



HM Courts
& Tribunals
Service

7909



Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON/00AE/LIS/2012/0002

Premises: 58c Victoria Road, Queens Park, London, NW6
6QA

Applicants: James Atha & Eve Crehan

Representative:

Respondents: AbbeyLadder Estates Ltd

Representative: Hampton Wick Estates

Date of hearing: 30 April 2012

Appearance for Applicants: Mr James Atha

Appearance for Respondents: Mr C Case of Hampton Wick

Leasehold Valuation Tribunal: Ms E Samupfonda LLB (Hons)
Mr I Thompson BSc FRICS

Date of decision: 21st May 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sums of £1,374.27 for the year 2006, £1,612.37 for the year 2007, £1,772.10 for the year 2008, £1,775.93 for the year 2009, £1,753.28 for the year 2010, £1,956.54 for the year 2011 and the estimated amount of £1,950 for the year 2012 are payable by the Applicant in respect of the building insurance.
- (2) The Tribunal determines that the sum of £100 per unit is reasonable and payable by the Applicant to the Respondent in respect of management in each of the service charge years in dispute.
- (3) The Tribunal determines that the sum of £544.24 is reasonable and payable by the Applicants to the Respondent in respect of the legal fees.
- (4) The Tribunal does make an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge,
- (5) The Tribunal determines that the Respondent shall pay the Applicants £175.00 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable by the Applicants in respect of the service charge years 2006 to 2012 inclusive. The items in dispute are building insurance premium, management fees, legal fees, general maintenance and on account costs of £500 per year for a new carpet.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. Mr J Atha lessee of the said premises appeared on behalf of the Applicants. Mr C Case of Hampton Wick Estates Ltd, the Respondent's managing agents appeared on behalf of the Respondent.

The background

4. The property, which is the subject of this application, is a 2 bedroom top floor flat in a converted 3-storey building containing 3 flats.

5. Photographs of the building were 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.
6. The Applicants 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.

The issues

7. At the start of the hearing the parties and the Tribunal identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for the service charge years 2006-2012 relating to building insurance premium, management fees, general maintenance, legal fees and on account payments of £500 per annum for a new carpet.
 - (ii) Whether an order under section 20C of the Act should be made and
 - (iii) Whether the Respondent should reimburse the Applicants their hearing and application fees.
8. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Service charge item & amount claimed

9. Building Insurance: year 2006 - £2374.27, year 2007- £2,612.37, year 2008- £2,772.10, year 2010 -£2,775.93, year 2011- £2956.54. The estimate for the year 2012 is £2,950

The Tribunal's decision

10. The Tribunal determines that the amounts that are reasonable and payable in respect of insurance premium are as set out above at paragraph (1).

Reasons for the Tribunal's decision

11. The Tribunal agreed with Mr Atha's assertions that the insurance premium throughout the service charge years was excessive. It considered the 3 alternative lower quotes that he had obtained. The quotes were found to be from reputable companies and appeared to be more or less on a like for basis

as Mr Atha had provided the insurers with all the information that he had been given by Hampton Wicks. The Tribunal did not agree with Mr Atha's view that terrorism cover was unnecessary given the location and the fact that they were residential premises. The Tribunal noted that the premiums provided by the alternative quotes ranged from £1,032.00 to £1,820.70. The Tribunal was not persuaded by Mr Case's assertion that the premium charged by his insurers was necessarily higher because it needed to reflect the potential for the flats being let to high-risk tenants. There were only 3 flats in the building under consideration and the nature of any tenancies could easily be clarified on a regular basis. The Tribunal heard that the insurance is placed with a broker known as Princess Insurance Agencies. It was said that the broker tested the market each year and obtained insurance for its property folio of some 15,000 units. The documentation provided in respect of insurance made reference to Sinclair Gardens Investments. Mr Case was unable to help the Tribunal with an explanation as to Sinclair Gardens' role in relation to the insurance for these premises other than to say that they received some benefit and that there was no link between Sinclair Gardens and the Freeholder. He did not know the amount of commission paid to the broker or Freeholder or indeed this third party, Sinclair Gardens. Mr Case also confirmed that Hampton Wick received 10% commission of the premium excluding terrorism cover and property owner. From this, it is apparent that there are at least 3 parties who derive benefit from the sums insured. Mr Case was not able to tell the Tribunal when the building was last valued for rebuilding costs.

