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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**

Case Reference: LON/00AU/LSC/2012/0461

**Premises: Ground Floor Flat, 129 Huddleston Road, London,
N7 0EH**

Applicant: Raksha Patel

Representative: Urban Owners Limited

Respondent(s): Mr Robert Herron

Representative: n/a

Date of hearing: 17 September 2012

Appearance for Applicant(s): none

Appearance for Respondent(s): none

**Leasehold Valuation Tribunal: Martin Rodger QC, Marina Krisko
Bsc (Est Man), BA, FRICS**

Date of decision: 17 September 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £965.73 is payable by the Respondent in respect of the service charges for the year ending 31 December 2011.
- (2) The Tribunal further determines that the sum of £480 is payable by the Respondent on account of his liability in respect of the service charges for the year ending 31 December 2012.
- (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) The Tribunal makes no order for costs on the application of the Applicant under paragraph 10(2) of Schedule 12 of the Commonhold and Leasehold Reform Act 2002

The application

1. The Applicant is the freehold owner of 129 Huddleston Road, London N7 0EH, and lessor of the three flats comprised in the building. The Applicant is also the lessee of the top floor flat. The Respondent is the lessee of the ground floor flat.
2. 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 Respondent in respect of the service charge year which ended on 31 December 2011, and as to the amount payable on account in respect of the year ending 31 December 2012.
3. In the course of the application each of the parties has made a further application in relation to costs. The Respondent has sought an order under section 20C of the 1985 Act that none of the Applicant's costs of the Tribunal proceedings may be passed to the lessees through any service charge, while the Applicant has sought an order under paragraph 10(2) of Schedule 12 of the Commonhold and Leasehold Reform Act 2002 that the Respondent personally be responsible for the costs incurred by the Applicant.
4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. The Applicant requested that the Tribunal determine the application without a hearing and the Respondent agreed. Having considered the papers, which include extensive submissions by both parties, and bearing in mind the wishes

of the parties, the Tribunal considered that it was appropriate to proceed without a hearing and made its determination on 17 September 2012.

The background

6. The property which is the subject of this application is a house on ground and two upper floors which was converted into three flats in 1982. The Tribunal has seen a transfer of the lease of the second floor flat which includes a floor plan from which it appears that the building is part of a terrace of similar houses. The only common parts shown on the floor plan are the stairs.
7. The Tribunal did not consider that it was necessary for it to undertake an inspection of the building, nor would it have been proportionate to the issues in dispute.
8. The Applicant acquired the freehold reversion to the three flats in the building in 2010.
9. The Respondent holds a long lease of the ground floor flat granted in or about 1982. The Tribunal has been provided with a copy of part of the lease of the flat, omitting the Particulars page ("the Lease").
10. The Lease 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. Although on the material before the Tribunal there is uncertainty over the service charge proportions recoverable in respect of the other flats in the building, it is common ground that the Lease requires the Respondent to contribute 33.33% of the recoverable costs incurred by the Applicant.
11. The service charge accounts, prepared by the Applicant's managing agent, Urban Owners Ltd, and dated 11 April 2012 show a total expenditure on services of £3,284.73 in the year ending 31 December 2011.
12. A service charge budget for 2012 also prepared by Urban Owners Ltd shows projected expenditure of £2,276.00.

The issues

13. The Application identifies the relevant issues for determination as follows:

The payability and reasonableness of service charges for 2011 relating to:

- (a) an electricity charge of £103.60

- (b) An invoice from the Handy Squad for repairing a leaking pipe at a cost of £187.94
 - (c) An invoice from Ersat for installing a new distribution board and wiring in the common parts at a cost of £550
 - (d) An invoice raised by the Applicant herself for managing works at the property in the sum of £120
 - (e) 3 invoices for emergency lighting and smoke detectors (£681), an asbestos survey (£300) and a health and safety assessment (£210).
14. The Application also asks the Tribunal to review the reasonableness of the 2012 budget and to determine whether the Respondent is liable to pay his proportion.
15. In his response to the application the Respondent disputed the items listed at paragraph 12(a) to (d) above, but did not dispute the three items identified at paragraph 12(e). He raised issues in relation to two further items, namely:
- (f) an accountancy fee of £108, and
 - (g) an invoice for the sum of £22.70 in respect of a lock for the meter cupboard door in the common parts of the building.
16. Apart from the items specifically disputed by the Respondent the Tribunal took him to accept the other items included in the service charge account for 2011.
17. Although both parties made detailed submissions on each of the items in dispute some of the issues remain obscure. Nonetheless, having considered the written submissions from the parties and all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The electricity charge of £103.60

