HM Courts & Tribunals Service

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Residential Property

LONDON RENT ASSESSMENT PANEL

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

Case Reference:	LON/00AT/LSC/2011/0797
Premises:	136 Norman Crescent, Heston, Middlesex, TW5 9JW
Applicant (Tenant):	Mrs S Rahman
Respondent (Landlord):	London Borough of Hounslow
Landlord's Representative:	Hounslow Homes Ltd.
Date of hearing:	9 May 2012
Appearance for Applicant(s):	Mr and Mrs Rahman in person
Appearance for Respondent(s):	Mr A Redpath-Stevens, counsel, instructed by Hounslow Homes Ltd.
Leasehold Valuation Tribunal:	Ms F Dickie, Chairman Mr F Coffey, FRICS Mr P Clabburn
Date of decision:	19 June 2012

Decisions of the Tribunal

1. The tribunal has no jurisdiction in relation to actual service charges for the years 2005/06 – 2008/09. All actual service charges demanded for the years 2009/10 and 2010/11 are reasonable and payable. The challenge to communal aerial charges was withdrawn. The tribunal makes the order sought under s.20C of the Act. The tribunal orders the Respondent to reimburse the Applicant the £350 fees paid.

The application

2. The Applicant leaseholder seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the Act") as to the amount of service charges payable. The relevant legal provisions are set out in the Appendix to this decision. The tribunal issued directions at an oral pre trial review that took place on 14 December 2011, which were amended on 20 December 2011. The subject premises are a self-contained 3 bedroom maisonette within a purpose built block served by a district heating system. The landlord is the London Borough of Hounslow and the block is managed by Hounslow Homes, an Arms Length Management Company wholly owned by the landlord. The Applicant was not the original right to buy purchaser of the lease. She took an assignment of it in May 2006.

3. Service charges disputed are those from the years 2005/06 to 2010/11 in respect only of charges for district heating and administration / management, as follows:

2005/06	
District Heating Administration Charge	£111.73
District Heating	£763.44
Administration / Management Charge	£180.90
2006/07	
District Heating Administration Charge	£113.55
District Heating	£564.72
Administration / Management Charge	£188.64
2007/08	
District Heating Administration Charge	£111.12
District Heating	£643.29
Administration / Management Charge	£171.84
2008/09	
District Heating Administration Charge	£108.42
District Heating	£572.80
Administration / Management Charge	£188.00
2009/10	
District Heating Administration Charge	£65.10
District Heating	£828.98
Administration / Management Charge	£199
2010/11	
District Heating Administration Charge	£72.89
District Heating	£1100.54
Administration / Management Charge	£203.00

4. All disputed amounts demanded as above were for actual expenditure, not estimated. At the hearing a challenge to communal aerial charges was withdrawn by the Applicant.

Preliminary Issue - Jurisdiction

5. Under section 27(4) of the Landlord and Tenant Act 1985 no application to a Leasehold Valuation Tribunal for a determination under section 27A(1) may be made in respect of a matter that has been agreed or admitted by the tenant. The Respondent contended that the Applicant has accepted the charges in this application from 11 May 2006 (the date she took an assignment of the lease) up to 31 March 2010.

6. Hounslow Homes received a signed agreement dated 1 November 2009 to pay a debt of £584.19 to 31 March 2010 by instalments. At that time the amount owed to 31 March 2010 for arrears and estimated charges was £584.19 (a debit of £161.47 carried forward plus charges for December 2009 to March 2010 of £422.72).

7. The agreement was produced to the tribunal and included the phrase "We/I hereby accept liability for the above debt." It is signed in the name of the Applicant Safa Rahman, who confirmed at the hearing that she had signed it. Mr Redpath-Stevens said this matter of jurisdiction was raised on behalf of the Respondent at the pre trial review. He sought determination of it as a preliminary issue regarding the tribunal's jurisdiction under s.27A in respect of any service charges to 31 March 2010. The tribunal heard argument from both parties on this issue at the beginning of the hearing.

8. Mr Redpath-Stevens argued that the agreement amounted to an admission of the factual matrix that applied at that time - that certain charges had been levied and certain payments made, leaving a net debt that was accepted. He considered that in order to admit the debt it was necessary to admit the balancing of the service charges that make up that debt.

