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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985 AND SECTION 168(4) OF THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Case References:	**LON/00AY/LBC/2011/0094 and LON/00AY/LSC/2011/0734**
Property:	**Second (Top) Floor Flat, 24 Rita Road, London SW8 1JU**
Applicant:	Rahmatullah
Representative:	Mr O Majeed (son of the Applicant's attorney) and Mr T Shakeer (friend and solicitor)
Respondent:	Mr S Miller
Representative:	Not represented
Date of hearing:	23rd February 2012 (post-hearing written submissions received on 5th, 13th, 14th, 23rd and 27th March 2012)
Appearances for Applicant:	Mr Majeed and Mr Shakeer
Appearance for Respondent:	None
Leasehold Valuation Tribunal:	Mr P Korn (chairman) Mr T Sennett MA FCIEH
Date of decision:	11th April 2012

Decisions of the Tribunal

(1) The Tribunal makes the following determinations:-

- The annual administration fee of £40 is not payable in any of the years in question.
- The amount payable by way of building insurance premium for the 2007/08 year is £108.15.
- That for the purposes of section 168(4) of the Commonhold and Leasehold Reform Act 2002 the breaches of covenant or condition in the lease alleged by the Applicant have not occurred.

(2) The Tribunal makes no determination as to the payability of the annual service charge of £90 on the basis that the Respondent has agreed/admitted that it is payable and therefore the Tribunal has no jurisdiction to make a determination on this issue.

(3) The Tribunal makes no determination as to the payability of the building insurance premium for the years 2008/09, 2009/10 and 2010/11 on the basis that the Respondent has agreed/admitted that the amounts claimed by the Applicant are payable and therefore the Tribunal has no jurisdiction to make a determination on this issue in respect of these years.

(4) The Tribunal makes no order under section 20C of the 1985 Act as the Respondent has not applied for any such order.

(5) The Tribunal rejects the Applicant's application for an order requiring the Respondent to reimburse the Applicant's application fee and hearing fee.

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the liability to pay and reasonableness of certain service charge items and also seeks a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that there have been breaches of covenant of the Respondent's lease of the Property.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing and post-hearing submissions

3. The Applicant was not present at the hearing but was represented by Mr O Majeed and Mr T Shakeer. The Respondent was not present and was not represented at the hearing.

4. The Respondent sent written submissions to the Tribunal after the hearing to which the Applicant responded (having been invited by the Tribunal to do so). The various post-hearing submissions are noted, although the Tribunal also notes that neither it nor the Applicant has had an opportunity to test the Respondent's post-hearing submissions through cross-examination and nor does the Respondent appear to have explained why he did not attend the hearing.

The background

5. The Property is a two bedroom flat in a converted house containing 3 flats.

6. The Tribunal did not inspect the Property. Neither party requested an inspection and the Tribunal did not consider that one was needed given that it made it clear to the Applicant's representatives at the hearing that it was very willing to inspect but the Applicant's representatives said that they did not themselves consider it necessary.

7. The Respondent holds a long lease of the Property. The specific provisions of the lease will be referred to below where appropriate.

The issues

8. The Tribunal identified the relevant issues for determination as follows:

   (A) The Applicant's liability to pay and reasonableness of the following service charge or administration charge items:-

   - *2005/06 to 2010/11* — *Annual Service Charge of £90 per year*
   - *2005/06 to 2010/11* — *Annual Administration Fee of £40 per year*
   - *2007/08 to 2010/11* — *Building Insurance Premium (amount varies)*

   (B) The following alleged breaches of covenant by the Respondent:-

   - *Changing the internal layout of the Property and making other alterations, in each case without obtaining the requisite consent*

- *Damage resulting from the carrying out of work*
- *Subletting the Property*
- *Trespass into loft*
- *Damage to front garden wall by drilling holes for motorbike.*

Annual Service Charge

9. Mr Majeed and Mr Shakeer for the Applicant conceded at the hearing that the service charge of £90 was a standard annual amount and therefore did not reflect the actual cost of providing services.

