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REF LON 00AZ/LSC/2010/0001

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE-MATTER OF THE LANDLORD AND TENANT ACT 1985  
SECTION 27A

AND IN THE MATTER OF Top Floor Flat 66 Granville Park  
London Se13 7DX

Applicant

Sarah Nutt

Respondent

Amanda Brilliant

The Tribunal

Mr P Leighton LLB (Hons)  
Mrs S Redmond BSc MRICS

Date of Decision

12 April 2010

## Introduction

- 1 By an application dated 30<sup>th</sup> December 2009 the Applicant applied to the tribunal for a determination of her liability to pay service charges in respect of the property known as Top Floor Flat 66 Granville Park London SE13("the property") under section 27A of the Landlord and Tenant Act 1985 ("the Act") and an order restricting her liability for costs under Section 20C of the Act
- 2 Directions were previously given on 29<sup>th</sup> December for an oral hearing but in subsequent correspondence the parties agreed that the issue would be disposed of by way of a paper determination.

## The Issues

- 3 The issues which the tribunal is required to determine include the following
  - (a) whether the administration charges, a term used to describe the management fees recoverable under the terms of the lease
  - (b) whether the Applicant's share of the insurance premium for the year 2007/8 is irrecoverable on the basis that it is time barred by virtue of Section 20B of the Act
  - (c) whether the applicant has, by virtue of payment of the disputed service charges agreed or admitted that that she was liable to pay them and that she is barred from disputing them before the tribunal by virtue of Section 27(a)(4)(a) of the Act
  - (d) whether the landlord's demands for service charges after 1stg October 2007 were accompanied by a summary of the tenant's rights and obligations in accordance with Section 21B of the Act.

## The Lease

- 4 Clause 1 of the lease provides as follows :-

"And also paying by way of further rent a yearly sum being a proper proportion to be determined by the landlord of the amount of premiums paid by the landlord

5 by clause 4 (8)(iii) of the lease the tenants jointly covenant to pay  
“ a proper proportion (calculated on the basis of rateable values) of the cost  
incurred by the landlord in decorating and keeping in repair..... the retained  
parts. Such payment to be made within 14 days of the same being demanded  
and in default of such payment the same shall be recoverable by action.

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### The Law

7 Section 27A of the Act provides that the Tribunal has jurisdiction to  
determine matters relating to the payability of service charges. In respect  
of costs incurred and to be incurred.

8 Section 27A(4)(a) provides that “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

9 Section 27A(5) provides that “the tenant is not to be taken as having  
agreed or admitted any matter by reason only of having made any payment

10 Section 20B of the Act provides

(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 on which the relevant costs in  
question were incurred the tenant was notified in writing that those  
costs have been incurred and that he would be subsequently  
required under the terms of his lease to contribute to them by the  
payment of a service charge

11 Section 21B of the Act provides (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..Sub section 2 provides for the secretary of State to make regulations in respect of this provision and regulations to this effect came into force on 1<sup>st</sup> october 2007

- 12 Subsection (3) of the section provides that a tenant may Withhold payment of a service charge which has been demanded from him if sub section(1) is not complied with in relation to the demand. The effect of this subsection is in the view of the tribunal similar to the provisions of Section 48 of the Landlord and tenant act 1987 that the sum recoverable only becomes payable when the necessary summary is served but is not a total bar to recovery for failure to comply.

### The Evidence

- 13 As the parties chose not to have an oral hearing it was necessary for the tribunal to determine the issues on the basis of the written representations submitted by the parties in their respective statements of case. In respect of the first issue it was necessary for the Tribunal to consider the clauses in the lease and to apply them to the charges which were levied by Mr Brilliant for the years in question
- 14 In relation to the issue of the insurance Ms Nutt states that she did not receive the invoice for the insurance before the service charge of 21st July 2009 and that this was more than 15 months after the premium had been incurred by the landlord in December 2007 for the year 2007/8. the respondent admits that the service charge demand was served on that date but states that the lessee had been paying the insurance each year and knew that the charge would be payable for that year and the landlord should not be penalised simply because the demand was late.. further he contends that she paid this amount without demur and only decided to challenge it at a later stage when she considered it might be a defence. To the claim. The Respondent says this claim is without merit.
- 15 With regard to the third claim the Applicant says that she did not agree that she was liable to pay the administration charges but merely paid them

because she had been informed by the Respondent's agent that she failed to pay them he could not deal with the insurance and that he would have to charge her more for insurance if she did not pay the administration fee to enable him to obtain the professional discount. She agreed to pay without qualification shortly after they were invoiced.

