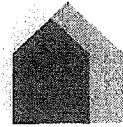


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HM Courts  
& Tribunals  
Service



Residential  
Property  
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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/00AM/LSC/2012/0297

**Premises:** Flat 3, Baltic Place, 287 Kingsland Road, London N1 5AQ

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**Applicants:** Parkbrace Limited

**Representative:** Mainstay Residential

**Respondent(s):** Mr Jeremy Hall

**Representative:** Mr. Hall did not appear and was un-represented

**Date of hearing:** 22 October 2012

**Appearance for Applicant(s):** Mr Daniel Potter Head of Estates and Ms Sophie Mason Company Secretary

**Tribunal:** Ms M W Daley LLB (Hons)  
Mr M Cairns MCIEH  
Mr P Clabburn

**Date of decision:** 5 November 2012

### Decisions of the Tribunal

- (1) The Tribunal determines that in relation to the years 2010 and 2011 service charges in the outstanding sum of £1196.09 are reasonable and payable in respect of the service charges for the years in question.
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

### The application

1. The Applicant sought 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 above service charge years.
2. This case was transferred to the Tribunal by an order dated 22 March 2012 made by District Judge Bazley White sitting at the Ipswich County Court, proceedings having been commenced by the Applicant on 19 January 2012 for the sum of ££2605.21 Service (and other charges) £119.96 interest under the County Court and £600.00 Legal cost under the terms of the lease.
3. Prior to the Pre-Trial Review held on the 20 June 2012, the Respondent wrote to the Tribunal indicating that he accepted the sum of £940.87 as being outstanding and due on account of service charges, and that he also accepted the current service charges up to 16 April 2012, however he disputed the sum of £1472.34, which had been " ...added to my account on 1<sup>st</sup> September with no explanation..."
4. The Tribunal directed that by 8 August 2012 the Respondent shall send to the Applicant (i) a schedule in the form attached to these directions, completed by the Respondent setting out in the relevant column by reference to each year (a) the item and amount in dispute (b) the reason(s) why the amount is disputed(c) the amount, if any, the Respondent would pay for that item
5. The Tribunal were informed that the Respondent had paid £940.87, of the outstanding service charges, on 22 August 2012. (However the actual sum outstanding on the account had increased, as the Respondent had not paid the intervening half yearly payments.)
6. The relevant legal provisions are set out in the Appendix to this decision.

### The hearing

7. At the hearing the Applicant was represented by the head of estates for the managing agents Mainstay Residential, who was assisted by Ms Mason. The Respondent did not appear and was not represented at the hearing.

8. Immediately prior to the hearing the Applicant's representative handed in further documents, namely a schedule setting out the properties and the percentage contributions in relation to Baltic Place, and a schedule setting out the details of the Respondent's budgeted service charge contributions for 25 September to 24 March 2011.
9. At the hearing, the Tribunal were informed that the premises were a purpose built flat in a block of similar apartments, flat 3 was within block 4, and paid a 1.5100 percentage contribution to the service charges, this charge was based on the square footage of the premises.
10. Mr Potter informed the Tribunal that the sum disputed arose prior to his company taking over the management of the premises, however in relation to the sum outstanding he had been provided with the accounts, which he asserted supported the outstanding charge. Mr Potter referred the Tribunal to the budget prepared by the previous managing agents ( White Druce & Brown) together with the accounts for the year ending 2010 which set out the actual expenditure.
11. Mr Potter informed the Tribunal that the service charge accounts revealed that in 2009 there had been an outstanding balancing charge in the sum of £78.70, and a balancing charge for 23 March 2007 to 24 March 2008 in the sum of £143.85. This was followed by a surplus of £32,960 this sum had been credited back to the leaseholders, and this was shown as a credit in the sum of £497.70 (1.5100% of the surplus sum) in the respondent's statement of accounts.
12. In 2010 there had been a budget deficit in the sum of £29141 and this had then formed the basis for a balancing charge in the sum of £440.03 (shown on the statement for the period 25.03.09-24.03.10)
13. There were two demands, which were shown on the statement of £196.33 for the sinking fund contribution (payable in accordance with clause 13 of the fourth schedule of the lease). This followed the Applicant's practice of demanding the sinking fund separately from the service charge demand). The half yearly service charge demand represented the budgeted sum and that was in the sum of £834.88.
14. The Applicant had also made two charges in the sum of £56.50 and £218.75 for legal fees in respect of outstanding service charges. Mr Potter was not able to provide detailed information as to the steps that would have been taken that would have caused these charges to be incurred, as he was not the managing agent at the time, however he asked the Tribunal to note that nearly two months after the service charge demand the sums were still outstanding. By way of general information, Mr Potter informed the Tribunal that Mainstay Residential followed a practice of sending a first arrears letter without levying a charge, and then charging for follow up letters. This had meant that the last

sum on the account was in respect of a second arrears letter, which had been sent out to the Respondent as a result of non-payment.

