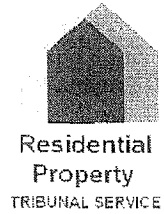


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### LONDON RENT ASSESSMENT PANEL

#### DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985 (the "Act")

<b>Case Reference:</b>	LON/00AU/LSC/2012/0510
<b>Premises:</b>	Ground floor and basement flat (formerly Flats D and E) 13 Compton Terrace Islington
<b>Applicant:</b>	13 Compton Terrace Limited
<b>Respondents:</b>	Ms Teresa Wells and Mr Daniel Holliday
<b>Date of Application:</b>	25 July 2012
<b>Date of Directions:</b>	15 August 2012
<b>Date of Hearing:</b>	Determination without an oral hearing in accordance with Regulation 13 Leasehold Valuation Tribunals (Procedures) (England) Regulations 2003
<b>Tribunal:</b>	Mrs J Pittaway Mr I Holdsworth
<b>Date of decision:</b>	17 October 2012

### **Decisions of the Tribunal**

The Tribunal determines that the sum of £1,413.16 is payable by the Respondents in respect of estimated service charges for the period 25 March 2012 to 28 September 2012.

### **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 estimated service charges payable by the Applicant in respect of the period 25 March 2012 to 28 September 2012.
2. In the Directions the Tribunal advised the parties that the matter would be dealt with on consideration of papers alone unless either party made representations to the contrary.

### **The issues**

From the Application the Tribunal identified the following to be the issues on which the Applicant wished it to decide;

1. Whether the Respondents were liable to pay the charges demanded by the Applicant; and
2. If payable were the sums demanded reasonable.

Ensuring payment of future service charge on time is outside the jurisdiction of the Tribunal.

### **Evidence**

1. The Tribunal had before it the Application and the Applicant's Statement of Case, which included copies of the former leases of the Basement Flat and the Ground Floor Flat (the "Old Leases") and the Deed of Surrender and Lease of 13 February 2004 of both the Ground Floor and the Basement, drafted by reference to the former leases (the "New Lease"). The specific provisions of the lease and will be referred to below, where appropriate.
2. The Tribunal also had before it the Respondents' Statement of Case.
3. There was no inspection of the Premises. Neither party requested an inspection and the Tribunal did not consider that an inspection would assist it.

### **The Law**

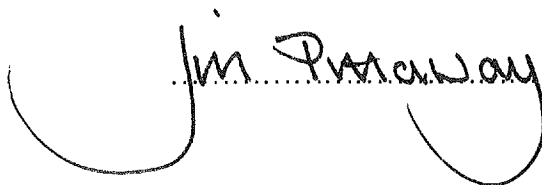
The relevant legal provisions are set out in the Appendix to this decision.

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

1. Save as expressly modified thereby the New Lease is made on the same terms and subject to the same covenants conditions and stipulations as contained in the Old Lease.
2. By Clause 4(2) of the Old Leases the Tenant covenants to pay the interim charge and the service charge as provided in the Seventh Schedule.

3. Under the Seventh Schedule the "interim charge" means a sum paid on account of service charge "as the auditors or the managing agents of the Lessor shall specify at their discretion to be a fair and reasonable interim payment". The "service charge" is in aggregate (under both Old Leases) forty per cent of the "total service cost". The "total service cost" is the aggregate amount in any accounting period reasonably and properly expended by the Lessor in complying with its repairing and decorating obligations (clauses 5(4) and 5(5)), paying rates, etc. in respect of roads footpaths and the forecourt of the building and the cost of management of the building (Fifth Schedule paragraphs 2 and 3) and a reasonable reserve in respect of the Lessor's liability for maintenance and repair.
4. In Clause 1 of the Old Leases the lessees covenant to pay in aggregate two fifths of the cost to the Lessor of insuring the building. The cost of insurance is "service charge" under section 18(1) of the Act.
5. The Tribunal determine that all the planned expenditure set out in the 13 Compton Terrace Limited Budget of 13 December 2011 is recoverable by way of service charge under the leases except for the "secretarial fee" of £300. As stated in Sarah Massey's email of 27 January 2012 this is a fee for completing the annual return for 13 Compton Terrace Limited, filing the company accounts, recording the company members, issuing share certificates and dealing with correspondence on behalf of the company. Such costs do not fall within the "total service cost" as defined in either the leases or the Act and therefore cannot be demanded as part of the interim charge.
6. As to the reasonableness of the other sums demanded the Applicant provided invoices to support the sums that it demanded. The Respondents have not provided any evidence (such as alternative quotes) to substantiate their submission that the sums demanded are unreasonable. The Tribunal's decision is therefore based on its own knowledge and experience and it considers the sums demanded to be reasonable.

Chairman:

A handwritten signature in black ink that reads "Jim Pittaway". The signature is written in a cursive style with a large, sweeping initial "J".

J Pittaway

Date: 17 October 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.