18. The papers include an invoice from NPower dated 7 January 2012 in the sum of £103.60 (including VAT) described as "charges relating to period 1/9/2011 to 30/12/2011" and further described as "Administration". The invoice contains no meter readings or energy consumption figures and it is not clear to the Tribunal to what this charge relates. The invoice sum of £103.60 is the only figure which appears in the service charge account for 2012. It is referred to by the Applicant in her application as "electricity - £103.60 – connect and supply" but despite the extensive submissions made in connection with it neither party has explained exactly what it is a charge for.

19. The common parts of the building are served by 3 light fittings and a single power socket. The charge appears to the Tribunal to be too great to be for the cost of electricity to serve those limited facilities.
20. It appears that until 2 August 2011 electricity to the common parts was provided from the supply to the ground floor flat. The practice of the Respondent, when he was freeholder, was to make a notional charge for electricity supplied to the common parts, which in 2010 we are told was £36.50.
21. Following the acquisition of the reversion by the Applicant, and a recommendation in a report by a health and safety consultant, a separate electricity supply was provided to the common parts. A new distribution board and wiring was supplied at a cost of £550 and forms the subject of the disputed charge at paragraph 13(c) above.
22. The electricity metered by the new meter as having been consumed in the period from 2 August 2011 to 22 August 2012 was, according to the Applicant 115 KwHs (supported by a photograph of the new meter).
23. The tribunal would expect that the cost of installing the distribution board and new meter would be fully accounted for in the charge of £550. It is unclear to us what additional charge the electricity supplier would levy. In the absence of an explanation of what the charge for administration related to the Tribunal was unable to conclude either that it fell within the service charge provisions of the Lease or that it was unreasonable in amount.
24. The Tribunal did consider that a charge for the provision of electricity to the common parts was reasonable, and basing itself on the calculations provided by the Applicant, allowed a sum of £24 for the period during which the supply was separately metered.
25. The focus of the dispute between the parties related to a separate matter, namely the credit which the Respondent claimed to be entitled to on account of his having provided electricity to the common parts through the meter serving the ground floor flat in the period of the year up to 2 August 2011. In the view of the Tribunal the Respondent's entitlement to such a credit is not a matter which arises under the Lease, but is a separate issue between the Respondent, as supplier, and the Applicant, as consumer, of the electricity supplied. The Tribunal has no jurisdiction to consider that dispute.
26. The Tribunal therefore limits its determination to finding that the sum to be included in the 2012 service charge as payable in respect of electricity is £24.

The Handy Squad invoice - £187.

27. It is common ground that this invoice relates to the cost of locating and repairing a leaking pipe in the Applicant's flat on 14 April 2011. The Applicant accepts in her written submissions that the cost of the repair work should be borne by her in her capacity as lessee, but submits that a large part of the work related to tracking and tracing the leak. This, she submits should be the responsibility of the freeholder and should be recoverable through the service charge.
28. The Tribunal does not accept the Applicant's submission. Under the terms of the Lease the obligation to repair the Demised Premises falls on the Lessee under paragraph 1 of Part II to the Fifth Schedule. Paragraph 7 of Part II of the same Schedule also requires the lessee to take immediate action to arrest any discharge of water from the Demised Premises. The Tribunal assumes the lease of the Applicant's flat is in the same form. Responsibility for carrying out repairs to defective water pipes within the Applicant's own flat therefore falls on her. The fact that work is required outside the Demised Premises in order to identify the location of a leak in a pipe does not have the effect of excluding that investigative work from the scope of the lessee's responsibility.
29. The Tribunal notes that the Applicant, as landlord, is entitled under paragraph 1 of the Eighth Schedule to the Lease to recover the costs incurred in carrying out repairs to the "Conduits" in the property. The expression "Conduits" is defined to include the water supply pipes in the Property, without any express exclusion of water pipes within demised premises. The curious result would therefore seem to be that both the landlord and the lessee have obligations in respect of the water pipes within the Demised Premises. Notwithstanding this oddity the Tribunal considers that it would not be reasonable to include in the service charge to which other lessees must contribute a charge relating exclusively to a defect for which an individual lessee was also responsible.
30. The Tribunal therefore concludes that the Handy Squad invoice should not form part of the 2011 service charge.