12. Using our knowledge and experience and in the light of the figures quoted in the comparable evidence, the Tribunal determined that a reduction of £1,000 in each service charge year was reasonable in respect of the sums paid for insurance. The Tribunal considered that it was reasonable to include terrorism cover.
13. The Tribunal well understood Mr Atha's concerns about the fact that whilst the insurance is paid in November in each year he is charged on the basis of an estimate made in January the following year that is invariably higher than the sum expended. Further any excess is automatically placed into a reserve fund. Mr Case acknowledged this practice and said that he had been advised to do so by the Freeholder's legal team.
14. The Tribunal observed that clause 3 of the Fifth Schedule to the lease provides that any excess charged out or surplus should be paid to the tenant.

Service charge item & amount claimed

15. Management Fees; years 2006 -£585, 2007-£615, 2008-£690, 2009-2012-£945 per annum.

The Tribunal's decision

16. The Tribunal determines that the amount payable in respect of management fees is £100 per annum per unit.

Reasons for the Tribunal's decision

17. From the evidence as submitted, the Tribunal formed the view that the management fee charged (£315 per unit) whilst being at the higher end of the scale for good management it was not in itself an excessive sum. However, taking into account the level of service provided in this case, which amounted to few visits, arranging insurance and responding to queries, the Tribunal considered that this was excessive. It was apparent from the photographs produced that there is some disrepair to the building, the common parts are unkempt, the pathway is cracked and the door to the ducts cupboard has hung dangerously loose from the hinges for about 2 years. Although Mr Case was aware of these facts he has not taken corrective action despite charging a fee for general maintenance through the service charge account since 2005. The Tribunal was informed that there are proposals underway to carry out major works.
18. The Tribunal did not agree with Mr Atha's assertion that the Respondent is not entitled to any management fee given its failings. The evidence was that the agents had provided a service albeit low level. The Tribunal noted that the agents failed to adequately address the queries raised by Mr Atha, acted in breach of the lease by failing to apply the credit back to the Applicants and by applying generally poor accounting practices.
19. For these reasons, the Tribunal's judgement is that £100 per unit per year is a reasonable sum payable by the Applicant to the Respondent in respect of management fees.

Service charge item and amount claimed

20. General Maintenance: years 2006-7-£300, 2008-2012-£600 and Carpet costs £500.00 per annum.

Reasons for the Tribunal's decision

21. From the evidence, the Tribunal observed that since 2007 there has been an estimated service charge for general maintenance and new carpet for the common parts. However it is clear that there has been no expenditure incurred under these heads and no credits applied back to the Applicants. Mr Case accepted this and agreed with the Tribunal's calculation that a total credit of £1,349 is due back to the Applicants.

22. The Tribunal noted that the estimated service charge for the year 2012 is £600. Given the proposed work and outstanding repairs, the Tribunal considers that this sum is reasonable and therefore payable by the Applicants.

Service Charge item and amount claimed

23. Legal fees: £1,088.48 plus land registry fee of £8.00

Reasons for the Tribunal's decision

24. The Respondent incurred these costs in 2012 because the Applicants failed to pay their service charge and solicitors were instructed to recover the arrears. Mr Atha explained the reasons why he had not made payments and the numerous attempts that he had made to try and resolve the situation. From the correspondence referred to, it was apparent that the Respondent's managing agent failed to respond adequately or at all. County Court proceedings were issued in which the Respondent sought to recover £6,103 service charge arrears. Mr Atha paid £4,015, which he considered to be a reasonable amount in the light of his queries. Those proceedings were then withdrawn.
25. Clause 15 to the Fourth Schedule of the lease entitles the Respondent to recover legal fees as administration fees in these circumstances. On the face of it, the Applicants had genuine concerns about the service charge, which were not adequately addressed. They are however contractually obliged to pay the service charge on demand. Some payment was made albeit following the issue of legal proceedings. Had the concerns been fully addressed the need for litigation may not have arisen.
26. For these reasons, the Tribunal's judgement is that £544.24 is a reasonable sum which is payable by the Applicants.

Reimbursement of fees and Application under s.20C

27. 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/ and hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund £175 to the Applicant within 28 days of the date of this decision.

28. Mr Case indicated at the hearing that he would not seek to recover the costs incurred in these proceedings through the service charge. Had such an application been made, Mr Atha said that he would have resisted it vigorously because of the efforts that he has made to try and resolve matters.
29. Having heard the submissions from the parties and taking into account the determinations above, although Mr Case indicated that no costs would be passed through the service charge, for the avoidance of doubt, the Tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Chairman: Evis Samupfonda

Date: 21st May 2012

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 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).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 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.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 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.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).

Building Insurance

Year	Amount Claimed	Tribunal Decision
------	----------------	-------------------