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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A AND 19 OF THE LANDLORD AND TENANT ACT 1985 AND SCHEDULE 11 COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Case Reference:	LON/00AH/LSC/2011/0859
Premises:	Flat 3, 58 Albert Road, South Norwood, London, SE25 4JE
Applicant:	Hamilton King Management Ltd, managing agents for the Landlord, Southern Land Securities Limited
Representative:	N/A
Respondent:	Mrs. Shaheeda Bano Zaidi (the Tenant)
Representative:	N/A
Date of hearing:	3rd May 2012
Appearances for Applicant:	(1) Ms. Janet Di, Operations Manager, Hamilton King Management Ltd (2) Mr. B. Taylor, Hamilton King Management Ltd (3) Ms. K. Coates, Property Manager, Hamilton King Management Ltd
Appearances for Respondent:	(1) Mr. Haider Zadi, husband of Mrs. Zadi (2) Mr. Ali Dudhia, son-in-law of Mrs. Zadi
Leasehold Valuation Tribunal:	(3) Mr. A Vance LLB (Hons) (Chair) (4) Ms. Alison Flynn

Decision of the Tribunal The amount demanded by the Applicant in respect of the 2009 interim service charge is payable in full save that the total sum payable by the Respondent in respect of repairs and general maintenance is reduced to £118.57.The sum of £3107.89 in respect of the costs of Major Works is payable in full by the Respondent.

3. The amount demanded by the Applicant in respect of the 2010 service charge is payable in full in the sum of £713.88.

4. The amount demanded by the Applicant in respect of the 2011 service charge is payable in full in the sum of £699.99 and that the sum payable by way of an interim charge was £878.00.

5. The sum of £1501.36 claimed by the Applicant in respect of legal costs is not recoverable from her under the terms of the lease and therefore not payable by the Respondent.Interest claimed in the sum of £580.38 for the period 26.12.09 to 25.12.10 is payable in full by the Respondent

7. We make no order as to costs.

Introduction

8. This is an application under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the 1985 Act") for a determination of the Respondent's liability to pay service charges under her lease of Flat 3, 58 Albert Road, South Norwood, London, SE25 4JE ("the Property") as well as an application for the determination of her liability to pay an administration charges under Schedule 11 Commonhold and Leasehold Reform Act 2002 ("CLARA"). The Property is a self-contained flat within a converted block consisting of six flats in total.

9. The Applicant is the managing agent for the Landlord. The Property is held under a lease ("The Lease") for a term of 195 years from 20th December 1984 originally made between Firelake Limited (1) and John Anthony Rackett and Juliet Francis Dryke (2).

10. The Respondent is the leaseholder of the Property.

11. Page references are to the hearing bundle [page number].

The Pre-Trial review

12. A pre-trial review was held 18.01.12 at which the issues requiring determination by the Tribunal were identified as being the reasonableness and payability of the following charges:

Service Charge Year 01.01.09 – 31.12.09

(i) £319.53 balance of interim service charge.

(ii) £3107.89 service charge for major works.

Service Charge Year 01.01.10 – 31.12.10

(iii) £713.88 service charges.

(iv) £1501.36 legal fees.

(v) £588.49 contractual interest.

Service Charge Year 01.01.11 – 31.12.11

(i) £878.00 interim service charge.

13. Those were the issues referred to in the Application. As neither party attended the pre-trial review the Tribunal was unable to identify, at that review, whether or not all of those issues remained in dispute. Nor was it able to clarify whether or not previous legal proceedings referred to in the Application had resulted in an order that would deprive the Tribunal of jurisdiction in respect of any of the items claimed.

The Hearing

14. The hearing bundle contained copies of documents relating to three previous claims issued by the Applicant in the Chorley County Court against the Respondent. All three claims concerned alleged arrears of ground rent, service charges, other charges and interest.

(ii) In claim 6CY00565, issued on 22.03.06, the Applicant claimed for sums it maintained were due up to and including 27.01.06. This claim resulted in a default judgement being entered against the Respondent on 05.05.06 in the sum of £4781.35

(iii) In claim 7CY00565, issued on 28.06.07, the Applicant claimed sums that were once again expressed to be due for the period up to and including 27.01.06. On 18.07.07 a default judgement was again entered against the Respondent, this time in the sum of £4074.64. Before this Tribunal Ms. Coates, property manager for the Applicant indicated that the reference to the period of claim in this claim form may have been a typographical error.

