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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION  
UNDER SECTIONS 27A OF THE LANDLORD AND TENANT ACT 1985 &  
SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

**Case Reference:** LON/00AT/LSC/2012/0111

**Premises:** 2 Ochre Court, Elvedon Road, Feltham,  
Middlesex, TW13 4RF

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**Applicant:** St James Place (Feltham) Residents Company  
Limited

**Representative:** Crabtree Property Management LLP

**Respondent:** Miss M A E Pereira

**Representative:** In person

**Date of hearing:** 29<sup>th</sup> May 2012

**Appearance for Applicant:** Ms C Zanelli, solicitor  
Mr J Naylor, managing agent

**Appearance for Respondent(s):** Did not attend and was not represented

**Leasehold Valuation Tribunal:** Ms E Samupfonda LLB(Hons)  
Mr N Maloney FRICS  
Mr O N Miller

**Date of decision:** 30<sup>th</sup> May 2012

### **Decisions of the Tribunal**

- (1) The Tribunal determines that the sum of £1,504.04 is payable by the Respondent in respect of the Apartment and Estate service charges for the year ending December 2010 and the Apartment and Estate estimated service charges demanded to 30<sup>th</sup> June 2011.
- (2) The Tribunal makes does not make an order under section 20C of the Landlord and Tenant Act 1985 as no application was made.
- (3) Since the Tribunal has no jurisdiction over county court costs, allocation fee of £35.00 and court fee of £85.00, this matter should now be referred back to the Barnet County Court.

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Respondent in respect of the Apartment and Estate service charges year ending December 2010 as well as the estimated Apartment and Estate service charges for the period ending June 2011.
2. Proceedings were originally issued in the Barnet County Court under claim no. 1UC145522. The claim was transferred to the Staines County Court and then in turn transferred to this Tribunal, by order of District Judge Tomlin and dated 10 January 2012.

### **The hearing**

3. The Applicant was represented by Ns C Zinelli, solicitor. Mr Naylor, of Crabtree, the managing agents accompanied her and gave evidence on behalf of the Applicant at the hearing. The Respondent did not attend and was not represented.
4. From the correspondence, the Tribunal was satisfied that the Respondent had been given notice of this hearing. No reasons were given for her failure to attend. In accordance with Regulation 14 (8) of the Leasehold Valuation Tribunals ( Procedure) (England) Regulations 2003, the Tribunal decided to proceed in her absence.

## **5. The background**

6. The property which is the subject of this application is situated within a modern low rise estate of similar buildings close to Feltham Town Centre and H M Youth Prison. It is constructed with exposed brick walls below a pitched roof structure covered with tiles; plastic rainwater goods and modern PVC windows. The grounds and communal areas provide good space for gardens and parking.
7. Neither party requested an inspection and the Tribunal did not consider that one was necessary.
8. 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 will be referred to below, where appropriate.

## **The issues**

9. At the start of the hearing the Tribunal and Ms Zinelli, identified the relevant issues for determination as follows:
  - (i) The payability and/or reasonableness of Apartment and Estate service charges for year ending December 2010 and the Apartment and Estate estimated service charge for the period ending June 2011
  - (ii) The payability and/or reasonableness of administration charges.
10. Having heard evidence from Mr Naylor, submissions from Ms Zinelli and considered all of the documents provided, the Tribunal has made determinations on the two issues as follows.

## **Service charge item & amount claimed**

11. The Applicant claimed £1,504.04 and submitted all supporting documentation of the various expenditure.

## **The Tribunal's decision**

12. The Tribunal determines that the amount payable in respect of the service charge is £1,504.04.

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

13. The Tribunal examined the budgets and year-end accounts (the latter having been certified by accountants). It also examined the invoices, which supported the expenditure as claimed.
14. The Tribunal also considered the terms of the lease. The lease divides the service charge between Apartment service charge, defined under clause 11.1 and Estate service charge defined under clause 11.2. The Respondent is obliged by clause 15 to pay on demand without deductions the matters out thereto. The service charge payment dates are defined as 1 July and 1 January each year or such other date or dates as the Manager shall decide.
15. Although the Respondent has not made any payments, she did not submit any evidence or make any representations to clarify the reasons for non-payment. The Tribunal noted that in a letter dated 5<sup>th</sup> January 2012 to Staines County Court, the Respondent stated that she did not dispute the service charge but sought clarification of certain matters including the court fee, allocation fee and £240 claimed additional management fee.
16. The Tribunal is satisfied that the service charge has been properly demanded in accordance with the terms of the lease. The Respondent did not challenge the reasonableness of the costs incurred. From the invoices, the Tribunal conclude that the costs have been reasonably incurred and the sum claimed is therefore payable.

### **Administration fee & amount claimed**

17. The Applicant claimed £240 identified as "additional management fee".

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

18. The Tribunal determines that the amount payable in respect of administration fee is £240.00.

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

19. The Applicant incurred this cost as a result of commencing proceedings against the Respondent to recover the service charge arrears.
20. The Tribunal consider that the sum claimed has been reasonably incurred, is reasonable and therefore payable by the Respondent. In any event the Respondent did not particularise the basis of her challenge.
21. The Tribunal has no jurisdiction over county court costs. This matter should now be returned to the Barnet County Court.

Chairman: Evis Samupfonda 

Date: 30 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.

## **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).