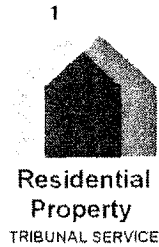


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HM Courts
& Tribunals
Service



LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN A
TRANSFER FROM THE COUNTY COURT AND IN CONNECTION WITH
SECTION 27A LANDLORD & TENANT ACT 1985 AND SCHEDULE 11 PART 1
COMMONHOLD & LEASEHOLD REFORM ACT 2002**

Case Reference: LON/00/AF/LSC/2012/0721

Premises: 2 Kendal House, Derwent Road, Penge, London
SE20 7YR

Applicant: Mr Haidar Sallar ("the Landlord").

Representative: PDC Legal, solicitors

Appearances for Applicant:

- (1) Mr S Purkis, counsel
- (2) Mr Sallar

Respondents: Mr M Rajgobal and Mrs P. Linganathan ("the Tenant")

Representative: N/A

Appearances for Respondents: Mr Rajgobal

**Leasehold Valuation
Tribunal:**

- (1) Mr A Vance LLB (Hons) (Chair)
- (2) Mr K. Cartwright
- (3) Ms Dalal

Date of Hearing:

04.04.13

Decision of the Tribunal

1. The Applicant having abandoned any claim for service charge arrears prior to 01.01.09 we determine that the total sum of **£1,728** is reasonable and payable by the Respondents on account of estimated service charges for the service charge years 2009, 2010 and 2011. This is broken down as follows (£576 for each of the three years):

Item	Annual Budget	Sum Allowed for each year by Tribunal	Respondents apportioned share at 6%
Cleaning, windows & gardening	£4,600	£2,300	£138
Electricity	£2,000	£1,500	£90
Repairs, maintenance and security	£3,500	£1,800	£108
Management Fees	£2,800	£2,000	£120
Redecoration	£2,500	£0	£0
Reserve Fund	£2,000	£2,000	£120
	£17,400	£9,600	£576

2. We make an order under s.20C preventing the Applicant from recovering any of the costs of these proceedings before this Tribunal as relevant costs. Any costs incurred in respect of the county court proceedings fall within the jurisdiction of the county court.

Introduction

3. This matter comes before the Tribunal on transfer from Croydon County Court following an order dated 26.10.12 in proceedings 2XV05053.
4. Within those proceedings the Applicant sought to recover sums alleged due from the Respondents in respect of service charge and ground rent

arrears as well as legal fees and interest. It is stated in the claim form that the amount claimed is £5,358.30 but no breakdown is provided as to how that sum is calculated. Although it is stated in the claim form that particulars of claim were to follow it appears that none have been served.

5. Numbers appearing in square brackets below refer to pages in the Applicant's hearing bundle unless otherwise stated
6. The Respondents are the leasehold owner of 2 Kendal House, Derwent Road, Penge, London, SE20 7YR ("the Property"), a one-bedroom ground floor flat in a two-story building built approximately 18 years ago ("the Building"). There are 14 flats in total in the Building which also contains a basement car-park. We were informed that following a fire the car park is no longer in use. The communal areas comprise landings and stairwells in the Building and a garden area consisting primarily of gravel with a very small grassed area.
7. The Applicant is the Respondents landlord and has the benefit of the freehold reversion of the Property. He purchased the freehold in 2006 [13]

The Lease

8. The relevant lease is dated 06.11.91 originally granted by Howard Developments Limited (1) to Nicola Ann Martenstyn (2) for a term of 125 years from 25.12.90. Following an assignment of the lease in September 2007 the unexpired residue of the term granted by the Lease is now vested in the Respondents.
9. The relevant provisions of the lease can be summarised as follows:
 - 9.1. The Tenant covenants to indemnify the Lessor in respect of a 6% share of the costs, charges and expenses incurred by the Landlord in carrying out his obligations under the Seventh Schedule to the lease including the cost of employing managing agents and an accountant.
 - 9.2. The Landlord's obligations as set out in the Seventh Schedule include keeping the Building in a good and full state of repair decoration and condition and the garden areas in a neat and tidy condition. There is also an obligation on the Landlord to set

aside sums in a reserve fund as reasonably required in order to meet future costs.

