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LONDON RENT ASSESSMENT PANEL

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

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| Case Reference: | LON/00AL/LSC/2011/0805 |
| Premises: | 20 Walpole Place London SE18 6TW |
| Applicant: | Royal Borough of Greenwich |
| Representative: | Mr Darryn Harris Solicitor with the Applicant |
| Respondent: | Ms Joan Igbinoghene |
| Representative: | N/A |
| Date of hearing: | 2 nd April 2012 |
| Appearance for Applicant: | Mr Darryn Harris |
| Appearance for Respondent(s): | Ms Igbinoghene appeared and represented herself. |
| Leasehold Valuation Tribunal: | Dr Helen Carr Mr M Taylor FRICS Ms Jackie Guest |
| Date of decision: | 19 th April 2012 |

Decisions of the Tribunal

- (1) The Tribunal determines that the sums set out in the table below are payable by the Respondent in respect of the service charges in dispute for the years 2003 – 04 to 2011/12

| | |
|------------------------|-----------|
| Cleaning & Environment | £529.11 |
| Grounds Maintenance | £399.82 |
| Refuse Storage | £55.86 |
| Energy | £513.85 |
| Insurance | £1,588.38 |
| Repairs | £147.51 |

- (2) The Tribunal makes the determinations as set out under the various headings in this Decision
- (3) The Tribunal determines that the Respondent shall pay the Applicant £ 150 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant
- (4) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court.

The Background

The application

The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2003 – 4 to 2011 - 12.

Proceedings were issued in the Woolwich County Court under claim no. OUA34135. The claim was transferred to this Tribunal, by order of Deputy District Judge Wright on 22nd November 2011.

The relevant legal provisions are set out in the Appendix to this decision.

The hearing

1. The Applicant was represented by Mr Darryn Harris at the hearing and the Respondent appeared in person.
2. Immediately prior to the hearing the Applicant handed in further documents, namely [the plan of the estate and a revised schedule of service charges demanded and in dispute.
3. The property which is the subject of this application is a three bedroom maisonette on a local authority estate, the Walpole Estate, which comprises 87 units. Nine of the units are leasehold properties.

4. 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.
5. The Respondent holds 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 and will be referred to below, where appropriate.

The issues

6. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) Grounds Maintenance
 - (ii) Energy bills
 - (iii) Insurance premiums
 - (iv) Repairs
7. 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.

Grounds Maintenance

8. Mr Carey Gay gave evidence to the Tribunal on behalf of the Applicant in connection with the charges for Grounds Maintenance. Grounds Maintenance is carried out to the estate by an organisation, Cleansweep, which is internal to the Applicant. Cleansweep took over responsibility for the maintenance of the estate in 2007. Mr Gay is the assistant manager of Cleansweep. He informed the Tribunal that he is an experienced and qualified horticulturalist.
9. It was clear from Mr Gay's evidence that Cleansweep has made considerable efforts to provide a much more accurate account of the services it provides to the estate than its predecessor. Unfortunately the consequence of this has been that in 2010/11 the level of charges to the lessees on the estate more than doubled.
10. Mr Gay considered that the charges for the services provided were fair and reasonable. He pointed out to the Tribunal the extent of the grounds, the extent of the shrubbery on the estate and the length of the hedges. He also indicated that the layout of the grounds meant that it was difficult to mow the lawns with a ride-on mower; instead strimming and clearing were required which is more expensive.
11. He indicated that the aim (dependent upon the weather) was to cut the grass every 14 days. He also indicated that Cleansweep carry out other work on the estate, such as additional grass cutting prior to estate events, weekly free collection of bulk rubbish and clearing of Japanese knotweed in the area backing onto the school.
12. Mr Gay admitted to the tribunal that there are no time sheets kept for the work carried out on the estate at the present time. In the near future costing will be timed to the minute.
13. Mr Hardev Sandhu also gave evidence in connection with the Grounds Maintenance. He explained that there had been a move from estates maintenance being a general charge to the council tax payer to a charge made to the Housing Revenue Account. That

move had been subsidised for the first three years, but now the estate is charged the full costs.

14. Mr Gay indicated that the Estate Management Board had not complained about the service provided. He also stated that he would be aware of around 90% of complaints made so he was confident that he would have some knowledge of any dissatisfaction with the contract.
15. The Respondent is not satisfied with the service provided. She points out that the estate benefits from input from offenders doing community service 'pay back' who do a great deal to remove dead leaves etc from the hedges and shrubs. She also indicated that the police community support officers had carried out quite a lot of work cutting back on hedges and shrubbery because the density of the vegetation encouraged potential criminal activity. She considered that the Applicant was benefitting from all the additional work carried out on the estate and continuing to charge at a high rate for its services.
16. She also found it difficult to believe that the grass is cut on a fortnightly basis. She had doubts as to whether the service promised is the service provided. She also observed that if the grass was cut fortnightly it is difficult to understand why additional cutting is necessary prior to community events. She considered that the density of the shrubbery indicated that insufficient work was done pruning the shrubs.

The Tribunal's decision

17. The Tribunal determines that the amount payable in 2010 - 11 in respect of ground maintenance should be reduced to £70 for that year. For the other years it determines that the charges are reasonable.

