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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/00AQ/LSC/2012/0306

Premises: 10 West Hill Hall, West Hill, Harrow on the Hill, Harrow HA2 0JQ

Applicants: West Hill Hall Ltd (1)
West Hill Management Co Ltd (2)

Representative: Miss Charlotte John counsel

Respondent: Ms Galina Ann Ursula Makohon

Representative:

Date of hearing: 11th October 2012

Appearance for Applicant(s): Miss Charlotte John counsel

Appearance for Respondent(s): Ms Makohon accompanied by Ms Gail Bradford
Harrow Law Centre McKenzie Friend

Leasehold Valuation Tribunal: Dr Carr
Mrs Bowers
Mrs Clark

Date of decision: 11th October 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £2,263.95 is payable by the Respondent in respect of the estimated service charges for the year 2011 – 12.
- (2) The Tribunal makes no determination in connection with the application under Schedule 11 of the Commonhold and Leasehold Reform Act 2002. That application relates to legal costs which in the circumstances of this case are more appropriately determined by the County Court
- (3) The Tribunal determines that the counterclaim be referred back to the County Court for determination.
- (4) The Tribunal makes the determinations as set out under the various headings in this Decision
- (5) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985
- (6) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Central London County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge year 2011-2012.
2. Proceedings were originally issued in the Central London County Court under claim no. 21R17298 and then transferred to this Tribunal, by order of District Judge Price on 4th May 2012.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Ms Charlotte John of Counsel at the hearing. She was accompanied by Mr Neil Andrew Kunst, Director with the Applicant. The Respondent appeared in person and was accompanied by Ms Bradford as a McKenzie Friend.
5. The Tribunal is very grateful to all those attending for their contributions to the hearing.

6. Immediately prior to the hearing the parties handed in further documents, namely a statement from the Respondent and counsel's skeleton together with legal authorities. The start of the hearing was delayed for one hour while the Tribunal considered these new documents.
7. The Respondent asked the Tribunal to note her belief that she suffered prejudice as a result of the late delivery of the Applicant's bundle. The Tribunal considered that the adjournment of one hour would enable her to consider the additional documents. But that it would consider an application for a further adjournment if she could demonstrate sufficient prejudice. No application was made.
8. The parties were asked to consider whether they would agree to the Tribunal considering the reasonableness/payability of the actual service charges demanded and to consider whether they could reach agreement on the appropriate forum for the determination of the counterclaim. The parties could not agree to the Tribunal making a determination on the actual service charges for the year in dispute; they also could not agree on the appropriate forum for the determination of the counterclaim.
9. The Applicant indicated that its claim under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 related entirely to legal costs. As it intended to pursue those costs at the county court, and the Tribunal was content for it to do so, there was no need for a determination on that aspect of the Applicant's claim.

The background

10. The property which is the subject of this application is a flat within a development of twelve flats converted from a Victorian building. The Respondent is required to pay 8.1% of the total service charges demanded.
11. 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.
12. 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

13. At the start of the hearing the parties identified the relevant issues for determination as follows:

- (i) Whether the Tribunal was the appropriate forum for the determination of the counterclaim
 - (ii) The payability and/or reasonableness of estimated service charges for the service charge year ending 31st March 2012 totalling £2,425 .96 in particular charges for
 - a. Cleaning
 - b. Gardening
 - c. Repairs
 - d. Professional fees
14. 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.

The appropriate forum for the determination of the counterclaim

15. The Applicant considered that the County Court was the most appropriate forum for the determination of the Respondent's counterclaim for the following reasons:
- (i) The counterclaim for damages exceeds the service charges claimed by the Applicant
 - (ii) The counterclaim cannot therefore wholly be disposed of by the LVT and it is undesirable that the counterclaim be fragmented
 - (iii) Issues arise as to the construction of the repairing covenants of the lease which are best left to the county court
 - (iv) There may be a need for expert evidence
 - (v) The matter will require referral back to the County Court
 - (vi) The Applicant prepared for the hearing on the basis that the counterclaim would be heard at the county court
16. The Respondent asked that the Tribunal determine the counterclaim for the period 2011 – 12.