- 9.3. The service charge year is the period 1st January to the 31st December in each year.
- 9.4. On the First day of January and on the First day of July the Tenant is to make an interim payment on account of the expenses and outgoings to be incurred by the Landlord in meeting his obligations under the Seventh Schedule.
- 9.5. At the end of each year an account is to be taken of the costs and expenses incurred within the last service charge year. Such accounts are to be prepared and audited by a competent chartered or certified accountant who is to determine the amounts due from each of the lessees. Within two months of the provision of these accounts the Landlord is to serve on the Tenant a Notice in writing stating the total amount due from him as certified by the accountants with credit being given for all interim payments and details provided of any balance due.

The Law

10. Section 27A of the Act provides that an application may be made to a Leasehold Valuation Tribunal for a determination as to whether a service charge is payable.
11. Under Section 19, relevant costs shall be taken into account in determining the amount of a service charge payable for a period
 - (i) Only to the extent that they are reasonably incurred, and
 - (ii) Where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.
12. Under Section 20C a tenant may make an application to this Tribunal seeking an order that costs incurred by their landlord in connection with

proceedings before the Tribunal are not to be regarded as relevant costs for the purposes of determining the amount of any service charge payable by the tenant.

13. An appendix of the relevant statutory provisions is annexed to this decision.

The Tribunal's Directions

14. Directions were initially issued by the Tribunal on 02.11.12 but the Tribunal was informed that the Applicant had not received these. Revised directions were therefore issued on 07.01.13.
15. In those revised directions it was stated that the Tribunal could only deal with the specific items transferred to it by the County Court but that these had not been particularised.
16. The Applicant was directed to serve a statement setting out, amongst other matters, an explanation as to how the service charges arose, what they are for and how they are justified. He was also directed to provide copies of all relevant invoices that make up the service charges for the years in dispute together with copies of all demands and supporting documentation.
17. The subsequent statement of case served by the Applicant was accompanied by copies of service charge demands sent to the Tenant as well as the certified accounts for the years ending 31.12.09, 31.12.10 and 31.12.11 as well as the budgets for the years ending 31.12.11 and 31.12.12.
18. In that Statement of Case the Applicant stated that county court proceedings were issued to recover the sum of £4,705.23. However, no details were provided as to how that sum was broken down nor what service charges and service charge years they related to. Nor did the Applicant comply with the Tribunal's directions to provide copies of all

relevant invoices. No explanation was provided as to additional sums sought from the Respondents that comprise the figure of £5,358.30 stated in the claim form. No details of ground rent arrears, legal fees and interest are provided.

Inspection

19. Neither party requested that the Tribunal inspect the Property and we did not consider this to be necessary.

The Hearing, Decision and Reasons

20. At the start of the hearing Mr Purkis confirmed that the sums sought from the Respondents in respect of service charges related only to demands sent to them in respect of interim payments due. He also stated that the Applicant was abandoning his claim for any outstanding service charge for the years prior to 01.01.09.
21. The Applicant was therefore only seeking interim service charges alleged due for the 2009, 2010 and 2011 service charge years. In each of those years demands were sent seeking payment of £1,317 totalling £3,951 for the three years in question. No reconciliation exercise has been carried out and no final service charge account provided to the Respondents for any of those three years.
22. Mr Purkis was unable to explain what sums comprised the difference between the sum of £3,951 and the figure of £5,358.30 stated in the claim form but presumed that this comprised sums sought in respect of ground rent, interest and legal fees.
23. The Tribunal has no jurisdiction in respect of ground rent arrears. The Applicant having abandoned his claim for any service charge arrears prior to 2009 the remaining matters that we were are in a position to determine are as follows:

