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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 [SECTIONS 27A OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00AK/LSC/2012/0193
Premises:	26 Pycroft Way, London, N9 9XY
Applicant:	Pymmes Park Close Management Company Ltd
Representative:	Playfield Management Managing Agents
Respondent:	Mr W Obaseki
Representative:	In Person
Date of hearing:	14th June 2012
Appearance for Applicant:	Mr B Rogers of Counsel Mr M Fain, property manager
Appearance for Respondent:	In Person
Leasehold Valuation Tribunal:	Ms E Samupfonda LLB (Hons) Mr M Cartwright FRICS Mrs R Emblin
Date of decision:	14 June 2012

Decisions of the Tribunal

(1) The Tribunal determines that the sum of £479.61 is payable by the Respondent in respect of the service charges for the years 2010/11 and 2011/12.

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 as no application was made.

(3) The Tribunal does not make an order under Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform act 2002 as it decided that the circumstances under which such an order can be made have not been made out.

(4) The Tribunal determines that the Respondent shall pay the Applicant £21.00 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.

(5) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Edmonton 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 Respondent in respect of the service charge years 2010/11 and 2011/12.

2. Proceedings were originally issued in the Uxbridge County Court under claim no.1UD0418. The claim was transferred to the Edmonton County Court and then in turn transferred to this Tribunal, by order of District Judge Silverman on 7 February 2012.

The hearing

3. Mr Rodgers of Counsel represented the Applicant and the Respondent appeared in person. Mr M Fain, property manager gave evidence on behalf of the Applicant.

The background

4. The property, which is the subject of this application, is a one bedroom flat on the ground floor of a three-storey block. The service charge year runs from 1 February to 31 January.

5. 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 by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

7. At the hearing the parties identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of service charges for the years 2010/11 to 2011/12 relating to management fees.

   (ii) Whether the Tribunal should make an order under Schedule 12 paragraph 10 of the Commonhold and leasehold Reform Act 2002.

8. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Service charge item & amount claimed

9. The Applicants issued proceedings in the County Court seeking to recover service charge arrears in the sum of £1276.84. Following various payments by the Respondent, the Tribunal was informed that the outstanding amount as of 31st January 2012 was £479.61

The Tribunal's decision

10. The Tribunal determines that the amount payable in respect of management fees was £479.61.

Reasons for the Tribunal's decision

11. The Respondent's case was that the management fees were not reasonable and/or payable because the managing agent failed to respond to his complaints about two incidents of water ingress and a defective door entry system.

12. The Tribunal heard evidence that the property suffered from water ingress in 2010 and 2011. Mr Obaseki, the Respondent said that his sub tenant's daughter reported the incidents of water ingress to him. On each occasion, he

attended the property and observed water overflowing onto the external wall. He also witnessed damp patches and mould within the flat. He said that on both occasions, he left a note with the occupants of flats 28 and 30, which are situated directly above his. He added that he notified the managing agent about the first incident by a telephone call in 2011 and the second incident by a letter in January 2012. The basis of his challenging the service charge was that that the managing agent did not address his complaints. Playfield did not respond to his telephone call or to his letter. He added that his sub tenant's daughter informed him that the first incident was rectified within a week but he did not know when the second incident was resolved. He added that he suffered financial loss as a result of making good damaged decorations.

13. Mr Obaseki explained that it was his view that management fees were also not payable because the agents had failed to ensure that the intercom system into his flat was functional despite his complaints.

14. Mr Rodgers submitted that the Applicant was not liable for the consequential damage caused by the water ingress as this was due to the upstairs flats' toilet cisterns. He stated that it was difficult to see why the service charge demand was unreasonable because of the overflow. There was no evidence that Mr Obaseki's notified Playfield of the water ingress in 2010. However, Mr Fain produced copies of letters that had been written by Playfields in August 2011 to the lessees of flats 28, 30 and 34 advising them that Playfields had received complaints about an escape of water from an over flow pipe within their flats and advising them how to remedy the defects. He acknowledged that Playfields had received the letter of complaint dated 31st January 2012 but said that this letter did not address Mr Obaseki's complaints about management fees but rather admonished the managing agents for incorrectly attributing the source of water ingress to his flat when he received the same letter that Playfields had sent to the other lessees. He added that Playfields apologised for this error in their letter dated 3rd February 2012.

15. With regards to the entry phone system, Mr Rodgers referred to the report by Woodside Security Systems Ltd dated 13 April 2012. It was stated that upon inspecting the system it was found that the handset had been removed and the area plastered over. Mr Fain produced a copy of an undated letter from the sub tenant's daughter stating that since their occupation there had never been a handset. Mr Rodgers therefore submitted that there were no grounds to allege that the service charge was unreasonable in amount or unreasonably incurred by reference to the intercom system.

16. The Tribunal decided that the management fees were reasonable in amount, reasonably incurred and were payable by the Respondent in both the service charge years in question. The Tribunal was informed that the agent's fees are £150 per annum per unit, which from our knowledge and experience, we considered to be in line with the market norm for this type of property in this area. From the correspondence produced it was apparent that the Applicant's managing agent had responded to the complaints made albeit that may not been communicated directly to Mr Obaseki who had not, until the day of the

hearing seen the letters written to the other lessees. The incidents of water ingress arose from faulty ball valves within the lavatory cisterns of the flats above and were rectified within a reasonable time. The Applicant cannot be held liable for defects within the lessees' flats and for any consequential damage caused. The Applicant complied with its obligations under the terms of the lease by writing to the other lessees and by ensuring that the cause was remedied. The Applicant cannot be held liable for the intercom system as it does not work because the handset within the flat has been removed.

17. Mr Rodgers made an application for costs under Schedule 10 paragraph 12 of the Commonhold and Leasehold Reform Act 2002 on the basis that had Mr Obaseki taken time to reflect he would have realised that his complaints were against his neighbours and not the managing agents. Further, he took no time to inspect his own flat to realise his intercom was removed. For these reasons Mr Rodgers invited the Tribunal to make an order that Mr Obaseki pays a small contribution towards the Applicant's legal costs which are recoverable under the terms of the lease.

18. Mr Obaseki stated that he had behaved reasonably because he continued to make payments despite his dissatisfaction. He only started to miss payments after the second incident of water ingress. He added that when he bought the flat the intercom handset was in situ and he had no idea when it was removed.

The Tribunal's decision

19. Under Schedule 12 paragraph 10, there are limited circumstances under which the Tribunal can make an order for costs. Having considered the circumstances of this case and the submissions made, the Tribunal is not satisfied that circumstances have been made out and therefore makes no order for costs.

Application for refund of fees

20. Mr Rodgers applied for reimbursement of fees of £21 and the Tribunal acceded to that application.

21. The Tribunal has no jurisdiction over county court costs. This matter should now be returned to the Edmonton County Court.

Chairman: Evis Samupfonda

Date: 22nd June 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).

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.