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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/00BG/LSC/2012/0584

Premises: 200a Finnis Street, London E2 0DX

Applicants: Miss C Harper
Mr D Harper

Respondent: Wilkinson Ventures Ltd

Representative: Mr G Wilkinson, sole director & shareholder

Date of hearing: 3rd December 2012

Leasehold Valuation Tribunal: Mr NK Nicol
Mr KM Cartwright JP FRICS
Mrs L West MBA

Date of decision: 12th December 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £250 is payable by the Applicants in respect of the service charges for the years 2010/11 and 2011/12, which liability has been discharged by payments made to date.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the Respondent's costs of the Tribunal proceedings may be passed to the Applicants through any service charge.
- (3) The Tribunal determines that the Respondent shall pay the Applicant £350 within 28 days of this determination to reimburse the Tribunal fees paid by the Applicants.
- (4) The Tribunal does not make any further order for costs.

The application

1. The Applicants seek a determination under s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by them in respect of the service charge years 2010/11 and 2011/12.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. Both parties appeared in person before the Tribunal. Immediately prior to the hearing Mr Wilkinson handed in the Respondent's bundle of documents. This was much later than provided for in the Tribunal's directions order made on 25th September 2012. However, neither party wanted to adjourn the hearing and it became apparent as the hearing progressed that, despite the fact that some of the documents were new to the Applicants, they were not prejudiced by their late disclosure. Therefore, the Respondent's bundle was admitted and taken into account.

The background

4. The property which is the subject of this application was built on behalf of Mr Wilkinson who says he has built and/or managed a number of properties over the last 15 years. On 8th February 2008 he granted to the Applicants a 125-year lease of the basement flat. He then formed the Respondent company to hold the freehold. His interest in the Applicant's lease was assigned to the Respondent company. A lease of the remaining upper part of the subject property was also granted by the Respondent company to Mr Wilkinson.

5. The basement flat has been occupied by one of the Applicants, Miss Harper. Her brother, Mr Harper, lives elsewhere. Mr Wilkinson has been occupying the upper part of the property. Unfortunately, the relationship between the parties has become severely strained over the years to the point where they are now hostile to each other. There have been complaints of abuse, harassment and anti-social behaviour. The Applicants have made complaints to the police to which Mr Wilkinson has objected strenuously.

The issues

6. The basement flat has been severely affected by damp. A claim was made to the National House-Building Council ("NHBC") who arranged for works to be carried out. The works were sufficiently extensive that Miss Harper had to move out from October 2010 for several months.
7. Before the commencement of the works, Mr Wilkinson decided to appoint himself as the project manager on behalf of the Respondent. This was despite the fact that the NHBC's contractor already had a project manager of their own. Mr Wilkinson has no relevant qualifications for such a job although he claimed that his experience and his knowledge of project management in other contexts made him suitable to do it.
8. Unfortunately, Mr Wilkinson's involvement with the remedial works ran far from smoothly. His relationship with the Applicants deteriorated substantially when they accused him of failing to keep them informed, entering the basement flat without their consent and delaying progress unnecessarily. His relationship with the NHBC and their contractors also suffered, to the point where the contractors eventually walked off site and a settlement was reached whereby the remainder of the money for the works was handed to Mr Wilkinson for him to arrange for them to be completed himself.
9. Mr Wilkinson defended his involvement. He said he had experience of the kinds of deficiencies which arise with building contractors and was able to spot a number of them in this case. This enabled him to see that he should instruct a surveyor, Paul Anderson MRICS MCIOB, whose report dated 15th June 2011 asserted that the basement works had caused damage to the upper areas of the property. In turn, he was able to use the surveyor's report to persuade the NHBC to have an engineer, Ron Gallagher, carry out an inspection on 12th July 2011. As it turned out, Mr Gallagher was unable to support Mr Wilkinson's complaints although he also stated in his report to the NHBC that he could not identify what had caused the cracks to the upper areas of the property.
10. In any event, the Applicants asserted that Mr Wilkinson had not applied the money from the NHBC to complete the works to the basement flat. They issued proceedings in the County Court which were eventually settled on terms which included a payment by the Respondent to the Applicant of £6,300.04.