The Tribunal's decision

17. The Tribunal determines that the counterclaim is appropriately to be determined in the county court.

Reasons for the Tribunal's decision

18. The Tribunal is persuaded by the reasoning of the Applicant. Moreover the Respondent has not the necessary evidence to hand to support her counterclaim, nor is she able to indicate which portion of her counterclaim relates to the year in dispute.

Estimated Service charges for cleaning and gardening

19. The Applicant is claiming £2,592 in total for cleaning and £2,000 for gardening. The Respondent is required to pay 8.1% of that total.
20. The Applicant has used the same cleaning company for 15 years. It is a commercial company which charges £25 per hour for cleaning services. Two hours of cleaning is provided per week. The contract has not been market tested. However there have been no complaints from lessees about the costs.
21. The gardening is charged at £77 per visit. The Applicant has made enquiries about alternative providers and could find no alternative provider for less than £90 per visit. Again the Applicant stated that there had been no complaints about the costs of the service.
22. The Respondent considered that appropriate charges would be £20 per hour for cleaning and suggested that gardening could also be obtained for far less than was being charged. The Respondent then made complaints about the actual quality of service provided.

The Tribunal's decision

23. The Tribunal determines that the estimated amounts payable in respect of cleaning and gardening are reasonable.

Reasons for the Tribunal's decision

24. The Respondent had no evidence to support her claim that services could be provided more cheaply. The Respondent's comments in connection with the quality of the service actually provided may be relevant to a discussion about the reasonableness of actual charges but not as to the reasonableness of estimated charges.

25. The Tribunal notes that the Respondent considered it to be very difficult to provide the necessary evidence because of the lack of detail about the contract specifications and because she would have to use subterfuge to obtain other quotes. However the Tribunal, if it were to determine that what appeared to it to be charges within a reasonable range of charges as unreasonable, would require some evidence of substance.
26. The Tribunal does consider that it is a wise precaution to market test contracts on a regular basis. However failure to do so in these particular circumstances does not render the estimated charges unreasonable.

Estimated Service charges for professional fees

27. The Applicant is claiming estimated service charges of £3,000 for professional fees. It argued that the figure was based upon previous expenditure.
28. The Respondent considered the figure too high and suggested a figure of £1,000 would be reasonable.

The Tribunal's decision

29. The Tribunal determines that the estimated amounts payable in respect of professional fees should be reduced to £1,000.

Reasons for the Tribunal's decision

30. The Tribunal drawing on its own expertise and taking into account the size of the building, the level of services provided and the level of service charges payable considers that an estimated sum of £1,000 would be reasonable.

Other matters

31. The Respondent asked the Applicant to explain how it calculated other figures within the estimate such as the charge for repairs, the contingency fee and the sum under the heading 'miscellaneous'.
32. The Applicant explained these, and although the Respondent was not entirely satisfied with the explanation, particular in regard to the calculation of sums paid into the reserve fund, she did not raise any arguments about the reasonableness of the estimated sums demanded.
33. The Tribunal also asked questions about whether the sums charged in connection with company house/secretarial charges and directors and officers insurance were payable. The Applicant argued that these were payable as they were an essential part of the functioning of the Applicant. The

Respondent raised no issue on the matter and as the amounts are de minimis the Tribunal makes no determination on the matter.

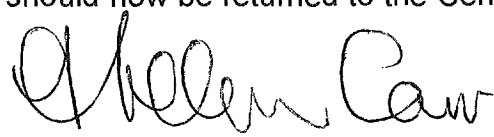
Application under s.20C and refund of fees

34. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. The landlord indicated it did not intend to pass its costs through the service charge. The Tribunal therefore did not make a determination under section 20C of the 1985 Act at this stage.

35. **The next steps**

36. The Tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Central London County Court.

Chairman:



[name]

Date:

6th 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 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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).

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.

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).

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.