

7580



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/00AZ/LSC/2011/0407

Premises:
88 Ardgowan Road,
London SE 16 1UU

Applicants:	Mr Paul Anthony Diggins and Ms Elspeth Brown
Representative:	Mr P Diggins and Ms E Brown
Respondent:	Newservice Limited (In Administration) (by its Joint Administrators – S Bannon and M Cohen)
Representative:	Liddigans LLP
Date of hearing:	9 February 2012
Appearance for Applicants:	Ms E Brown In Person
Appearance for Respondent:	None
Leasehold Valuation Tribunal:	Mr John Hewitt Chairman Mr Christopher Gowman MCIEH MCMI BSc
<u>Date of Decision:</u>	14 February 2012

Decisions of the Tribunal

1. The Tribunal determines that of the sums claimed by the Respondent in court proceedings in Claim 0UC85151 in respect of arrears of ground rent, arrears of service charges and administration charges some have been withdrawn by the Respondent and the balance has been paid by the Applicants so that the claim has been fully satisfied;
2. The Respondent shall by 5pm Friday 16 March 2012 repay to the Applicants the sum of £2,225.15 made up as to the following services charges:

Year ended 2009	£812.56
Year ended 2010	£769.86
Period ended 03.11.2011	£642.73

Which have been paid to the Respondent but which we find are not payable by the Applicants to the Respondent.

3. The file shall be returned to the court so that the judge can make a determination on the Applicants'/Defendants' outstanding application to set aside the default judgment dated 7 January 2011.

The application and court transfer and background

1. On 16 June 2011 the Applicants made an application to the Tribunal seeking 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 Applicants.
2. On 2 December 2010 the Respondent had commenced legal proceedings against the Applicants claiming:

Ground rent	£ 750.00
Service/administration charges	£3,439.75
Costs	£ 742.88
Interest	£ 60.61

Further interest at £0.92 per day

3. By letter dated 14 December 2010 sent by Salter Rex, Chartered Surveyors and Estate Agents and the managing agents engaged by the Respondent to the Applicants, they withdrew four of the administration charges claimed, totalling £1,228.10
3. Notwithstanding the above the Respondent made an application to enter judgment in default in the full sum claimed and on 7 January 2011 a default judgment was entered for £4,805.24 for debt and interest and £210 for costs making a total of £5,015.24.
4. The Applicants/Defendants made an application to set aside the judgment. By order made 20 June 2011 District Judge Burn adjourned that application, with permission to restore because he had been informed that the Applicants/Defendants proposed to make an application to the Leasehold Valuation Tribunal for a determination as to the reasonableness of the service charges claimed. Evidently unbeknown to the judge such application had in fact been made some four days earlier.
5. By order made 15 September 2011 District Judge Thomas ordered that *"The Claim be transferred to the Leasehold Valuation Tribunal."*
6. Ordinarily the Tribunal would consider that it is unable to determine the payability of service charges and administration charges which are the subject of a default judgment of the county court. It appears clear that here, as part of its process to determine the Applicants'/Defendants' application to set aside the default judgment the court has expressly sought assistance from the Tribunal and has referred the claim to the Tribunal for a determination. The Tribunal therefore accepts that it has jurisdiction to determine the claim transferred by the court.
7. A pre-trial review was held by the Tribunal on 19 October 2011. The Applicants were represented by solicitors. The Respondents did not attend or send a representative. Directions were issued which, amongst other matters, required the Applicants to serve a statement of case by 16 November 2011 and the Respondent to serve a statement of case in answer by 30 November 2011 and for the Respondent to file and serve a trial bundle by 21 December 2011, or if the parties were unable to agree a single trial bundle, then each party was to file and serve their trial bundle by 11 January 2012.
8. Meanwhile the Applicants and the lessee of the other flat in 88 Ardgowan Road had exercised the right to collective enfranchisement of the freehold interest and completion of the transfer of the freehold took place in January 2012. One of the conditions of completion imposed by the Respondent was that on completion the Applicants should pay the then alleged arrears of ground rent and service charges totalling £2,475.15 made up as to:

Ground rent:

2011	£250
------	------

Service charges:

Year ended 2009	£812.56
-----------------	---------

Year ended 2010	£769.86
-----------------	---------

Period ended 03.11.2011	£642.73
-------------------------	---------

9. On 27 January 2012 the Tribunal received from the Applicants their trial bundle which comprised a number of documents in which they set out their challenges to certain service charges together with witness statements made by each of them in support of their application. The Tribunal has not received any trial bundle from the Respondent.
10. On 27 January 2012 the Respondent's solicitors sent an email to Mr Diggins, with a copy to the Tribunal. The email acknowledged receipt of the Applicants' trial bundle and went on to say that the Respondent's interest in the property came to an end on 16 January 2012 when the freehold was transferred, the completion monies included the only claims which the Respondent had and which did not include the pre administration charges which are the subject of the LVT application. They said they regarded the matter as concluded and stated that the Respondent did not propose to attend the hearing. The email made no express reference to the service charges which were the subject matter of the application.

The hearing

11. Mr Diggins was unable to attend the hearing due to ill health. Ms Brown attended on behalf of herself and Mr Diggins. Ms Brown was assisted by two student representatives of BPP, Ms Chowdhury and Ms Shaikh.
12. The Respondent was neither present nor represented.
13. Ms Brown did her best to assist us with the background to this matter but she accepted that her grasp of the detail was not as good as that of Mr Diggins.
14. Ms Brown explained that 88 Ardgowan Road is a house converted into two self-contained flats. Ms Brown said that she and Mr Diggins live in the flat and it is their home. Since they had acquired the lease in 2007 the Respondent has not carried out any services or repairs or redecorations. This is reflected in the service charge documents shown to us which show that the service charges claimed are limited to insurance and management fees.

