



**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AY/LSC/2011/0161

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS
UNDER SECTION 27A LANDLORD AND TENANT ACT 1985 AND SCHEDULE 11 OF
THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

Applicant/Leaseholder:	Lloyd Reynolds
Respondent/Freeholder:	Declan Eiffe
Premises:	Flat C, 129 Palace Road, Tulse Hill London SW2 3LD
Date of Hearing:	7 September 2011
Leasehold Valuation Tribunal:	Ms F Dickie, Barrister, Chairman Mr F Coffey, FRICS Mrs J Hawkins
Date of Decision:	6 October 2011

Summary of Determination

- (i) No service charges are due for the years in dispute except those amounts for maintenance and insurance that have been expressly agreed by the tenant (and in respect of which the Leasehold Valuation Tribunal therefore has no jurisdiction).

- (ii) No sum is due in respect of major works until statutory consultation under s.20 of the 1985 Act has taken place.
- (iii) No administration charges are payable by the tenant in respect of any of the years in dispute. In relation to the year 2006 this determination relates to administration charges of £999.28 demanded, and not administration charges carried forward from previous years which are not the subject of this application.

Preliminary

1. By an application made on 9 March 2011 the Applicant leaseholder sought a determination under section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) of his liability to pay service charges. The subject premises are a one bedroom Victorian flat in a converted Victorian house comprising four flats in total. The Applicant also challenged administration charges applied by the Respondent landlord, the tribunal having jurisdiction under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) to determine those payable and reasonableness.
2. After a pre trial review hearing that took place on 22 June 2011 in the presence of both parties, directions were issued for the determination of both of those applications. Service and administration charges in the years 2006, 2009, 2010 and 2011 were identified as being in dispute. The tribunal has no power to make a determination in respect of the sums for ground rent specified in the application.

The Lease

3. The lease is dated 15 March 1985 and is between Declan Eiffe as Lessor and Mr Andrew James Towe and Miss Karen Jane Lea as Lessees for a period of 99 years from that date. The Applicant is the successor in title to those Lessees.
4. Clause 1(6) defines “the Accounting period” as a period commencing on the First day of January and ending on the Thirty first day of December in any year. In Clause 3(9) the Lessee covenants:

“To pay to the Lessors all costs charges and expenses including Solicitors’ Counsels’ and Surveyors’ costs and fees at any time during the said term incurred by the Lessors in or in contemplation of any proceedings in respect of this Lease under Sections 146 and 147 of the Law of Property Act 1925 or any re-enactment or modification thereof such costs charges and expenses as aforesaid to be payable notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court”

5. The Lessee covenants in Clause 4(4) to “Pay the Interim Charge and the Service Charge at the times and in the manner provided in the Fifth Schedule hereto both such Charges to be recoverable in default as rent in arrear”
6. The Lessor covenants in Clause 5:
“(5) Subject to and conditional upon payment being made by the Tenant of the Interim Charge and the Service Charge at the times and in the manner hereinbefore provided:

(c) Subject to the provisions of Clause 8(3) hereof, to insure and keep insured the building...”

7. The Service Charge provisions are found in the Fifth Schedule. Paragraph 1 includes the following definitions:

- (1) “Total Expenditure” means the total expenditure incurred by the Lessors in any Accounting Period in carrying out their obligations and Clause 5(5) of this Lease and any other costs and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the foregoing (a) the cost of employing Managing Agents (b) the cost of any Accountant or Surveyor employed to determine the Total Expenditure and the amount payable by the Tenant hereunder
- (2) “the Service Charge” means such percentage of Total Expenditure as is specified in Paragraph 7 of the Particulars or (in respect of the Accounting Period during which this Lease is executed) such proportion of such percentage as is attributable to the period from the date of this Lease to the Thirty first day of December next following
- (3) “the Interim Charge” means such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Lessors or their Managing Agents shall specify at their discretion to be a fair and reasonable interim payment.

8. Paragraph 3 provides: “..... the Interim Charge shall be paid to the Lessors by equal payments in advance on the Twenty ninth day of September and the Twenty fifth day of March in each year and in case of default the same shall be recoverable from the Tenant as rent in arrear”. Paragraphs 4 and 5 provide for interim service charges paid in excess of the service charge to be carried forward, and for any shortfall to be paid by the tenant “within twenty eight days of service upon the Tenant of the Certificate referred to in the following Paragraph ...”

9. Paragraph 6 provides:

“As soon as practicable after the expiration of each Accounting Period there shall be served upon the Tenant by the Lessors or their Agents a certificate signed by the Accountant containing the following information:

- (a) The amount of the Total Expenditure for that Accounting Period
- (b) The amount of the Interim Charge paid by the Tenant in respect of that Accounting Period together with any surplus carried forward from the *previous Accounting Period*
- (c) The amount of the Service Charge in respect of that Accounting Period and of any excess or deficiency of the Service Charge over the Interim Charge

10. Paragraph 8 provides:

“Any sums payable hereunder whether by way of rent interim charge or service charge or otherwise which shall not be paid by the Tenant within 21 days of the same becoming due hereunder shall bear interest at the rate of four per cent per annum above Barclays Bank Base Rate for the time being in force such interest shall be recoverable from the Tenant as rent in arrear”

The Law

Commonhold and Leasehold Reform Act 2002

SCHEDULE 11

Meaning of “administration charge”

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.

