

5205



Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LANDLORD AND TENANT ACT 1985

LON/00AW/LLC/2010/0003

Premises: Flat 3, 10 Lennox Gardens,
London SW1X 0DG

Applicant: Mr F Masri

Respondent: 10 Lennox Gardens Ltd

Tribunal: Mr NK Nicol
Ms S Coughlin MCIEH

Date of Decision: 26/07/10

REASONS FOR DETERMINATION

1. Mr Masri has applied under s.20C of the Landlord and Tenant Act 1985 that the costs incurred in connection with case number LON/00AW/LSC/2009/340 should not be regarded as relevant costs to be taken into account in determining the amount of his service charge.
2. Case number LON/00AW/LSC/2009/340 was heard and determined on 23rd February 2010. It concerned an application for a determination as to the payability of payments on account of service charges based on estimated sums in respect of the year ending 25th December 2009. Mr Masri did not attend the hearing, despite having notice. The Tribunal concluded that the entire amount sought was reasonable and payable.

3. The relevant parts of s.20C of the Landlord and Tenant Act 1985 read:-

S20C Limitation of service charges: costs of proceedings.

- (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 or leasehold valuation tribunal, or the Lands 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—
 - (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;
- (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.

4. Mr Masri's submissions are contained in his letter dated 24th May 2010. The Tribunal issued brief directions by letter dated 25th June 2010 but he did not take the invitation therein to produce any further submissions. Written submissions were filed on behalf of 10 Lennox Gardens Ltd on 8th July 2010.
5. The Tribunal accepts that Mr Masri is entitled to make this application. It is somewhat unusual not to deal with a s.20C application within the original proceedings but s.20C(2)(b) clearly allows a separate later application. The submission on behalf of 10 Lennox Gardens Ltd that the Tribunal is *functus officio* by reason of its decision in case number LON/00AW/LSC/2010/0094, heard and determined on 5th May 2010, is rejected. That decision concerned the reasonableness and payability of a service charge based on their legal costs in a

number of cases involving Mr Masri. Reasonableness and payability are separate from a s.20C determination, even if many of the factual issues may overlap.

6. However, the Tribunal sees no basis on which to grant this application. In most cases, the Tribunal will look to the outcome of the case and the parties' respective conduct of the proceedings in order to determine if it would be just and equitable to make an order in all the circumstances. In case number LON/00AW/LSC/2009/340 Mr Masri failed to challenge successfully a single element of the service charge. He didn't even attend the hearing although he had the opportunity.
7. Further, the Tribunal can see no basis for criticising the conduct of those proceedings by or on behalf of 10 Lennox Gardens Ltd. Mr Masri set out a chronology of the proceedings in his letter of 24th May 2010 but the Tribunal cannot see what point he is trying to make by doing so.
8. Mr Masri claims in his letter of 24th May 2010 that he tried to avoid a multiplicity of proceedings by making this s.20C application at the hearing on 5th May 2010. The members of the current Tribunal were both members of the Tribunal at that hearing and only recollect that Mr Masri left the hearing after failing in his application to have the Chairman, Mr Nicol, recuse himself. Neither member can recollect anything which could be interpreted as an attempt to make a s.20C application. In any event, the application has been made now and any failure on the Tribunal's part to hear the application earlier has been remedied.
9. In his letter of 24th May 2010 Mr Masri stated that he thought it would be advisable to think carefully about the appointment of an LVT. It is probable he meant to refer to the Chairman, Mr Nicol, who he has previously accused of bias and other improper conduct. He has made no further submissions in this regard and so the Tribunal can add nothing to its previous determinations on this issue.
10. Therefore, the Tribunal has concluded that Mr Masri's s.20C application must be rejected.

Chairman.....*N. K. Nicol*.....

Date 26th July 2010