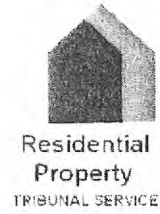


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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A and 20C OF THE LANDLORD AND TENANT ACT 1985**

Case Reference:	LON/OOBB/LSC/2012/0819
Premises:	Flat 5, Hart Court, 317 Burges Road, East Ham, London E6 2EQ
Applicant:	Burges Road Management Company Limited
Representative:	PDC Lehal
Respondent:	Mr Harun Ali
Representative:	MTG Solicitors
Date of hearing:	21 May 2013
Appearance for Applicant:	Ms M Sobiecki of counsel Miss Gibson, Miss K Howe both of RMG Ltd
Appearance for Respondent(s):	Ms A Knight
Leasehold Valuation Tribunal:	D D Banfield FRICS Mrs J Davies FRICS
Date of decision:	4 June 2013

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### Summary Decision of the Tribunal

To allow the service charges as demanded less the deduction of £91.81 referred to in paragraph 23 giving a total due of **£1,031.88**.

To disallow all of the administration charges in the sum of **£439.45**

To grant an order under S.20C of the Landlord and Tenant Act 1985.

This case is transferred back to Bow County Court under their case reference 1BEO2077 so that either party can apply for any order relating to costs, interest or enforcement which is not within the jurisdiction of this tribunal.

### Background

1. By an order of Deputy District Judge Freeborough dated 29 October 2012 sitting at Bow County Court Claim Number 1BEO2077 was transferred to this tribunal to make a determination under Section 27A of the Landlord and Tenant Act 1985 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as to whether service charges and administration costs are payable.
2. At the oral pre-trial review on 12 February 2013 the tribunal drew up directions in consultation with those attending and identified the issues as being;
  - i. Whether the sum of £1,123.69 in alleged arrears of service charges is payable.
  - ii. Whether the sum of £445 in alleged administration costs is payable.
3. From the statements of case submitted it seemed to this tribunal that the dispute covered three areas;
  - The amount of the service charges
  - Whether the demands were correctly served
  - Whether the administration charges were properly payable

### Hearing

4. At the start of the hearing Miss Sobiecki corrected the figures shown at paragraph 2 (i) and (ii) above and which appeared in the applicants' particulars of claim to £1,107.24 and £439.45, a total of £1,546.69. She said that contrary to the respondent's case the applicant had complied with their covenants under the lease, the demands had been properly served and administration fees were payable under the lease. In answer to the tribunal she confirmed that the sums at issue were shown on the statement at page 113

of the bundle and consisted of quarterly service charge payments in advance from 1 September 2009 to 30 November 2010, a land registry search fee, 2 legal fees and 2 administration fees.

5. The budget for 2010/11 was included at page 145 of the bundle and showed a quarterly payment for flat 5 of £245.49. There was no explanation as to why £245.52 was the sum actually charged as shown on page 113.
6. The budget for 2009/10 was not included in the bundle and was only provided near the end of the hearing. Although the heading of the document indicated that it was for 2008/2009 this was explained as a typing error which explanation was accepted by Miss Knight. In this case the quarterly charge was shown as £205.42 rather than the £205.40 shown on the statement at page 113.
7. Ms Sobiecki referred to Part IV of the lease setting out the lessor's obligations to repair and maintain the structure and common parts and at clause 9 to create and maintain a reserve fund.
8. Miss Howe, the property manager responsible for this development and Miss Gibson the Head of Collections then gave evidence .
9. Miss Howe said that each year's budget was based on the previous year's actual expenditure adjusted for inflation and any other changes as appropriate. Miss Knight highlighted additional headings of expenditure in the 2010/11 budget such as Gardening and Cleaning the explanation for which was said to be that one of the directors had carried out these services herself but on her resignation the new directors put the work out to a commercial concern.
10. Miss Howe explained that the new directors had also requested directors' insurance cover an amount for which was therefore included although in the event it was not taken out. £500 was included for Repairs and maintenance as it was impossible to provide an accurate figure for repairs as yet not identified.
11. Miss Howe said that the accountants' charge was necessary as an audit had to be provided and that they were tendered annually. She confirmed that there was only one set of accounts that covered both the company and the service charge.
12. Ms Knight considered that the accounts produced were defective in that they were not made up to the 31st March each year as specified in the lease at Part 4 clause 11. She further said that it was requirement that they should be audited whereas they were merely reviewed. She said there was no obligation to under the lease for secretarial and other company expenses to be met by the service charge.
13. Miss Howe explained that the demands had been sent to Mr Ali at the property address as this was "the only address on the system" . She said that she had not been provided with a correspondence address and that the Land Registry entry gave the property as the address for service. Miss Gibson gave further explanations as to the service of demands. She accepted that they did

have the correspondence address provided by Mr Ali but that their system changed in 2009 following which if an account went into arrears after 2 reminders they only corresponded with the address at Land Registry. She said that due to problems incurred the system had now been changed back again and both addresses would be used. Somewhat surprisingly she contradicted the evidence given at paragraph 7 of the applicants reply to the respondents statement of case and said that the 3 demands shown at pages 197-199 were never in fact sent.