11. Before matters had reached this stage, Mr Wilkinson had served a number of invoices for alleged service charges. Each invoice was headed with the Respondent's name and required that payment should be made to Mr Wilkinson. The invoices were as follows:-

Date of Invoice	Period	Amount	Service
10/12/10	2008/9	£500	Fixed charge
30/1/11	2008/9	£250	Fixed charge for building admin
30/1/11	2009/10	£250	Fixed charge for building admin
		£200	Handling of insurance claim: Registering claim, letters, phone calls, site visits, communications with leaseholders
16/2/11	2010/11	£300	Flat rate for building management plus admin time relating to blocked drains
		£250	Insurance claim: Pursuing claim, letters, phone calls, site visits, communications with leaseholders, monitoring of works
3/10/11	2011/12	£300	Flat rate for building management plus admin time relating to blocked drains
		£750	Insurance claim: Managing claim, letters, emails, phone calls, site inspections, communication with leaseholders

12. The Applicants disputed the invoices on the basis that they were not in the statutorily-required form – the first was not accompanied by the requisite summary of rights and obligations and the rest did not provide details of the Respondent as landlord required by sections 47 and 48 of the Landlord and Tenant Act 1987. They also felt that Mr Wilkinson had not carried out any management of the building and his charges for handling the insurance claim were too high. In the event, they paid £200 and then a further £50 towards management of the insurance claim which they felt was sufficient.
13. As the County Court claim was drawing to a close, Mr Wilkinson served new invoices which he said replaced the latter two:-

Date of Invoice	Period	Amount	Service
22/3/12	2010/11	£250	Building management & admin: Postage, stationery and office running costs. Preparation of invoices, accounting, company returns, bank account management, deploying and paying

			tradesmen
		£200	Blocked drain: Investigating problem, liaising with neighbouring properties and insurers, lodging an insurance claim (subsequently withdrawn at C Harper's request) and negotiating resolution
		£3,510	NHBC Insurance claim: Registering further claim. Liaising with insurer, site inspections, communication with leaseholders and their representatives. An average of 3 hours per week over 39 weeks @ £30 per hour
22/3/12	2011/12	£300	Building management & admin: Postage, stationery and office running costs. Preparation of invoices, accounting, company returns, bank account management, deploying and paying tradesmen
		£3,120	NHBC Insurance claim: Liaising with insurer, site inspections, communication with leaseholders and their representatives. An average of 4 hours per week over 26 weeks @ £30 per hour

14. Both of the new invoices were in the statutorily-required form, having a statement which complied with the aforementioned sections 47 and 48. However, the Applicants suspected that the invoices had been created in order to offset the sum which the Respondent had agreed to pay in the county court proceedings, the two sums being of similar amounts. In due course, they issued the current application challenging the charges in the two invoices.
15. The Applicants' lease contains fairly widely-drawn service charge provisions which include the type of charges made in the two invoices. However, Mr Wilkinson has not complied with the lease in the following ways:-
- a) The lease contains provision for interim estimated service charges so that the Lessor may obtain money in advance and then recover the shortfall or repay any excess when the actual charges are known. Mr Wilkinson did not make use of this and his charges were said to be in respect of expenditure already incurred.
 - b) The lease provides that the Service Charge Proportion and the Insurance Contribution are both one third of the Lessor's costs. However, Mr Wilkinson charged building management at 50% of what he said was the total cost. He claimed this was fairer. He also sought to levy the whole of the costs relating to the insurance claim on the Applicants on the basis that they were primarily responsible for those costs. The lease does not contain any provisions allowing him to do this.

- c) By clause 4 of Schedule 4 to the lease, the Respondent was obliged to arrange for service charge accounts to be prepared for each year and the summary to be supplied to the Applicants. When the Tribunal pointed this out to Mr Wilkinson, he claimed to be under the impression that the invoices served on the Applicants complied with this provision. This is plainly wrong since a service charge demand is not the same thing as a service charge account. The latter will include details of the total expenditure and income related to service, not merely the amount payable by one lessee. This calls into serious question Mr Wilkinson's claim to have the knowledge and experience to manage residential property, not because of the seriousness of the breach but because the nature of a service charge account is so basic to residential property management.
16. However, there were even more fundamental problems with the charges. Firstly, Mr Wilkinson admitted that the only work he had done in managing the subject property consisted of dealing with a blocked drain and managing the insurance claim. He had submitted company returns in relation to the Respondent company but that was a company cost, not a service charge. The Tribunal is forced to conclude that he did not actually carry out any work under the first listed heading in each invoice, "Building management & admin", and so nothing is payable by the Applicants in this regard.
17. In relation to the second-listed item in the first invoice, namely a blocked drain, the Applicants said that they had been forced to arrange and pay for work themselves to clear up the mess in their own flat which followed from a drain being blocked. They provided a copy of the invoice showing their expenditure. Mr Wilkinson responded that the work he had done was in relation to a different matter. He said that there had been a drain located under the floor of a neighbouring property which was blocked and causing problems for a number of neighbouring properties, including the subject property. He further said that Thames Water eschewed any responsibility and the owner of the property is for no reason to co-operate as he was not directly affected. Mr Wilkinson claimed to have had to enter into significant negotiations to persuade the neighbour to allow works to take place.
18. Unfortunately, Mr Wilkinson had no evidence to support his claim. He had no correspondence with any neighbour, insurer or Thames Water. He produced an invoice from a contractor but it had nothing to identify itself as having anything to do with either the subject property or the drain problem which Mr Wilkinson identified. If the problem was as Mr Wilkinson claimed, the Tribunal cannot believe that he would not have some better evidence of it. Again, the Tribunal is forced to conclude that there are no payable charges under this heading.
19. By far the largest part of the service charges relate to Mr Wilkinson's alleged management of the NHBC insurance claim. The Tribunal has a number of problems with these charges:-