- 16 With regard to the fourth claim the summary of tenant's rights has been included in the bundle and Mr Brilliant says they were served on the Applicant. She states that the guidance given on the notices was for ground rents only but she does not deny that she received the notices.

### The Tribunal's Decision

- 17 The Tribunal concludes that on a fair reading of the lease there is no provision for charging a management fee. It is clear from Clause 4(8) that the landlord is entitled to charge her a proportion of the costs of decorating and maintaining and lighting the common parts. It appears to the Tribunal that this includes any administration which might be associated with these functions but not for the other items claimed such as account administration or management fees

- 18 Accordingly the Tribunal considers that the following items are recoverable

2007/8

Water main renewal administration	£125	
Organise surveyor	£25	
Attend site survey	£100	
Review surveyors report	£50	
Schedule of works	£100	
Prepare and serve Section 20 notice	£140	
Total	£540	Applicant's share £135

Amount paid for the year £100

2008/9

Blocked drain administration	£75	
Schedule of works	£50	
Prepare and serve Section 20 notice	£140	

Total £265 Applicant's Share £66.50

Amount paid for the year £100

Accordingly the tribunal determines that the Applicant has overpaid the sum of £1.25 in respect of the two years in question

- 19 For the year 2009/10 the Respondent proposes to charge the sum of £218.75 based on annual expenditure of £975. Of this expenditure the Tribunal determines that the total amount recoverable is only £390 of which the Applicant's share is £97.50. The items allowed for this year are Roof leak administration £150, pipe leak administration £100 and preparation of section 20 notice £140
- 20 With regard to the second issue the tribunal considers that the Applicant's claim is without merit. She was fully aware that insurance was payable in each service charge year and when she received the bill she paid it. It was only subsequently that she thought it might be a good idea to challenge the insurance on the basis of Section 20B of the Act. It was not referred to in the original application and the tribunal finds that the insurance was admitted or agreed and is payable.
- 21 With regard to the administration charges the tribunal is in some difficulty in finding that the Applicant agreed to these charges in the absence of hearing oral evidence from each of the parties. However, it appears that she challenged them and paid under protest as a result of which the payment would fall within Section 27A(5) rather than Section 27A(4)(a)
- 22 However, since the Tribunal has determined that the Applicant has only paid £1.25 more than the Respondent was in any event entitled to charge under the lease this issue is now largely academic.
- 23 With regard to the service of the summary of tenant's rights, the tribunal is satisfied that this has now been served whether or not it was served at the time and that the service charges are accordingly recoverable. Section 21B only prevents recovery for as long as the relevant notice is not served.

24 Accordingly the tribunal is satisfied that the Applicant is liable to pay the sum of £1453 by way of insurance for the year 2007/8 and that she is entitled to a credit of £1.25 for the overpayment on the administration charges for 2007/8 and 2008/9 and that this credit should go in reduction of her liability to pay the administration charge of £97.50 for the year 2009/10

**Section 20C costs**

25 It does not appear that the lease permits the landlord to recover any costs for these proceedings but it is not necessary for the tribunal to determine the point in these proceedings. If costs were recoverable the tribunal would disallow half the costs on the basis that there were some issues on which the tenant has been successful and some on which the landlord has been successful and that it would be just and equitable for a portion of the costs to be disallowed.

26 With regard to the application fee of £70 the tribunal proposes to apply similar reasoning and will allow the Applicant to recover one half of the fee from the Respondent in the sum of £35. This sum can be credited against future service charge liability

Chairman Peter Leighton

Dated 12 April 2010