



HM Courts
& Tribunals
Service

7702.



Residential
Property
TRIBUNAL SERVICE

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/00BJ/LSC/2012/0005

Premises: 40B Cologne Rd, London SW11 2AJ

Applicant: Mr Richard Bevan

Representative:

Respondent London Borough of Wandsworth

Representative:

Date of hearing: 19 March 2012

**Appearance for
Applicant(s):** N/A

**Appearance for
Respondent(s):** N/A

**Leasehold Valuation
Tribunal:** Ms E Samupfonda
Mr J Barlow FRICS

Date of decision: 19th March 2012

Decisions of the Tribunal

- (1) The Tribunal makes the determinations as set out under the various headings in this Decision
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (3) The Tribunal determines that the Applicant shall pay to the Respondent £627.00 in respect of the cost of the major work carried out in 2010.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable by the Applicant in respect of the major works carried out in 2010.

The hearing

2. A Pre-trial review was held on 25th January 2012. The Applicant did not attend and was not represented. Ms Gina Snell appeared on behalf of the Respondent. The Tribunal directed that the matters can be dealt with on the basis of written representations (paper track) and the parties agreed to this course.

The background

3. The property, which is the subject of this application, is a two bedroom flat on the first and second floors of a converted terraced house, which contains one other flat on the ground floor and basement.
4. Neither party requested an inspection and the Tribunal did not consider that one was necessary.
5. The Applicant 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 issues

6. At Pre-trial review the Tribunal in consultation with those attending identified the relevant issues for determination as follows:
 - (i) The service charge in dispute relates to major works for the years 2012 and the Applicant challenges specifically the cost of renewing the front covering to steps at a cost of £627.00.

- (ii) Whether the landlord has complied with the consultation requirements under s20 of the 1985 Act.
7. Having considered the written submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The Tribunal's decision

8. The Tribunal determines that the amount payable in respect of the major works carried out in 2010 is £627.00.
9. The Respondent has complied fully with the consultation requirements.

Reasons for the Tribunal's decision

10. The Tribunal found that the Notice of Intention was delivered by hand on 10 February 2011 at the Applicant's address by Ms Lisa Pennett. That Notice was addressed to "the Leaseholder." This was confirmed and endorsed on the file copy as well as in her signed witness statement and in the Respondent's Statement of Case both dated 8th February 2012.
11. The Tribunal noted that the Applicant maintains that he did not receive the Notice and therefore was denied the opportunity to object to or query its contents. He queried its validity on the basis that he was not specifically named as the relevant person and that there was no requirement for a signature from the recipient. Whilst the Applicant stated in his letter dated 20th February 2012, that the work undertaken was "exceptionally inconvenient", he did not challenge the reasonableness/quality or the cost of the works.
12. The Tribunal considered the terms of the relevant lease. It found that there were no specific provisions regarding the services of notices by the Landlord. The Tribunal then considered the relevant consultation procedures under the Act. The relevant consultation procedures are set out in Paragraph 1 Schedule 3 of the Services (Consultation Requirements) (England) regulations 2003. From this it is abundantly clear that there is no requirement for the Notice to specifically name a leaseholder as paragraph 1 (1) provides "the Landlord shall give Notice in writing of his intention to carry out qualifying works-to each tenant." Further there is no requirement that the Notice must be signed for by the recipient or anyone. The Tribunal considered that Notice was properly effected by the Respondent posting it through the front door of the property. Although the Applicant contends that he did not receive it, the provisions do not require the Respondent to prove receipt.
13. In the circumstances the Tribunal concluded that the Respondent had complied with the consultation requirements, that the cost of £627.00 incurred

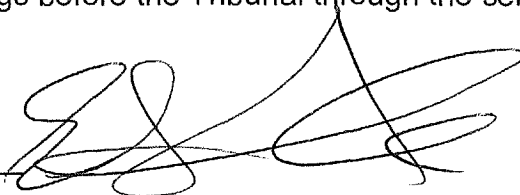
for renewing the front covering of the steps at the property was reasonable and is therefore payable by the Applicant.

Application under s.20C and refund of fees

14. In his application, the Applicant made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that he had paid in respect of the application. No reasons or justification were given. Taking into account the determinations above, the Tribunal does not order the Respondent to refund any fees paid by the Applicant.

15. In the application form the Applicant applied for an order under section 20C of the 1985. No reasons or justifications were given. Taking into account the determination above, the Tribunal determines that it is neither just nor equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may, to the extent that the leases permit and the costs incurred are reasonable, pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Chairman: Evis Samupfonda



Date: 19th March 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).