- a) The Tribunal cannot see the justification for the appointment of Mr Wilkinson as project manager. He has no relevant qualifications and so would not be in a position to ensure that quality was maintained or that the buildings insurance would be unaffected. His justification for his involvement, namely that he picked up on some problems, is put forward in hindsight and, in any event, the evidence does not establish that he was correct in his identification of those problems or that any real problems would not have picked up anyway. At the time of his self-appointment, no reasonable property manager would have regarded such extensive involvement by him as useful or necessary.
 - b) Further, no reasonable property manager would have regarded Mr Wilkinson's appointment as appropriate if the expense was to be so high proportionate to the cost of the works. Service charges must be reasonable and this includes taking into account the ultimate cost to the service charge payers. There is always more a property manager can do to try to achieve the best service but it is not reasonable to take this to the point where the cost is disproportionate.
 - c) There must be serious doubt that Mr Wilkinson originally intended to attempt to levy any such charges. He originally attempted to charge much lower sums and only submitted the revised, much larger sums when it became clear the Respondent would have to pay out significant sums of money in relation to the Applicants' County Court claim. He had made no contemporaneous record of the time he spent and came up with the charges by looking back at all the various items of correspondence and estimating how much time it would have taken him to write and deal with it.
 - d) Further, the Respondent company is actually dormant. The company returns submitted by Mr Wilkinson on the Respondent's behalf for the year 2010/11 assert that it is a dormant company, i.e. it is not carrying on any activity. Mr Wilkinson told the Tribunal that the company has ceased to be dormant in the current year 2012/13, which implies that it was dormant in both years under consideration in this application. However, if Mr Wilkinson was really acting as agent for the Respondent, incurring substantial service charge liabilities, this would have to be reflected in the company accounts. The Tribunal does not believe that Mr Wilkinson was involved in any kind of abuse of company law. Rather, the dormant nature of the Respondent is significant evidence that Mr Wilkinson was not acting on the Respondent's behalf but involving himself in order to protect his own personal interest. The bundle produced to the Tribunal at the hearing included two invoices from Mr Wilkinson to the Respondent corresponding to the service charge invoices served on the Applicants. However, they bear all the hallmarks of having been produced very recently (Mr Wilkinson even claimed that the recently-served Applicants' bundle assisted him in creating the invoices). In the Tribunal's opinion, Mr Wilkinson's invoices to the Respondent were produced significantly after the date on which they bear in order to try to support his claim for the service charges.
20. The Tribunal lease does permit the Respondent to recover charges for the management of an insurance claim. However, in the circumstances of this case, this would not extend to the kind of involvement which Mr Wilkinson has had rather than the submission of the claim and occasional liaison with the

insurers. The Applicants have already paid £250 for this service. The Tribunal is satisfied that this is a reasonable sum and no further amount is payable.

Application under s.20C and refund of fees

21. At the end of the hearing, the Applicants made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that they had paid in respect of the application and the hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund the fees paid by the Applicants within 28 days of the date of this determination.
22. The Applicant also applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that, although Mr Wilkinson indicated that no costs would be passed through the service charge, for the avoidance of doubt, it is just and equitable in the circumstances for an order to be made so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.
23. The Applicants also sought an order for their costs of the proceedings under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 on the basis that Mr Wilkinson's conduct of the dispute has been unreasonable. However, the test for the award of such costs is a high one. Although Mr Wilkinson has not conducted himself in accordance with good practice for residential property management, the Tribunal is not satisfied that the relevant test has been passed. Therefore, no further order as to costs is made.

Chairman:



NK Nicol

Date:

12th December 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.

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 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.