9. Mr Rahman, speaking on behalf of his wife the tenant, said that the document had been signed on the assumption that she retained her right to challenge unreasonable service charges or those charged incorrectly. He recalled that the document had been received from the Council with two other such agreements – one in respect of major works charges and another in respect of the building insurance contribution. Mr Rahman said there was no confusion that the document in question concerned the service charge element. He considered that the agreement was that the tenant was liable to pay service charges, and agreed to the charge for the year 2009/10 and the carried forward balance from previous years, but that if the charges were incorrect or unreasonable they would not be payable.

10. Having considered the respective submissions, the tribunal agrees with the position of the Council that the document signed and dated 1 November 2009 is an admission to the service charges payable to that date, including the estimated amount for the year 2009/10. The admitted figure includes a debt carried forward from a previous period, which is arrived at with reference to the service charges levied and paid since the Applicant purchased the lease. The agreement to pay the debit of £161.47 cannot be understood to be an agreement only in relation to the year in which it arose and that prior. It is a cumulative account of all annual service charges outstanding since 2005/06. There is no evidence to support Mr and Mrs Rahman's understanding of the agreement, which does not reflect the meaning on its face and its legal effect.

11. The tribunal is satisfied that in having accepted liability for that debt the tenant had admitted and agreed the service charges to the date of the agreement, including the annual estimate for the year 2009/10. Accordingly, by virtue of section 27(4) the tribunal has no jurisdiction to consider them.

The Applicant's Case

12. The Applicant asserts that she should not be liable to make any contribution towards district heating administration because these heads of charge were not specifically mentioned in the Section 125 offer notice when the right to buy was exercised by the former secure tenant. She said she was not sure whether the recharge costs and the accounting methods for calculating the district heating charges and the administration management charge are fair and transparent.

13. Mr Rahman said that the main reason for having brought the case was the lack of information provided by Hounslow Homes in response to his enquiries for copy invoices in support of its expenditure, which he had been querying since 2007. Hounslow Homes provided a spreadsheet breakdown of expenditure for previous years on 7 March 2008 and Mr Rahman then requested sight of supplier invoices on numerous occasions.

14. As a result of the Council's disclosure in response to the tribunal's directions, a number of these invoices had been provided to him, but not all. He objected to all charges not supported by an invoice and observed there had been apparent cases of incorrect charges – for example he considered invoices 3042304 and 3035759 showed duplicated charging. Having analysed the electricity and gas meter numbers to which the relevant charges related, he considered the Applicant's block had been charged for consumption elsewhere. The leaseholder does not appear to have made a formal request for a summary account under section 21 of the Act, and thereafter for inspection under section 22 within 6 months thereof, as had been her right.

15. Mr Rahman observed that the District Heating Administration Charge was made up solely of a proportion (30%) of certain salaries, and he considered that these services should already have been met within the management charge. He queried how this charge was calculated.

16. Mr Rahman also challenged the maintenance charges, which had fluctuated from about £1000 to over £6000 for this block, and over £17,000 in total had been charged since T Brown had taken over in 2009/10, even though the communal boiler was replaced in the last couple of years. He considered that if it was breaking down and inefficient the Council should be looking at alternatives, e.g. individual heating systems. He believed the Applicant was paying a lot more for gas, electricity and repairs than it would cost to run a domestic heating system.

17. The Applicant said the Council should only charge tenants for work done to their boiler and noted that under the old system the service charges were lower. She sought recovery of her tribunal application and hearing fees totalling £350.

Respondent's Case

18. In spite of the agreement as to service charges to 2009/10, Mr Redpath Stevens confirmed on behalf of the Council that where, as a result of queries on invoices raised by Mr Rahman in these proceedings, it identified that charges had improperly been applied to the wrong account, it would make the appropriate adjustments and, if applicable, the relevant credit to the leaseholder. At the hearing such adjustments in favour of the tenant were identified and conceded as follows:
£13.87 for 2006/07
£54.73 for 2007/08

£14.58 for 2008/09

19. Identification of further adjustments necessary would require the Council to investigate the meter numbers in the relevant invoices. Mr Redpath Stevens confirmed that exercise would be carried out.

20. The tribunal heard evidence from Mr A. Salmon, Leasehold Accounts manager for Hounslow Homes. He confirmed that the district heating administration charge was not duplicated in the general management charge, the former being for rent collection, service charges and general property management, and the latter being calculated largely from costs of the Home Ownership Unit relating to management of the district heating system. He said that the time of everyone working in that Unit is apportioned depending on whether they are working on district heating, or service charge matters like insurance etc.

