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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER [SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985] [& SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002]**

**Case Reference:** LON 00AE/LSC/2012/0540

**Premises:** Flat 4 571-573 Kingsbury Road London NW9 9EL

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**Applicant:** Smithson Limited

**Representative:**

**Respondent(s):** Sandra Retzmann

**Representative:**

**Date of hearing:** 14<sup>th</sup> November 2012

**Appearance for Applicant(s):** Mr D Dovar of counsel  
Mr A Tilsiter

**Appearance for Respondent:** Mrs Retzmann and Mr O Hara

**Leasehold Valuation Tribunal:** P L Leighton LLB(Hons)  
Mrs A Flynn MRICS  
Mrs S Justice

**Date of decision:** 14<sup>th</sup> November 2012

### Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £345 is payable by the Respondent in respect of the insurance service charges for the years 2012/3 within 14 days namely 28<sup>th</sup> November 2012
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 [so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge
- (3) The Tribunal determines that the Respondent shall pay the Applicant £200 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant
- (4) The Tribunal determines that the Respondent shall pay the Applicant £500 within 28 days of this Decision, by way of costs under Schedule 12 Paragraph 10 of the Commonhold and Leasehold Reform Act 2002
- (5) Since the Tribunal has no jurisdiction over county court costs and fees, or the issue of bank charges incurred by the landlord and sought to be recovered against the amount due this matter should be dealt with if at all by the County Court.]

### 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 years
2. The relevant legal provisions are set out in the Appendix to this decision.

### The hearing

3. The Respondent appeared in person at the hearing accompanied by Mr O Hara and the Applicant was represented by Mr D Dovar of counsel accompanied by Mr A Tilsiter the managing agent of Aprirose Limited .
4. Immediately prior to the hearing the Respondent applied for an adjournment on the grounds that the Applicant had appeared with a barrister and she was in person. She was therefore seeking an adjournment to obtain legal representation. As the Tribunal pointed out this would be expensive and time-consuming and disproportionate use of the Tribunal's resources and out of all proportion to the amounts of money claimed. It was the Respondent who had asked for the oral hearing when in fact the Tribunal had offered the parties the opportunity of a hearing based on consideration of the papers alone. The Tribunal therefore refused the adjournment notwithstanding that the Respondent stated that she was in poor health .Mr O Hara was asked to

conduct the proceedings on her behalf which he did in a perfectly reasonable manner

### The background

5. The property which is the subject of this application is a block of 8 flats on two storeys above commercial premises. 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.]
6. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs including the costs of insurance by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate .but the relevant clauses have already been referred to in a recent decision of the Tribunal chaired by Mr Dutton in June 2012

### The issues

7. The only issue with which the Tribunal was concerned was the issue of insurance The Respondent appeared to indicate that she had in fact "paid "the insurance by virtue of the fact that she felt she was entitled to set off a sum of £345 in respect of various claims which she considered she had against the landlord Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues .
8. The issue relates to the insurance claim made by the applicant on 28<sup>th</sup> June 2012 and the issues relating to the current year's insurance are not disputed. The reason for this is that a previous determination in respect of insurance was made by this Tribunal on 22nd June 2012 which decided that the insurance for previous years was due and payable and any defences raised were dismissed .The only caveat was that the amounts of the insurance had not been validly demanded because the service charge demands had not included the necessary summary of rights and obligations required by section 21B of the 1985 Landlord and Tenant Act.(The 1985 Act)
9. That defect was remedied by the service of notices on the 28<sup>th</sup> June together with the claim for the current year's insurance. No payment was made immediately and an order of the Willesden County Court was made on the 12<sup>th</sup> July 2012 enforcing the Tribunal's decision and on 19th July an interim third party debt order was also made by the county court
10. On 17th July the Respondent sent for payment a cheque for the amount due under the Dutton decision but did not make any payment in respect of the current year's insurance. That payment was received by the Applicant on 20<sup>th</sup> July An interim third party debt order was made by the court on 19<sup>th</sup> July 2012

11. A further demand was issued on 30<sup>th</sup> July 2012 followed by an application to this Tribunal on 1<sup>st</sup> August 2012 for the amounts now claimed
12. The Applicant originally requested a paper determination on 20<sup>th</sup> August following the directions but on 21st August 2012 the respondent wrote in stating that she required an oral hearing of the proceedings but did not specify the grounds on which she was opposing the application.
13. In the event, no defence was put forward to the claim for insurance but a payment was made on 17th September in the sum of £139 78 leaving a balance of £345 and the Respondent contends that that sum of £345 is not payable by reason of matters raised by way of a set of in a letter from her solicitors Mills Chody written on the 29th August 2012
14. In that letter the solicitors wrote

*"You will appreciate that our client had 14 days to settle the order of 12 July in any event. in fact we understand you confirmed receipt of our clients settlement cheque by 20th July 2012 it is plain that a short while later on 30<sup>th</sup> July 2012 you wrote to the court withdrawing your reinforcement claim However your preemptory actions have caused our client to direct(sic) financial loss not only the court fee on the unnecessary judgement order on 12 July 2012 but our client's bank have charged £65 and we will enquire whether the bank has levied any further charges We therefore look to you to reimburse our client the sum of £105 and the legal costs £240 We look forward to receiving your cheque.*

