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**Ref: LON/00AY/LSC/2010/0805**

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT  
ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER s 27 OF THE LANDLORD AND TENANT ACT 1985**

**Applicant: The Common Estate**

**Represented by: Trust Property Management Limited  
(Ms A Griffiths Property Manager and  
Ms K Lyne Property Manager)**

**Respondent: Ms R Hammerton**

**Represented by: In person**

**Premises: Ground Floor Flat, 329 Norwood Road, London SE24 9H**

**Hearing date: 12 May 2011**

**Members of the Leasehold Valuation Tribunal: Mrs F R Burton LLB LLM MA  
Mr F Coffey FRICS  
Mr A D Ring**

**Date of Tribunal's decision: 3 July 2011**

**GROUND FLOOR FLAT, 329 NORWOOD ROAD, LONDON SE24 9AH**

**BACKGROUND**

1. This was a case, transferred from Lambeth County Court by order of District Judge Wake on 15 November 2010 (received by the Tribunal on 26 November 2011) for determination of liability to pay service charges for the years 2005 to 2008.

2. On 5 January 2011, the Leasehold Valuation Tribunal held a Pre Trial Review, at which the Applicant Landlord, The Common Estate, was represented by Ms A Griffiths, Property Manager, of the Managing Agents, Trust Property Management Limited, and the Respondent Lessee, Ms R Hammerton, appeared in person. The subject property was a ground floor rear flat, of which Ms Hammerton was the sole Lessee under a Lease dated 2 April 1984 of which the parties are assignees, in a house converted into 5 flats, and of which the Applicant Landlord was the freeholder. Ms Hammerton told the Tribunal that the service charge year followed the calendar year, but that service charge statements were not received on time, that certain works had apparently not been carried out and that she disputed the service charges claimed. Following the PTR the Tribunal issued Directions, requiring the Managing Agents to prepare a statement for each service charge year and a Scott Schedule setting out the date and type of each charge, providing columns for the Respondent's comments and for any replies by the Landlord and sending these documents to the Respondent by 2 February 2011. The Directions then provided further arrangements for the proper preparation of the case for hearing and set it down for determination after an oral hearing on 21 March 2011 (subsequently amended to 12 May 2011). The amounts in issue were £519.23 + 19.56 (2005), £933.77 (2006), £961.91 (2007), £102.75 (2008) plus £587.24 for management fees for unspecified periods. (Total £3124.46 plus interest and costs claimed in the County Court which are outside the jurisdiction of the Tribunal). The Managing Agents, on behalf of the Applicant Landlord, were to prepare a paginated and indexed bundle of documents for the hearing.

**THE HEARING**

3. At the hearing Ms Griffiths again appeared on behalf of the Managing Agents who represented the Applicant Landlord, and was accompanied by Ms K Lyne, and Ms Hammerton again appeared in person.

### **THE CASE FOR THE APPLICANT LANDLORD**

4. The Landlord's case was that the sums demanded were made up of service charges billed in advance, and of the annual balancing charges also billed in accordance with the terms of the Lease. The mechanism for calculation of the "maintenance charge" (originally £75 annually on account of service charges, but later a variable annual amount based on previous expenditure) and of the annual balancing charge (i.e. the actual amount spent in the year, payable within 28 days of the accountant's certificate following audited accounts) appear in Clause 3 of the Lease, together with the Lessee's covenant to pay, and the Landlord's obligations to provide services in Clause 4. The Managing Agents had duly prepared the Scott Schedule as required by the Directions: the corresponding columns for the Respondent's comments, and any further comments from the Managing Agents on behalf of the Landlord, had been duly completed, and supporting invoices for the various individual charges had been duly supplied in the hearing bundle.