(iv) In claim 9CY00118, issued on 6.02.09, the Applicant claimed sums alleged due for the period up to and including 08.01.09. This claim resulted in a default

judgement being entered against the Respondent on 27.02.09 in the sum of £9,613.06.

15. At the hearing before us both parties agreed that the Respondent had successfully applied to set aside the 2009 default judgement following which the Court, by order dated 05.03.10, transferred the claim to the Leasehold Valuation Tribunal for determination. A copy of that order was handed up to the Tribunal. The resulting Tribunal proceedings LON/00/AH/LSC/1010/00194 did not progress much further than the pre-trial review held on 08.07.10 because in a letter dated 06.10.10, Ms. Coates, on behalf of the Applicant, notified the Tribunal that the parties had reached an "amicable agreement".

16. In her written reply to the Applicant's application and before the Tribunal the Respondent sought to challenge service charges relating to the 2004 and 2005 service charge years. These were not included in the Application. We were not, however, prepared to deal with charges prior to the 2009 service charge year for the following reasons:

(i) The late stage at which these representations were made. The directions made by the Tribunal at the pre-trial review provided for the Respondent to provide her response to the Applicant by 30.03.12. She responded by email but not until 16.04.12. Nor did the Respondent avail herself of the opportunity to attend the pre-trial review where she could have identified these charges as being in dispute and suitable directions given (if the Tribunal considered it appropriate to consider those service charge years).

(ii) In any event, the Tribunal did not appear to have jurisdiction to deal with such a challenge given the default judgements obtained against the Respondent in the County Court in 2006 and 2007.

17. The Respondent confirmed that the only items of the 2009 service charges that she wished to challenge was the sum of £1073.67 in respect of repairs and general maintenance (for which her apportioned contribution was £178.95) and the sum claimed in respect of the estimated costs of major works for which she was being asked to pay £3,107.89.

18. She also confirmed that no challenge was being pursued in respect of the 2010 service charges but that sums claimed in respect of legal costs and interest were in dispute.

19. Nor was she challenging the 2011 service charges. The actual charges for that year were now available and both parties confirmed that they were content for the Tribunal to make its determination for that year using those figures as opposed the estimated charges (than actual figure being less than the estimated amount).

20. The Applicant objected to the Respondent being able to rely on her further representations sent to the Applicant and the Tribunal by email on 27.04.12, three working days before the Tribunal hearing. We were of the view, however, that

notwithstanding the late submission the Applicant had received sufficient opportunity to consider and deal with any issues arising out of that document. We saw no reason for the hearing to be adjourned.

21. Neither party requested that the Tribunal inspect the Property and the Tribunal did not consider it necessary to do so in order for it to make its determination.

The Respondent's Case

2009 Service Charges

22. The only item the Respondent disputed in the 2009 service charge demand was that relating to repairs and garden maintenance in the total sum of £1073.67 (her apportioned share being £178.95). Her challenge to this item was that part of the sum related to the garden of Flat 1. As this was not a communal garden she considered that element of the charge was not payable.

Major Works

23. No challenge was raised in respect of the need for these works, the standard of workmanship nor the amounts charged. Rather, the challenge was that the works should have been carried out in 2004 and that the failure to do so had led to damage to the Property and the loss of rental income. In essence, the Respondent was seeking compensation for these losses.

24. It was her case that on two occasions between 2005 and 2006 she had to pay the policy excess on insurance claims following water penetration into the Property. This amounted to £375 on each occasion. In addition, £152.75 was paid by her to fix a leak and the bedroom wall had to be repaired and re-plastered on three occasions resulting in expenses of £850 on each time. Furthermore, the Property had to be vacated for 3 – 4 weeks each time leading to loss of rental income of three months totalling £1950.

25. The Respondent claimed that during this period she had repeatedly informed the Applicant that water penetration and dampness was affecting the Property. The first notification was in 2005 after which the Applicant inspected and stated that the roof required repair but that it did not have the money to do so. These notifications were made to a Mr. Holloway by telephone. Nothing was put in writing.

26. The water penetration problems ceased after the major works were completed. If they had been carried out when complaints were first made the problems she experienced could have been avoided.

