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

Case Reference: LON/00BK/LSC/2012/0675

Property: Flat 17, 7 Queen Anne Street, London W1G
9HN

Applicant: Mr B Luklinski

Respondent: University of Cambridge

Date of hearing: 7th February 2013

**Appearances for
Applicant:** Mr Luklinski

**Appearance for
Respondent:** Mr H Day, Counsel for the Respondent

**Leasehold Valuation
Tribunal:** Mr P Korn (chairman)
Mr N Maloney FRICS FIRPM MEWI

Date of decision: 18th February 2013

Decisions of the Tribunal

- (1) The Tribunal makes the following determinations:-
- The Applicant's application is dismissed in its entirety.
 - The Applicant is ordered to pay £200 to the Respondent by way of penalty costs pursuant to paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.
- (2) The Tribunal makes no order under section 20C of the 1985 Act and no order for the refund of the application or hearing fees.

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the liability to pay and reasonableness of certain service charge items.
2. The exact basis of the claim is not clear from the initial application and this point is referred to in more detail below.
3. The relevant legal provisions are set out in the Appendix to this decision.

The background

4. The Applicant holds a long lease ("**the Lease**") of the Property pursuant to a lease dated 24th June 1977 originally made between Harmont Investment Company Limited (1) and Her Majesty The Queen represented by Paul Martin the High Commissioner for Canada (2) as subsequently varied and extended.
5. The Tribunal did not inspect the Property, nor the building of which it forms part. Neither party requested an inspection and, given the nature of what the issues appeared to be, the Tribunal did not consider that one was necessary.

The issues

6. Following receipt by the Tribunal of the Applicant's application a pre-trial review was held. At the pre-trial review the Procedural Chairman explained to the Applicant that it was not clear to him from a reading of the application what issues within the Tribunal's jurisdiction the Applicant was raising. After some discussion at the pre-trial review the Applicant (with considerable prompting) said that the issues were as follows:-

- service charges totalling approximately £8,250 having been demanded for the period 2002 to 2005 despite his only having become the leaseholder in December 2005;
- service charges totalling approximately £3,650 having been demanded in respect of (to the best of his recollection) the 2005/06 service charge year despite the invoice being addressed to – and therefore payable by – the leaseholder of Flat 18;
- the sum of £5,500 being earmarked by the building’s insurers for the repair of the Property but instead (according to the Applicant) being retained by the Respondent and used to fund general services; and
- the payability of service charges which were successfully challenged by 56 other leaseholders in a previous Leasehold Valuation Tribunal (LVT) case relating to 7 Queen Anne Street to which the Applicant was not a party

but he added that the Respondent had admitted in writing that the first two sums above (£8,250 and £3,650) are not payable by the Applicant. The Procedural Chairman stated at the pre-trial review that if indeed these sums were agreed not to be payable then it would seem that there was no ‘dispute’ over which the LVT had jurisdiction on these points. He also added that in relation to the third item (the £5,500) it was possible that the LVT had no jurisdiction either as the challenge did not appear to be to the payability of a service charge (or administration charge).

Non-compliance with directions

7. At the pre-trial review, particularly in view of the unclear nature of the application, the Procedural Chairman stressed (and confirmed in writing) the need for the Applicant to send to the Respondent a full and detailed typed statement of case, and the Procedural Chairman set out in detail what the statement of case needed to include.
8. The Applicant failed even to come close to complying with the Tribunal’s directions. His ‘statement of case’ consisted of no more than a copy of a short and unclear email cross-referring to a letter which he had not supplied, together with a small amount of copy correspondence/statements on which he had merely written comments such as “Ongoing Scam”, “All False” etc.
9. Despite this failure on the part of the Applicant to set out his case, the Respondent made a serious attempt to respond to what it thought the issues might be based on the summary in the directions of the discussion between the Applicant and the Procedural Chairman at the pre-trial review. Only at this point did the Applicant make at least some effort to summarise his position in an email dated 9th January 2013 to the Respondent’s managing agents.

The hearing

10. At the hearing, the Applicant appeared to change the grounds of his application. Although the point did not seem to have been raised before, apparently his main concern now was that – in his view – the service charges had been increasing by an unreasonable amount since 2008 and should have been fixed at £1,350 per annum.
11. When asked by the Tribunal which service charge items in each year were incorrect the Applicant said that they were all incorrect but did not offer any evidence in support of this opinion despite being strongly encouraged by the Tribunal to do so. After some further probing, the Applicant appeared to concede that some items might be correct and said that his main concern was the general increase, although he was unable to offer any explanation as to why he believed that any amount above £1,350 per annum was necessarily unreasonable.