14. Miss Howe had no explanation as to why the 2 legal fees referred to in paragraph 3 above were not demanded until the invoice dated 19 April 2012 at page 125 of the bundle. Miss Gibson said that she was sure they had been sent on the due dates but was unable to provide copies as being computer generated they always showed the date produced.
15. She confirmed that the "Tenants Rights and Obligations were always sent with the demands and although not attached to the demand were within the same envelope. Miss Gibson elaborated further and explained that there was an automated system for sending out demands with sufficient checks to ensure that all documents that should be included were actually sent.
16. Miss Howe explained that the account went into arrears due to their system not collecting the direct debits. The system was set up so that if an account was in credit then the direct debit was automatically "locked" and not collected. To get round this they had to manually "unlock" the account. She accepted that whilst this had been done on several occasions in the past for some reason it was missed. She considered however that it was the tenant's responsibility to ensure that payments were being made.
17. Ms Knight said that prior to April 2009 Mr Ali's account was in credit. At this point due to a number of errors on the managing agent's part service charges were not collected and arrears were incurred. It should not be up to the respondent to have to pay for the mistakes of others.
18. Miss Knight referred to a payment that had been made of £2,129.85 and queried why only £927.60 had been credited to the service charge account. Miss Gibson explained that the balance was "other costs" and referred to the breakdown on page 29 indicating PDC collection fees and £1,002.50 as costs from PCS.
19. Miss Knight then queried the payment of £731.04 credited on 4 July 2011 in acknowledgement thereof PDC had confirmed on 17 June 2011 (page 31) that the sum "clears our account" Miss Gibson said that the statement only referred to the arrears that had been referred to PDC and not the Service charge account as a whole. She said that in the absence of instructions to the contrary the sum would be credited to the earliest arrears.
20. Ms Knight said that the costs of running the management company were not recoverable under the lease and referred to *Wilson v Lesley Place (RTM) Company Ltd.*

## Decision

21. The facts of this case seem to be clear and largely undisputed. The respondent had been paying his service charge by direct debit for some time until the managing agents accounting system caused that to cease. Instead of manually correcting the position as had happened on a number of occasions in the past the managing agents failed to do so thus allowing the account to go into arrears. At this point, they contacted the respondent but, relying on having previously set up a direct debit the respondent took no action. After 2 reminders sent to his correspondence address the applicants then only wrote to the property which was either vacant or sub let. Up to the change in their system reminders would have continued to be sent to both the property and correspondence address and, on finding the new system was causing problems they reverted to the former.
22. The applicant's witnesses explained the system of sending out service charge demands and we are satisfied that they most likely included the required Tenants rights and obligations. The automated nature of the system made it seem difficult for any omissions to occur. We are also satisfied that by serving the demands on the address for service as shown on the Land Registry entry that the demands were properly served.
23. The service charges demanded are based on budget estimates and as such we have only considered whether they appeared to be reasonable when the estimate was produced. Basing them on the previous years expenditure suitably adjusted for inflation and any changes in circumstance seems a reasonable basis and as such we find no fault in the process. We accept the explanation regarding the effect on cleaning and other costs resulting from the change of directors.
24. There are two items that cause us concern in that in part at least they relate to the expenses of running the company rather than payable under the lease. Company expenses are payable by the shareholders and are not service charge items. We therefore disallow the sums for Directors' insurance and Company secretary's fees totalling £1,193.50 which by applying the service charge percentage of 7.6923% gives a deduction of £91.81.
25. With regard to the accountants fee we find it difficult to differentiate between costs relating to the production of the service charge accounts and those relating solely to the company. As we are considering budgets only however we consider that it is reasonable to allow them in full.
26. We therefore allow the service charges as demanded less the deduction of £91.81 referred to in paragraph 23 above giving a total due of **£1,031.88**.
27. We now turn to the administration charges. Those before us total £439.45 and are made up of a Land Registry search fee of £16.45, two Legal fees each of £176.25 and two administration fees of £35.25 each. Other administration charges appear to have been paid as referred to in paragraph 17 above but we must emphasise that those sums are not before us and we can make no determination on them.

28. We are quite satisfied that these arrears were occasioned by the failures of the managing agents in applying what should have been the most secure system of payment, direct debit. The lessee did not set up the system and had no control over it. He had made arrangements to pay by direct debit and had received confirmation as to when payments were to be taken. This did not happen and whilst perhaps it would have been wiser for the applicant to establish what was going wrong we do not consider he should be penalised for not doing so.
29. We therefore disallow the administration charges of £439.45 in full. Other administration charges appear to have been paid as referred to in paragraph 17 above but we must emphasise that with some regret those sums are not before us and we can make no determination on them.

#### Costs

30. The respondents ask for an order under S 20C of the Landlord and Tenant Act 1985 preventing the landlord placing the cost of these proceedings on the service charge. we are satisfied that this matter would not have been before us if the managing agents had not ceased to collect the direct debit payments. As such we grant the order requested.
31. This case is transferred back to Bow County Court under their case reference 1BEO2077 so that either party can apply for any order relating to costs, interest or enforcement which is not within the jurisdiction of this tribunal.

D Banfield FRICS:

Date 4 June 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 - which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and 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 -  
"costs" includes overheads, and  
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 -  
only to the extent that they are reasonably incurred, and  
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 -  
the person by whom it is payable,  
the person to whom it is payable,  
the amount which is payable,  
the date at or by which it is payable, and  
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 -  
the person by whom it would be payable,



- the person to whom it would be payable,  
the amount which would be payable,  
the date at or by which it would be payable, and  
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 -  
has been agreed or admitted by the Tenant,  
has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the Tenant is a party,  
has been the subject of determination by a court, or  
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

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.

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—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;  
in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;  
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;  
in the case of proceedings before the Upper Tribunal, to the tribunal;

- 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.