Legal Fees

27. The Respondent was unclear as to how these fees had been calculated. Nor was she clear why they were incurred. She disputed that that they were payable.

Interest

28. Again, the Respondent was unclear as to how these fees had been calculated and referred to payments totalling £5508.33 made by her to the Applicant in 2009.

The Applicant's Case

2009 Service Charges

29. Ms. Coates agreed that there had, previously, been an error in the calculation of the repairs and garden maintenance charges. Once this came to light a credit adjustment was made to the Respondent's service charge account in the sum of £60.38 [205]. This, she said was the apportioned share of the total of the two invoices of Beds Buds & Borders [17] & [18] of the bundle that did not relate to the communal garden area.

30. According to Ms. Coates this sum of £60.38 was included within a credit of £3844.22 made on 06.10.10. This credit was made in respect of fees, charges and interest that had previously been applied to her account going back to 2004. It was made on the basis of an agreement that the Respondent clear a balance outstanding of £4339.08 by way of 12 post-dated cheques

31. These cheques were not received and the sum of £319.53 was outstanding in respect of the interim service charge for this year.

The Major Works

32. It was not in dispute that the sum of £3107.89 related to the Respondent's proportion of the costs of the major works carried out in 2009. These works were commenced following a full consultation process carried out in accordance with section 20 of the 1985 Act. A notice of intention to carry out the works was sent to the leaseholders on 08.10.08 [50]; a copy of the schedule of works was sent to them on 31.03.09 [56] and copies of tenders received were sent on 08.05.09 [105]. Written observations were invited as required but none were received.

33. In evidence to the Tribunal, Ms. Di stated that she had reviewed the insurance files for 2005 and 2006 and the excess charges incurred related not to damage caused to the Property but for costs incurred as a result of water penetration from the Property into the flat below. These leaks had occurred on 12.04.05 and 10.03.06. Furthermore, in 2005, the sum of £152 was incurred by way of a callout fee when entry into the Property had to be forced in order to repair a defective and leaking boiler. Before the Tribunal, the Respondent conceded that there may have been a problem with her boiler in 2005.

34. Ms. Di informed the Tribunal that she could find no evidence on the Applicant's files of any complaints made by the Respondent prior to June 2009 when she notified them of a water penetration problem affecting the Property.

Legal Fees

35. The Applicant seeks a determination in respect of legal fees demanded by Marsden Rawthorn solicitors on 06.10.10 in the sum of £1501.36 [138 & 139]. The narrative of that bill indicates that the work carried out included the preparation of court documents, obtaining judgment and dealing with a subsequent application to set judgment aside

36. The Applicant sought to recover this sum under the terms of the lease for the Property and relied upon clause 2(21) which contains a covenant by the tenant to

> *"pay all costs charges and expenses (including solicitors' costs and surveyors fees) incurred by the Landlord for the purposes of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925 requiring the tenant to remedy a breach of any of the covenants herein contained....."*

37. A Section 146 notice [161] was sent to the tenant on 12.03.09 under cover of a letter dated 12.03.09 [160]. In that notice the sum of £751.22 is expressed as being outstanding in respect of legal costs, fees Section 146 costs and repairs".

38. In evidence, it was conceded that the sum demanded by Marsden Rawthorn on 06.10.10 related to work carried out after service of this s.146 Notice.

39. The Tribunal enquired as to when this sum of £1501.36 was demanded from the Respondent and was directed to a request for payment dated 13.02.12 [5].

Interest

40. In the Application, this was specified as amounting to £588.49. However, before the Tribunal the Applicant confirmed that this sum included interest on outstanding ground rent. The actual amount of interest due on outstanding service charges was £580.38 and a determination was sought in that sum. The Applicant relied on clause 2(31) of the lease which provides for interest at the rate of 4% per annum above the base rate of National Westminster Bank plc with a minimum of 15% per annum.

41. An interest calculation record was included in the hearing bundle [6] which provided a breakdown as to how that sum had been calculated. It comprised interest on an initial principal sum of £3107.89 for the period 26.12.09 to 25.12.10. The principal sum comprised an outstanding balance due in respect of the major works. That figure was adjusted and interest recalculated accordingly to take into account (a) a credit of £86.10 on 31.12.09 for refund of excess service charge [4]; and (b) an outstanding interim service charge payment of £860.34 due for the 2010 service charge year.