### **2005**

5. It appeared that the Lessee had only paid £404.47 towards the total of £943.26 for this year so that £558.35 was outstanding. The balancing charge for the year had been £19.56. The Lessee's answer to this was that she had paid the full amount (£958.66) on 2 June 2005 and that this had been accepted in the County Court and the Applicant's case struck out at that time as they had not appeared. However the Managing Agent's case was they had succeeded BLR as managing agents in 2009 and BLR's records did not show that this had been paid. They claimed therefore that they had no personal knowledge of the 2005 period so that it was up to the Lessee to show that the sum had been paid, if that be the case, and to the LVT to determine that the figure demanded was reasonable. Ms Hammerton however countered that she had no longer kept her papers from 2005 as she had thought that the matter was over, but was insistent that her bank statements had shown at the time that she had paid and that

this had been accepted by the County Court. She added that she accepted items 2-6 in the Scott Schedule for this year i.e. accountancy fees £25.56 (chargeable under clause 4(8) of the Lease) and electricity, gardening, building insurance, management fee and pest control, although she had never had the Asbestos Report at item 7 for which she had been charged £90.55 as her share of £440.63 for the provision of the report, and wanted to know why the report had not been made available at the time.

## 2006

6. For 2006 Ms Hammerton again accepted most of the charges but said that she had never received the budget estimate in that year and produced a copy of her solicitors' letter dated 6 July 2007 in which it was complained of that she had received the service charge estimates for 2006 and 2007 together on 30 June 2007, and an explanation was requested for the failure to issue a service charge invoice or statement of account in 2006, pointing out that unless and until these documents were issued their client was within her rights to withhold payment. She also queried why a second asbestos survey was required in 2006 and received the explanation that this was probably to check and report on work that would have been identified as necessary in the earlier survey, as the 2006 charge had been £246.75, lower than in 2005, of which the Lessee's share was £50.71. She then queried the professional fees charged of £802.23 (Lessee's share £164.86) and received the explanation that it was a fire insurance valuation which was covered by the terms of the Lease as "such other services for the benefit of the Lessee and other tenants". However she had not offered any alternative cost or evidence that would suggest that this figure was excessive.

7. Ms Hammerton said that she had never had a response to her solicitors' letter until 2008 when her payment was acknowledged and had not been told what the repairs and maintenance charged in 2006 had been for. The Tribunal was able to explain that a s 20 consultation would only have been required for items costing her more than £250 in any year whereas her share of this item for 2006 was £194.20. The Managing Agents had obtained from BLR's records that the work involved had been roof re-felting, repair and replacement of tiles and use of a cherry picker to access the roof.

## 2007

8. In this year Ms Hammerton was challenging little, although she wished to know what the repairs and maintenance of £165 (her share £33.91) was for and received the explanation that gullies and channels around the property had been cleared for which there was an invoice in the bundle. Ms Griffiths confirmed that although a payment had been received for 2008, nothing had been received for 2007. The interim demand had been for £961.91 but in fact the actual expenditure had been £814.59, so a credit of £147.32 had been issued, together with a further interest credit of £0.48 as every property had an interest bearing account.

## 2008

9. In this year Ms Griffiths said that the Lessee had paid £961.07 but the interim demand had been £1,063.82 so she had underpaid £102.75. However the certified actual expenditure had raised a credit to her of £55.07, but as this did not cover the interim demand of £1,063.82 she still owed £47.68. The Lessee accepted most of the charges for this year but did challenge the management fees of £1,891.05 as Ms Griffiths had stated at the PTR that the management fee was £250 per unit per annum. Ms Griffiths submitted that the actual fee was £221.88 + VAT but that BLR had charged a handover fee of £587.50 + VAT in that year when they had transferred the managing agents' role to TPM. Ms Hammerton also challenged the management fee of £461 for the summons issued and associated work, as this apparently included checks such as at Companies House (which could have no possible relevance to her since she had never been involved in any limited company) and the interest charged of £587.24 (under clause 2(31) of the Lease which permitted a charge of 4% above Nat West base rate on outstanding monies, subject to a minimum of 15%). Ms Griffiths explained that the checks listed in the breakdown of sums owing in the Particulars of Claim in the County Court would have been a routine list of tasks undertaken whenever a summons was issued for back service charges owing, for which £461 did not appear unreasonable for the work involved of searching the various registers and getting the documentation together in order to issue proceedings.

10. The Tribunal asked Ms Griffiths for full particulars of the interest charged, including over what periods this had been done, as this was a large sum which needed to be proved and for any further documentation available in connection with the 2005 County Court proceedings, since it appeared that the Lessee claimed to have paid the service charges for 2005 and was unsure whether she still had the relevant documentation while this was still being demanded on the basis that BLR had not recorded payment. However she was unable to produce any interest calculations, instead claiming that the amount charged was reasonable as the minimum allowed by the Lease was 15% and the total charged for money mostly agreed to be outstanding from at least 2006 was inevitably substantial.