10. However, in his letter of 18th October 2011 to Mr Mohammed Ramzan (who was acting on behalf of the Applicant) the Respondent accepted that the service charge for the period 2007 to 2010 was owed and payable by him. It would therefore seem to follow that the Respondent accepted that the service charge of £90 per year was properly payable.

11. As regards the period prior to 2007 (2005/06 and possibly 2006/07), whilst there may be a dispute as to whether the service charge has actually been **paid** the Tribunal has seen no evidence to indicate that the Respondent considers the service charge in respect of this earlier period not to be **payable**. As the Tribunal's jurisdiction is confined to **payability** and – in the Tribunal's judgment – the Respondent has agreed that the service charge is payable, the Tribunal does not have jurisdiction to make a determination as to the payability of the annual service charge of £90. This is because section 27A(4) of the 1985 Act provides that *"No application ... [to a leasehold valuation tribunal for a determination whether a service charge is payable] may be made in respect of a matter which (a) has been agreed or admitted by the tenant ..."*.

12. Therefore the Tribunal cannot, and does not, make any determination in respect of the annual service charge.

Annual Administration Fee

13. Mr Majeed and Mr Shakeer said that this was a fee for arranging the building insurance, although they did not offer any specific proof of this point. It would seem from their explanation that the fee is in the nature of a service charge rather than an administration charge (and that the 1985 Act applies to it). When asked by the Tribunal which clause of the lease they were relying on they referred the Tribunal to clause 3(iv) which included a covenant by the tenant to pay to the landlord *"One Third of the costs of insuring ... the building"*.

14. It is settled law that any service charge claimed by a landlord must be clearly provided for under the lease and must have been apparent to a reasonable tenant. In the case of any ambiguity, the ambiguity should be resolved in favour of the tenant. In the Tribunal's view, the clause relied on by the Applicant is not wide enough to allow it to charge a fee for organising the building insurance and therefore the fee is not payable by the Respondent.

Building Insurance Premium

15. The premium charged was £176.97 for 2007/08, £103.63 for 2008/09, £99.75 for 2009/10 and £91.82 for 2010/11. At the hearing Mr Majeed said that the Respondent had not paid the insurance premium at all for the years in question.

16. In relation to the years 2008/09, 2009/10 and 2010/11 the Respondent in his letter of 18th October 2011 to Mr Mohammed Ramzan (referred to above) accepted that the insurance premium was payable. Therefore, as with the service charge, the Tribunal does not have jurisdiction to make a determination in respect of these years, the Respondent having agreed that that the amount charged is payable.

17. In relation to the year 2007/08 the Respondent disputes the **amount** that is payable, stating in his letter of 18th October 2011 that the amount should be £108.15. The Applicant could easily have written to the Respondent disputing his analysis of the amount payable but the evidence indicates that the Applicant did not do so. At the hearing neither Mr Majeed nor Mr Shakeer was able to provide any evidence to show that £176.97 was the correct figure. In the circumstances, the Tribunal prefers the Respondent's figure and therefore the amount payable in respect of 2007/08 is £108.15.

18. In conclusion, the Tribunal cannot, and does not, make any determination in respect of the building insurance premium for the years 2008/09, 2009/10 and 2010/11. In respect of the year 2007/08, the amount payable is £108.15.

Changing the internal layout and other alterations

19. Mr Majeed and Mr Shakeer explained that the issue was the alleged removal of part of one of the kitchen walls, including the door, the alteration of a small staircase and changing the windows to uPVC.

20. However, when questioned by the Tribunal, Mr Majeed admitted that he had never been inside the Property and nor did he know whether anyone else had inspected the inside of the Property. He appeared to be relying in evidence on a layout plan attached to particulars provided by an estate agent.

21. Specifically in relation to the windows, Mr Majeed argued that the change could be seen from the outside. The Tribunal referred Mr Majeed to the

Respondent's letter of 18th October 2011 in which he stated that *"in the 1990s the original wooden sash windows were rotting and in dire need of replacing for they were letting in wind and rain and were non-energy compliant. We (John Capon and I) orally notified you of this major concern on numerous occasions over a period of 18 months but you took no action so we took it upon ourselves to replace the windows with uPVC energy-compliant / non-maintenance material after Planning Permission from Lambeth Council was granted"*.