- 15 In relation to those claims Mr Dovar submits that the Tribunal has no jurisdiction to deal with them for various reasons. In connection with the court legal fees those became due and payable on 12th July before any payment was received and the only body which is capable of rescinding those costs is the County Court itself.
- 16 In relation to the bank charges those are an issue between the Respondent and her bank, although it is suggested that the bank took the action it did because of the preemptory action of the landlord.
- 17 In addition the question of her own legal costs of £240 is also not a matter within this Tribunal 's jurisdiction on the grounds that the only basis on which an order for costs can be recovered is by way of an order through the County Court and if necessary followed by an assessment. No such order or assessment has been made

### **The Tribunal's Decision**

- 18 It appears to the Tribunal that the landlord may have been justified in the action which it took but in any event it is not minded to consider that issue as part of these proceedings. and it is not possible for the Respondent at this stage in the proceedings to seek to set off any of the sums which she seeks to set off against the admitted insurance claim.
- 19 That is not to say that she may not recover any of these sums in the future but simply that the Tribunal has no jurisdiction to consider them in the context of this application. The Tribunal was informed that there may be ongoing proceedings relating to alleged breaches of the covenant to repair by the landlord. The Tribunal has not investigated that question in any depth but from a brief enquiry is clear that that may be a complex disputed issue. No doubt if that matter proceeds in the county court the Respondent may wish to raise some of the additional issues which she has sought to raise by way of set-off in these proceedings
- 20 In the circumstances the Tribunal considers that the sum of £484 78 is clearly due and payable and that the £345 set-off is not available to the Respondent. Therefore the Tribunal orders that the sum of £345 which remains unpaid is now payable and that if not paid within the next 14 days the Applicant would be entitled to take further proceedings for enforcement.

### Fees

- 21 In addition the Applicant claims the sum of £50 by way of application fee and a further £150 being the fee payable in respect of the hearing. The Respondent requested an oral hearing and as a result the Applicant has incurred the further fees involved in that application. In the circumstances the Tribunal can see no reason why the Respondent should not pay the sum of £200 in respect of the fees incurred.
- 22 The Applicant made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that he had paid in respect of the application/ hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund the fees of £200 paid by the Applicant within 28 days of the date of this decision.
- 23 No application was made by the Respondent under Section 20C of the 1985 Act but for the avoidance of doubt, the Tribunal determines] that it is not just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may pass the costs incurred in connection with the proceedings before the Tribunal through the service charge account.

### Costs under Schedule 12 Paragraph 10 of the Commonhold and Leasehold Reform Act 2002

- 24 In addition to those costs the Applicant has submitted to the tribunal that he should make an order under schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002
- 25 That section provides as follows
- (1) A Leasehold Valuation Tribunal may determine that a party to proceedings shall pay any costs incurred by another party in connection with the proceedings in any circumstances within subparagraph (2)
- (2) The circumstances are where
- (b) he has in the opinion of the Leasehold Valuation Tribunal acted frivolously vexatiously abusively disruptively or otherwise unreasonably in connection with the proceedings. The section also provides that the maximum sum payable under this section is £500
- 26 In the course of the proceedings the Respondent first sought to challenge the insurance although this claim was abandoned at an early stage. She then requested an oral hearing and further requested the Applicant to provide all documents including the documents which were made available within the course of the previous proceedings before Mr Dutton. This would have added substantially to the costs which would be incurred in the course of the proceedings.
- 27 By a letter dated 21st October 2012 the Applicant invited the Respondent to abandon the oral hearing and stated
- "if you are prepared to agree to this before 31<sup>st</sup> October 2012 then there is a chance that the tribunal will refund the hearing fee of £150 . As a gesture of goodwill if a hearing can be avoided we will also withdraw our claim for costs of £500 as referred to in a statement in response. And then if a paper determination can be agreed the tribunal then only have to consider the balance of the charges outstanding and the application fee of £50*
- 28 That letter appeared to be a reasonable attempt to try to save costs but was ignored by the Respondent.
- 29 In addition at the commencement of the hearing today the Respondent requested an adjournment of the hearing on the grounds that the Applicant had appeared with a barrister and she was therefore seeking an adjournment to obtain legal representation
- 30 As the Tribunal pointed out this would be an expensive and time-consuming and disproportionate use of the Tribunal's resources and out of all proportion to the amounts of money claimed. The Tribunal therefore refused the adjournment notwithstanding that the Respondent stated that she was in poor

health. The Tribunal considered that Mir O'Hara who was present to assist was able to put forward in a reasonable manner the matters on which she sought to rely. It appears to the tribunal that even if the Respondent had been represented at the hearing it would have made no substantial difference because any representative would have had to ultimately concede that the matters which she was seeking to set off were not within the Tribunal's jurisdiction and therefore could not form the basis of the decision.

- 31 The Tribunal therefore concluded that the Respondent had acted "unreasonably" within the meaning of the section and that the Applicant had incurred further costs as a result. The Tribunal decided therefore that the Respondent must pay the Applicant's costs in the sum of £500

### Conclusion

- 32 The Tribunal determines that the sum of £345 is payable and that it has no jurisdiction over the issues raised by the Respondent concerning bank charges, court fees and her legal costs ]

- 33 The Tribunal further awards costs and fees as set out above.

Chairman: \_\_\_\_\_  
Peter Leighton



Date: 14<sup>th</sup> November 2012

## 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.

### **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 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.