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Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 27A
OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON/00AQ/LSC/2012/0409

Premises: 87 Dove Park, Hatch End, Middx, HA5 4ED

Applicant: Dove Park (East) Management Co Ltd

Respondent: Mr P Parker

**Leasehold Valuation
Tribunal:** Mr NK Nicol
Mr T Sennett
Mr P Clabburn

Date of decision: 19th April 2013

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 Respondent in respect of the service charge years 2010-11, 2011-12 and 2012-13, totalling £2,786.59. Following a hearing on 26th February 2013, the Tribunal has issued two further orders, on 26th February and 26th March 2013, which contain all the relevant material to date. This decision should be read as a continuation and part of the two previous orders.
2. The Applicant has now filed and served a letter dated 8th April 2013 explaining that they had sought legal advice and attaching the further service charge demands served on the Respondent. These new demands comply with the statutory requirements under s.21B of the Landlord and Tenant Act 1985, the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 and ss.47 and 48 of the Landlord and Tenant Act 1987.
3. The Respondent continues to take no part in these proceedings.
4. In the circumstances, the Tribunal is bound to hold that the service charges of £2,786.59 are payable by the Respondent as they have been validly

demanded and no defence has been put forward, let alone made out. No evidence or arguments have been put in support of the alleged counterclaim and set-off and so the Tribunal is bound to hold that none has been made out.

Chairman:

_____ NK Nicol

Date:

19th April 2013

LONDON RENT ASSESSMENT PANEL

**FURTHER DIRECTIONS OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 27A
OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON/00AQ/LSC/2012/0409

Premises: 87 Dove Park, Hatch End, Middx. HA5 4ED

Applicant: Dove Park (East) Management Co Ltd

Respondent: Mr P Parker

**Leasehold Valuation
Tribunal:** Mr NK Nicol
Mr T Sennett
Mr P Clabburn

**Date of further
directions:** 26th March 2013

IMPORTANT NOTE:

- **The directions are formal orders and must be complied with**
- **They are intended to help the parties and the tribunal deal with applications swiftly and economically**
- **If you fail to comply with them your case may be prejudiced**
- **Whenever you send a letter or email to the tribunal you must also send a copy to the other party and note this on the letter or email**

BACKGROUND

1. In its further directions order of 26th February 2013, the Tribunal set out the background to this application and directed that the Applicant provide further material. The Applicant has complied with the further directions and the Tribunal has considered the further material provided.
2. At the previous hearing, the Tribunal discussed with the Applicant's representative, Mr Giles, both the need to take professional and legal advice on the requirements of residential property management in general and the

statutory obligations relating to the form of service charge demands. Paragraph 8 of the further directions order directed the parties' attention to s.21B of the Landlord and Tenant Act 1985 and ss.47 and 48 of the Landlord and Tenant Act 1987, copies of which were appended to the order.

3. However, it is clear that the Applicant has not obtained any expert advice. Amongst the new material is a document headed, "Service Charges – Summary of tenants' rights and obligations." It does not comply with the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007, SI 2007/1257. Reg.3 sets out the wording to be used for the summary but, instead, the Applicant has used the statutory excerpts attached to the Tribunal's further directions order.
4. Unless and until the Applicant has complied with the relevant legal requirements, the Respondent is entitled to withhold payment of the service charges and the Tribunal has no power to determine that they are payable. The Tribunal has decided not to dismiss the application yet for two reasons:-
 - a) The Respondent persists in playing no part in these proceedings. He has put forward no properly evidenced justification for his failure to pay his service charges.
 - b) The service charges will be payable as soon as s.21B of the Landlord and Tenant Act 1985 and ss.47 and 48 of the Landlord and Tenant Act 1987 have been complied with, even if compliance occurs late or after the service charges were first demanded.
5. In the circumstances, the Tribunal has decided to try to save time and resources by giving the Applicant one last chance to take suitable advice and comply with their legal obligations. This is not a matter of frustrating efforts to recover charges from one recalcitrant lessee. Unless and until the Applicant complies with their legal obligations, they risk any number of lessees, now and in future, giving rise to difficulties by raising justifiable objections, possibly resulting in further litigation.