21. The heating administration charge is costed on 2 elements – departmental support, being a 30% apportionment of the departmental support expenditure to reflect the senior management input and associated overheads, and support salaries of the electrical and mechanical engineers who manage the district heating systems for the borough. Mr Salmon explained that within the Home Ownership Unit percentages are applied based on a study of how much time staff spend on each type of work – general management and heating administration – though since the latter involves two people working full time, the full cost of managing the district heating system is not being charged. Furthermore, Mr Salmon said that only 4% of the cost of the customer service centre is for leaseholders – because tenants, who report internal repairs, use it more. About 20% of the Council's properties are leasehold, and of 4384 properties on a district heating system, 475 are leasehold. The district heating charge is apportioned across all 4384 properties, but only the leaseholders pay their share of it.

22. Regarding charges for maintenance, Mr Salmon said that since work done by the in-house Hounslow Homes Repair Service is not invoiced, but recorded on the Council's online system and costed according to a schedule of rates, it is not supported by invoices. Other invoices for contractor services are coded on the accounts system and filed by transaction number, which made it difficult to retrieve them for a particular block to assist in leaseholder enquiries. Those older than 2 years are archived.

23. With regard to the increasing service contract costs, Mr Salmon explained that the contract was formerly with Planned Maintenance Engineering to maintain the boilers. That contract did not relate to the infrastructure outside of the boiler houses or work within the flats - all such works were done in house and charged separately. After competitive tendering, the contract had been awarded to T Brown in 2009/10 for the maintenance and repair of the whole system, including within the flats and all repairs up to £1000. More expensive repairs are charged separately. Mr Salmon considered that the evidence showed that in 2009/10 and 2010/11 administration charges had come down and that increased heating charges included the higher cost of fuel.

24. Mr Salmon observed that prior to the new contract heating maintenance charges were calculated in a different way. Maintenance time was not charged according to time spent on a particular block – but charged across the whole borough and charged proportionately. The previous charges did not therefore represent the

actual cost of repairs and maintenance to the communal boiler at the Applicant's block – and information about those costs was not available. However, this was not the case anymore and did not relate to the years in dispute.

25. The tribunal heard evidence from Ms G Goodwin, Home Ownership Manager for Hounslow Homes Ltd. who explained the Council's response to the enquiries made by Mr Rahman, and confirmed he had not always had the response to which he was entitled. Some invoices could not be found in the time scale ordered in the tribunal's directions. Greater efforts to find a complete set of invoices had not been made because the Council was working from the position that the debit to 2009/10 had been accepted. She said that the general management charge, while not low, was not out of kilter with charges in the private sector.

Decision

26. The initial period of the lease for the purpose of the section 125 notice, within which the repairs and maintenance charges specified were relevant, ended on 31 March 2008. It is therefore not relevant to the subject matter in dispute.

27. The tribunal observes that under Clause 5(d) of the lease the Council covenants that it will "so far as practicable" provide the specified "Services", which include the supply of hot water and central heating to the flat. By sub clause (2) the Council "may in their absolute discretion on reasonable notice cease to supply heating or hot water to the Flat should they decide that the cost of providing heating and hot water to the Flat and other Flats in the building and other premises serviced by the same boiler is uneconomic". It is therefore a matter for the Council reasonably to decide whether to discontinue the district heating system. There is no evidence that the Council has acted unreasonably in continuing to provide the system.

28. In light of its decision on jurisdiction as above, the tribunal has determined whether the disputed actual service charges for the years 2009/10 and 2010/11 were payable. The Applicant had successfully shown that there are mistakes in the service charge due to incorrect billing of individual invoices, but such issues were only raised for years in relation to which the tribunal has no jurisdiction. Nevertheless, the Council is clearly willing to make adjustments where it is shown it has made an accounting error. With regard to the years 2009/10 and 2010/11 no specific invoices were raised in dispute and the only challenge was with regard to the heads of the service charge. The thrust of the challenge brought was whether the charges were payable, duplicated, and properly apportioned. No case was advanced that the underlying charges were unreasonable.