Installation of a new distribution board and wiring in the common parts at a cost of £550

31. The Applicant incurred costs of £550 in installing the new distribution board and wiring to provide a separately metered supply of electricity to the common parts of the building. The Respondent contends that this cost is not recoverable under the service charge.
32. The Lease includes a covenant on the part of the Lessor at paragraph 1 of Part 1 of the Sixth Schedule to keep the Conduits in the Property in good repair and to renew and improve them as and when the Lessor may from time to time in the Lessor's discretion consider it necessary to do so. The costs of complying with that covenant are included as part of the service charges recoverable from the Lessee.

33. The provision of a separate electricity supply to the common parts was advised following a health and safety inspection commissioned by the Applicant when she acquired the freehold in the building. Apart from any safety consideration the previous arrangement whereby the electricity to the common parts was provided from the supply to the ground floor flat was unsatisfactory and, as has proved the case, was liable to give rise to disagreement as to the appropriate allowance to be made to the lessee of that flat. The Tribunal therefore considers that the decision by the Applicant to separate the electricity supply and provide a means of metering the supply to the common parts was a reasonable one. The cost of improvements to the Conduits, of which this was an example, is recoverable under the terms of the Lease.
34. The Tribunal also considered that the cost of £550 was not shown to be unreasonable.
35. The sum of £550 in respect of the new distribution board and wiring is therefore recoverable as part of the 2011 service charge. It is assumed that it forms part of the figure of £1,533.94 shown in the account for general repairs and maintenance.

Applicant's charge of £120 for managing works at the property

36. The Respondent disputes the Applicant's entitlement to charge £120 in respect of four hours of her own time spent organising a health and safety assessment, the installation of the new electricity supply and smoke detectors and the purchase of a lock.
37. The costs and expenses recoverable by the lessor through the service charge include at paragraph 8 of Schedule 8 the cost of employing managing agents or surveyors to carry out the management of the property. There is no separate provision entitling the lessor to recover costs which she has incurred in participating in the management of the property. Any contribution of time which the Applicant has made is for the benefit of all of the lessees, of whom she is one, and is not a recoverable item of expenditure. This is despite the fact that the Applicant's participation may result in a saving to the Lessees compared to the cost of employing a managing agent to undertake the same tasks.
38. The Applicant's charge of £120 in respect of her own time is therefore not recoverable as part of the 2011 service charge.

3 invoices for emergency lighting and smoke detectors (£681), an asbestos survey (£300) and a health and safety assessment (£210)

39. The Respondent does not dispute his liability to contribute towards these three heads of expenditure.

40. The Tribunal therefore determines that the amount payable in respect of legal and professional fees is £510 (the aggregate of the asbestos and health and safety items. The service charge for general repairs properly includes the cost of providing smoke detectors and emergency lighting of £681.

Accountancy fee of £108

41. The Respondent disputes the figure of £108 shown in the 2011 accounts for accountancy.
42. The Lease provides at paragraph 2 of the Fifth Schedule for the expenses incurred by the Lessor in providing services to be certified by the Lessor or its Managing Agent. In this case the service charge accounts are certified by the managing agent, Urban Owners Ltd. The charge is supported by an invoice, as well as by the inclusion of the figure in the accounts themselves, as certified by the agent making the charge.
43. The Tribunal considered the sum of £108 to be reasonable and recoverable as part of the service charge.