42. The Applicant's position was that no payments were made by the Respondent during this 12 month period (26.12.09 to 25.12.10). In evidence to the Tribunal, the Respondent agreed that this was the case.

Alleged Agreement in full and final settlement

43. It appeared to be the Respondent's case that in March 2012 a binding agreement was reached between the parties whereby the Applicant agreed to accept the sum of £6000 in full and final settlement of all outstanding sums owed by the Respondent.

44. In evidence to the Tribunal the Respondent stated that: -

(a) On 22.03.12 she had a telephone conversation with Ms. Coates in which she offered to pay £5000 in full and final settlement of all outstanding amounts. Whilst Ms. Coates did not accept that offer, agreement was reached in the sum of £6000 which Ms. Coates agreed to accept in full and final settlement. The Respondent also agreed to pay £70.07 per month towards the sums due in respect of the current service charge year.

(b) She then requested that her bank, NatWest, pay this sum to the Applicant. However, NatWest would only do so after speaking to the Applicant's solicitors, Marsden Rawthorn. She relied upon a letter sent to her by the bank dated 18.04.12 in which it is stated that a colleague of the writer spoke to Marsden Rawthorn on 28.03.12 who had confirmed that *"a £6000 sum had been agreed as the total sum outstanding in relation to outstanding ground rent/service charges"* and that the solicitor had also confirmed that *"no further action was to be taken by them..."*.

(c) Following the conversation on 28.03.12 NatWest then made the payment to the Applicant in the sum of £6,000.

(d) The Applicant then reneged on the agreement reached by demanding additional sums. In consequence, the Respondent instructed NatWest to cancel the £6000 payment, which they duly did.

45. In reply, Ms. Coates confirmed that she had spoken to the Respondent on 22.03.12 but that the extent of the agreement reached was that if the sum of £6000 was paid the Applicant would look at withdrawing the application made to this Tribunal. It was not, she said, agreed that a payment in that sum would be accepted in full and final settlement of all outstanding claims.

46. In evidence, Mr Taylor stated that he had overheard this conversation as he and Ms. Coates work in an open-plan office. He did not hear Ms. Coates make any reference to payment being in full and final settlement and stated that only the office manager had authority to do that. He also referred the Tribunal to a letter dated 18.04.12 from Marsden Rawthorn to the Applicant [207] in which it is stated that the writer has "received a call from the Natwest bank some time in March asking if they should make payment of £6000 to this firm on behalf of Mrs. Zadi for debt owed to Southern Land Securities Ltd.....After speaking to the agents I confirmed that Mrs. Zadi had asked Natwest to make a payment of £6000 for payment of outstanding arrears.....At no time did I confirm that any payment would constitute full and final settlement of Mrs. Zadi's account.

47. Ms. Coates went on to say that after the conversation on 22.03.12 she had further telephone conversations with the Respondent in which she requested that the Applicant waive the sum of £1501.36 being sought in respect of legal fees on the basis that the previous agreement reached was in full and final settlement of all sums claimed. This request was refused and it was made clear that no agreement had been reached as alleged.

48. After hearing the evidence of Ms. Coates and Mr. Taylor, Mrs. Zadi stated that she may have made a mistake and misunderstood what had been agreed during the conversation on 22.03.12. She was, she said, on a lot of medication at that time. Nevertheless, it was her position that NatWest would not have paid this sum unless it had been satisfied that payment was to be in full and final settlement of all claims.

Credit Adjustments

49. The Respondent also sought clarification as to the credit in the sum of £5504.95 that the Applicant maintained had been made to her account. She could not identify where that sum had been credited.

50. Mr Taylor explained that the sum in question included the payment of £3844.22 paid on 06.10.10 and which was credited in light of the agreement reached shortly before the previous Tribunal hearing (see paragraphs 17 and 45 above). The balance of the figure was made up by four other credits totalling £1660.73 made on 12.05.10 comprising refunds of interest [5]. His evidence was that on 06.10.10 agreement had been reached whereby £3844.22 would be credited to the account on the basis that the Respondent would discharge the total outstanding sum due at that time of £4339.08 by way of 12 monthly payments. Mr. Zadi agreed that this was the case and that it was agreed that payment would be made by 12 post-dated cheques. Mr. Zadi agreed that no payments had been made but that was because the agreement reached was conditional on the Applicant 'removing' the County Court judgments previously obtained by the Applicant. As that had not occurred, the Respondent had not made the monthly payments.

