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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION  
UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985**

**Case Reference:** LON/00AU/LSC/2012/0576

**Premises:** 10 Sherston Court, Attneave Street, London  
WC1X 0DX

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**Applicants:** London Borough of Islington

**Representative:** Legal & HR Services London Borough of Islington

**Respondent:** Ms Catherine Summerson

**Representative:** In person

**Leasehold Valuation Tribunal:** Ms N Hawkes (Lawyer Chairman)  
Mr T Johnson FRICS  
Mr A D Ring

**Date of decision:** 17.12.12

### **Decisions of the Tribunal**

- (1) The Tribunal determines that the sum of £754.37 is payable by the Respondent in respect of the service charge for the year 2010 to 2011.
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (3) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Clerkenwell & Shoreditch 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 Respondent in respect of the service charge year 2010 to 2011.
2. Proceedings were originally issued in the Northampton County Court under Claim No.2QK20224. The claim was transferred to the Clerkenwell and Shoreditch County Court on 31<sup>st</sup> July 2012 and then in turn transferred to this Tribunal, by order of District Judge DJ Manners dated 14<sup>th</sup> August 2012.
3. Following the transfer, a directions hearing took place on 25<sup>th</sup> September 2012 at which the Applicant was represented by Mr S Bhatia, Litigation Lawyer, and the Respondent appeared in person. At the directions hearing, the Tribunal was told that £10 of the sum of £814.37 claimed in the County Court proceedings related to ground rent. Accordingly, the sum claimed in respect of the service charge is £804.37 (the Tribunal does not have jurisdiction in respect of ground rent).
4. The directions provided that this matter was to be dealt with on the Paper Track, unless either party requested an oral hearing. No request for an oral hearing has been received by the Tribunal and, accordingly, this case has been determined on the papers.
5. The relevant legal provisions are set out in the Appendix to this decision.

### **The background**

6. The property which is the subject of this application is one bedroom flat in a purpose built block on an estate in the London Borough of Islington.
7. 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.

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 and will be referred to below, where appropriate.

### **The issues**

9. It is apparent from the directions dated 2<sup>nd</sup> October 2012 and from the parties' statements of case that the following issues have been raised:
  - (i) The payability and/or reasonableness of service charges for the year 2010 to 2011 relating to (i) the collection of rubbish and (ii) communal lighting.
  - (ii) Whether or not the Tribunal should make 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.
10. Having considered the written submissions and documents provided, the Tribunal has made determinations on the various issues as follows.

### **The payability and/or reasonableness of the service charges for the year 2010 to 2011**

11. Under clause 1(2)(2) of the lease, the Respondent is required to pay a service charge. Pursuant to clause 5(3), the service charge is to include a proportion of the expenses and outgoings incurred or to be incurred by the Applicant in respect of the items set out in the Third Schedule to the lease and which comprise the repair, maintenance, renewal and improvement of the building and any facilities and amenities appertaining to the building and the estate; the provision of services for the building and the estate (if any); and other items of expenditure.
12. The Applicant's entitlement to claim the service charges is not in dispute. The Respondent has raised the limited issues of the reasonableness of the charges in respect of the collection of rubbish and the communal lighting.
13. The Tribunal is concerned with the service charge year 2010/2011. It is the Respondent's case that in 2010, the porch light stopped working in September 2010 and was not fixed for two months.
14. In response, the Applicant states at Paragraph 62 of its statement of case that the fault was reported on 25<sup>th</sup> September 2010 and repaired on 7<sup>th</sup> October 2010. The Applicant states that the caretaker tried to remedy the fault to the light immediately but that, due to worn components, immediate repairs could

not be undertaken. Accordingly, the Area Housing Office had to instruct a contractor to carry out the work.

15. It is the Respondent's case that the refuse collection service provided by the Applicant is not of a reasonable standard. She states that, during the relevant period, there were instances of rubbish piling up and remaining uncollected for up to 4-6 weeks. She has provided colour photographs of the rubbish in support of this contention. She states that the rubbish attracts vermin; that the cleaners did not provide an adequate service; and that the Applicant has offered her £50 in compensation which she has refused.
16. In response, the Applicant states that the black bags shown in the photographs alongside a car park are leaf bags; that this is the designated site for leaf bags which are collected separately from domestic waste; and that the leaf bags were collected "on an ad hoc basis" between November and January. The Applicant states that extreme weather conditions during the relevant year made it difficult for Greenspace to access some areas; that they were not aware of any issues at Sherston Court; and that if this issue had been brought to their attention they would have addressed it.
17. The Applicant concludes "to remedy this we will work with Greenspace to ensure that leaf bags are collected in a timely manner and apologise for any inconvenience caused".
18. In respect of the other rubbish bags shown in the photographs, the Applicant states that, unfortunately, some residents leave rubbish bags by the gates because they do not have access to the bin chamber. The Applicant states that the caretaker has removed rubbish on a number of occasions and "will continue to do so more frequently". By letter dated 8<sup>th</sup> June 2011, the Applicant assured the Respondent that it was taking the matter seriously and stated that the residents would be reminded to use the rubbish chutes provided.
19. However, the Applicant also states that monthly inspections of the estate are carried out and that reports do not indicate a build-up of rubbish or litter which suggests that the litter could not have been present for the length of time specified by the Respondent.

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

20. The Tribunal accepts that the Respondent was without a porch light from 25<sup>th</sup> September until 7<sup>th</sup> October 2010 but considers that the Applicant's records regarding the date of the repairs are likely to be correct and does not find that the Respondent was without a porch light for any longer period during the service charge year in question.
21. The Tribunal accepts the Respondent's evidence that there was an unacceptable build-up of rubbish on the estate during the service charge year

2010 to 2011 but also accepts the Applicant's evidence that information obtained during its monthly inspections indicates that the rubbish was not present for quite as long as the Respondent suggests.

22. Having regard to the documents and photographs provided and to its knowledge and experience as an expert Tribunal, the Tribunal finds that it would be appropriate to make a deduction of £50 from the service charge for the year 2010 to 2011 to reflect its findings that there have been deficiencies in the rubbish collection service and to reflect the short period for which the Respondent was without a porch light. The Tribunal necessarily has to adopt a broad, pragmatic approach to this assessment and the Tribunal notes that the Applicant has carried out numerous other functions pursuant to the terms of the lease about which the Respondent makes no complaint.

### **Application under s.20C**

23. At the directions hearing, the Respondent applied for an order under section 20C of the 1985 Act. Taking into account the determinations above, the Tribunal determines that it is not 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 Tribunal notes that, by letter dated 10<sup>th</sup> November 2011, the Applicant offered the Respondent the sum of £50 in compensation for any inconvenience or distress caused to her.

### **The next steps**

24. The Tribunal has no jurisdiction over ground rent or County Court costs. This matter should now be returned to the Clerkenwell & Shoreditch County Court.

Chairman: \_\_\_\_\_  
Naomi Hawkes

Date: 17.12.12

## 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.