FURTHER DIRECTIONS

6. The determination of this matter is further adjourned subject to the following directions.
7. The Applicant shall, by 4pm on **12th April 2013**, send to the Tribunal and serve on the Respondent copies of any service charge demands served at any time on the Respondent in relation to his service charges for each of 2010-11, 2011-12 and 2012-13 which comply with the relevant statutory requirements. If the demands do not so comply, the Tribunal is likely to dismiss the application.

8. The Tribunal shall reconvene and make a final determination on the papers, without a hearing, during the week commencing **15th April 2013** and shall notify the parties of the determination thereafter.

Chairman:

NK Nicol

Date:

26th March 2013



LONDON RENT ASSESSMENT PANEL

**FURTHER DIRECTIONS OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 27A
OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON/00AQ/LSC/2012/0409

Premises: 87 Dove Park, Hatch End, Middx. HA5 4ED

Applicant: Dove Park (East) Management Co Ltd

Respondent: Mr P Parker

Date of hearing: 26th February 2013

Appearance for Applicant: Mr P Giles, director
Ms A Yimesghen

Appearance for Respondent: Did not attend

Leasehold Valuation Tribunal: Mr NK Nicol
Mr T Sennett
Mr P Clabburn

Date of further directions: 26th February 2013

IMPORTANT NOTE:

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- **If you fail to comply with them your case may be prejudiced**
- **Whenever you send a letter or email to the tribunal you must also send a copy to the other party and note this on the letter or email**

BACKGROUND

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 Respondent in respect of the service charge years 2010-11, 2011-12 and 2012-13, said to total £2,786.59. The application made on 18th June 2012 had only mentioned the latter two years but the total includes a small amount said to be owing from the previous year.
2. On 17th July 2012 the Tribunal held a pre-trial review attended by both parties. The Respondent made it clear that he did not dispute the payability or reasonableness of the service charges. Instead, he claimed to have a set-off arising from the Applicant's alleged failure to maintain the roof above his flat resulting in penetrating damp. The Applicant denies that there has ever been such a problem and ascribes any damp to condensation caused, at least in part, by the number of occupants in this one-bedroom flat and their failure properly to ventilate it. However, they agreed to submit an insurance claim and the Respondent agreed to pay his service charges in the event that the insurers did not support his claim. The pre-trial review was adjourned for 3 months.
3. The Applicant has since obtained reports from a structural engineer (of which the Tribunal has only seen an excerpt) and a roofing contractor, both of which indicate that there is no penetrating damp as claimed by the Respondent. The Respondent has queried the conclusions to be drawn from the reports but has otherwise provided no evidence in support of his claims. He has still yet to pay his service charges.
4. Therefore, the Tribunal held a further pre-trial review on 6th November 2012. Detailed directions were issued. The Respondent did not attend the pre-trial review and has not complied with any of the directions.
5. In accordance with the directions, the Tribunal conducted a hearing on 26th February 2013. The Respondent did not attend or provide any communication explaining his absence. Mr Giles, the chairman of the Applicant company's management committee, attended on behalf of the Applicant, supported by Ms A Yimesghen.
6. Mr Giles explained that the Respondent is a serial non-payer of service charges and the only person on the estate with whom his volunteer management committee have a problem. He said that there was nothing in the Respondent's alleged set-off and that it was just an excuse to try to avoid or delay paying his liabilities. The Tribunal agrees that his complete failure to provide any evidence in support of his claim or to take part in these proceedings strongly suggest that this is the case. Such tactics constitute vexatious and unreasonable behaviour which may justify making a costs order under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.

