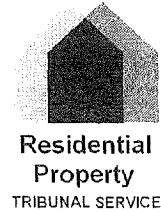


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**LONDON RENT ASSESSMENT PANEL**

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

**Case Reference:** LON 00AU/LSC/2012/0157

**Premises:** Flat A Cara House Brooksby Street London 1  
1HE

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**Applicant(s):** Matthew Reid

**Representative:** In Person

**Respondent(s):** Central and Cecil Housing Trust

**Representative:** Radcliffe Le Brasseur solicitors

**Date of hearing:** 16<sup>th</sup> May 2012

**Appearance for Applicant(s):** Mr Reid in person

**Appearance for Respondent(s):** Simon Mc CLoughlin Counsel instructed by  
Radcliffe Le Brasseur  
Mr Goorbim trainee solicitor  
Mr Ngandwe Customer Liaison officer of the  
Respondent

**Leasehold Valuation Tribunal:** Mr P Leighton LLB Hons  
Miss M Krisko BSc (Est Man )BA FRICS

**Date of decision:** 2012

**Decisions of the Tribunal** The Tribunal determines that the sum of £2.62 p week or £136.24 is payable by the Applicant in respect of the disputed items of service charge for the year 2011/12 as set out in Paragraph 19 below

- (1) The Tribunal makes the determinations as set out under the various headings in this Decision
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 as the landlord has conceded that it is not recoverable
- (3) The Tribunal determines that neither party shall re pay to the other the fees paid for the application and the hearing

### **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 2011/12 and 2012/13 .
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

3. The Applicant appeared in person at the hearing on 16<sup>th</sup> May 2012 and the Respondent appeared in person/ was represented by Mr S McCloughlin of counsel instructed by Radcliffe Le Brasseur solicitors
4. Immediately prior to the hearing the Respondent handed in further documents, namely various invoices relating to cleaning pest control and fire alarm checks The start of the hearing was delayed while the Tribunal considered these new documents. but in the interests of justice the Tribunal agreed to receive the documents.
5. At the conclusion of the hearing the tribunal gave the Respondent the opportunity fo providing further documents arising out of the hearing . they provided additional documents relating to cleaning and pest control and the Applicant responded in writing on

### **The background**

6. The property which is the subject of this application is a one bedroom flat in a purpose built block of flats operated by a housing association which is a social landlord which took over the ownership of the block from . Cara Irish Homeless Project Limited

7. 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
8. There have been previous proceedings between the Applicant and the Respondent .On 3<sup>rd</sup> September 2010 the tribunal found in Mr Reid's favour when the Respondent failed to appear. The Respondent has also been involved in litigation with other tenants including a Mrs Twomey of Flat C 188 Balls Pond Road which was determined in September 2012
9. The Applicant holds a weekly assured tenancy of the property under the terms of a written agreement originally with the Cara Irish Homeless Project Limited 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 agreement are referred to below, where appropriate.
10. Under Clause 1(1) of the agreement it is provided that the term "rent" includes the payment of service charge
11. Clause 1(3) of the agreement provides  
  
*"The Association shall provide the services detailed in appendix A in connection with the Premises for which the Tenant shall pay a service charge to be included in the rent."*
12. Clause 1 [4] makes provision for an increase or decrease in the next rent by giving the tenant not less than one calendar month in writing of the increase or decrease and also provides
13. *[III] notification of the alteration in the service charge shall be given in the same or by separate notice. The notice shall specify the new service charges proposed and the date from which the alteration shall take effect. The tenant shall pay the new service charges provided in the notice from the date specified. If the annual cost of providing services cannot be determined at the time such notice is sent any alteration shall be based upon the Association's estimate of providing such services during the coming year. An adjustment in the service charge will, if necessary, be made at the time the next alteration is made to take account of the actual costs incurred. Service charges are subject to the provisions contained in the Landlord and Tenant Act's 1985 and 1987.*
14. Clause 2 of the Agreement sets out the duties of the Association and by clause 2(4) it is provided that the landlord shall keep in good repair the structure and exterior of the property and specifies under items (i) to (x) the items included in the obligation Clause 2(5) sets out the landlord's obligations in relation to installations ,clause 2(6) in relation to the common parts and 2(7) in relation to the external decorations.

