



HM Courts
& Tribunals
Service

8544 -



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 /00AH /LSC/2012/0676

Premises: 63 AND 65 Albert Road South Norwood London
SE25 4JD

Applicant(s): Mercia Investment Properties Limited

Representative: Carol Nelson MRIPM

Respondent(s): Nigel Currie

Representative: Not appearing

Tribunal
P Leighton LLB
C Gowman

Date of decision: 14th January 2013

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £1000 is payable by the Respondent in respect of the estimated service charges for the year 2012/3
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision
- (3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985
- (4) The Tribunal determines that the Respondent shall pay the Applicant £70 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant
- (5) The Tribunal refuses an application for an order for penal costs under schedule 12 Paragraph 10 of the Commonhold and Leasehold Reform Act 2002

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 estimated service charges payable by the Applicant in respect of the service charge year 2012/13 .
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The application was allocated to the paper track and was determined on the basis of the papers submitted.

The background

4. The property which is the subject of this application is a purpose built block of 6 flats
5. 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.
6. 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 will be referred to below, where appropriate.

The issues

7. As the Respondent did not make any submission the landlord identified the relevant issues for determination as follows:

The payability and/or reasonableness of estimated service charges for [2012/3 comprising

(a) end of year accounts	£31
(b) building repairs	£27.33
(c) gardening	£216.67
(d) building insurance	£500
(e) management fee	£225
Total	£1000

8. Having received submissions from the Applicant and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

General

9. The Applicant submitted the accounts for the previous year dated 30th October 2012 showing the sums actually incurred for the previous year. They were obviously a reasonable indication of the sums likely to be incurred in the coming year and the Applicant prepared estimated on the basis of these figures and guidance in the RICS Management Code

End of Year Accounts**The Tribunal's decision**

- 10 The Tribunal determines that the amount payable in respect of end of year accounts is £31

Reasons for the Tribunal's decision

11 The Applicant explained that there was in force a fixed fee agreement with the accountant to prepare the accounts for the sum of £186. This was figure charged for the previous year and the tribunal accepts that it is a reasonable estimate for the work.

Building repairs

The Tribunal's decision

12 The Tribunal determines that the amount payable in respect of building repairs is £27 33.

Reasons for the Tribunal's decision

13 The Applicant has estimated for a figure of a £164 for repairs to the building to cover ad hoc repairs which the applicants surveyor has indicated are likely under the Health and Safety Regulations and the Working at Heights regulations. The tribunal considers that this is a reasonable provision for the estimated costs

Building Insurance

The Tribunal's decision

14 The Tribunal determines that the amount payable in respect of building insurance is £500

Reasons for the Tribunal's decision

15 The actual cost of insurance for the year 2012 was £3073 .28. No alternative estimate has been provided and the tribunal considers that a figure of 3000 pounds for the insurance of the building is not unreasonable.

Gardening [

The Tribunal's decision

16 The Tribunal determines that the amount payable in respect of gardening is £216.67.

Reasons for the Trib unal's decision

17 This figure is based upon a total charge of £1428.96 which was the cost of gardening for the previous year. It would follow therefore that unless there is some reason for reducing this figure it is a reasonable estimate of likely expenditure for the coming year and is accordingly allowed in this sum

The Tribunal's decision

17 The Tribunal determines that the amount payable in respect of management fee is £225.

Reasons for the Tribunal's decision

18 The management fee for this block of 6 flats is based on a sum of the £200 plus VAT for each unit. This includes all the functions of management required under the Service Charge Residential Management code items a-m.

19 This figure is well within the amounts usually allowed by the tribunal for a management fee and there is no suggestion that the should be reduced on the grounds of mismanagement and is therefore allowed in this amount

Application under s.20C and refund of fees

20 At the end of the hearing, 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/ hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicant namely £70 within 28 days of the date of this decision

21 The Respondent not having appeared and having made no application under section 20C the Tribunal makes no order in this respect

Applicants Application for costs Under Schedule 12 Paragraph 10 of the 2002 Act

The Tribunal's decision

22 The Tribunal does not award the Applicant costs under this provision against the Respondent in respect of the conduct of the application.

Reasons for the Tribunal's decision

23 The Applicant is seeking costs on the basis that the Respondent failed to concede liability for the interim payments at an early stage and thus avoid the costs of the application

24 The Applicant wrote to the Respondent on 27th September 2012 together with the demand stating that if the sum was not conceded within 14 days an application would be made to the tribunal for a determination. No response having been received from the Respondent the Applicant promptly issued this application on 10th October 2012(which is in fact 13 days)

25 The Applicant referred to two decisions of the Tribunal where an order for costs was made where the Tribunal judged that an admission of liability should have been made at an early stage to avoid the necessity of an application

26 Without demurring from the correctness of those decisions in any way the Tribunal is satisfied that although the Applicant is entitled to recover the costs of the application this is not a case where it can be said that the Respondent has behaved so unreasonably as to justify an order under Schedule 12 Paragraph 10 and that application is dismissed

Chairman: Peter Leighton

Date: 14th January 2013

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 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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 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).

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.