Reasonableness of administration charges

2A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

.....

Notice in connection with demands for administration charges

4(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

Liability to pay administration charges

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.

Landlord and Tenant Act 1985

21B Notice to accompany demands for service charges

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

s.27A (not reproduced here)

The Hearing

- 11. The Applicant leaseholder Mr Lloyd Reynolds appeared in person at the hearing that took place on 7 September 2011. The Respondent landlord Mr Eiffe did not appear, but he had latterly submitted written representations in response to the application. The Applicant gave evidence that no statement of rights and obligations accompanied or followed any service charge demand since October 2007, and that the landlord had never produced a service charge account or certificate of expenditure.

2006

- 12. No dispute is raised regarding service charges for the year 2006. The Applicant's only challenge in that year is to administration charges. It was identified that all administration charges demanded by the landlord on 7 September 2006 and in relation to which the Applicant seeks a determination are in fact brought forward charges demanded in previous years, other than charges totalling £999.28 comprising:

£296.28 costs for late payment of insurance due July 2004

£296.28	costs for late payment of insurance due July 2005
£306.72	costs for late payment of insurance due July 2006
£50	for letter to Bristol and West
£50	for issue of landlord's statement dated 7 September 2006

13. Mr Eiffe considered that Mr Reynolds had been late in paying ground rent, buildings insurance and service charge together with his share of the cost of scaffolding to the building for work to the chimneys and guttering in 2006. His mortgage lender Bristol and West had been approached for payment.

2009

14. Maintenance charges of £50 and insurance of £338.17, in addition to ground rent, had been paid and agreed by the Applicant for this year. The Respondent had, however, made charges in respect of alleged late payment of these sums, all of which the Applicant sought to challenge. The total of such charges was over £500, though the figures of the landlord and tenant did not exactly match. These charges were described variously on the landlord's invoices as being for late payment or reminder costs, and for an insurance arrangement.
15. The insurance arrangement charge was understood to be the landlord's fee for having paid the insurance instalments out of his own bank account, there being insufficient funds in the service charge account owing to the Applicant's alleged non payment. These charges for funding the insurance instalments were equal in amount to Mr Reynold's proportion of those instalments, effectively doubling the cost of the insurance to him.
16. *The cost of the actual insurance was agreed, but not an instalment fee of around £108 for the ability to spread payments throughout the year. The tribunal understood the landlord's case to be that, since the lease requires payment of the insurance in full within 21 days, and the tenant's payment was not received in that timescale, this additional charge for obtaining credit from a third party was justified.*
17. The landlord also made two small charges for obtaining information from the Land Registry, though no evidence was produced that any such information had been obtained and charges incurred.

2010

18. In this year insurance of £338.16, ground rent and maintenance of £50 had been agreed and paid. Mr Eiffe had charged Mr Reynolds several amounts in respect of his alleged late payment. Mr Reynolds again disputed these, including the cost of about £108, said to have been paid by the landlord for the facility to pay the insurance by instalments.
19. The landlord demanded a contribution of £1500 towards major works to the common

areas. No evidence of statutory consultation as required by s.20 of the Landlord and Tenant Act 1985 (as amended) has been produced in evidence by the Respondent, and the Applicant denied receiving any. The landlord also demanded a £1000 payment on account of service charges, though the Applicant denied receipt of any service charge statement of account and budget supporting this figure, and none was before the tribunal in evidence.

2011

20. An invoice dated 5 July 2011 had been served by the landlord on Mr Reynolds demanding payment of ground rent plus £352.58 for insurance and £50 for maintenance. Mr Reynolds said he had paid this sum in full on 6 July 2011 and agreed these items.
21. Charges for administration had been made by the landlord, including solicitors' costs. The landlord levied a charge of £600 for the fees of Brunswick Law, solicitors. The landlord produced a paid invoice dated 22 February 2011 in the sum of £500 plus VAT for professional services "in connection with correspondence with Lloyds TSB and Mr Reynolds relating to arrears of ground rent and insurance". The tenant contended that the landlord had no cause to instruct solicitors and to contemplate forfeiture.
22. The Applicant's then mortgagee Lloyds TSB had written to him on 14 September 2010 to advise it had received a letter from Brunswick Law regarding alleged ground rent and/or service charge arrears. Mr Reynolds emphasised that this letter came after he had tendered a cheque for full payment of the service charges and ground rent, which was rejected by Mr Eiffe. The Applicant gave evidence that he personally did not receive correspondence from Brunswick Law, and none was produced in evidence.

