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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/00BE/LSC/2011/0599

Premises: 41 Park Street, Park Street Estate, Bermondsey,
London SE1 9EA

Applicant: London Borough of Southwark

Representative: Mr. O Strauss (Litigation Officer), Mr. G Dudhia
(Accountant), Mr. J Rowan (Technical Officer),
Mr. J Boas (Building Insurance Officer)

Respondent: Mr. Ambrish Patel

Representative: Mr. Ambrish Patel

Date of hearing: 6 February 2012

Appearance for Applicant: As above

Appearance for Respondent: As above

Leasehold Valuation Tribunal: Mr. L Rahman (Barrister)
Mr. SF Mason BSc FRICS FCI Arb
Mr. M Martynski (Solicitor)

Date of decision: 27 February 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £1,294.28 is payable by the Respondent in respect of the service charges for the years 2007-2008, 2008-2009, and 2009-2010.
- (2) The Tribunal determines the service charge for the year 2007-2008 is £724.04 (as per the service charge account, excluding £10 ground rent as it is not a service charge). Taking into account the £606.97 already paid by the Respondent, that leaves a balance of £117.07 outstanding for that year.
- (3) The Tribunal determines the service charge for the year 2008-2009 is £742.53 (as per the service charge account, except the adjusted figures for care and upkeep and administration cost in the sum of £334.41 and £67.50 respectively and excluding the ground rent of £10 as it is not a service charge). Taking into account the £364.00 already paid by the Respondent, that leaves a balance of £378.53 outstanding for that year.
- (4) The Tribunal determines the estimated service charge for the year 2009-2010 is £798.68 (as per the sum claimed at Lambeth County Court minus the £10 ground rent as it is not a service charge). The Tribunal determines this to be a reasonable estimate for service charges by comparison with the actual charges for the preceding two years, taking into account annual uplifts. The Respondent should note the actual service charge for this year may be higher and should be paid when demanded by the Applicant, unless the Respondent disagrees with the actual amount claimed, in which case he may make an application to the Leasehold Valuation Tribunal.
- (5) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (6) The Tribunal determines that the Respondent shall pay the Applicant £165 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.
- (7) Since the Tribunal has no jurisdiction over county court costs and fees, 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 charge payable by the Respondent in respect of the service charge years 2007-2008, 2008-2009, and 2009-2010.

2. Proceedings were originally issued in the Lambeth County Court under claim no. OUA26670. The claim was transferred to the Tribunal, by order of District Judge Zimmels, on 27 July 2011.
3. The relevant legal provisions are set out in the Appendix to this decision.

Background

4. The property which is the subject of this application is a 1 bedroom flat on the top floor of a block containing 6 flats. The block was built in the early 1980's. The Applicant owns 44 blocks on the estate, totalling 162 units. The Respondent had been living in the property since 1992. He purchased the lease in 1997 and continued living there until 2000. Thereafter, the property was rented out by the Respondent.
5. The lease of the property, demised for a period of 125 years from 1997, requires the Applicant, as landlord, to provide services and the Respondent, as tenant, to contribute towards their costs by way of a variable service charge.
6. According to clauses 6(1) and (2) of the Third Schedule of the lease, the Respondent shall pay "a fair proportion" of the costs and expenses incurred by the Applicant under the lease and the Applicant may adopt "any reasonable method" of ascertaining the said proportion and may adopt different methods in relation to different items of costs and expenses.
7. The method used by the Applicant is the bed-weighting method, whereby a property is assigned a weighting of 4 units with an additional unit for each bedroom. Being a 1 bedroom property, the Respondent's property therefore attracts a bed-weighting of 5 units. According to the Applicant, there are 30 units in the Respondent's block and the Respondent's contribution is therefore 5/30. The Applicant considers this to be a reasonable method of apportionment and states this has been agreed with the Leaseholder Council.
8. The Respondent has not specifically challenged this method but has noted that the apportionment concerning some of the items for the relevant service charge years refer to his block as having 37 units (for example the calculation for ground maintenance for service charge year 2007-2008 at page 81 of the bundle).
9. The Applicant clarified at the hearing it had mistakenly included 35 Maiden Lane, which has 7 units, to the Respondent's block. For each item where the Applicant has calculated the contribution from the Respondent to be 5/37, it should in fact be 5/30. It appears the mistake has worked in the Respondent's favour as he has been under charged for those particular items. However, the Applicant stated at the hearing it would not be seeking to recover the shortfall from the Respondent. The figures would remain the same.

