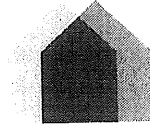




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LONDON RENT ASSESSMENT PANEL

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

Case Reference: LON/00AP/LSC/2012/0325

Premises: 59G Tottenham Lane, London N8 9BE

Applicant: Ms Janet Butler

Representative: Mr David Butler

Respondent: Sara Moise

Representative: RA Property Management

Date of hearing: 30 October 2012

Appearance for Applicant(s): In person and Mr D Butler

Appearance for Respondent(s): Mr A Mendlesohn

Leasehold Valuation Tribunal: Ms E Samupfonda LLB (Hons)
Mr W R Shaw FRICS
Mrs L Walter

Date of decision: 21 November 2012

Decisions of the tribunal

- (1) The tribunal determines that the amount payable by the Applicant in respect of the service charges for the year 2008 is £213.33, £505.39 for the year 2009, £255.65 for the year 2010 and £328.75 for the year 2011. In addition management fees and insurance proportion is payable as stated below.
- (2) The tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The tribunal makes 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.
- (4) The tribunal determines that the Respondent shall pay the Applicant £250 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

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 2008, 2009, 2010 and 2011.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant appeared in person and was accompanied by her brother Mr D Butler at the hearing. The Respondent did not attend but was represented by Mr R Mendelsohn, property manager of R A Management Ltd.
4. Immediately prior to the hearing, the Mr Mendelsohn handed in further documents, namely the Respondent's hearing bundle. The start of the hearing was delayed while the Applicant considered these new documents. The Applicant confirmed that she had had previous sight of these documents. She said that in her view they were not relevant to these proceedings as they related to current repairs. She confirmed that she was content to proceed.

The background

5. The property which is the subject of this application is a one bedroom flat on the third floor, situated in an end terrace building comprising eight self contained flats with commercial premises on the ground floor.

6. Photographs of the building were provided in the hearing bundle. 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.
7. The Applicant 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

8. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for years 2008, 2009, 2010 and 2011 relating to repairs, accountancy, administration, management fees and excess billing.
 - (ii) Whether the Respondent should reimburse the Applicant the sum of £350 that the Applicant paid her contractor Drains UK for repairs.
 - (iii) Whether the Applicant is liable to pay to the Respondent the sum of £300 that she was invoiced as a result of the Respondent alleging that damage was caused by Drains UK whilst undertaking repairs on her behalf.
9. 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 2008

10. From the statement of expenditure for the year 1st January 2008 to 31st December 2008, the Respondent claimed the sum of £1,471.08 by way of service charge. The total costs incurred in respect common parts cleaning was £917.87, £213 electricity, £100 accountancy, £94.00 repairs-gutters, £30.00 repairs-gutters out of pocket expenses and £116.10 administration fees. The tribunal was informed that the management fees and insurance were charged separately. For the Applicant, all costs with the exception of repairs to the gutters were apportioned at 16.67% and the gutters apportioned at 20%. The explanation given by Mr Mendelsohn was that the apportionment at 16.67% relate to the main building, which contains common parts whereas 20% is charged for repairs to the whole building which includes the ground floor units that do not have common parts.

11. The Applicant challenged the validity of the apportionment at 16.67% under the terms of the lease, the administration fee and accountancy fees. She also challenged the management fees of £190.00.
12. The Applicant confirmed that she no longer challenged the cleaning costs and that there was no dispute regarding the electricity and level of insurance charged.

The tribunal's decision

13. The tribunal considered that the costs incurred in respect of administration and accountancy fees were not reasonably incurred and therefore the sums claimed were not payable.
14. The tribunal determines that the costs incurred in respect of the cleaning, electricity and repairs were reasonably incurred. Therefore the amount payable in respect of the service charge year 2008 is £1254.98 of which the Applicant is liable to pay her due proportion of £213.33. In arriving at this sum the tribunal adopted the landlord's method of apportionment at 16.67% for cleaning and electricity and 20% for repairs to the gutters and out of pocket expenses. The tribunal also determined that the sum of £190 for management fees was reasonable and payable. In addition, the Applicant is also liable to contribute towards the insurance costs for this year.

Reasons for the tribunal's decision

15. The tribunal was informed that the gutters were repaired from the flat roof above without the benefit of scaffolding. The invoice for gutter repairs is dated 23 September 2008 at £94.00. There was a claim for £30 for "out of pocket expenses" which was not challenged and no invoice produced. The tribunal was informed by the Applicant that there was an invoice dated 15 January 2008 for £138.00 for guttering but this was not in the statement of expenditure in this year and therefore the tribunal could not consider it.
16. The tribunal did not accept the Applicant's submission that the guttering costs were unreasonable as the works proved ineffectual. There was no evidence to support the assertion that the subsequent repairs to the guttering arose as a result of defective repairs.
17. The tribunal considered that the sums claimed for management fees were reasonable in all the service charge years. The reason given by the Applicant for challenging this cost was that the property was not "a Belgravia postcode" and she considered the fee too high given its location and size. No further information was provided. The tribunal considered that there was insufficient evidence to support her assertions. Relying on our own expert knowledge and

experience, we concluded that the sums claimed were within market norms for this type of property within this locality.

18. The tribunal disallowed the Respondent's claim for administration fees. We were informed that the Respondent charges a basic fee plus an administration fee on various items. The tribunal did not consider this to be reasonable because tenants should know what the costs of various items are in order that they may budget for them without fear of the possibility of additional sums being requested. This is the preferred method of charging set out in the RICS Service Charge Code paragraph 2.3 of the second edition.
19. The tribunal disallowed the Respondent's claim for accountancy. The tribunal was informed that the Respondent does not engage the services of an accountant and that the service provided, although itemised as accountancy was in fact book keeping.. It is our view that book keeping is part and parcel of management functions and we are supported in this view by RICS Service Charge code paragraph 2.4 which states that managing agents should prepare and submit service charge statements as part of their duties. Accountancy fees are payable under the terms of the lease for an accountant to certify the accounts.