### **THE CASE FOR THE RESPONDENT LESSEE**

11. Ms Hammerton confirmed that she had nothing further to add to the comments she had made in respect of the evidence provided by Ms Griffiths, and that now explanations were provided she mostly accepted the amounts charged except where she had specifically maintained her objections.

### **FINAL SUBMISSIONS**

12. Ms Hammerton submitted that the law was “stacked against her”, as she had had to deal with the case by herself, both in the County Court and before the Tribunal, and it was a fact that the managing agents had not sent service charge demands when they ought and had had the benefit of an administrative office to back up their work whereas she had had to do everything for herself and she was now being asked to prove again that she had paid in 2005 when this had been accepted by the County Court in 2005. The Tribunal explained to her that if she needed assistance before the LVT there were voluntary advice and representation services available to assist unrepresented parties, details of which were available from the clerks and from Reception. We suggested that if she had any documentation retained in connection with the striking out of the Landlord’s claim in 2005 she should send it in to the clerk within 7 days.

13. Ms Griffiths submitted that full explanations had been provided for all items

In the service charges over the 4 years involved and requested that they be determined to be fair and reasonable and reasonably incurred, so duly payable.

## **DECISION**

14. The Tribunal notes that the parties have not sent in any further documentation in relation to any matter in which the Tribunal considered the evidence was sparse or not available at all, and therefore determines the matters before it on the basis of evidence heard and documents handed in at the hearing. The Tribunal therefore determines that no substantive case for challenge to any of the individual items in the services charges for the years 2005-2008 had been made out, but are certainly critical of the BLR handover charge which had generated extra management charges in the year 2008, particularly as BLR's records were clearly inadequate when the Lessee remembered so strongly that she had paid the year's charges in full in 2005, that the Landlord's case had been struck out for non appearance at that time, which would have been unlikely if there was still a sum to pay for that year. In the circumstances the Tribunal considers that it is more likely than not that the sum claimed to have been paid by the Lessee was in fact paid, and that it would now be unreasonable to require the Lessee to prove payment again after 6 years have passed (if indeed the claim is not now time barred). The Tribunal further determines that the charges for 2006 are duly payable although not formally demanded in that year as the Lessee's solicitors had confirmed eventual receipt of the demands within 18 months of the costs being incurred, although the accountants' certificates were clearly not available in 2006.

15. The Tribunal determines that in all other respects the service charges (with the exception of the interest element dealt with separately below) are reasonable and reasonably incurred, and thus duly payable. The "management charge" of £461 in 2008 in connection with issue of the summons is not in fact a management charge as such but a contractual charge incidental to a s 146 Notice in accordance with clause 2(21) and is naturally recoverable from the Lessee in accordance with her covenants and not through the service charge. In the circumstances the actual management fee in 2008 is £388.61 (inflated from £250 or £221+ VAT by BLR's handover fee in that year) and is not unreasonable in itself or unreasonably incurred since, as TPM

explained in the Scott Schedule, the current market fees could easily be much more in relation to a building of the size of the subject property, especially in an initial year of a new managing agent's tenure.

16. The Tribunal is however concerned about the amount of the interest being charged and the lack of substantiated periods and figures within the global sum of £587.24 demanded. The Tribunal notes that the following sums of service charge were owing at the relevant stages: £1,176.48 in 2006, £814.59 in 2007, and £47.68 in 2008, a total of £2,038.75. £587.24 appears to be a substantial amount to pay on this outstanding figure. First the sum of £1,176.48 could only be due from 2007, not 2006, since it was not demanded until the middle of 2007, and the credits passed to the account in 2 of the service charge years indicate that the managing agents' accounting is not always perfect, especially as the Lessee was sued for the overall amount in those years while a credit had had to be given when the actual figures were available. In the Tribunal's opinion, although it is impossible to be 100% accurate as the dates from which interest has been charged and on what sums outstanding has not been provided, the maximum that should have been charged comes to approximately £520 on the basis of a minimum contractual charge of 15% and the late demands in 2006 and 2007, and the interest for late payment should be capped at that figure.

17. The Tribunal determines accordingly.

Chairman..... *F.R. Smith*  
Date..... *7 July 2011*