15. The Tribunal noted that in accordance with the Applicant's statement of case and the county court referral, it was the intention of the Applicant to deal with the issue of costs once the matter had been returned to the County Court for further judgement.
16. Mr Potter stated that he had made enquires of the previous managing agents and had noted that the Respondent had not raised any queries or issues concerning the reasonableness of any of the charges. The Tribunal noted on the Respondent's behalf that he had exhibited two letters dated 15 October 2011 and 16 November 2011 in which he had queried the sums outstanding, and had indicated that he was awaiting an explanation before he would make payment.
17. Mr Potter stated that prior to the defence being filed, Mainstay Residential had not received these letters. Mr Potter set out for the Tribunal explanation details of the central post system that was operated by Mainstay Residential, which involved the logging and tracking of all correspondence received by the managing agents. In answer to a query from the Tribunal, Mr Potter confirmed that the system was also operational for email and other electronic communication.
18. Mr Potter also stated that details of the service charges were available on line and his company operated a six weekly inspection regime which gave leaseholders an opportunity to raise queries face to face with a property manager, given this, he was confident that if Mr Hall had wished to query the charges, or ask for detailed explanations he had been provided with a reasonable opportunity to do so.
19. The Tribunal noted the service charge headings, which consisted of maintenance cost (cleaning, gardening Insurance etc) utility cost ( water supply and electricity) and management and administration cost ( management fees and other professional fees).
20. The Tribunal noted that there had been no specific objection to any of these costs, and the Respondent had not set out any objection to the charges as required by the directions given by the Tribunal on 20 June 2012. In the absence of a specific complaint by the leaseholder, the Tribunal had to apply its knowledge and experience, to assist in the task of determining the reasonableness and payability of the sum.

#### **Reasons for the Tribunal's decision**

21. The Tribunal were satisfied by the detailed and careful explanation given by Mr Potter and Ms Mason for the sum in issue. The Tribunal noted that there were final accounts for the period, and having examined the service charge

accounts, the Tribunal were satisfied that the sum claimed by way of service charge was reasonable and payable. This was supported by clauses 25 and 26 of the lease. In particular clause 26 which stated that " To pay to the Lessor within seven days of being requested to do so by the lessor excess service charge ( if any)." The Tribunal noted that this provided for the payment of a balancing charge.

22. The Tribunal had briefly considered the sums due under each of the headings that made up the service charge account, the Tribunal noted that the sums were within the range considered to be reasonable based on the Tribunal's knowledge and experience of the number of flats within the development.
23. The Tribunal noted that the legal costs, that were set out in the service charge account were not considered by the Applicant's representative to be administration charges, indeed the Tribunal noted no provision in the lease for such charges, and no specific provisions were drawn to our attention.
24. In the earlier directions dated 23.05.12 the Tribunal asked for further information concerning these charges. This was provided in the statement of case at paragraph 15, which states - : " *J B Leitch [ Solicitors] assert that the legal costs are not administration charges and they were demanded by virtue for their inclusion on the claim form..*" . Although it does not appear to the Tribunal that this blanket statement covers the cost of £56.50 and £218.75 which make up the sum in issue, the Tribunal considers that in the absence of a clause in the lease providing for such sums to be payable, the sums should not be included in the service charge sum, and any claim for the payment of these sums should be included in the cost, that are likely to be within the remit of the County Court.

#### **Application under s.20C**

25. The Tribunal noted that the question of costs, will be referred back to the County court for its determination, and that there was no application made either at the hearing or in writing under section 20 C of the Landlord and Tenant Act 1985, however ,notwithstanding this, the Tribunal has considered whether to make an order in respect of the Tribunal hearing, taking into account the determination above, the Tribunal determines that in the circumstances of this case no good grounds exist for the making of an order under section 20C of the 1985 Act.

Chairman: Ms M W Daley  
]

Date: 5  
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.