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**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON/00Am/LSC/2011/0720

Premises: 13 Athlone Close, London E5 8HD

Applicant: The London Borough of Hackney

Respondent: Robert Shaw

**Date of Paper
Determination:** 16 April 2012

**Leasehold Valuation
Tribunal:** Ms M W Daley LLB (Hons)
Mr J F Barlow, JP FRICS

Date of decision: 16 April 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £2,073.05 is payable by the Applicant for the periods 2008/09, 2009/10, and 2010/11 up until the 6 January 2011 (being the date that the claim was issued in the county court).
]
- (2) The Tribunal makes no order under section 20C of the Landlord and Tenant Act 1985.
- (3) Since the Tribunal has no jurisdiction over County Court costs and fees, this matter should now be referred back to the Clerkenwell and Shoreditch County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 as to the amount of service charges payable by the Applicant in respect of the service charge years 2008/09, 2009/10, and 2010/11.
2. Proceedings were originally issued in the Clerkenwell and Shoreditch County Court under claim no. 1UC02279. The claim was transferred to this Tribunal, by order of District Judge Stary on 14 October 2011.
3. The relevant legal provisions are set out in the Appendix to this decision.

The background

4. The property which is the subject of this application is a 1 bedroom property situated on an estate of 30 similarly constructed properties, that was purchased pursuant to a lease under the Right to Buy provisions on 7 April 2003.
5. 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 and will be referred to below, where appropriate.
6. On 5 September 2007, the Respondent applied to the Leasehold Valuation Tribunal together with two other leaseholders for an application for a determination of the reasonableness and payability of the service charges for the years up to and including 2005/06, 2006/07 and 2007/08. A determination was made in the application LON/00AM/LSC/2007/0342 which stated at paragraph 21 that the central heating system was " inefficient and this is in

itself unreasonable. Accordingly, some of the charges that flow from it are unreasonable” However at paragraph 24, the Tribunal noted that:- “ Insofar as maintenance is concerned there was no real evidence produced to us that the costs were unreasonable...”

7. The Applicant in their statement of case, state that on or about 20 April 2009 the Respondent’s premises were disconnected from the communal heating system, the charges which are claimed by the Applicant in relation to the heating and hot water a boiler maintenance are up until that date.

8. On 6 January 2011, the Applicant brought a claim for a money judgement in the Clerkenwell and Shoreditch County Court for Outstanding service charges in the sum of £2,073.05 and interest. On 10 February 2011, judgement was given for the Applicant (The London Borough of Hackney.) The Respondent (Mr Robert Shaw) subsequently successfully applied to set aside the judgement, and asked for the proceedings to be transferred to the Leasehold Valuation Tribunal.

9. In his Amended Defence to the claim brought by the Applicant in the County Court, The Respondent at paragraph 4 stated “ The defence rests on s27A Landlord and Tenant Act 1985 which gives court or tribunal the right to determine the reasonableness or liability to pay service charges demanded by a local authority. In this case, the costs of heating and hot water maintenance are submitted to be too high. Liability for the sum claimed is denied.” There were no other grounds save for the cost of maintenance of the boiler set out in the Defence.

10. The claim was transferred to the Tribunal on 17 October 2011.

11. On 9 November 2011 a pre-trial review was held, the applicant was represented by Brendan Thorpe a Legal Officer, and the Respondent Mr Shaw attended in person. Paragraph C of the Directions noted as follows:- “*The tenant said that his complaints relate solely to the costs incurred in respect of the maintenance of a communal heating and hot water system which was decommissioned in 2009 or 2010. He said that he wished to challenge these costs, **and no others**, for the period since he acquired his lease in 2003 until the system was decommissioned. He agreed that he had not paid any of the service charges which are the subject of the present claim.*”

12. The Tribunal determined that on the question of costs (service charges) in relation to the maintenance of the communal system prior to 1 April 2008, there should be a preliminary hearing.

13. On 15.11.11, the Respondent applied for permission to appeal to the Upper Tribunal against the decision taken at the pre-trial review. On 21 December 2011 the Upper Tribunal refused permission to appeal, accordingly the preliminary issue remained before the Tribunal.

14. A determination on the preliminary issue together with directions was given on 20 February 2012. The Tribunal determined that the cost for maintaining the communal heating boiler prior to 2008 should not form part of the matters to be determined by the Tribunal in this application, as to do so would be an abuse of process.

15. Further directions were given, at paragraph 21 of the decision dated 20.02.12 the Directions provided that -: the matter is suitable to be determined on the basis of written representations on the paper track. The parties have the right at any time before the application is determined to request a hearing or the Tribunal may give notice to the parties that it intends to determine the application at a hearing" (Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003).

16. No request for an oral hearing was made by either party, the applicant provided a statement of case in accordance with the directions, however no further documentary evidence has been provided by the Respondent in compliance with the directions.

The issues

17. The sole issue for the Tribunal is the reasonableness and payability of the service charges for the periods set out in paragraph 1 above.