15. Ms Brown confirmed, as was clear from the documents in the trial bundle, that their concern was the cost of insurance and the amount of the management fees. In 2009 the cost of insurance was £842.22 (£421.11 per flat). In 2011 the cost of insurance was £654.93 and the management fee claimed was £546.00.
16. Ms Brown said that on completion of the freehold they were required to pay the arrears of ground rent of £250, to which no exception was, or is, taken, and arrears of alleged services charge amounting to £2,225.15, made up as shown above. She said that these were paid under protest, and this position is confirmed in paragraph 12 of their witness statements. We accept her evidence on this point.
17. Ms Brown also produced to us a Rent/Service Charge Demand dated 16 September 2009 which she said was a typical example. We noted that the demand bore the legend:

*"Notice Address: Newservice Limited – In Administration c/o BDO
Stoy Hayward LLP, 55 Baker Street, London W1U 7EU"*

The demand made no reference to *"Service Charges – Summary of tenants' rights and obligations"* or to *"Administration Charges – Summary of tenants' rights and obligations"* and Ms Brown told us, that she had no recollection of seeing any such notices with the demands that were sent through. We accept her evidence on this point.

18. We drew to Ms Brown's attention the provisions of the lease and in particular Schedule 6 which, in essence, provide for an accounting period of the calendar year, an obligation on the tenant to pay an Interim Charge on account of the Service Charge on 1 January in each year, as soon as practicable at the end of each accounting period for the landlord or its accountants is to prepare a Service Charge account and a certificate to be served upon the tenant containing prescribed information including the amount of any excess or deficiency in the Service Charge over the Interim Charge and that any debit balance was payable within 14 days of service on the tenant of the certificate. Ms Brown told us that she had no recollection of receiving any such account or certificate from the Respondent or its agents in respect of any of the years in issue. We accept her evidence on this point.

Reasons for the Tribunal's decision

19. It is unfortunate that the Respondent chose not to engage in the application or provide any information or documents to assist the Tribunal. Indeed, so far as we can see the Respondent has not played any constructive part in these proceedings. We therefore had to do the best we could with the materials provided to us by the Applicants, most of which had been sent to the Respondent's solicitors prior to the hearing. It is clear from section 27A(2) of the 1985 Act that the Tribunal is not precluded from determining an application

under subsection (1) because payment of the service charges in issue has been made. It is also clear from subsection (5) that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment. We have found that the Applicants effected payment of the service charges in issue under protest. In doing so they plainly reserved their right to challenge the sums claimed. We consider that we therefore have jurisdiction to determine the application.

20. The subject property is modest and virtually no services were provided by, or on behalf of the Respondent, other than that insurance was evidently effected. The sums claimed by the Respondent for insurance and management fees are, in our experience and having regard to our expertise in these matters, on the face of them, very high given the relevant circumstances. They thus called for some explanation from the Respondent to support the reasonableness of the sum claimed. No such explanation has been provided to us. The onus was upon the Respondent to show that the sums claimed were expended, were reasonably incurred, were reasonable in amount and are payable by the Applicants. The Respondent has failed to discharge that onus.
21. The lease requires the preparation of accounts and the service of a certificate upon the tenant as a prerequisite for payment of any balancing debit. No such accounts or certificates have been provided to us by the Respondent and we find that the Applicants are not aware of any having been served. We infer that no such accounts and certificates have been prepared and served by the Respondent.
22. The sample Rent/Service Charge Demand shown to us does not appear to comply with the provisions of section 47 Landlord and Tenant Act 1987 in that it does not state the name and address of the landlord. Further the demand was not accompanied by the relevant summaries of tenant's rights and obligations as required by the relevant regulations. On both counts the sums so demanded are to be deemed as not being payable by the tenant. Having accepted the evidence of Ms Brown we find that we can reasonably infer that other Rent/Service Charge Demands sent to the Applicants by the same managing agents were similarly deficient.
23. In these circumstances we find that the sum of £2,225.15 paid by the Applicants to the Respondent in respect of service charges for the years 2009 to 2011 were not in law payable by them. Thus we have made a requirement in accordance with the provisions of section 37A of the 1985 Act that that sum shall be repaid by the Respondent to the Applicants.

The next steps

24. The file will now be returned to the county court so that the Applicants'/Defendants' outstanding application to set aside the default judgment can be determined. In the light of the matters set out above it may

be that the Respondent/Claimant will wish to consent to the judgment being set aside in order to save further costs for both parties.

John Hewitt

Chairman

14 February 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.

Landlord and Tenant Act 1987

Section 47

47.— Landlord's name and address to be contained in demands for rent etc.

- (1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—
- (a) the name and address of the landlord, and
 - (b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.
- (2) Where—
- (a) a tenant of any such premises is given such a demand, but
 - (b) it does not contain any information required to be contained in it by virtue of subsection (1), then (subject to subsection (3)) any part of the amount demanded which consists of a service charge or an administration charge ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

- (3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of service charges or (as the case may be) administration charges from the tenant.
- (4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy

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).

Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 SI 1257

Administration Charges (Summary of Rights and Obligations)(England) Regulations 2007 SI 1258