22. Mr Majeed was unable to provide evidence that any written response to the Respondent's letter had been made by or on behalf of the Applicant nor that any written complaint had been made prior to the LVT application concerning the change to the windows.

23. The Tribunal noted that the description of the Property in the lease was not very detailed and put it to Mr Majeed and Mr Shakeer that it was possible that the window frames formed part of the Property and that therefore in replacing what he considered to be rotting frames the Respondent was simply complying with his repairing responsibilities. Mr Majeed and Mr Shakeer did not accept that the frames were in disrepair and suggested that it was 'common practice' for landlords to maintain window frames.

24. In the Tribunal's view the Applicant's evidence on the issue of the alleged alterations to the layout of the Property is very weak. Neither the Applicant nor anyone on his behalf has actually seen the alleged alterations. The Tribunal questioned Mr Majeed regarding the plan attached to the estate agent's particulars but he was unable properly to explain how the layout in the plan demonstrated the point that he was seeking to make.

25. Regarding the window frames, such evidence as there is on this issue points to the Respondent having asked the Applicant to fix a problem of rotten frames and having had no satisfactory response. In any event, it is highly arguable that the window frame is part of the Property and that the Respondent was simply carrying out a repair to his Property which he was entitled to do.

26. In conclusion, the Applicant has failed to show on the balance of probabilities that the Respondent is in breach of covenant in relation to these issues.

Damage resulting from carrying out of work

27. Mr Majeed referred the Tribunal to a photograph within the bundle which he said showed damage to the ceiling of the first floor flat. He also referred the Tribunal to a copy witness statement purporting to be given by Valentin Kovrigovitch, apparently a tenant of the flat below the Respondent's flat, stating (amongst other things) that the occupier of the Respondent's flat renovated it some time back and that this caused cracks on Mr Kovrigovitch's ceiling and stains on his bedroom ceilings.

28. In one of his witness statements in the context of a case at Lambeth County Court (included within the bundle), the Respondent states that he was approached by Mr Kovrigovitch – with whom he had a good relationship – on 29th March 2003 who informed him that Mr Majeed's father was trying to force him to sign a letter of complaint regarding the keeping of his dogs in the Property and was threatening to evict him if he refused to sign.

29. In the Tribunal's view the photograph constitutes very poor evidence, there being nothing to link it to the Property or the floor below or to link it to any specific time period. It appears to show some damage having occurred to something, but no more than that.

30. As regards the witness statement, even assuming that Mr Kovrigovitch signed it he was seemingly not available to be cross-examined on it at the hearing (which weakens the force of the witness statement) and the Respondent has brought some evidence to at least cast doubt on whether any such witness statement was freely and willingly made and therefore as to whether it is reliable.

31. In addition, the Applicant has failed to articulate and prove precisely what breach of covenant is being complained of, as the fact of damage to a ceiling (even if proven) does not demonstrate by itself that the leaseholder of the flat above is in breach of his lease. In the circumstances, therefore, the Tribunal does not consider that the Applicant has demonstrated on the balance of probabilities that the Respondent is in breach of covenant.

Subletting the Property

32. Mr Shakeer stated that the Respondent has been subletting the Property. The Tribunal pointed out that the lease contains no restrictions on subletting. This does not therefore constitute a breach of covenant.

Trespassing into loft

33. Mr Majeed argued, based on the estate agent's particulars referred to above, that the Respondent had turned the loft into a reception room and that this was a breach of his lease because the loft did not form part of the Property.

34. The Tribunal put it to Mr Majeed that although, rather confusingly, the plans attached to the lease were (wrongly, it seemed) the ground and first floor plans, the lease described the Property as being on the second **and third** floors and that it appeared – on the face of it – that the loft was on the third floor (and indeed was the only room on the third floor). Mr Shakeer countered that there was a detailed description of the demised premises in the lease which only described what the **second** floor element consisted of.