Determination

23. Mr Reynolds has expressly agreed the annual service charges and insurance. The tribunal has no jurisdiction under section 27A of the 1985 Act in respect of matters which have been agreed. As the sums for the current service charge year were estimates, the Leasehold Valuation Tribunal would not lack jurisdiction to determine reasonable and payable actual service charges at the end of the current Accounting Period, in the event of there being any dispute.
24. This tribunal has jurisdiction in relation to the service charges not agreed (£1500 for major works and the "on account" demand of £1000), as well as all administration charges for the years in dispute. It is immediately apparent to us that the landlord has been demanding service and administration charges from the tenant without proper regard to the terms of the lease. Service charges have been demanded annually in July without reference to a budget, and without reconciliation and certification of actual expenditure as required by Schedule 5 of the lease.
25. Since we find that service charges were not due according to the terms of the lease, any administration charges recoverable under that lease and arising from non payment

are also not due. In any event, having considered the terms of the lease we find that the majority of the administration charges sought by the landlord are not payable by the tenant under its terms. The lease makes no provision for the payment of administration charges which fall within the definition in Schedule 11, other than interest under Schedule 5(8) and costs under Clause 3(9) when forfeiture is contemplated. No interest is payable since estimated or actual service charges were not certified and demanded according to the terms of the lease, and were accordingly not due.

26. The landlord could not properly contemplate proceedings under the Law of Property Act 1925 (forfeiture) in respect of service charges allegedly unpaid in respect of which, in the absence of any budget or accounts, there is no evidence that they related to reasonable estimated or actual expenditure. Accordingly, we find that the landlord is not entitled to recovery of any solicitors' charges under Clause 3(9). Notwithstanding this, we further find that, at the time those solicitors' were instructed, Mr Reynolds had already offered payment by cheque. Still further, the amount of the solicitors' fees is not reasonable. They include charges for correspondence with Mr Reynolds which we find did not take place, and they are unreasonably high for advice to Mr Eiffe and a single item of correspondence with the mortgagee.
27. We also find that service charges invoiced since 1st October 2007 have not been lawfully demanded. Therefore any provision that might exist in the lease for the recovery of an administration charge (including interest) for overdue service charges would be of no effect (see Section 21B(4) of the Act). Section 21B has, since 1 October 2007, required a demand for the payment of a service charge to be accompanied by a summary of the rights and obligation of tenants in the prescribed form (Service Charges (Summary of Rights and Obligation, and Transitional Provisions) (England) Regulations 2007). The Respondent has produced no evidence that such a summary was provided with the service charges demanded after that date.
28. Demands for administration charges themselves must be accompanied by a summary of the tenant's rights and obligations in relation to them (paragraph 4(1) of Schedule 11 to the 2002 Act). There is no evidence that any such summary was provided and we therefore find that it was not. Accordingly, by virtue of paragraph 4(3) the tenant could withhold payment of any administration charge, were it payable under the terms of the lease.
29. Letters from Weald Insurance Brokers Ltd. dated 30 June 2009 and from Premium Credit dated 16 July 2009 and 3 August 2010 appear to show that a credit arrangement was entered into for two years at a cost of £108.21 (or £108.25) in the first year and 8.5% of the sum borrowed in the second year. The cost of insurance was not properly demanded and we find for the reasons above that the credit arrangement fee is not reasonable or recoverable under the lease as an administration charge. Furthermore, there is authority for the proposition that such expenditure is not recoverable as a service charge, as found by Mr A J Trott FRICS sitting in the Lands Tribunal in *Redendale Ltd. v Modi* [2010] UKUT 346 (LC):

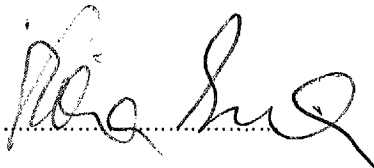
“60. The appellant paid the insurance premium each year by monthly instalments, for which a charge was levied by the insurance company..... In my opinion it is not reasonable for the appellant to incur, and charge the

respondents for, additional finance charges to assist the appellant's ability to pay the premium. It was not necessary to incur such charges and, in my opinion, it was not reasonable to include them as a service charge."

30. A landlord may not recover service charges for major works unless there has been compliance with the consultation requirements of section 20 of the Landlord and Tenant Act 1985. In this case we find evidence of no such compliance and accordingly determine that the landlord's unsubstantiated estimated in respect of major works is not payable.

31. The administration charges levied by Mr Effie appear to be utterly arbitrary and unreasonable in their amount. Though the landlord has displayed a weak grasp of leasehold law, and has managed this property himself, even though the provisions of the lease which allow him to recover the cost of a professional managing agent. We find no lawful justification for any of the administration charges demanded. In the circumstances, we grant the tenant's application under s.20C of the 1985 Act – and make an order prohibiting the landlord from recovering his costs of these proceedings through the service charge.

Signed



Ms F Dickie, Chairman

Dated 6 October 2011