The Law

The 1985 Act

51. Section 27A of the 1985 Act provides that an application may be made to a Leasehold Valuation Tribunal for a determination as to "whether a service charge is payable and, if it is, as to ...the amount which is payable...."

52. Section 19(1) of the 1985 Act provides:

> *"Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -*
>
> *(e) only to the extent that they are reasonably incurred, and*

(f) where they are incurred on the provision 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.

53. "Relevant costs" are defined in Section 18(2) of the 1985 Act as:

"the costs or estimated costs incurred or to be incurred by or on behalf of the landlord...in connection with the matters for which the service charge is payable."

54. "Service charge" is defined in Section 18(1) of the 1985 Act as:

"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 cost of management, and (b) the whole or part of which varies or may vary according to the relevant costs."

55. Section 20 of the 1985 Act (as amended by the Commonhold and Leasehold Reform Act 2002) limits the payment of service charges in respect of qualifying works unless consultation requirements have either been complied with or dispensed with.

56. Under Section 20C a tenant may make an application to this Tribunal seeking an order that costs incurred by their landlord in connection with proceedings before the Tribunal are not to be regarded as relevant costs for the purposes of determining the amount of any service charge payable by the tenant.

CLARA

57. Sub-paragraph 1(1) of Part 1 ("Part 1") of Schedule 11 to CLARA defines an "administration charge" as including *"an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable directly or indirectly....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....in connection with a breach (or alleged breach) of a covenant or condition in his lease".*

58. Sub-paragraph 1(3) of Part 1 defines a *"variable administration charge" as "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".*

59. Paragraph 2 of Part 1 provides that *"a variable administration charge is payable only to the extent that the amount of the charge is reasonable".*

60. Sub-paragraph 5(1) of Part 1 provides (inter alia) that *"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....the amount which is payable".*

The Tribunal's Decision and Reasons

2009 Service Charges

61. The only item disputed by the Respondent was the sum demanded from leaseholders for repairs and garden maintenance amounting to £1073.67. The Applicant concedes that within that sum, £362.25 demanded in respect of gardening costs is not recoverable. This is because the charges did not relate to communal garden areas. In the Tribunal's view the remaining invoice relating to gardening costs in the sum of £101.99 [20] was reasonably incurred and clearly relates to the communal garden areas. We consider it to be payable in full.

62. It is not disputed that under the terms of the Lease the Respondent is obliged to contribute towards service charges at the rate of 16.67%. In light of the Respondent's concession we determine that 16.67% of £362.25 is not recoverable from the Respondent for this item, namely £60.38. The total sum payable by the Respondent in respect of repairs and general maintenance is therefore £118.57 (the £178.95 demanded from her less £60.38).

63. It is the Applicant's position that this sum has already been credited to the Respondent's account on 06.10.10 within a credit of £3844.22 that also included refunds of fees, charges and interest. As we do not have a breakdown as to how the sum of £3844.22 is calculated we cannot identify whether or not that is correct.

The Major Works

64. There was no substantive challenge to this item. In essence, what the Respondent was inviting the Tribunal to do was to award a sum, by way of a set-off or by way of a discount from the service charge bill in respect of the Landlord's neglect in carrying out repairs in a timely fashion. This she says, led to the losses set out above.

65. Whilst we accept that the Tribunal may have jurisdiction to entertain such a claim we find that there is insufficient evidence to support the assertions made by the Respondent. There is no corroborative evidence before us such as letters of complaint, photographic evidence, invoices for work carried out or evidence of loss of rental income to support the Respondent's claims.

66. We are satisfied that the proper Section 20 consultation procedure was complied with and that the sum of £3107.89 was reasonably incurred and is payable by Respondent.

2010 Service Charges

67. The Respondent did not challenge these charges in the sum of £713.88 and we therefore determine that they are payable in full.