35. Much could be said about the quality of drafting in the lease, but the description of the Property is particularly poor. As noted before, the wrong plans seem to have been attached to the lease. The lease also tells the reader what the first floor consists of, even though it is common ground between the parties that the Property does not extend down to the first floor. Although it is difficult to be certain, it seems to the Tribunal that the purpose of describing in detail what the first and second floor demises consist of was probably to help the reader understand the interface between the first floor and second floor demises, in other words where the first floor ends and the second floor begins. Following that logic, the lease would not need to go into detail regarding the third floor because the tenant under the lease is the tenant of both the second and third floors and therefore does not need to know where one part ends and the other begins.

36. In addition, Mr Majeed and Mr Shakeer conceded that the loft area could only be accessed through the second floor flat and that the landlord had not reserved a general right of access to it in the lease of the Property, which again points to the likelihood that the third floor loft area was intended to be included within the Property.

37. Taking all of the above into account, the Tribunal considers on the balance of probabilities that the loft forms part of the Property and therefore that the Respondent is not trespassing by using the loft, assuming that he is using it.

Damage to front garden wall

38. Mr Majeed referred the Tribunal to a copy letter in the bundle dated 3rd February 2009 stated to be from Elizabeth Hodges (then a tenant in the building). The letter states amongst other things that the Respondent had chained his motorbike against the front garden wall. Mr Majeed said that the Respondent had cemented the bolts into the wall.

39. Again In one of his witness statements in the context of a case at Lambeth County Court, the Respondent states that Ms Hodges informed him on 29th March 2003 that she had refused to sign a letter of complaint about him, whereupon Mr Majeed's father became extremely angry and violently slammed the door shut as he left the building.

40. The Applicant has not provided any photographic evidence of the Respondent having cemented bolts into the wall, nor was Mr Majeed able to direct the Tribunal towards any letters of complaint from or on behalf of the Applicant in the bundle on this issue. The letter from Ms Hodges, even assuming that it was written by her, is dated 3rd February 2009 and therefore does not constitute strong evidence of a current breach of covenant, and nor does it indicate anything more than the 'chaining' of a motorbike against the wall; there is no reference to the cementing in of holes. Ms Hodges was not available to be cross-examined on the contents of the letter and the Respondent has brought some evidence to at least cast doubt on whether any

such witness statement was freely and willingly made and therefore as to whether it is reliable.

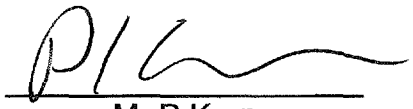
41. Therefore, on the balance of probabilities, the Tribunal considers that the Applicant has failed to show that the Respondent is in breach of covenant.

No application under section 20C

42. The Respondent was not present at the hearing and did not make any application prior to the hearing for an order under section 20C of the 1985 Act and therefore this issue does not fall to be considered.

Application and hearing fee

43. The Applicant applied (through his representatives) for an order for the Respondent to reimburse his application fee and hearing fee. The Tribunal has found against the Applicant on all points other than those points which had already been conceded by the Respondent in correspondence. The Tribunal has found much of the Applicant's evidence to be extremely weak and is concerned that the Applicant saw fit to apply for a determination that the Respondent was in breach of covenant without having more credible evidence to support his allegations. The Tribunal therefore has no hesitation in rejecting the Applicant's application for an order that the Respondent reimburse his application fee and hearing fee.

Chairman: 

Mr P Korn

Date: 11th 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.

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.

Commonhold and Leasehold Reform Act 2002

Section 168

(1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.

(2) This subsection is satisfied if-

(a) it has been finally determined on an application under subsection (4) that the breach has occurred,
(b) the tenant has admitted the breach, or
(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3) But a notice may not be served by virtue of subsection 2(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(4) A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of covenant or condition in the lease has occurred.

(5) But a landlord may not make an application under subsection (4) in respect of a matter which-

(a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(b) has been the subject of determination by a court, or
(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.