- 23.1 The reasonableness and payability of the sums demanded by way of interim payments for the 2009, 2010 and 2011 service charge years.
- 23.2 The Respondents application, made to the Tribunal, under s.20C of the Landlord & Tenant Act 1985 ("the 1985 Act") that none of the costs of the Applicant incurred in connection with these proceedings should be regarded as relevant costs in determining the amount of service charge payable by the Respondents.
24. No explanation has been provided to the Tribunal as to what sums were being sought in the County Court proceedings in respect of legal costs and interest. As stated above, we have no jurisdiction in respect of legal costs incurred in respect of the County Court proceedings. In the absence of figures relating to interest the question of whether or not any interest is due will have to be remitted to the County Court along with the issue of ground rent arrears.
25. The Applicant brought supporting invoices for the 2010 and 2011 service charge years with him to the hearing. We adjourned on two occasions for Mr Rajgobal to have sight of these invoices and to see if the parties were able to narrow the issues in dispute.
26. The hearing bundle prepared by the Applicant contained the budget for 2011 [72] in which the Respondents' apportioned share is stated as being £1,317. It does not contain the budget for 2009 or 2010. However, Mr Purkis submitted that as the interim sums demanded from the Respondents for each of the three service charge years in question were for the identical sum of £1,317 that it was clear that the same budget had been used for each year. We agree and our determination is made on this basis.
27. The actual expenditure for each of the three years in question has now been ascertained and certified by Alan Bott FCCA [47 – 70]. In doing so

he has clearly combined certain of the individual items specified in the budget (for example, rubbish cleaning and gardening is included in the accounts under the heading of 'Cleaning, windows and gardening').

- 28.** Mr Purkis invited us to proceed on the basis that Mr Bott had conducted himself professionally and properly accounted for the actual expenditure incurred in respect of each year.
- 29.** Mr Rajgobal, however challenged his credentials on the basis that his enquiries had led him to believe that he was not a member of the Association of Chartered Certified Accountants and the figures stated in the accounts may therefore be inaccurate.
- 30.** This assertion does not appear in the Respondents statement of case and the Applicant had not, therefore, had the opportunity to address it prior to the hearing. We are aware that there are several professional accountants' bodies and, in any event, consider that there is no substantive evidence before us to cast doubt on Mr Bott's professional qualifications or ability.
- 31.** Given the clear benefit in ascertaining the reasonableness of estimated charges by comparison to actual charges incurred we have reached our determination using the heads of expenditure set out in the accounts and on the basis that this represents actual expenditure.
- 32.** It is unfortunate that the 2009 accounts do not refer to the actual expenditure in 2008 and we therefore have no historic figures on which to assess the reasonableness of the budgeted figures. Nevertheless we have three consecutive sets of certified accounts that assist in establishing a pattern of expenditure.
- 33.** Mr Rajgobal did not challenge the sums sought in respect of insurance but challenged the following heads of estimated expenditure for each of the three years:

Item	Budget	Actual 2009	Actual 2010	Actual 2011
Cleaning, windows & gardening	£4,600	£1,479	£2,095	£2,048
Electricity	£2,000	£1,690	£1,202	£1,096
Repairs, maintenance and security	£3,500	£2,426	£1,609	£1,294
Management Fees	£2,800	£3,220	£3,395	£3,510
Redecoration	£2,500	£0	£0	£4,071
Reserve Fund	£2000	N/A	N/A	N/A

- 34.** We set out below the relevant submissions made by the parties in respect of each disputed head of estimated expenditure together with our decision in respect of whether or not the sum sought is reasonable. For the avoidance of doubt we consider that each item of expenditure is payable by the Respondent under the terms of his lease as set out above but this is subject to the question as to whether or not the amount sought is reasonable.
- 35.** It was clear to us that the Applicant was unable to explain the reasons underlying the setting of the budget for the three years in question. When asked to do so he repeatedly stated that he had left such matters to the managing agents, JJ Homes to deal with.
- 36.** We were informed by Mr Saleh that JJ Homes were the agents throughout the three years in question in these proceedings but were replaced by him in January 2013. Since then he has carried out the management function himself and has had difficulty obtaining information from the former agents which was why the Tribunal's directions had not been complied with.
- 37.** The management agreement with JJ Homes commencing 01.01.09 states that the fee payable for their services would be at least £150 per annum

plus VAT for each leaseholder together with managing agent disbursements [193].

