

7338

London Leasehold Valuation Tribunal File Ref No.

LON/00BC/LSC/2011/0646

Her Majesty's Courts and Tribunals Service

Leasehold Valuation Tribunal: determination

Landlord and Tenant Act 1985 sections 27A and 20C

Address of Premises

Flat 1,
14 Empress Avenue,
Ilford IG1 3DD

The Committee members were

Mr Adrian Jack
Mr Peter Roberts Dip Arch RIBA

The Landlord: (a) The estate of the late Mr Alan Matthey and (b) Mr Steven Matthey

The Tenant: East Thames Group Ltd

Procedural

1. By an application dated 9th September 2011 the tenant applied to the Tribunal for determination of some items of the service charges demanded for the year 2010. The service charge year is the calendar year.
2. The Tribunal held a hearing on 1st December 2011. The tenant appeared by Ms P Morris, the head of service charges and rent, and Ms C White, an inhouse legal assistant. The landlord appeared by Mr Samuel Tucker, a legal support administrator of BLR Property Management Ltd, the property manager.
3. In the application the landlord was named as BLR Property Management Ltd, but at the outset of the hearing it was clarified that the landlord was as set out above. Mr Tucker applied to add the landlord as a respondent to the proceedings and the Tribunal granted that application.
4. The parties also agreed that the Tribunal should determine certain issues in respect of the 2009 service charges and the Tribunal agreed to do this.
5. Neither party requested an inspection and none was held.

The law

6. The Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

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, improvement 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 of 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 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 provision 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 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.”

Sections 47 and 48 of the Landlord and Tenant Act 1987 require a landlord to give his name and address and to give an address for the service of notices by the tenant on him. The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 requires a landlord to serve a summary of tenants’ rights and obligations with any demand for service charges on pain of irrecoverability of the service charges demanded.

The dispute

7. The lease is dated 13th January 1978 and grants a term of 99 years from 1st November 1977. It is in an old-fashioned form, but there was no dispute that the matters which the landlord sought to recover by way of service charges were in principle recoverably by them under the terms of the lease.
8. In each year there were initially only two items in dispute. In 2009, these were BLR’s management fees of £231.45 (£201.26 plus £30.19 VAT) and professional fees of £100.63. In 2010, these were BLR’s management fees again of £254.59 (£216.67 plus £37.92 VAT) and professional fees of £63.16.
9. In the course of the hearing, the tenant abandoned its objection to the £100.63 figure for professional fees in 2009.
10. So far as the £63.16 figure for professional fees in 2010, this comprised two elements: the tenant’s quarter share of (a) a surveyor’s fee note for £235.00 (including VAT) and (b) fees from Her Majesty’s Land Registry for obtaining documentation in respect of another tenant totalling £17.63.
11. In the course of the hearing Mr Tucker withdrew the surveyor’s fee note on the basis that it stood to be charged in 2011 when the major works to which it related were billed. He also withdrew the other bill on the basis

that the money had been recovered from the tenant concerned, who had fallen into arrears with service charges.

12. Accordingly the only live issue for the Tribunal's determination was the fees charged by BLR in the two service charge years.

Management charges

13. It is well established that a landlord need not seek out the cheapest rate for services provided by a managing agent, so long as the fee is reasonable. There were no complaints that the services provided by the managing agent were performed poorly. Rather the tenant's complaint was that the managing agent was charging too much for what it was obliged to do.
14. In our judgment there is some force in what the tenant says. This is a small property, comprising a house converted into four flats. The front garden is concreted over so as to make two parking spaces. The only common parts are the narrow path to the front door, the hall and the stairs to the first floor. The tenants under the terms of the lease clean and light the common parts.
15. Of the services provided by the landlord, some were in fact never required, such as pest control and the removal of rubbish from the path in the garden. A fire alarm was only installed in the latter part of 2010, so no services were provided in respect of that earlier. Of the regular services, the managing agent carried out general and roof repairs, organised a risk assessment and provided a 24 hour emergency telephone service.
16. The managing agents billed separately in respect of major works and the tenant raised no complaint in respect of this.
17. Insurance was arranged by the landlord separately from the managing agents. The landlord billed tenants directly for insurance and ground rent. Accordingly the managing agents had no responsibilities in respect of these important matters.
18. If the managing agents provided a full service including arranging insurance and raising demands for insurance and rent, then the figures charged for their services would have been reasonable. In our judgment, however, the amounts charged are too high for the modest services provided.
19. The tenant suggested that the managing agents should bill at 15 per cent of the other charges. In 2009 the items in the service charge apart from the managing agent's fees amounted to £902.50, so on this basis the managing agent would have recovered total fees of £135.38.

20. In our judgment that is too low. No managing agent would do the work done for that fee. Moreover, it is contrary to the RICS guidance to charge a percentage rather than a flat fee.
21. In our judgment a managing agent is entitled to charge a fee just “for being there”, in other words for being on stand-by if its services are needed by a tenant. Doing the best we can we consider that £150 per flat plus VAT is reasonable for each of the service charge years in question.

The costs

22. The Tribunal has a discretion as to who should pay the fees payable to the Tribunal. These comprise a £70 application and a £150 hearing fee. The parties have each had a modest degree of success. In our judgment the fairest outcome in respect of these fees is that they should be split equally between the parties, so that the landlord should reimburse the tenant £110 of the fees.
23. The tenant also applied for an order under section 20C of the Landlord and Tenant Act 1985 to prevent the landlord recovering the cost of the current application from them under the service charge. Mr Tucker indicated that BLR would charge £500 plus VAT for the preparation and his attendance at the hearing.
24. In our judgment the tenant has had only a modest degree of success, so that it would be wrong to deprive the landlord of their contractual rights under the lease. In these circumstances we refuse to make a section 20C order. This is without prejudice to the rights of other tenants in the block to make a section 20C application in their own right. We also make no determination as to whether the sums to be charged are reasonable or not. That is a matter for another day.

DECISION

The Tribunal accordingly determines:

- a. **that in the service charge year 2009 the professional fees of £100.63 are recoverable from the tenant but that the amount of the managing agent’s fee payable by the tenant be reduced to £150 plus VAT;**
- b. **that in the service charge year 2010 the professional fees of £63.16 be disallowed (but without prejudice to the landlord’s right, if any, to recharge the surveyor’s fee in 2011) and that**

**the amount of the managing agent's fee payable by the tenant
be reduced to £150 plus VAT**

- c. that the landlord do pay the tenant £110.00 in respect of the
fees payable to the Tribunal;**
- d. that the tenant's application for an order under section 20C of
the Landlord and Tenant Act 1985 be refused (but for the
avoidance of doubt without prejudice to the rights of other
tenants in the block to apply under that section).**



Adrian Jack, chairman

1st December 2011