



HM Courts
& Tribunals
Service

7961



Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON/00AY/LSC./2012/0173

Premises: 17 Beardell Street SE19 1TP

Applicant(s): Queenhithe Investments Limited

Representative: Mr Victor Gersten, Director

Respondent(s): Ms Karen Evans

Representative: None

Date of hearing: 19th June 2012

Appearance for Applicant(s): Not applicable

Appearance for Respondent(s): Not applicable

Leasehold Valuation Tribunal: Ms N Hawkes (Lawyer Chairman)
Ms S Coughlin MCIEH
Mrs L Hart

Date of decision: 21st June 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £1,126.26 is payable by the Respondent in respect of the service charges for the years 2009/10, 2010/11 and 2011/12. This figure is made up as follows:
 - a. The sum of £361.26 is payable in respect of the Respondent's contribution to the cost of insurance in the year 2009/10.
 - b. The sum of £329 is payable in respect of the Respondent's contribution to the cost of insurance in the year 2010/11.
 - c. The sum of £372 is payable in respect of the Respondent's contribution to the cost of insurance and the sum of £64 is payable in respect of the Respondent's contribution to the cost of gutter clearance and repair work carried out in the year 2011/12.
- (2) The Tribunal determines that the Respondent shall pay the Applicant £170 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.
- (3) Since the Tribunal has no jurisdiction in respect of alleged arrears of ground rent, the claim to statutory interest or county court costs, this matter should now be referred back to the Lambeth County Court.

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 Respondent in respect of the service charge years 2009/10, 2010/11 and 2011/12.
2. Proceedings were originally issued in the Chichester County Court under Claim No. 2CI00250. The claim was transferred to the Lambeth County Court and then in turn transferred to this Tribunal, by order of District Judge Zimmels on 27th February 2012.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Mr Gersten, a Director of Queenhithe Investments Ltd., at the hearing and the Respondent did not attend the hearing and was not represented.

The background

5. The property which is the subject of this application is a flat in a block of four flats built around 1900.
6. 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 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

8. At the start of the hearing, the Applicant and the Tribunal identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of the service charges for the year 2009/10 relating to the Respondent's contribution to the cost of insurance.
 - (ii) The payability and/or reasonableness of the service charges for the year 2010/11 relating to the Respondent's contribution to the cost of insurance.
 - (iii) The payability and/or reasonableness of the service charges for 2011/12 relating to the Respondent's contribution to the cost of insurance and to the cost of gutter clearance and repairs.
 - (iv) The Respondent's Counterclaim/set off.
 - (v) The question of the reimbursement of fees.
9. Having heard evidence and submissions from the parties and having considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Service Charge for the year 2009/10

10. The Applicant claims by way of service charge for the year 2009/10 a quarter of the insurance premium paid by the Applicant to insure the building, namely, the sum of £361.26.

The Tribunal's decision

11. The Tribunal determines that the amount payable by the Respondent in respect of her contribution to the cost of insurance for the year 2009/10 is £361.26

Reasons for the Tribunal's decision

12. By Clause 1 of the Lease, the Respondent is required to pay:

“by way of further or additional rent from time to time a sum or sums of money equal to one fourth of the amount which the Lessor shall expend in effecting or maintaining the Insurance of the building and other parts of the estate against loss or damage by fire flood storm impact aircraft and such other risks (if any) as the Lessor thinks fit as hereinafter mentioned such last mentioned rent to be paid without any deduction on the half yearly day for the payment of rent next ensuing after the expenditure thereof.”

13. Mr Gersten gave evidence that, in addition to the correspondence which was before the Tribunal, from September 2009 onwards he sent out service charge demands to the Lessees every September. Prior to 2009, he had sent out these demands in July. This is the change in procedure to which he refers to in the penultimate paragraph of his witness statement which provides: “...accordingly it seemed wise to start to operate to the provisions of the Leases relating to accounts. This was done in 2009.”
14. Mr Gersten described these demands stating that they followed a standard, typed format with gaps for lessees names and addresses which were filled out in ink. The demands gave the name and address of the Applicant and specified the relevant dates and the sums due. Photocopies of the demand for a premium which Mr Gersten had received from the insurers and proof of payment would accompany these service charge demands.
15. Mr Gersten gave evidence that the Summary of Tenants Rights and Obligations to which he refers in his letter of 31st August 2010 in which he reiterates his demand for all outstanding sums was the “official, standard version” which he had either obtained from his old firm (he is a retired solicitor) or from the Internet. Mr Gersten’s evidence was confirmed by that of his wife who had delivered the service charge demands by hand.
16. Whilst, unfortunately, the demands themselves could not be located, the Tribunal accepts Mr Gersten’s evidence that he sent out such a demand to the Respondent in September 2009 claiming by way of service charge for the year 2009/10 a quarter of the insurance premium paid by the Applicant to insure the building, namely, the sum of £361.26.