Service charge item & amount claimed

18. In their statement of case the Applicant refers the Tribunal to Clause 3 (A), Clause 4, of the Seventh Schedule and the landlord's obligations set out in the Ninth Schedule of the Lease. Clause 3 (A) states that the lessee covenants to "*Pay to the Lessor such annual sum as may be notified to the Lessee by the Lessor from time to time as representing the due and proper proportion of the reasonably estimated amount required to cover the cost and expenses incurred or to be incurred...*"
19. The Seventh Schedule Clause 4. States:-" *...to accept the supply of heat and hot water (if any) presently supplied to the demised premises or which may in the future be supplied thereto by the lessor ...*"
20. The Ninth Schedule deals with the obligations of the landlord to keep the premises in repair, to insure and repaint and decorate the block and communal areas.
21. In the witness statement of Lucy Simler (Service Charge Accounts Officer), the Applicant deals with the method of calculation of the charges, which is based on the living space factor, which includes a calculation based on the number of bedrooms. 13 Athlone Close is a 1-bedroom property, which has been given a living space factor of 3, and a corresponding service charge calculation of 3.3333%.
22. The Tribunal noted that the Respondent made no challenge, to the method of apportioning the service charge expenses.
23. The Tribunal were provided with the Respondent's statement of accounts, which was appended to the witness statement of Shah Rahman (a member of the service charge recovery team). This included a breakdown of the charges a copy of the statement is appended to this decision.
24. The total sums for the period are set out below-
 - 2008/09- £1586.33
 - 2009/10-£906.74
 - 2010/11-£1003.69
25. This included Communal heating/ hot water, fuel charges in the sum of £401.52 and Communal Heating/Hot water maintenance in the sum of £405.54 for 2008/09 and £9.93 for communal heating/hot water fuel charges 2009/10.

The Tribunal's decision and Reasons for the decision

26. The Tribunal noted that save for the challenges made to the Communal heating and hot water system, no other heads of charge were disputed, although the Respondent did not provide a statement of case to the substantial issues, the Tribunal have considered the Respondent's defence, and his witness statement filed on 11.1.12 (for the preliminary hearing) in detail. The Tribunal noted that no evidence is given of alternative cost for heating, and given this the Tribunal has had to use its knowledge and experience of the cost of heating and the cost of maintenance. The Tribunal notes that the cost is for both heating and hot water for a 12 month period the Tribunal consider that in the absence of a proper challenge and based on its own experience of such charges it finds the sum claimed to be reasonable and payable.
27. The Tribunal has considered the charges for General services for 2008/09 this includes estate repairs, estate cleaning, lighting, ground maintenance, estate roads and footpaths and estate CCTV, the total cost for these items for 2008/09 to the Respondent was £165.25, the largest single item being estate cleaning in the sum of £95.70, for 2009/10, (for all the years in question the largest individual charge was in relation to the estate cleaning) the total cost was £197.67 and 2010/11 £184.83. (The Tribunal have not considered the charges for 2011/12, as these were not the subject of the county court referral.)
28. The Tribunal note that the Respondent at the pre-trial review did not indicate an intention to challenge these charges. Notwithstanding this, the Tribunal has considered the charges, and in so doing has applied its knowledge and experience and finds that these charges are reasonable and payable.
29. In relation to the Block Charges the service charges were for block repairs, block cleaning, block lighting, communal heating/hot water (dealt with above) communal door entry. The sums charged for this items for the years in question was as follows; - 2008/09- £1125.81, 2009/10-£391.21 and for 2010/11-£491.20. The Tribunal noted that save for the heating and hot water charges no challenge was made to the other heads of charge. The Tribunal have not been provided with any alternative costing by the Respondent for these services. The Tribunal notes that there is an obligation on the Applicant to provide these services in accordance with the ninth schedule of the lease, accordingly we find that the cost of these services, again based on our knowledge and experience are reasonable and payable.
30. The Tribunal note that the additional charges claimed were for Administration charges, building insurance and neighbourhood management charges. Of these charges the building insurance for the years in question were £59.20 for 2008/09, £74.00 for 2009/10 and £88.09 for 2010/11. We note that no

comparable evidence has been provided in relation to building insurance, accordingly we find the sums claimed based on our knowledge and experience to be reasonable and payable.

31. In relation to the Administration charges and the neighbourhood charge, the Tribunal were concerned that no supporting information had been provided, neither had any reference been made to the specific clauses in the lease upon which these charges are based. We also noted that the Respondent did not seek to challenge these charges. Nevertheless the Tribunal determine that additional information should be provided to the Respondent on these charges. **The Tribunal direct that the Applicant shall within 14 days of the date of this decision provide a letter to the Respondent and the Tribunal setting out the clauses relied upon, and the nature of these charges. The Respondent shall have 7 days thereafter to make any representation on these charges.**


32. Should the Applicant fail to provide the additional information then the appropriate sum shall be deducted from the final determination.

33. Application under s.20C and refund of fees

34. The Tribunal notes that the Respondent made no application under section 20C, and there was no request from the Applicant in relation to a refund of fees, accordingly no order is made in relation to this issue.

The next steps

- The Applicant shall provide the information referred to in sub paragraph 6 above.
- The Tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Clerkenwell and Shoreditch County Court.

Chairman: 
[name]

Date: 16/ April 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.