15. No Appendix A to the document was produced to the tribunal or to the previous tribunal which heard the application by the Applicant in 2010 in relation to this property nor was it available for production in the proceedings involving Mrs Twomey in September 2011

### **The issues**

16. At the start of the hearing the parties identified the relevant issues for determination as follows:
- (i) Whether in the absence of an Appendix to the lease there was an implied term that the landlord was entitled to add additional services and levy a service charge in respect of them
  - (ii) the payability and/or reasonableness of service charges for the year 2011/12 relating to the items in the service charge demand and in particular communal lighting, pest control tv aerial costs of fire alarm and cleaning charges
  - (iii) whether the landlord performed or adequately performed the services for which it charged a service charge

An administration charge of 15% was agreed and communal energy of 42p per week was also not disputed. 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.

### **Issue 1**

#### **The Tribunal's decision**

17. The Tribunal determines that the landlord is entitled to add items of service which are needed for the block and to charge under the terms of the service charge account .

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

18. Mr Reid did not seriously challenge the proposition that if the landlord carried out additional services in the course of managing the property it was entitled to charge provided the charges were reasonable. The tribunal considers that if an agreement specifies various services to be provided and also makes provision for alterations then that provision is wide enough to cover the possibility of further services other than those immediately specified being provided. Whilst it may be argued that the provision regarding alterations may be limited to the amount chargeable the tribunal sees no reason for imposing such a limitation . It therefore holds that the variation of services is covered by

clause 1.4.(iii) In any event the tribunal would consider that the landlord is entitled to charge on a quantum meruit for services provided. The tribunal does, however, agree with the observations made in the decision in the Twomey case that the landlord should clearly specify in the agreements the services which they intend to supply so that there is no room for dispute in the future.

## Issue 2

### The Tribunal's decision

19. The Tribunal determines that the amounts payable in respect of the disputed items in the service charges for the year 2011/12 is £2.62 per week or £136.24 per annum which is made up as follows

(a)	Communal lighting	42p per week	£21.84 per annum
(b)	Pest control	44p per week	£22.88 per annum
(c)	TV aerial	£0	
(d)	Fire alarm inspections	19p per week	£9.88 per annum
(e)	Cleaning costs	£1.57 per week	£81.64 per annum

### Reasons for the Tribunal's decision

20. The tribunal received evidence from the landlord of the services which were provided from the documents in their possession and from Mr Ngandwe

#### Pest Control

21. Mr Reid agrees that this is chargeable but denies that the service is carried out. The Tribunal finds that it was carried out and sets out its findings in more detail under Issue 3 below

#### TV aerial

22. Mr Reid contends that this service was not connected to his set. He and another tenant did not agree to the installation of a new aerial unless it was done at no charge to them. The charge made for the year 2011/12 was £1.01 per week but no further charge has since been made. As Mr Reid is not getting this service and it was not one of the original specified services the

tribunal has decided that this should not be charged and that he should not be required to pay the fee for 2011/12. No further fees are being charged so there is no likelihood of any dispute in the future on this issue.

### **Fire Alarm**

23. Mr Reid contends that there is no fire alarm in the building and that the tenants should not therefore be charged for inspections. The landlords produced an invoice showing a fire inspection in February 2012 in respect of this building. The tribunal accepts that an inspection of the building for fire safety was within the contemplation of the parties and it should be paid for out of the service charge account.

### **Cleaning Costs**

24. Mr Reid contends that the tenants should be consulted about the cleaning arrangements. He does not say that he should not be required to pay but that the cleaners have only been in twice since January 2012 and the tenants do not know what they are supposed to be receiving for their charges.
25. Following the hearing the tribunal has now seen the cleaning invoices. They are not as clear as they might be but show that cleaning is carried out to the block and in the circumstances the tribunal finds that the sums claimed are recoverable.

### **Issue 3**

#### **The Tribunal's decision**

26. The tribunal finds on the balance of probabilities that the pest control service has been provided by the landlord and the cost of the provision is reasonable and payable.

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

27. The Tribunal determines that the Landlord has performed the services for which it is seeking payment through the service charge. Mr Reid disputed that any pest control was undertaken by the landlord. Evidence was given by the landlord about the placing of bait boxes by Rentokil and invoices for the boxes in question were reduced. The boxes are checked quarterly and if mice are found and further remedial action has to be taken there is a separate charge

28. The boxes were originally provided by Gross until the contract with Rentokil. The bait boxes have a specified life span and after that period they are replaced.
29. The tribunal is satisfied that all the other disputed services were provided by the landlord and that the amounts charged to the tenant are reasonable.

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

30. The agreement makes no provision for the payment of costs and the Respondent is not seeking to impose them. It is therefore not necessary for the tribunal to make any order under Section 20C of the Act.

Chairman:                     Peter Leighton                    

Date:                      August 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).