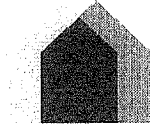


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**HM Courts  
& Tribunals  
Service**



**Residential  
Property  
TRIBUNAL SERVICE**

**LONDON RENT ASSESSMENT PANEL**

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

**Case Reference:** LON/00AT/LSC/2011/0861

**Premises:** 98 Alexandra Gardens Chiswick London W4 2RZ

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**Applicant:** London Borough of Hounslow

**Representative:** Judge and Priestley Solicitors

**Respondent(s):** Ajaya Kumar Indrayen

**Representative:** N/A

**Date of hearing:** Monday 2<sup>nd</sup> July 2012

**Appearance for Applicant(s):** Ms Lina Mattsson of Counsel

**Appearance for Respondent(s):** Mr Indrayen appeared and represented himself

**Leasehold Valuation Tribunal:** Dr Helen Carr  
Mr Ian Thompson BSc FRICS  
Miss Roslyn Emblin

**Date of decision:** 23rd July 2012

### **Decisions of the Tribunal**

- (1) The Tribunal determines that the sum of £570.97p is payable by the Respondent in respect of the service charges for the years 2010/11 and 2011/12
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision
- (3) The Tribunal makes 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.
- (4) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Brentford County Court.

### **The application**

1. 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 2010 -11 (actual costs) and 2011 -12 (estimated costs).
2. Proceedings were originally issued in the Northampton County Court under claim no. 1XZ75406. The claim was transferred to the Brentford County Court and then in turn transferred to this Tribunal, by order of District Judge Plaskow on 6th December 2011.
3. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

4. The Applicant was represented by Ms Lina Mattsson at the hearing and the Respondent appeared in person.
5. Immediately prior to the hearing Ms Mattsson handed in further documents, namely an updated account statement and a service charge certificate for the service charge year ended 31<sup>st</sup> March 2011 together with supporting documents.
6. Mr Indrayen handed in a notice of transfer of proceedings to Brentford of a claim made against him by the Applicant in connection with the same property but relating to different service charge years dated 10 May 2012. Mr Indrayen intends to ask Brentford County Court to transfer those proceedings to the LVT and asked the Tribunal to adjourn the current application so that it could be consolidated with that claim.

7. Ms Mattsson resisted the application for the adjournment on the grounds that the two claims were not linked and could be dealt with separately, that there was no certainty that the case would be transferred from Brentford County Court to the LVT and that the Applicant was entitled to recover its standard service charges as expeditiously as possible.
8. The Tribunal refused Mr Indrayen's request for an adjournment on the grounds argued by Ms Mattsson.

### **The background**

9. The property which is the subject of this application is a ground floor three bedroomed flat in a purpose built local authority block. The estate comprises 108 flats organised into two U shaped blocks. The particular leg of the U shaped block which includes the property contains fifteen flats, numbers 94 – 108.
10. 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.
11. 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**

12. At the start of the hearing the parties identified the relevant issues for determination as follows:
  - (i) The payability and/or reasonableness of service charges demanded for each of the years in dispute relating to the door entry system
  - (ii) The payability and/or reasonableness of service charges demanded for each of the years in dispute relating to the administration and management charges
  - (iii) The payability and/or reasonableness of service charges demanded in 2010/11 for new TV Aerial Installation

13. 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 charges for door entry system**

14. Following perusal of the lease the Applicant conceded that the lease did not entitle it to claim the costs of the door entry system. The Tribunal therefore does not need to make a determination on this issue.

#### **Administration and Management charges**

15. The administration and management charges for the years in dispute are £203 for the year ending 31<sup>st</sup> March 2011 and £200 (estimated) for the year ending 31<sup>st</sup> March 2012.
16. The Applicant relies on clause 5(h) of the lease in respect of the ability to incur and seek recovery of management and administration charges. This provides that the council shall at all times during the term hereby granted manage the premises in a proper and reasonable manner and the Council shall be entitled:  
(i) To appoint if the council so desires managing agents for the purpose of managing the premises and to remunerate them properly for their services.
17. The Applicant employs Hounslow Homes to manage its leasehold properties.
18. The Lessee's covenant to pay service charges attributable to the flat includes at Part 1 paragraph c of the Sixth Schedule the following: 'The administrative costs of managing the Premises including the costs of employing and paying professional men agent contractors or employees in and about the performance of any of the said covenants'.
19. Mr Gerald Anderson, an Income Officer with Hounslow Homes gave evidence on behalf of the Applicant, that the management of the property includes a range of services as follows:
  - (i) Providing local housing management to the estate, including inspections, raising repairs and dealing with nuisance
  - (ii) Meetings with residents
  - (iii) Maintaining records of leaseholders
  - (iv) Identifying rechargeable costs and calculating estimated and actual recharges for each financial year