38. Mr Rajgobal asserted that the management agreement was a qualifying long-term agreement for the purposes of section 20 of the 1985 Act that required prior consultation with the lessees before it was entered into. We reject that submission. The agreement is expressed to run from 19.01.09 to 18.01.10 and it is not, therefore an agreement for services lasting for a period of more than 12 months. As such, it does not amount to a qualifying long-term agreement.

Cleaning, Windows & Gardening

39. Mr Sallar's evidence was that a cleaner attends the Building once a fortnight and cleans the communal areas including cleaning the glazing on the internal communal doors. They also undertake any gardening required and dispose of bulk refuse items.
40. The invoices provided indicate that the same contractor had been used throughout the relevant period at a charge of £40 per month for cleaning and £60 per month for gardening plus additional costs for individual items such as bulk refuse disposal.
41. Mr Rajgobal disputed that this work was carried out as frequently as every fortnight and asserted that the work was only carried out in response to complaints. He also asserted that the large disparity between the estimated sum sought in the budgets and the actual figures meant that the sums demanded were unreasonable.

Decision and Reasons

42. We consider the budgeted sum to be unreasonable given the actual expenditure incurred in each of the three years. Having regard to the pattern of actual expenditure for those years, the invoices for routine work of £100 per month, the size and recent construction of the Building and

the likely work required we determine a reasonable sum to be £2,300 for each year.

Electricity

43. Mr Rajgobal disputed the sums sought on the basis that the estimated sums sought were far greater than the actual figures for each year.

Decision and Reasons

44. Given the absence of any explanation as to the very significant disparity between the budgeted figures and the pattern of actual expenditure for the three years we consider that the sums sought were excessive and that a sum of £1,500 is a reasonable sum for each year.

General Repairs

45. Again, Mr Rajgobal disputed the sums sought given that the actual figures as set out in the accounts were much lower.

Decision and Reasons

46. We agree with the Respondents that the large difference between the budgeted figures and the actual expenditure indicates the budgeted sum was unreasonable. In our view the pattern of actual expenditure for the three years indicates that sum of £1,800 would have been a reasonable sum for each of the three years and we determine accordingly.

Redecoration Costs

47. No expenditure in respect of redecoration costs is shown in the 2009 and 2010 accounts. Mr Sallar informed us that the sum of £4,071 in the 2011 accounts related to redecoration costs in the sum of £3,450 and an asbestos survey. He was unable to explain why this sum was not taken from the reserve fund.

Decision and Reasons

48. We do not consider it reasonable to have sought these sums by way of estimated service charges. Such redecoration costs are infrequent, non-routine expenditure that should, in our view, have been deducted from the reserve fund. We disallow the sums in full on the basis that whilst payable by way of service charge it is unreasonable to include them in the budget given that substantial sums have been demanded each year towards reserve fund contributions.

Management Fees

49. Mr Rajgobal submitted that the services provided by JJ Homes were poor. They had, he said, failed to secure annual accounts on time; failed to properly organise cleaning off the block; dealt with the reserve fund inappropriately.

Decision and Reasons

50. The available evidence supports the Respondents assertions that the service provided by JJ Homes was unsatisfactory.
51. There have been serious breaches of the Applicant's obligations under the terms of this lease in that there has been no service charge reconciliation since 2008, a delay in finalising accounts for the years 2009, 2010 and 2011 until 2012 and a complete lack of an explanation as to why this delay occurred. Demands for service charge payments were sent out to the lessees that, on the face of it, bear little relation to actual costs incurred and without a proper assessment of likely expenditure.
52. Mr Sallar's explanation for these breaches were that he left such matters to JJ Homes. Entry into the management agreement does not absolve the Applicant of his obligations under the lease. These are personal to him. The available evidence indicates that there has been poor management by JJ Homes. As this inadequate service should have been apparent to the Applicant at an early stage we consider that a reasonable estimated

sum for the services to be provided is £2,000 per annum plus with the Respondents contribution being £120.

