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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/00AM/LSC/2012/0519

Premises: 206C Queensbridge Road London E8 3NB

Applicant: The London Borough of Hackney

Representative: Hackney Homes

Respondents: Mr Ancell Marshall and Mrs Delphine Marshall

Representative: N/A

Date of hearing: 13th December 2012 and 1st February 2013

Appearance for Applicant(s): Mr Murch of Counsel

Appearance for Respondent(s): The Respondents appeared and represented themselves.

Leasehold Valuation Tribunal: Dr Helen Carr
Mr Peter Roberts Dip Arch RIBA

Date of decision: 1st February 2013

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £ 1228.23 is payable by the Respondent in respect of the service charges for the years 2007 /8 to 2011/12.
- (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) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Clerkenwell County Court.

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 service charges payable by the Applicant in respect of the service charge years 2007-8 to 2011-12 inclusive. .
2. Proceedings were originally issued in the Clerkenwell and Shoreditch County Court under claim no. 1UC68632 and was transferred to this Tribunal, by order of District Judge Stary on 27th July 2012. .]
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Mr Stephen Murch of Counsel at the hearing and the Respondents appeared in person. Mr Murch was accompanied by Ms Diane Woode, paralegal and Mr David Cassidy, service charge Recovery Team Leader with the Applicant.
5. Prior to the hearing on 13th December 2012 the parties agreed that the service charge contributions would be calculated at 40% of the costs incurred at 206 Queensbridge Road for the service charge years 2007/8 to 2012/13 and at 31% of the costs incurred at both 204 and 206 Queensbridge Road for the service charge year 2013/14 and subsequent years.
6. The hearing was adjourned so that a site visit could be arranged. The hearing reconvened on 1st February 2013.

The background

7. The property, which is the subject of this application is situated on three floors above a basement flat. It forms part of a Victorian block 204 and 206 Queensbridge Road which has been sub-divided into four units each with a rear garden.
8. The Tribunal inspected the property before the reconvened hearing on the morning of the 1st February 2012 in the presence of the Respondents and Mr Murch of Counsel, Ms Diane Woode, paralegal with the Applicants, Mr Cassidy, service charge recovery team leader, and Mr Jim Fogarty, an Electrical Engineer with Hackney Homes.
9. The inspection focused on the landlords supply of electricity for lighting the communal areas. The main electrical intake and landlord's supply was situated in a understairs store area at basement level. The distribution board had six positions and five supplies, labelled from left to right, 204A, 206A, spare (surgery) 204B, 202B and landlord's supply.
10. The electrical engineer instructed by Hackney tested the incoming mains, the distribution system and the existing light fittings, four to the front of the block and two to the rear and some apparently redundant junction boxes one to the front and one to the rear. It was established that the junction boxes were dead, the wall lights either side of the ground floor entrance to 206C were fed via the Respondents own metered supply, and no other external lights were fed from the landlord's meter. The external wall lights over entrance doors to basement flat 206A were fed off 206A's own meter.
11. The Tribunal considered it would be difficult to describe any of the lighting to the exterior of the block as communal lighting as the lights were located in the basement areas. The landlord's metered supply under the main entrance steps was indicating some consumption of electricity, but it did not serve the communal lighting or indeed any external lighting. and it was not clear what it was serving.
12. The Tribunal noted that the block was in need of external decorations, there was evidence of damp to the rear wall of the basement flat, the garden areas (other than the area demised to the Respondents) were neglected, the parking area to the front of the property was uneven leading to water pooling.
13. The Respondents hold 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

14. At the start of the hearing on the 13th December the parties identified the relevant issues for determination as follows:
- (i) The payability and/or reasonableness of service charge for service charge years 2007 - 2011 and in particular the reasonableness and payability of charges for
 - a. insurance costs
 - b. block repairs
 - c. block lighting
 - d. management fees
 - (ii) At the beginning of the re-convened hearing the Applicants conceded that the service charges demanded in connection with block lighting are not chargeable for the years in dispute.
15. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Insurance costs for the years in dispute

16. The Applicant provided a statement from Mr Michael Pegram which stated that the Applicant no longer provided lessees with copies of statements of building insurance unless specific requests were made. This policy of the Applicant accords with its obligations under the lease.
17. The Respondents argue that they should have been provided with copies of the details of the insurance policy as this would have enabled them to claim for works that they have carried out to the property.
18. In response to questions from the Tribunal it appeared that the Respondents had carried out works which may have been the Applicant's responsibility.
19. The Respondents did not challenge the reasonableness of the premiums paid.

The Tribunal's decision

20. The Tribunal determines that the Applicants are entitled to the sums demanded in connection with the insurance premium.

Reasons for the Tribunal's decision

21. The Applicant's practice of not providing details of the insurance policy accords with the terms of the lease. The Respondents concede that they have not made formal requests for a copy of the insurance policy.

Block repairs

22. The Applicant informed the Tribunal that the only demand it was making for the costs of block repairs was the sum of £278.93 which relates to works undertaken in 2009/10 as a result of drain blockage.
23. The Respondents' argument was in essence that they should not be required to pay for repairs until the Applicant had carried out the repairs that it was ordered to carry out following county court proceedings.
24. The Applicant submitted that those repairs were entirely separate from the proceedings before the Tribunal and that any action in connection with those repairs should be taken back to the county court

The Tribunal's decision

25. The Tribunal determines that the amount payable in respect of block repairs is £278.93 p

Reasons for the Tribunal's decision

26. There was no dispute that the work had been carried out and no argument that the charges were not reasonable.

Management fees

27. The Applicant informed the Tribunal that the only charges made in connection with management related to its administration costs, including legal costs. It calculated these on a borough wide basis and then these are apportioned between freeholders and leaseholders. The Applicant considered that this was the fairest way to apportion these costs.
28. The Respondents argue that the Applicant has failed to provide them with adequate management. Many of their complaints relate to alleged failures on the part of the Applicant to manage the block effectively. They complain of poor standards of repair and anti-social behaviour from the Applicant's tenants. They also complained of a lack of response to issues they raised.
29. The Tribunal was concerned that the Applicant had failed to manage the dispute before it appropriately as it had not taken the Respondents' concerns

about the block lighting seriously, relying on the fact that the electricity costs accorded with what one might have expected of a block of this size.

30. The Applicant conceded some management failures and agreed to reduce its management charges by 20%.

The Tribunal's decision

31. The Tribunal determines to reduce the management fees for the years in dispute by 50%.

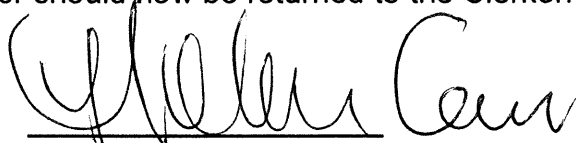
Reasons for the Tribunal's decision

32. The Tribunal determines that if the services provided for the management fees had been appropriately provided then the fees demanded would be reasonable. However in the Tribunal's opinion the Respondents have had a very poor service from the Applicant as they have failed to handle this dispute in a professional manner until the hearing before the Tribunal.

Application under s.20C

33. After some discussion the Respondents decided not to make a s.20C application.
34. The Tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Clerkenwell County Court.

Chairman:


Helen Carr

Date:

1st February 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.