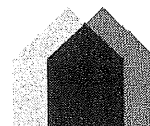




HM Courts
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Residential
Property
TRIBUNAL SERVICE

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/00BE/LSC/2012/0553

Premises: Flats 11, 17, and 43 Grenier Apartments 18
Gervase Street London SE15 2RS

Applicants: Mr A Weatherhead and Dr J Harris (flat 11)
Miss A Rainford-Roberts (flat 17)
Dr T Lanier (flat 43)

Representative: Dr Lanier acted as representative but all three
applicants contributed to the hearing

Respondent(s): Bernard Construction Limited

Representative: Residential Block Management Services Ltd
(RBMS)

Date of hearing: 10th December 2012

Appearance for Applicant(s): The Applicants all appeared

Appearance for Respondent(s): Mrs L Thomas Property Manager and Mr N St
Clair Senior Manager with the Respondent
Representatives

Leasehold Valuation Tribunal: Dr Helen Carr
Mr Stephen Mason FRICS FCI Arb
Mr John Francis

Date of decision: 15th January 2013

Decisions of the Tribunal

- (1) The Tribunal determines that the sums demanded in respect of the insurance premium, the reserve fund and the management fees are payable by the Applicants in connection with the service charge year 2011.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision

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 year 2011.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicants appeared in person at the hearing and the Respondent was represented by Mr N St Clair and Mrs L Thomas from Residential Block Management Services Ltd (RBMS) the managing agents for the Respondent from January 2011.
4. During the hearing the Respondents handed in further documents, namely the property expenditure listing, the insurance summary, the insurance revaluation and the claims history in relation to the block.. The Applicants were given an opportunity to consider and respond to these documents.

The background

5. The properties which are the subject of this application are flats within a development which is a conversion carried out in 2001 from a Victorian/Edwardian school. There are 44 flats in the development which also includes five houses.
6. 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.
7. The Applicants hold long leases 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 and will be referred to below, where appropriate.

The issues

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for 2011 relating to
 - a. The insurance premium
 - b. Reserve fund contribution
 - c. The management fees

9. 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.

The insurance premium

10. The Applicants considered the increase in insurance premium for the development from £11,671 demanded in 2010 to £30,712 to be unreasonable.
11. The Respondent, in its statement, conceded that some of the increase resulted from an over-recovery of buildings insurance and that a sum of £203.69 was to be credited to each lessee's account.
12. During the hearing it emerged that a further sum had been overcharged and the Respondent agreed to deduct that sum also from the demand.
13. Nonetheless there was still left a substantial increase in the amount demanded from the Applicants from the original estimate. The total amount demanded from each lessee was £372.77 pence as compared with the original estimate of £249.
14. The Respondent explained that the high level of the demand was the result of (i) the exceptional claims history of the development and (ii) the costs of paying the insurance by monthly instalments which was necessary because there was insufficient monies in the account to pay for the insurance premium in one payment.
15. The Respondent also explained that it expected that the costs of insurance would fall as a result of its improved management of the property which will

result in a less dismal claims history and that as it is managing the arrears position more assertively than the previous management it will be able to pay the insurance in one lump sum and save the additional costs incurred by paying in instalments.

16. The Applicants considered that as they had all paid their service charges they should not be required to pay the additional charges made necessary by the monthly payments.
17. The Tribunal notes that the Applicants did not produce alternative quotations for the insurance charges.

The Tribunal's decision

18. The Tribunal determines that the amount payable in respect of the insurance in the service charge year 2011 is reasonable.

Reasons for the Tribunal's decision

19. It notes the very high claims history which inevitably makes premiums rise and also considers that the Respondent had no choice but to incur extra costs as a result of having to pay the insurance charges monthly in arrears.
20. The Applicants argument that the Respondent should itself bear the additional costs of the insurance is misguided. The Respondent has a responsibility to put insurance in place, but the costs of that, to the extent that they are reasonable have to be met by the lessees. The Respondent has in the circumstances behaved reasonably in paying for the insurance in instalments.

Reserve fund charges

21. The Applicants argue that as they had each paid monies into the reserve fund that monies should be made clear on the face of the accounts.
22. What they were asking for was clarity of accounting rather than a finding from the Tribunal that the demand was payable and reasonable.
23. The Respondent explained that the reason why no monies were shown as credited to the reserve fund was because insufficient monies were collected to discharge the current liabilities, therefore no payment had been made to the reserve fund. The Respondent made it clear that as arrears of service charges were collected monies would be paid into the reserve funds.

The Tribunal's decision

24. From the perspective of the Tribunal it appeared that the demand for reserve fund payments was reasonable and payable, and a proper step for the Respondent to take. However it made no determination on the reserve fund issue as the Applicants were seeking clarity rather than a determination on reasonableness.

The level of management fees

25. The Applicants pointed to an earlier decision of the Tribunal when the fees of the previous managing agents were reduced by 20% for one year because of the inadequacies of those managing agents.
26. The Applicants felt that the current managing agents were performing below expectations for the level of management fee demanded which is £225.00 per unit plus VAT.
27. They pointed to delays in responding to emails, poor performance in replacing lighting, poor performance in connection with the problems with the gates, poor performance in dealing with outstanding repairs and the ingress of vegetation from a neighbouring building.
28. The Respondents explained that they had changed the gate contract to a contractor with higher performance standards and that their protocol for the lighting was to instruct the caretaker to check the fault prior to calling out an electrical contractor. This saves the lessees money as often the only requirement is to replace the light bulb which can be done by the caretaker. However following this protocol does lead to delay as the caretaker only attends the property twice a week and he may forget to check the reported fault. Nonetheless the Respondent considers that this is an appropriate practice to save lessees costs.
29. The Applicants informed the Tribunal that they considered that £200 plus VAT would be an appropriate fee for the managing agents to charge.
30. Mr St Clair informed the Tribunal that the charge was at the lower end of the scale for the complexity of the development and the scale of the grounds.

The Tribunal's decision

31. The Tribunal considered that the charge of £225.00 plus VAT per unit was reasonable.

Reasons for the Tribunal's decision

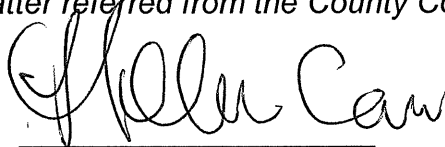
32. The charges for management are reasonable taking into account the nature of the property.
33. The responses to failures in lighting are reasonable and cost effective and the change of contractor in connection with the gates is an appropriate response to the problem. Greater attention to disrepair issues will no doubt be given once sufficient funds are available to address those issues.
34. The Tribunal did comment that greater efforts may be required to communicate effectively with the lessees. Mrs Thomas informed the Tribunal that she had attended meetings with the Residents Association on Saturdays during her own time. This is very commendable. The Tribunal is confident that this level of engagement will overcome the distrust that the lessees justifiably feel as a result of the very poor performance of the previous managing agents.

Application under s.20C

In the application form and at the hearing, the Applicant applied for an order under section 20C of the 1985. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines to make no order under section 20C.

Was this matter referred from the County Court?

Chairman:



Helen Carr

Date: 15th 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.