- (v) Billing service charges and ground rent
  - (vi) Collecting charges and accounting for payments received
  - (vii) Arranging leasehold buildings insurance and supporting leaseholders in their own block policy claims
  - (viii) Providing newsletters and handbooks
  - (ix) Responding to correspondence and queries
  - (x) Customer service centre
20. The costs of providing these services to leaseholders are logged by Hounslow homes and the total is then split between all the leaseholders of the Applicant. Two levels of management charges are levied. The lower charge is paid by those leaseholders, typically lessees of street properties who pay £100 or less per annum in service charges. The higher charge is paid by the remainder of the lessees whose management services include for instance the costs of running the caretaking service and grounds maintenance.
21. Mr Anderson said that the charges were lower than those levied by his previous employer, Kensington and Chelsea, who charged around £250 per annum. He said that the costs were currently being market tested. He was confident that they were reasonable when considered alongside the management charges levied by RSLs and other London Boroughs.
22. Mr Indrayen considered that the costs were too high for the services he received. He was not able to provide a reasonable alternative figure to the Tribunal.

### **The Tribunal's decision**

23. The Tribunal determines that the amount payable in respect of administration and management costs is reasonable and payable by Mr Indrayen.

### **Reasons for the Tribunal's decision**

24. Mr Anderson had provided a coherent explanation of the charges levied, the services provided and the reasonable apportionment of those charges. The lease enables the Applicant to make such charges. Mr Indrayen provided no evidence to demonstrate that the charges were not reasonable or to substantiate any alternative charge.

### **The payability and/or reasonableness of service charges demanded in 2010/11 for new TV Aerial Installation**

25. The Applicant argues that the new TV aerial was installed during the 2010/11 financial year in response to the change over required from the old analogue system to digital for all homes in the country. The costs incurred were a one-off costs for the installation and repair and maintenance of any necessary elements.
26. The Applicant relies upon clause 5c of the lease. This provides that the Council will keep in good repair and condition all other property over or in respect of which the Lessee has been granted rights under the Second Schedule hereto.
27. The Second Schedule at paragraph 10 includes a right granted to the Lessee to 'connect a television set in the Flat with an aerial erected by or on behalf of the Council Provided That nothing herein contained shall oblige the Council to erect any such aerial'.
28. Mr Anderson gave evidence that the Applicant had entered into a £2 million plus contract with Avonline to provide the necessary aerials for all of its blocks. Lessees were required to pay a one off charge of either £208 or £235 dependent upon whether the wiring is internal or external.
29. Mr Indrayen argued that the installation of the new aerial was not necessary, that he could receive digital channels via a digital television connected to the existing aerial, or he could purchase a digital box.

### **The Tribunal's decision**

30. The Tribunal determined that the one off charge of £208 for the installation of the new TV aerial was not payable.

### **Reasons for the Tribunal's decision**

31. The Tribunal found the provisions of the lease in connection with the TV aerial difficult to comprehend. However it decided that it was not necessary for it to construe the relevant provisions as it was not persuaded by the Applicant that it had demonstrated that the costs incurred in renewing the TV aerial was reasonable. Drawing on its own knowledge and expertise it determined that the decision to install a new aerial was contingent upon a number of factors; the quality of the existing aerial and any amplifier and other such equipment, the nature of the reception in the area of the block and the quality of the connection of individual TVs to the block aerial. The Applicant provided no evidence of the reasoning process it had gone through in deciding to install a new aerial to the Respondent's block. In the absence of such evidence the Tribunal determined that the cost was not payable.

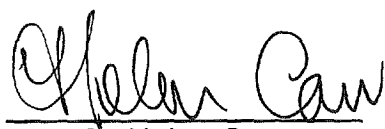
### **Application under s.20C and refund of fees**

32. At the hearing, the Respondent applied for an order under section 20C of the 1985. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal 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 Applicant may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

**The next steps**

33. The Tribunal has no jurisdiction over county court costs. This matter should now be returned to the Brentford County Court.

Chairman:

  
Dr Helen Carr

Date:

23<sup>rd</sup> July 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;
  - (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.
- (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.