Legal Fees

68. Courts have consistently construed clauses in leases relating to the recovery of legal costs strictly (see, for example, *Agricullo Ltd v Yorkshire Housing Ltd [2010] EWCA Civ 229*) In our view the proper construction of clause 2(21) is that legal fees are only recoverable under the terms of the lease where they incurred for the purposes of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act 1925.

69. The Applicant concedes the sum demanded by Marsden Rawthorn on 06.10.10 related to work carried out after service of a s.146 Notice. As such they were not incurred for the purposes of the preparation and service of a s.146 Notice. Nor, in our view, can it be said that the work carried out was incidental to the preparation and service of such a notice. The breakdown of the work in question [139] & [140] indicates that it related primarily to the instigation and pursuit of the County Court proceedings by the Applicant. In our view these costs are too remote from the preparation and service of a s.146 notice to be regarded as incidental to the same.

70. Therefore, whilst we accept that the Applicant is entitled to recover reasonable costs incurred for the purposes of, or incidental to, the preparation and service of a s.146 Notice we determine that the sum of £1501.36 is not recoverable from her under the terms of the lease.

Interest

71. Interest charges fall within the definition of administration charges referred to in paragraph 39 above but they are not 'variable' administration charges as they are calculated in accordance with a formula set out in the lease. As such, they do not fall within the definition in sub-paragraph 1(3) of Part 1 of Schedule 11 to CLARA.

72. The relevance of this distinction is that the jurisdiction of the Tribunal in respect of *non-variable* administration charges is limited to determining whether or not they are *payable* etc under sub-paragraph 5(1) of Part 1 of Schedule 11 to CLARA, whereas in respect of *variable* administration charges our jurisdiction also extends to determining whether or not the charges are *reasonable* under paragraph 2 of Part 1 of Schedule 11 to CLARA.

73. The Applicant's interest calculation record [6] indicates that the sum in question relates solely to the 12 month period between 26.12.09 to 25.12.10 and that interest was recalculated appropriately following the two adjustments to the principal sum outstanding. It appears that the payment of £5508.33 made by the Respondent in 2009 related to charges incurred prior to 26.12.09. Both parties agree that no payments were made by the Respondent between 26.12.09 and 25.12.10. In our view there was no proper justification for this and the Applicant is entitled to charge interest on arrears as one of the tools available to it to enforce compliance with the Respondent's obligations under the lease. We therefore determine that the sum of £580.38 is payable in full.

2011 Service Charges

74. The Respondent did not challenge the interim charge of £878.00 or the actual charge of £699.99 [209]. We determine that the sum of £699.99 is payable in full and that the sum of £878.00 was payable by way of an interim charge.

Alleged Agreement

75. We are not persuaded, on the evidence before us, that there was a binding agreement entered into between the parties as alleged by the Respondent. We found the evidence of Ms. Coates and Mr. Taylor persuasive and consistent with the approach adopted by the Applicant in its dealings with the Respondent as evidenced by the documents in the bundle. As stated above, after hearing that evidence, Mrs. Zadi conceded that she may have made misunderstood the nature of what had been agreed during the conversation on 22.03.12.

76. As to the letter of 18.04.12 from NatWest relied upon by the Respondent we consider its contents to be entirely consistent with the Applicant's account of the agreement between the parties. Namely that a £6000 sum had been agreed as the total sum outstanding in relation to outstanding ground rent and service charges. No reference was made to legal costs or that the sum was accepted in full and final settlement of all claims between the parties. The apparent confirmation from the solicitor that no further action was to be taken by them cannot, in our view, be construed to amount to confirmation that the Applicant was not intending to pursue the additional costs.

77. In any event, for the reasons stated above we determine that the legal costs of £1501.36 are not recoverable from the Respondent.

Costs

78. Ms. Coates, on behalf of the Applicant agreed before the Tribunal that the Applicant would not be seeking to add the costs incurred in pursuing this Application to the service charge account.

79. During the course of the hearing Mr. Zadeh indicated that he (and possibly the Respondent) sought an order that he be reimbursed for his costs of attendance before the Tribunal. We make no such order. To enable such an order to be made we would need to be satisfied that the Applicant had acted frivolously, abusively disruptively or otherwise unreasonably in connection with the proceedings. We do not consider this to be the case.

80. We therefore make no order in respect of costs.

Chairman: Amran Vance

Date: 11 July 2012