Respondent's position

12. Counsel for the Respondent said that the Respondent had not been provided with any evidence as to what charges the Applicant considered unreasonable and why. He also suggested that in relation to the points apparently made by the Applicant at the pre-trial review the Applicant seemed confused with regard to the application and apportionment of debits and credits.
13. Counsel for the Respondent also said that it was the Respondent's practice to obtain input from the Residents Committee (representing the leaseholders) when setting service charges and that this arguably created at least a presumption that the charges were agreed to be reasonable.
14. Counsel for the Respondent also took the Tribunal through the Respondent's statement of case. He referred to the relevant sections of the Lease setting out the basis on which the service charge was calculated, in particular the ability of the Respondent to charge to the Applicant his set percentage of the estimated service costs for each year and subsequently to make a balancing adjustment once the actual costs for the year are known.
15. As regards the previous LVT case, the Respondent's statement of case sets out the amount of credit that was allowed to each leaseholder and states that the Property received credit of £3,419.92 over the years 2002 to 2009, the credit being applied to the Applicant's account on 14th and 15th April 2011. A correction was later made, as part of the credit related to the period prior to the Lease being transferred to the Applicant and therefore this element should not have been credited to his account. One other mistake pointed out by Counsel for the Respondent was that despite the Lease stating that the Applicant's share of the service charge is 1.25% he is in fact charged 1.18%. Whilst this means that his 'refund' was less than it should have been, the overall amount

of service charge that he pays is less than it should be and so – in the round – he is actually better off paying 1.18%.

16. As regards the levying of service charges prior to the Applicant's purchase of the Property, it was fully accepted by the Respondent that initially it failed to apportion historic debts and credits correctly, but an apportionment was carried out on 5th May 2012, and attached to the Respondent's statement of case is a schedule showing how the apportionment had been carried out. In its statement of case the Respondent emphasises that it is not seeking payment from the Applicant of service charges incurred prior to the transfer of the Lease to him.
17. As for the issue of the £5,500 allegedly earmarked by the building's insurers for the repair of the Property, Counsel for the Respondent did not have any information on this point but the Respondent submitted in its statement of case that the Tribunal did not have jurisdiction over this issue.

Tribunal's analysis

18. The Tribunal has found the Applicant's approach to this case very frustrating. It has tried to understand what he considers to be the key issues but it has been very difficult to do so. The written application is very unclear, and the Applicant has failed to provide a clear statement of case as required by directions. Instead, the Applicant has generally resorted to unhelpful written comments such as "Ongoing Scam", "All False" etc and vague sweeping comments at the hearing rather than offering cogent arguments or any proper evidence. His concerns seem to have changed from the date of the application to the date of the pre-trial review and again from the date of the pre-trial review to the date of the hearing, making it very difficult for the Respondent to know how to respond. At the hearing his evidence was very unclear, and having initially suggested that all individual items had been incorrectly charged for all years he then abandoned this position when pressed by the Tribunal to give examples.
19. Insofar as the issues can be discerned from the Applicant's submissions, the Respondent had done well to respond to those issues. The Tribunal is satisfied, on the basis of the evidence provided, that the Respondent is not seeking payment from the Applicant for services provided prior to the transfer of the Lease to the Applicant and that the Respondent credited back any sums due to the Applicant following on from administrative errors initially made by the Respondent. The Tribunal is also satisfied that the Respondent has credited the Applicant with its proper share of the partial refund arising out of the previous LVT case but makes no comment as to whether it was under a legal obligation to do so given that the Applicant was apparently not a party to that case.

20. The Applicant has done nothing to demonstrate even that the Tribunal has jurisdiction to make a determination in respect of the first three of the four issues highlighted in paragraph 6 above.
21. The only minor criticisms that the Tribunal could make to the Respondent are as follows:-
- although the Tribunal does not appear to have jurisdiction to make a determination in relation to the £5,500 insurance issue and although the Applicant's evidence on this point (as on all others) was poor, it is arguable that the Respondent should nevertheless have made (and should still make) a slightly greater effort to explain its position on this issue to the Applicant; and
 - some of the Respondent's explanation of its accounting practices, particularly at the hearing, was a little confusing.
22. However, considering the issues overall, the Tribunal has no hesitation in dismissing the application in its entirety.

Section 20C application

23. The Applicant has applied for an order that the Respondent's costs should not be put through the service charge. The Respondent has lost this case on all points and has presented his case very poorly and therefore the Tribunal determines not to make an order under section 20C of the 1985 Act.

Application for refund of application and hearing fees

24. The Applicant has applied for an order that the Respondent refund the application and hearing fees pursuant to paragraph 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003, but the Tribunal refuses this application for the same reasons as set out in paragraph 23 above.

Application for penalty costs

25. The Respondent has applied for penalty costs against the Applicant pursuant to paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002, which allows a leasehold valuation tribunal to order a party to proceedings to pay up to £500 to another party to those proceedings towards their costs in circumstances where the first party has in the opinion of the leasehold valuation tribunal "*acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings*".
26. Counsel for the Respondent argued at the hearing that the Applicant had failed to comply with directions, had raised new issues for the first time at the

hearing and had presented his evidence in a wholly inadequate manner. The Tribunal agrees with Counsel for the Respondent on this point and has been generally very unimpressed with the Applicant's approach to the case. Whilst the Applicant was not 'disruptive' at the hearing, he was a little abusive in his written application and at the hearing, and the Tribunal considers his approach to the case to have been unreasonable and possibly even vexatious. The Tribunal is, though, prepared to give the Applicant the benefit of the doubt in one respect, namely that it is possible that he was genuinely confused by aspects of the Respondent's accounting methods in connection with the various credits due to him. Therefore, whilst the Tribunal considers that a penalty cost award should be made against the Applicant, that award is limited to £200.

Chairman:



Mr P Korn

Date: 18th 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 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.