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LONDON LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00BB/LSC/2012/0829

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

Applicant: Mr L Darie
Respondent: Mr A Patel
Property: 56A Maryland Park, London, E15 1HB
Date of Hearing 10 April 2013

Appearances

Applicant

Mr Darie Leaseholder

Respondent

Mr Puri Katherine Estates Ltd, Managing Agent

Leasehold Valuation Tribunal

Mr I Mohabir LLB (Hons)
Mr H Bowers BSc(Econ) MSc MRICS

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of his liability to pay actual service charges claimed by the Respondent for the years 2006-2012.
2. The Applicant is the leasehold owner of the subject property pursuant to a lease dated 5 August 1985 granted by A J Bush Ltd to Alexandra Bisnath for a term of 99 years from 24 June 1985 ("the lease"). The Tribunal was told that the Applicant took an assignment of the lease on 28 February 2006. The Respondent is the present freeholder.
3. The service charges in issue are the annual service charges (excluding the ground rent and building insurance costs, which are not in issue) and additional charges for ad hoc cleaning of the common parts. These can be summarised as follows:

Service Charges

01/03-30/04/06	£120.55
01/05/06-30/04/07	£290.83
01/05/07-30/04/08	£290
01/05/08-30/04/09	£290
01/05/09-30/04/10	£290
01/05/10-30/04/11	£290
16/08/11-15/08/12	£290
16/08/12-15/08/13	£290

It should be noted that it was conceded on behalf of the Respondent that no service charges had been demanded for the period 1 May 2011 to 15 August 2011 and that any costs incurred had been waived.

Cleaning Charges

18/01/06 (for 16/01/06)	£146
08/11/07 (for 08/11/07)	£166
17/09/08 (for 11/09/08)	£216

19/11/09 (for 19/11/09)	£142
11/11/10 (for 11/11/10)	£189
08/08/11 (for 08/08/11)	£133
16/10/12 (for 16/10/12)	£339

The Tribunal was told that these charges had been invoiced separately from the service charges above on a cost incurred basis.

Lease Terms

4. By clause 4(4) of the lease, the lessee covenanted with the lessor to pay a service charge contribution of 50% for the “proper expenses and outgoings” incurred by the lessor in the repair and maintenance and renewal and insurance of the building together with the other heads of expenditure set out in the Fifth Schedule of the lease. Paragraph 1 of the Fifth Schedule expressly allows the costs of cleaning to be recovered as a service charge.

5. Clause 4(4)(a) obliges the lessor to ascertain the amount of the service charge and certify by a certificate signed by the lessor annually or as soon as is practicable after 31 December in each year. The certificate must contain a summary of the service charge costs incurred by the lessor during the year to which it relates (clause 4(4)(b)).

6. Clause 4(4)(e) permits the lessor, with every payment of rent reserved, to demand such sum in advance on account of the service charge as the lessor or the managing agent in their absolute discretion consider to be fair and reasonable. It should be noted that clause 4(4) reserves the service charge contribution payable by the lessee as additional rent. Clause 1 of the lease requires the lessee to pay the rent in advance on 1 January in each year.

7. It seems, therefore, that on 1 January of each year, the lessor can demand a service charge contribution in advance and on account from the lessee for such amount as he considers to be fair and reasonable. On 31 December of each year, or as soon as practicable thereafter, the lessor has to provide the lessee with a certificate summarising the actual expenditure incurred in the preceding year. Clause 4(4) of the lease makes this a condition precedent to recovery. In

other words, the landlord can only recover service charges at the times and in the manner permitted by the lease. He cannot demand service charges other than at the beginning and end of any service charge year and the lessee has no contractual liability to pay any demand made other than in accordance with the lease terms set out above.

The Law

8. The substantive law in relation to the determination regarding the service charges can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

"(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."

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges. Where the reasonableness of service charge costs falls to be considered, the statutory test is set out in section 19 of the Act.

Decision

9. The hearing in this matter took place on 10 April 2013. The Applicant appeared in person. The Respondent was represented by Mr Puri of Katherine Estates Ltd who is the managing agent. Unfortunately, the hearing was delayed by Mr Puri's late attendance.
10. It seems that both parties had not received the respective hearing bundles that had been filed with the Tribunal, despite asserting that they had been served prior to the hearing. Given the relatively small amount of documentary evidence relied on by each side, the Tribunal adjourned the hearing to afford both parties an opportunity to consider the evidence. Initially, Mr Puri said

that he did not want to look at the Applicant's documents and then changed his mind.

11. It subsequently transpired that Mr Puri had left the building and, in answer to a telephone call made to him by the Tribunal clerk, gave no indication that he intended to return to the hearing. The Tribunal afforded Mr Puri some time to re-appear, however it became obvious that he was not going to return and in those circumstances the Tribunal proceeded with the hearing in his absence.
12. In relation to the annual service charge demands, the Applicant asserted that he had not seen any of these documents prior to the hearing and that they were, in effect, fraudulent. The only documents he had seen was an invoice from Katherine Estates Ltd dated 25 October 2010 in the sum of £1,483.57, which he had paid in full by a cheque dated the same day. The Applicant further asserted that none of the charges claimed by the Respondent had been incurred because no service whatsoever had been provided.
13. As to the cleaning invoices, the Applicant repeated his assertion that he had not been served with these before the hearing. Furthermore, he said that no cleaning had in fact ever been carried out to the common parts and it was he who actually cleaned these areas.
14. Prior to leaving the hearing, Mr Puri has said that the service charge demands had been served on the Applicant at the beginning of each service charge year and he relied on the various certificates of posting filed in evidence. He also maintained that cleaning of the common parts had been carried out on the dates stated on the invoices.
15. Based on the evidence before it, the Tribunal made the following findings:
 - (a) that none of the various service charge demands or cleaning invoices had been served on him prior to the hearing. The Tribunal accepted the Applicant's evidence in this regard. This had largely been proved by the fact that the actual certificate of posting had not been created as

a document until 2008, whereas the dates of posting endorsed on two of the certificates were dated 2006 and 2007. When Mr Puri was asked about this matter at the commencement of the hearing, he was unable to provide an explanation.

- (b) further and in the alternative, that neither the annual service charges and cleaning invoices had been made been in accordance with the lease terms and the Applicant was, therefore, not contractually liable to pay these costs.
- (c) in any event, that none of the demands complied with the requirements of section 21B of the Act, by failing to contain the prescribed information required by the section and, as a matter of law, the Applicant was not obliged to pay any of them.
- (d) that, if the Respondent sought to remedy this defect by subsequently serving amended demand that complied with section 21B, any of the costs incurred prior to 18 months before 10 April 2013, being the hearing date, would be caught by section 20B of the Act and irrecoverable as a matter of law. It follows that the only costs that could possibly be recovered by the Respondent were those costs claimed after 10 October 2011.
- (e) that the service charges claimed by the Respondent after 10 October 2011 were not payable by the Applicant for two reasons. Firstly, there was no evidence adduced by the Respondent that any such expenditure had in fact been incurred. Secondly and alternatively, the Tribunal accepted the Applicant's evidence that "no service" at all had been provided. This was consistent with the Respondent's inability to provide any evidence of the expenditure incurred.
- (f) that none of the cleaning costs incurred after 10 October 2011 were payable by the Applicant also for two reasons. Firstly, again, there was no evidence adduced by the Respondent that any such expenditure