17. Applying its expert knowledge, the Tribunal finds that the sum claimed in respect of the cost of insurance is reasonable. Accordingly, the Tribunal determines that the sum of £361.26 is payable by the Respondent, subject to consideration of the Respondent's set off.
18. It is noted that the Respondent has not sought to challenge either the reasonableness or the payability of the service charges; she has simply raised a Counterclaim in the County Court proceedings.
19. An oral Pre-Trial Review was held by the Leasehold Valuation Tribunal in this matter on 27th March 2012. An order was made which included provision (at paragraph 4) that the Tribunal would determine the Respondent's Counterclaim at the hearing of 19th June 2012.
20. Paragraph 12 of the order provides that the Respondent should by 4 pm on Friday 13th April 2012 serve on the Applicant a statement of case setting out clearly what items of service charges are disputed and why and that:

"If the Respondent asserts that she has a counterclaim against the Applicant the amount of which she is entitled to set-off against service charges otherwise payable the Respondent must set out in the statement of case all facts and matters she relies upon together with details of the sums claimed by her.

There shall be attached to the statement of case copies of all documents, reports or witness statements which the Respondent wishes to rely upon at the hearing."

21. The order of 27th March 2012 also provides, in bold, under the heading "Important Note":

"Failure to comply with Directions could result in serious detriment to the defaulting party e.g. the Tribunal may refuse to hear all or part of that party's case and orders may be made for them to reimburse costs or fees thrown away as a result of the default."

22. Notwithstanding this, the Respondent has failed to serve any statement of case on the Applicant or on the Tribunal; she has failed to serve on the Applicant or on the Tribunal any documentary evidence whatsoever in support of her Counterclaim; and she has failed to attend today's hearing to make oral representations. She has not requested an extension of time for compliance with the Tribunal's directions.
23. The Respondent having provided no written or oral evidence in support of her Counterclaim pursuant to the Tribunal's directions, she has failed to satisfy the Tribunal, on the balance of probabilities, that her Counterclaim/set off is made

out on the facts. Accordingly, the Tribunal finds that the service charge claimed in these proceedings is payable without any set off.

Service Charge for the year 2010/11

24. The Applicant claims by way of service charge for the year 2010/11 a quarter of the insurance premium paid by the Applicant to insure the building, namely, the sum of £329.

The Tribunal's decision

25. The Tribunal determines that the amount payable by the Respondent in respect of her contribution to the cost of insurance for the year 2010/11 is £329.

Reasons for the Tribunal's decision

26. The Tribunal accepts Mr Gersten's evidence that he sent out a service charge demand in 2010 which included this sum. The Tribunal has also been provided with additional correspondence requesting payment of this amount from the Respondent and stating that the Summary of Tenants Rights and Obligations is enclosed. It is noted that the Respondent has not sought to challenge the reasonableness or payability of the service charges.
27. Applying its expert knowledge, the Tribunal finds that the sum of £329 claimed in respect of the cost of insurance is reasonable. For the reasons set out above, the Tribunal is not satisfied that the Respondent's Counterclaim/set off has been made out. The Tribunal finds that the sum of £329 is payable without any set off.

Service Charge for the year 2011/12

28. The Applicant claims by way of service charge for the year 2011/12 the sum of £436 which comprises a quarter of the insurance premium paid by the Applicant to insure the building, namely, the sum of £372, and a quarter of the cost of gutter clearance and repair work carried out in 2011/12, namely, the sum of £64.

The Tribunal's decision

29. The Tribunal determines that the amount payable by the Respondent in respect of her contribution to the cost of insurance and to the cost of gutter clearance and repairs for the year 2011/12 is £436.

Reasons for the Tribunal's decision

30. The Tribunal accepts Mr Gersten's evidence that he sent out a service charge demand in 2011 which included a demand for the sum payable in respect of the Respondent's share of the insurance premium. The Tribunal has been provided with a covering letter dated 6th September 2011. Applying its expert knowledge, the Tribunal finds that the sum claimed in respect of the cost of insurance is reasonable.
31. As regards the work to the gutters, by clause 4(1) of the Lease, the Lessee covenants with the Lessor to contribute and pay one equal fourth part of the costs and expenses outgoings and matters mentioned in the Fourth Schedule to the Lease.
32. The matters mentioned in the Fourth Schedule of the Lease include (at Paragraph 2(b) of the Fourth Schedule)
- "The expenses of maintaining repairing redecorating and renewing... (c) The gas water pipes drains electric cables and wires in under or upon the building and the estate and used in common with the owners and lessees of the other flats."*
33. The Tribunal is satisfied that gutter clearance and repair work would fall within this provision. Mr Gersten gave evidence that costs were incurred when a tenant rang him to say that water was pouring down the wall of the block. He stated that he immediately found a builder who went round to clear the gutter.
34. We have been provided with a copy of an invoice from C Murton Property Repairs dated 27th December 2011 in respect of the work carried out. As stated above, it is noted that the Respondent has not sought to challenge the reasonableness or payability of the service charges. Applying its expert knowledge, the Tribunal finds that the sum claimed in respect of the work which was carried out to the gutters is reasonable.
35. For the reasons set out above, the Tribunal is not satisfied that the Respondent's Counterclaim/set off has been made out. The Tribunal finds that the sum of £436 is payable without deduction.

Refund of fees

36. 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 he had paid in respect of the application/hearing in the sum of £170. Having heard the submissions from the Applicant and taking into account the determinations above, the Tribunal orders the Respondent to refund any Leasehold Valuation Tribunal application and hearing fees paid by the Applicant within 28 days of the date of this decision.

The next steps

37. The Tribunal has no jurisdiction over ground rent, statutory interest or county court costs. This matter should now be returned to the Lambeth County Court.

Chairman: Naomi Hawkes

Date: 21st June 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.

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).