7. Mr Giles has not attended this Tribunal before. He does not have experience of property management or legal proceedings and is not supported by anyone who does. As a result, he did not appreciate what documents he needed to include in the hearing bundle to establish the Applicant's case. He understood that the Respondent's concession that he did not dispute the amount claimed for service charges relieved him from bringing documents which could establish that amount. In particular, he wanted a declaration from the Tribunal as to the Respondent's obligation to pay his service charges.
8. The Tribunal is normally limited to considering the issues raised by the parties. It is too late in these proceedings for the Respondent to rely on any objection to his service charges other than the alleged set-off. However, the Tribunal has no jurisdiction to determine that an amount is payable unless satisfied that it is. This means that anyone claiming an amount to be payable needs to establish that the basic requirements of the lease and statute law have been complied with. In this case compliance may be established by documents which include the audited accounts which the lease obliges the Respondent to serve on the Applicant and service charge demands which comply with s.21B of the Landlord and Tenant Act 1985 and ss.47 and 48 of the Landlord and Tenant Act 1987. Unfortunately, Mr Giles had not included these documents in the hearing bundle, despite their being referred to in the Tribunal's directions of 6th November 2012.
9. Further, the Tribunal is not in the business of making general declarations of a person's obligations. The Tribunal's job is to make determinations in relation to actual sums owed. The Respondent's obligation to pay his service charges is very clearly stated under clause 3(e) of the original 99-year lease (a copy is included in the Tribunal's main file) and there is nothing to be gained by the Tribunal simply repeating this or pointing to it.
10. In the circumstances, the Tribunal has decided to adjourn the final determination of this matter. Given the lack of participation of the Respondent and his complete failure to produce any evidence in support of his case, it would not be appropriate to dismiss the application. Instead, the Applicant will be allowed the time to produce the additional documents required. Appropriate further directions are set out below.
11. The Tribunal has decided that it would be appropriate for the final determination to be made on the papers, without requiring the parties to attend another hearing. Having said that, both parties have the right to an oral hearing and may request one but, if they do so and then do not attend, that again would constitute vexatious and unreasonable behaviour which may justify making a costs order under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.
12. The relevant legal provisions are set out in the Appendix to this decision.

FURTHER DIRECTIONS

13. The determination of this matter is adjourned subject to the following directions.
14. The Applicant shall, by 4pm on **22nd March 2013**, send to the Tribunal and serve on the Respondent a supplementary bundle containing the following documents, if available:-
- a) The audited service charge accounts for 2010-11, 2011-12 and 2012-13.
 - b) The original service charge demands served on the Respondent in relation to his service charges for each of 2010-11, 2011-12 and 2012-13.
 - c) If not included in the above categories, any service charge demands served at any time on the Respondent in relation to his service charges for each of 2010-11, 2011-12 and 2012-13 which comply with the relevant statutory requirements.
 - d) A statement of the Respondent's service charge account showing the sums demanded from and the sums paid by the Respondent for the years 2010-11, 2011-12 and 2012-13.
 - e) If the Applicant intends to make an application for costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002, a schedule of the costs claimed together with any receipts, invoices or other documents which evidence those costs. If the Applicant intends to seek an order requiring the Respondent to reimburse their Tribunal application and hearing fees in accordance with reg.9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 then those sums should also be included in the schedule of costs.
15. The Tribunal shall reconvene and make a final determination on the papers, without a hearing, during the week commencing **25th March 2013** and shall notify the parties of the determination thereafter.

Chairman:

NK Nicol

Date:

26th 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 21B

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

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.

Landlord and Tenant Act 1987

Section 47

- (1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—
- (a) the name and address of the landlord, and
 - (b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.
- (2) Where—
- (a) a tenant of any such premises is given such a demand, but
 - (b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge or an administration charge ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

- (3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of service charges or (as the case may be) administration charges from the tenant.
- (4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Section 48

- (1) A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.
- (2) Where a landlord of any such premises fails to comply with subsection (1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.
- (3) Any such rent, service charge or administration charge shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal, there is in force an appointment of a receiver or manager whose functions include the receiving of rent, service charges or (as the case may be) administration charges from the tenant.

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.