not appear at the hearing.
3. There have been previous proceedings between the parties and on 4th March 2013 the tribunal determined that the on account service charges for 2012 were recoverable in full. That decision has not been appealed.
4. The relevant legal provisions are set out in the Appendix to this decision.

The background

5. The properties which are the subject of this application are 18 flats within a purpose built block of approximately 34 flats in West Drayton.
6. A photograph of the building was provided in the hearing bundle. 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.]

The Lease

7. The Respondents hold 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. A representative lease has been supplied and the relevant clauses are as follows: – clause 3 point 1 "the lessee for the mutual protection of the Lessor and of the Lessees and owners of the Properties hereby covenants with the Lessor to observe and perform the obligations on the part of the Lessee set out in parts 1 and II of the eighth schedule hereto."
9. By paragraph 1 of part 1 of schedule 8 of the lease the respondent covenanted
10. "to pay the rents hereinbefore reserved on the days and in the manner herein provided without deduction or set-off free from any equity or counterclaim."
11. "By paragraph 2 of part 1 of schedule 8 of the lease the respondent covenanted
12. "to pay the Lessee's proportion in accordance with the provisions of the seventh schedule hereto" the Lessee's proportion is defined in paragraph 1 of the definitions as follows:
13. "means a fair proportion as varied by the Lessor from time to time in respect of the maintenance expenses each payable by the lessee in accordance with the provisions of the seventh schedule hereto." And the maintenance expenses are defined at paragraph 1 of the definitions as follows: –
14. "means the costs incurred in accordance with the Lessor's obligations contained in parts 1 II III- and IV of the sixth schedule as are applicable thereto."
15. There is no doubt that the service charges are recoverable in accordance with the terms of the lease as has been determined in respect of previous proceedings

The Hearing

- 16 A witness statement, dated 21 May 2013 has been supplied by Ms Lisa Taylor the Senior Property Manager of Consort Property Management, the managing agents for the block setting out the basis of the claim but she was unable to attend the hearing in person

17 At the commencement of the proceedings Mr Allison was not in possession of the estimated service charges for 2012 which had been approved by the previous tribunal. After a short adjournment he was able to produce these figures from his instructing solicitors and they were presented to the tribunal.

Discussion of Estimated Service Charges

18 The figures for 2013 were very similar to those of the previous year. The block costs were in fact reduced from £43,449 to £43,027 and the estate costs were increased from £307,555 to £339,165 and the gym costs increased from £16,750 to £17,250

19 Most of these changes were costs which were increased in line with inflation but there were three which were specifically discussed as significant variations:

- (1) the management charge was reduced by 5%
- (2) the concierge costs were increased by £10,000 which was mainly accounted for by changes in pension provision and
- (3) accountancy and auditing costs which had originally appeared under both block and estate costs but were now consolidated under the estate heading.

The Tribunal's Decision

20 Having considered the previous estimates and the current estimates and the fact that the application is not opposed the tribunal is satisfied that the estimated figures for 2013 are reasonable and recoverable.

Application under s.20C and refund of fees

21 At the end of the hearing, the Applicant made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that he had paid in respect of the application/ hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicant [within 28 days of the date of this decision]

22 There is no application for an order under section 20C of the 1985 Act.

Chairman: Peter Leighton

Date: 3rd June 2013



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).