The issues

10. At the start of the hearing it was unclear what the issues in the case were. The Applicant clearly set out its claim in the Particulars of Claim (prepared for the purpose of the County Court proceedings) and also in the Statement of Case, pursuant to the directions made by this Tribunal at the oral pre-trial review on 21 September 2011. The Respondent was directed to provide a statement of case in reply, attaching any documents and witness statements the Respondent wished to rely upon in support of his case. The Respondent's response appears at pages 102-105 of the bundle. Reference is also made to emails and correspondence at pages 24-46 of the bundle. The Tribunal found it difficult to clearly establish from this the Respondent's case. The Tribunal discussed with the Respondent the various issues he had raised.
11. The Respondent raised issues concerning maintenance, repairs, and accounts going back to earlier service charge years. The Tribunal explained to the Respondent that issues concerning those service charge years were not transferred to the Tribunal by Lambeth County Court and there was a lack of supporting evidence on those issues in any event. If the Respondent wished to challenge other service charge years, he should make a separate application to the Leasehold Valuation Tribunal.
12. The Respondent raised issues concerning alleged damage and disrepair to his flat. The Respondent confirmed at the hearing he received £20,161.51 under an insurance claim in 2007 for the cost of repairs and loss of rental income. The Respondent states there is ongoing water penetration into the property and other unresolved repair issues in connection with this, resulting in the flat being uninhabitable since 2007.
13. The Applicant stated in response (witness statements from Mr. J Boas and Mr. J Rowan, dated 10.1.11 (which presumably should be 10.1.12)) and 13.1.12 respectively, appearing at pages 109-112 of the bundle) that it was unclear what disrepair the Respondent was referring to. According to its own records, there was contact from the Respondent on 25 March 2011 and 21 June 2011 regarding an insurance claim for unspecified damages. On each occasion, a claim form was sent to the Respondent. To date, the Respondent has failed to return a completed form. Mr. Strauss stated at the hearing the Applicant was not aware of any ongoing property disrepair issue. The earlier matter dating from 2007 had been settled.
14. The Tribunal notes there is a lack of evidence concerning the alleged disrepair other than the Respondent's oral evidence. This matter was not directly raised with supporting evidence in the Respondent's statement in response or in reply to the written evidence from Mr. J Boas and Mr. J Roan. If the Respondent wishes to raise this matter, he can do so at the County Court with supporting evidence. In the circumstances, the Tribunal determines it is not appropriate for this Tribunal to deal with this issue.

15. The Respondent was directed to the itemised charges for each of the relevant service charge years and was asked to identify the particular charges he disagreed with and the reasons why. The Respondent raised issues with the following items for each of the service charge years: insurance, care and upkeep, ground maintenance, and administration costs.
16. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on these issues as follows.

Insurance

17. The charge for each year is as follows: £164.90 (2007-2008), £171.11 (2008-2009), and £183.09 (2009-2010). The Applicant states the insurance is tendered on the open market. The market is tested and the insurance premium represents value to its leaseholders. Each property is covered up to a sum of £350,000. The cost of the insurance is not apportioned as per the method referred to at paragraph 7 above but is apportioned on the basis of the number of bedrooms for each property. The insurance provider provides the cost of the premium for different sized properties based on the number of bedrooms. This premium is then allocated to all similar sized properties throughout the borough.
18. The Respondent states the premium for each year is very high. He states he could get a cheaper quote on the open market, although he did not have any quotes. He estimates it should cost about £68-£84 maximum for each year. He stated the premium he initially paid was only £32. He stated his father owns a 3 bedroom property on a different estate, approximately 10 minutes away, although he could not state the insurance premium his father was paying for his own property.
19. The Tribunal notes the absence of any meaningful evidence from the Respondent such as a quote or even the premium paid by his father, albeit for a larger property. Based upon the Tribunal's own knowledge and experience of hearing cases of this type, the Tribunal finds the insurance premium for each year does not appear to be excessive. Accordingly, the Tribunal finds the cost of the insurance premiums are reasonable and payable for each of the service charge years.

Care and upkeep

20. The Applicant charged the following for each year: £204.42 (2007-2008), £466.83 (2008-2009), and £902.11 (2009-2010). The Applicant clarified at the hearing the figures for 2008-2009 and 2009-2010 were wrong. There was an error on the part of the Applicant's contractor. Mr. Dudhia explained the figure for 2007-2008 was based upon the Borough wide cost to the Applicant which was then divided per block. This did not relate to the actual work that was done to each block. This system of apportionment was changed from 2008-

2009 onwards, following a decision from the Leasehold Valuation Tribunal concerning another case, so that the cost reflected the actual hours worked on each block. This change caused some confusion in the way in which the contractor was accounting the figures. Mr. Dudhia stated having looked at the figure of over £900 for 2009-2010, he felt the figure "looked wrong". He discussed the matter with the contractor, who then changed the amount to £334.41 for each of the years 2008-2009 and 2009-2010. Mr. Dudhia stated this only came to light the previous Friday.