£22.70 in respect of a lock for the meter cupboard door in the common parts

44. The Respondent disputes his liability to contribute towards the cost of providing a padlock to secure the door of the meter cupboard in the common parts. The charge is supported by an invoice showing that it was incurred in the 2001 service charge year, although the padlock was not fitted until after the year-end.
45. The provision of a padlock to a meter cupboard seems a reasonable item of expenditure and the amount claimed is reasonable. The Tribunal therefore considers that the 2011 service charge properly includes the charge for this item.

2012 estimated service charge

46. The Applicant's budget for the 20012 service charge year totals £2,276, which is challenged by the Respondent.
47. The Tribunal considers that a reasonable pre-estimate of the cost of items which might reasonably be comprised in the service charge £1,440, of which the Respondent's contribution should be £480.
48. The Tribunal considers that an allowance for general repairs and maintenance of £300, as shown in the budget, is a reasonable provision. No specific items of work are planned and the higher figure of £500 mentioned in the Applicant's comments seem unreasonable.

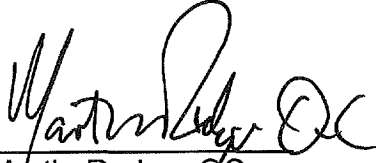
49. The expenditure on cleaning in 2011 was £72. No explanation for an increase to £200 has been given by the Applicant and the Tribunal considered that a figure of £100 was a more reasonable estimate.
50. A charge of £470 is included in the budget for electricity. This is said to relate to the cost of installation of a new supply point and meter which is spread over a 2-year contract. The Tribunal did not understand how the additional electricity charge arose, and no document was produced to justify it. In view of the expenditure in 2011 of £550 on new electricity supply equipment the Tribunal did not consider that a further substantial figure could reasonably be justified in 2012. A figure of £80 for the supply of electricity to the common parts is reasonable.
51. The budgeted figure of £331 for management services appears reasonable. The Applicant did not query the insurance cost in 2011 of £566.79 and the small increase to £625 in the 2012 budget does not seem unreasonable.
52. The final budget item is £625 towards legal and other professional fees which is said to comprise an annual health and safety assessment. The Tribunal does not see the need for an annual assessment. A comprehensive assessment was undertaken in 2011 and no further external assistance ought to be required in the short term.
53. Aggregating the budget figures and rounding them up produces a budget of £1,440, of which the Respondent's contribution should be £480.
54. The Tribunal's conclusion on the 2012 budget is based on the information and explanations available. The final account for 2012 will obviously be based on actual expenditure which may be higher or lower than the budget or the Tribunal's estimate. Nothing in this decision prejudices any application either party may wish to make under section 27A of the 1985 Act concerning the final account figures.

Application under s.20C and under paragraph 10(2) of Schedule 12 of the Commonhold and Leasehold Reform Act 2002

55. In his submission the Respondent made an application for an order under section 20C of the 1985. As the Applicant acknowledges, the Respondent made a number of proposals for the service charge issues to be referred to mediation, but the Applicant declined those suggestions. The Tribunal considers that this case was very suitable for mediation involving as it does relatively modest sums about which both parties had a number of detailed points which they wished to make. It was always likely that the final conclusion would fall somewhere in the middle of the parties' respective positions and they might have saved themselves a good deal of time and some expense if they had engaged a mediator to assist in resolving the dispute.

56. Taking into account the refusal of mediation, the fact that the Applicant herself is a lessee in the building and the final outcome, 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 her costs incurred in connection with the proceedings before the Tribunal through the service charge.
57. The Applicant made an application of her own for costs against the Respondent under paragraph 10(2) of Schedule 12 of the Commonhold and Leasehold Reform Act 2002. The Tribunal's jurisdiction under paragraph 10 arises on a dismissal of an application under paragraph 7, which does not apply in this case, or where in the opinion of the tribunal the party against whom the application for costs is made has acted "*frivolously, vexatiously, abusively or otherwise unreasonably*" in connection with his application. Sufficient to say that the Tribunal does not consider that the Respondent's conduct of these proceedings can be described in that way.

Chairman:


Martin Rodger QC

Date:

17 September 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.

Commonhold and Leasehold Reform Act 2002

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.

- (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.