Reserve Fund Contributions

53. These were demanded in the sum of £2,000 for each year. The accounts show no sums being debited from the reserve fund that stood at £25,776 as at the end of 2009, increasing to £42,490 as at the end of 2011.
54. Mr Rajgobal's position is that the sums held in the reserve fund (and therefore the sums demanded) are too high and that no explanation had been provided as to why the sums in question were being demanded.

Decision and Reasons

55. We were informed by Mr Sallar that major external works took place in 2012 following a consultation exercise under s.20 of the 1985 Act and that this cost approximately £20,000. There is evidence of such consultation at page [74] of the bundle. This was not contradicted by Mr Rajgobal.
56. In light of these substantial works and also having regard to our above determination that the 2011 redecoration costs should have been debited to the reserve fund we determine that the sum of £2,000 per annum is a reasonable sum to have sought for each of the three years in question. This should not, however be taken by the Applicant as justifying the same sum being sought by way of an interim payment for future years. The sum to be demanded should be calculated according to anticipated future works and how long it will be before such works are required, ideally as part of a planned maintenance programme.

Other Matters

57. We do not agree with the Respondents submission that the several summaries of rights and obligations sent to him by JJ Homes were not in the form required by the provisions of the Commonhold and Leasehold Reform Act 2002, Section 153 in that the word "tenant's" was omitted from the title.

58. When pressed by us, Mr Rajgobal conceded that he had not been misled or suffered any detriment as a result of that omission. However, in his view, any departure from the prescribed form rendered it invalid.
59. In our view this is a very minor and technical deficiency that did not mislead the Respondents in any way. We consider that the omission of the word in question from the title does not prevent the contents from being in prescribed form. If we are wrong in that respect, the notice is, in our view, in substantially the same form as the prescribed notice we consider to be sufficient..
60. The annual accounts show actual expenditure in respect of audit and accountancy fees as well postage and sundry items. These items do not, however, appear as heads of expenditure on the budget and as such we have not taken them into consideration when determining what sum is reasonable for the Respondents to pay towards the interim charges. The Applicant may, of course seek to recover these sums now that the actual charges are known for each year. We point out, however, that we would normally expect routine postage and photocopying costs incurred by the managing agents to be absorbed within their annual fee.

Section 20C Application

61. The Respondents seek an order under section 20C of the Landlord & Tenant Act 1985 Act that none of the costs of the Applicant incurred in connection with these proceedings should be regarded as relevant costs in determining the amount of service charge payable by the Respondents.
62. We consider it just and equitable to make an order under s.20C preventing the Applicant from recovering any of the costs of these proceedings before this Tribunal as relevant costs.
63. We have paid due regard to the Respondents history of non-payment of service charge for the years in issue in these proceedings. Whilst we find no merit in the argument that the summaries of rights and obligations sent

to the Respondents by JJ Homes were invalid (which appears to be one of the key reasons why payment was withheld), the Respondents have to a very significant degree, been successful in resisting this application. We have also had regard to the fact that the Applicant's significant non-compliance with this Tribunal's directions meant that it was difficult both for the Respondent to prepare for this hearing and for the Tribunal to make determine this application.

Concluding Remarks

64. This matter will now be remitted back to the County Court. Both parties are encouraged to seek to reach agreement where possible before this matter is next considered by the County Court. If restored for further hearing the Applicant should ensure that the Court is provided with updated figures of what sums (including interest) he considers remain outstanding from the Respondents bearing in mind this decision.

Chairman: Amran Vance

Date: 15 April 2013

Annex

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18 - Meaning of "service charge" and "relevant costs"

- (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 – Limitation of service charges: reasonableness

- (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.

20C. Limitation of service charges: costs of proceedings

- (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;
- (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.

Section 27A – Liability to pay service charges: jurisdiction

- (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.