Reasons for the Tribunal's decision

18. The Tribunal accepts that the grounds require considerable maintenance and that the complexity of the layout adds to the costs of the grounds maintenance. It is for these reasons that it accepts the general level of charges of around £60 - £70 per annum and that indeed it may be possible to justify a higher charge.
19. However it is very concerned that the re-evaluation of the cost of the contract was carried out without consultation or discussion with the estates management board and in particular without consultation with the lessees. It is not reasonable to double the cost of the service without such consultation and without giving the lessees an opportunity to consider whether the level of service is appropriate for the estate, whether alternatives could be sought perhaps in terms of the layout and extent of the hedging etc to achieve reductions in costs or whether other quotations could be provided to see if it would be possible to obtain the same service cheaper. It was also surprising to the Tribunal that the estates management board did not have the specific details of the contract for service provision provided to them.
20. The Tribunal also considered that it was not reasonable to charge the higher charge without the benefit of time sheets so that there was evidence that the work being charged for was being carried out.
21. The Applicant must bear in mind that it is spending lessees' monies and that it should be mindful of the need to do so with care. It should be alert to the consequences of doubling the costs of carrying out the works. It is for these reasons that the Tribunal determines to reduce the charge made for grounds maintenance to £70 for the year 2010- 11.

Charge for hire of Paladin bins

22. The Applicant charges the costs of hiring Paladin bins to the estate and the Respondent is required to pay her proportion of these costs.
23. The Respondent argues that this is not fair as other home owners are provided with bins for free.

The Tribunal's decision

24. The Tribunal determines that the amount payable in respect of the charges for the hire of Paladin bins is fair and reasonable.

Reasons for the Tribunal's decision

25. This is a charge that is reasonably incurred by the Applicant in connection with its responsibilities under the lease. The Applicant only charges the lessees what it pays in hiring costs. Therefore the amount is reasonable and payable.
26. The Applicant agreed at the Tribunal to consider the possibility of the Estate Management Board purchasing Paladin bins and therefore avoiding the need to pay annual hire charges. This may prove a solution for the future.

Energy charges

27. The Applicant charges the costs of the communal electricity to the estate. The costs include charges for lighting the internal and external communal areas, operating costs for the lifts and the costs incurred by the office which is shared by the concierge and the estates management board.
28. The Applicant provided copies of the invoices made up from the bills provided by the supplier within its bundle.
29. The Respondent considered that the supply of invoices was insufficient and wanted to see the bills from the supplier so that she could be sure that the Applicant was not overcharging her. As far as she was concerned the Applicant could be making up the figures.

The Tribunal's decision

30. The Tribunal determines that the amount payable in respect of the electricity costs is fair and reasonable.

Reasons for the Tribunal's decision

31. The invoices prepared by the Applicant accord with the charges it has levied. The Respondent has no evidence to suggest that the charges are unreasonable and indeed the charges are very similar to those estimated to be charged at the time that the Respondent acquired her lease.
32. The Respondent had no evidence that the Applicant was making up its figures.
33. The Tribunal considers, drawing on its own expertise, that the charges levied are reasonable considering the scope of the communal use of electricity.
34. The Tribunal notes that the Applicant indicated that it would arrange for the estates management board to be provided with copies of the bills in future which may well avoid the mistrust with which the Respondent has treated these charges.

Insurance charges

35. The insurance charges levied by the Applicant derive from a block policy for all the properties owned by the Applicant in the borough. The Applicant passes on any discounts to its lessees. It points out that the market for this type of insurance is small, and that it has negotiated long term agreements in order to minimise the costs of the premiums paid. It also points out that it has no choice but to pay the tax on insurance that is levied nationally.
36. The Respondent argues that the insurance premium is high. She 'googled' for comparative quotations and received quotations of around £145. She did not bring this evidence with her. Moreover, as the Tribunal pointed out to the Respondent, insurance quotes gained via the web rarely bare much relation to what would be charged to a lessee within a council block. Very few insurers are prepared to cover this type of property. The Tribunal made it clear that the sort of evidence it would be looking for to demonstrate that these payments were unreasonable would be evidence about the level of insurance paid by lessees in similar blocks owned by a local authority freeholder.

The Tribunal's decision

37. The Tribunal determines that the amount payable in respect of the insurance premium is fair and reasonable.

Reasons for the Tribunal's decision

38. The Respondent has produced no evidence that the amount charged is unreasonable. The Tribunal drawing on its own expertise and knowledge of the insurance market considers that the amount charged is fair and reasonable.

Repair charges

39. The Applicant produced the call out sheets relating to the charges levied for repairs.
40. The Respondent queried whether two of those invoices actually related to the Walpole Estate but was not able to produce evidence that the monies had been mischarged to the Walpole state account.
41. There is a possibility that the estates management board would be able to verify whether or not those call out sheets actually related to Walpole Estate. This evidence was not produced to the Tribunal. However the Tribunal is confident that if evidence

emerges that the monies were wrongly charged that the Applicant would rectify the position.

The Tribunal's decision

42. The Tribunal determines that the amount demanded in respect of repair works is fair and reasonable.

Reasons for the Tribunal's decision

43. The Applicant produced the relevant call out sheets. The Respondent was not able to provide any evidence that the call out sheets did not relate to the estate. Therefore as it appeared that the work had been carried out and that the charging rate was reasonable the amount demanded is fair and reasonable.

Application under s.20C and refund of fees

44. 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 it had paid in respect of the application/ hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.
45. The landlord indicated that no costs would be passed through the service charge account.

The next steps

46. The Tribunal has no jurisdiction over county court costs. This matter should now be returned to the County Court for determination of any outstanding matters.

Chairman:



[name]

Date:

19 / 4 / 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 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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;

- (b) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (c) 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;
 - (d) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (e) 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.
- (3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.

- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

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).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
 - (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
 - (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.