29. The difference between the estimated and annual service charge contribution for the year 2009/10 is negligible at £19.06, though there were modest fluctuations between the different heads of charge. The tribunal has no power to determine whether the amount of those actual charges was reasonable in light of the agreement made by the tenant.

30. In 2010/11 the cost of the annual contract apportioned according to the size of the system is £562.43, and a boiler specific charge (a repair cost not covered by the contract) was charged at £4769.37.

31. The tribunal finds that the District Heating Administration Charge and general management charges are recoverable as a service charge. Both of these charges are encompassed by the terms of the lease. Under Clause 4 the lessee undertakes to pay the service charge, which under the Sixth Schedule may include all costs of complying with the Council's covenants in 5(d) and the administration costs of managing the premises.

32. The lease expressly allows the payment of salaries and managing agents. The Seventh Schedule requires the supply of hot water and central heating to the flats, and Paragraph 3 refers to the employment of " ... any other persons necessary for the continued supply of the said services." Under Clause 5(d) the Council undertakes to provide the services and under Clause 5(h) is entitled to appoint managing agents and remunerate them properly for their services, to employ professional and specialist people, firms and companies and to pay them for their services, and to delegate the performance of any of its obligations to an appropriate firm or company.

33. The Applicant is therefore clearly liable to pay the two management charges. Her challenge to their amount lacked in particularity. The Applicant did not give evidence of what a reasonable cost should be for any of the matters in dispute. The complaints advanced by Mr Rahman were general in nature and not supported by evidence. The tribunal finds that the apportionment of the Hounslow's Homes' management charge and heating management charges is also reasonable. It is content with the Council's explanation as to the apportionment of management charges based on a time and motion study and finds that they is no overlap between the two charges. The apportionment takes account of the fact that staff perform different functions and that Hounslow Homes, running a large and complex operation, is entitled to make, and has made, a reasonable judgement as to charging that time proportionately under the appropriate service charge head.

34. With regard to the maintenance contract costs and additional repair charges above £1000, the tribunal also finds these are reasonable and payable as a service charge. It is suggested that the maintenance contract is too expensive and higher than the previous method of charging. The charges in previous years may have been skewed by the apportionment method applied at that time, and cannot be said to reflect actual expenditure on the block. Whether this was appropriate or not, it is not relevant to the years in respect of which the tribunal has the jurisdiction to reach a determination.

35. There is no evidence that the maintenance contract awarded is unreasonably costly. The contract only looks poor value to the tenant because there was exceptional expenditure in 2010/11. In another year all repairs could be under £1000 and the tenant would have saved under the contract. One cannot look at a short period of time in isolation and conclude the new contract does not represent good value for money.

36. It has not been suggested by the Applicant that the boiler repair was an unreasonable cost or did not need doing. The installation in 2010/11 of a new aluminium heat exchanger to the boiler following failure of the existing one was a necessary repair and there is no evidence that the cost of £4749.37 was not reasonable.

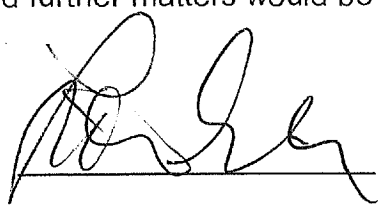
37. The tribunal finds that all annual service charges for annual expenditure in the years 2009/10 and 2010/11 are reasonable and payable.

Costs and fees

38. The leaseholder made an application under s.20C of the Act in respect of the landlord's costs of the proceedings to prevent their recovery through the service charge account. The Council said it would not charge costs to the service charge account and was therefore content for tribunal to make an order under s.20C.

39. Under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 the tribunal has the power to refund any fees paid. The Respondent resisted the tenant's application for an order under that regulation, submitting that it had spent a considerable number of person hours preparing for this response.

40. In the present case the tribunal considers it appropriate to order the Respondent to refund the Applicant's tribunal fees of £350. This might be considered an unusual step given that it has concluded it has it has no jurisdiction in relation to many of the years specified in the application and that the Applicant case has been unsuccessful. Costs normally follow the event. However, the tribunal considers this order justified in this particular case because the Applicant is a litigant in person and Hounslow Homes has never provided the requested invoices before even though Mr Rahman had made requests for them for years. It was the making of this application that finally secured at least partial disclosure and some concessions from the Council that inappropriate charges had been made and further matters would be investigated.

Chairman 

Date: 19 June 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.