Service charge items & amount claimed in 2009

20. According to the statement of expenditure for this year, the total actual expenditure was £3,997.00 of which the Applicant was liable to pay £736.78. From the listed items of expenditure, the Applicant only challenged the costs of £2,057.00 incurred in respect of repairs to the roof and £350 accountancy fees. The year end accounts show that she was charged £411.40 whereas in her application form she alleges that she was charged £708.40 for the three invoices for the roof repairs which she calculated to be 31% of the total cost of £2,277.00.
21. The Applicant challenged the costs incurred in respect of the works to the roof on the basis that the work carried out comprised one job but the Respondent produced three separate invoices in order to avoid having to undertake the consultation procedures required by section 20 of the Act. She also queried the standard of work as the roof subsequently leaked and there are now plans to carry out further repairs.
22. The Respondent described in some detail the work that was carried out to the roof. He argued that although the work was done on the same day, there were three separate items of repair. One was an emergency as roof leaks had been reported.
23. The Applicant also sought reimbursement of £350 that she paid to Drains UK for repairs. She also challenged her liability to pay £300 that was invoiced separately by the Respondent for alleged damage caused by her contractor Drains UK.

The tribunal's decision

24. The tribunal considers that the total costs incurred in respect of the roof repairs are not recoverable by virtue of section 20 of the Act. Therefore the Applicant is not liable to pay the sum claimed of £411.40 as the sum recoverable from the Applicant is limited to £250.
25. The tribunal does not have jurisdiction to consider the issues of reimbursement of £350 and whether the Applicant is liable to pay £300 as these are not service charge items.
26. For the reasons stated above the tribunal disallowed the 'accountancy fees' of £350.00.
27. For the reasons set out above the tribunal determines that the sum claimed of £200 for management fees is reasonable and payable.
28. Therefore the tribunal determines that based upon the proportions used by the Respondent the amount payable by the Applicant in respect of the service charges for the year 2009 is £505.39. As previously stated the Applicant is liable to pay in addition her due proportion of the insurance and her management fee.
29. The tribunal noted that in this year, there were some items charged at 14.58% and some at 20%. No plausible explanation was provided for varying the Applicant's apportionment of 20% as per Clause 3.23 of the lease.

Reasons for the tribunal's decision

30. Three invoices were produced for repair work to the roof all dated 3 March 2009. The tribunal was not persuaded that the items of repair all comprised three separate unrelated jobs. The same contractor carried out the work, on the same day, on the same roof. The Respondent must have instructed the roofer to do the work and at some point either whilst on site, it was agreed for the contractor to carry out additional works to the roof so that the total cost exceeded the consultation requirements. In the circumstances we find that the Respondent should have complied with the consultation requirements or if, as alleged there were essential emergency repairs he should have applied to this tribunal for retrospective dispensation. The tribunal is therefore bound to limit the amount that is recoverable from the Applicant to £250 in accordance with section 20 of the Act for the failure to comply with the consultation requirements.

Service charge items & amount claimed in 2010

- 31 According to the statement of expenditure the total actual expenditure was £1,973.00 and the Applicant was liable to contribute £325.65. From the listed items of expenditure the Applicant only challenged the £70.00 claimed in respect of accountancy fees.

The tribunal's decision and reasons

32. For the reasons outlined above the tribunal disallowed the sum claimed for accountancy fees.
33. Therefore the tribunal determines that the outstanding costs incurred were reasonable and the amount that is payable by the Applicant is £255.65. In addition the Applicant is liable to pay her due proportion in respect of the insurance plus the management fee.

Service charge items & amount claimed in 2011

34. From the statement of expenditure, the Applicant only challenged the professional fees of £2,300 of which she is liable to pay £460.00 and the accountancy fees of £75.00.

The tribunal's decision and reasons

35. The tribunal was informed by the parties that this cost had not yet been incurred. A Notice of Intention to carry out work under section 20 of the Act had been served and was challenged. The Respondent confirmed that he had not been invoiced for this fee.
36. Given that this cost has not yet been incurred it should not appear in the 2011 final accounts as though it had been expended. The Respondent is entitled to ask for the professional fees on account and they are payable on demand in advance subject to reasonableness. Therefore the sum claimed of £460.00 is not yet payable.
37. For the same reasons outlined above the tribunal disallowed the accountancy fees.
38. The tribunal determines that the outstanding costs incurred were reasonable and that the amount that is payable by the Applicant is £328.75 plus the management fee and due proportion for insurance.

Excess Billing

39. The Applicant alleged that the Respondent's method of billing had caused a lot of confusion and lacked transparency. As a result of this application the Respondent had acknowledged some of the issues raised and "reversed" invoices e.g. invoice numbers 5556, 7559 and 7911. He withdrew the claim for finance charges of £49.25 and £16.40.
40. The tribunal was informed that the Applicant had made some payments already. If there is any overpayment as a result of this determination the Respondent must reimburse the Applicant or credit her service charge account.

Application under s.20C and refund of fees

41. At the end of the hearing, the Applicant made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that she had paid in respect of the application and hearing. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.
42. At the hearing, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Chairman: Evis Samupfonda

21 November 2012

Date:

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 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
 - (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

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 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
 - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) 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
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means 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.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

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.

Schedule 11, paragraph 5

- (1) 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—
 - (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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).