21. The Applicant further explained the costs under this heading were based upon the amount actually paid (for 2009-2010 estimated to be paid) to the cleaning contractors for cleaning the block and the estate. The charge for refuse disposal are also included under this heading and include the cost involved in the hire of refuse storage bins. The detailed breakdown for the costs under this heading have been provided for each of the relevant service charge years.
22. The Respondent stated in oral evidence he was frustrated and he had to constantly make enquiries. He stated the figure was still too high for each year considering there were only 6 flats on his block and the size of the estate. He stated nothing was maintained or cleaned. He then stated he accepts the estate was cleaned, but the figure was high bearing in mind the size of the block and the estate. The Respondent then stated the cleaning of the communal areas had stopped and the area was messy. He stated if he had known he would need evidence to support his claim, he would have taken photographs. He also stated that since 2007, he has been visiting the property 3 times per month.
23. The Tribunal notes the Applicant accepts its mistake and has adjusted the figures accordingly. Based upon the Tribunal's own knowledge and experience of hearing cases of this type, the Tribunal finds the figure for 2007-2008 and the adjusted figures for 2008-2009 and 2009-2010 to be reasonable.
24. The Respondent has failed to provide any supporting evidence, other than his oral evidence, to support his claim that the charges are too high or that the block and estate were not cleaned. This matter was not previously raised by the Respondent. Furthermore, the Tribunal notes the Respondent's evidence on this was inconsistent and in any event not very persuasive bearing in mind he has not been living at the property since 2000 and has only been visiting the property 3 times a month since 2007. Accordingly, the Tribunal finds the costs for care and upkeep for each year reasonable and payable.

Ground maintenance

25. The Applicant has charged as follows for each of the service charge years: £34.70 (2007-2008), £32.50 (2008-2009), and £29.98 (2009-2010). The Applicant states this charge covers the cost of maintaining the communal land on the estate, including flowerbeds and grass areas.

26. The Respondent states there should not be a charge for ground maintenance as there is no ground to maintain. There is no grass to maintain. The grass had been replaced with stones. The communal gardens had been stoned over. The Respondent initially stated there were no trees on the estate, but then stated he accepts there were trees on the estate.
27. The Applicant stated in response there were in fact flowerbeds around the edge of the building and the stoned areas still needed weeding.
28. Again, the Tribunal notes the Respondent failed to directly raise this argument prior to the hearing. There is no supporting evidence from the Respondent other than what he has stated at the hearing. The Respondent's evidence regarding the presence of trees on the estate was inconsistent. The Tribunal notes the breakdown of the costs for maintenance for the year 2008-2009 shows a charge for arboreal works. The Tribunal accepts the communal gardens, even if stoned over, would still need to be weeded. The Tribunal therefore determines the sums charged for grounds maintenance, for each of the service charge years, are reasonable and payable.

Administration costs

29. For each of the service charge years, the Applicant has charged 10% of all the costs making up the service charge demand, as per clause 7(7) of the Third Schedule to the lease. The figure for 2007-2008 is £65.82. The figures for 2008-2009 and 2009-2010 need to be adjusted in light of the mistake made by the Applicant concerning the sum for care and upkeep as discussed at paragraph 20 above. The adjusted administration costs are £67.50 (2008-2009) and £90.73 (2009-2010).
30. The Respondent does not disagree with the terms of the lease but argued the Applicant should only receive half the administration cost for each service charge year. The Respondent stated the Applicant failed to provide quarterly bills, requested since 1997, until 2002. The Applicant did not provide a breakdown of the service charge costs as had been provided for the current 3 years. The Respondent stated he only received service charge estimates for the years 2007, 2008, and 2009. He did not receive a breakdown of the itemised costs for each year despite requests being made to the Applicant.
31. Mr. Strauss stated in response he had spent hours dealing with points raised by the Respondent. He stated points raised by the Respondent in September 2009, concerning service charge bills, were dealt with in October 2009, as confirmed by the exchange of emails, copies of which are at pages 30-31 of the bundle. Mr. Strauss stated the Respondent only asked for detailed information concerning service charge bills just prior to a forfeiture hearing, as confirmed by the exchange of emails, copies of which appear at pages 26-28 of the bundle.

32. The Tribunal determines the Applicant did reply to the Respondent's requests for information concerning the service charges, as confirmed by the exchange of emails referred to above. The Tribunal accepts the Applicant's point that it cannot send out detailed information with every service charge demand, unless a specific request is made, as this would increase the cost of the service charge for the rest of the leaseholders.
33. The Tribunal notes the mistakes made by the Applicant (concerning the Respondent's block being treated as 37 units instead of 30 units and the overcharge concerning the cost for care and upkeep regarding service charge years 2008-2009 and 2009-2010). However, the mistake concerning the wrong number of units attributed to the Respondent's block has worked to his advantage, as he had been undercharged. The Applicant confirmed it would not seek to recover the shortfall. So far as the mistake concerning the overcharge is concerned, the Respondent has not made any overpayments.
34. Furthermore, using the Tribunal's own knowledge and experience, the Tribunal finds the overall administration charge of 10% to be a very low figure when applied to the annual expenditure normally incurred. The Tribunal therefore finds the administration costs for each service charge year are reasonable and payable.

Application under s.20C and refund of fees

35. 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 (£165) that it had paid in respect of the application. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund the fees paid by the Applicant within 28 days of the date of this decision.
36. The Respondent applied for an order under section 20C of the 1985. Although the Applicant indicated that no costs would be passed through the service charge, having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is not just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act.
37. The Tribunal took into consideration that the Applicant had been substantially successful in its application. The Respondent failed to put forward a meaningful case. The Respondent's statement in response was unhelpful. Contrary to the Respondent's claim, the Applicant had responded to the various requests made for information concerning the service charges.

The next steps

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

Chairman: 

Date:27.02.12

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).

Commonhold and Leasehold Reform Act 2002

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.