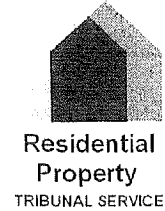


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LONDON RENT ASSESSMENT PANEL

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/00BE/LSC/2012/0045

Premises: 7 Lindley House Estate, Peckham Park Road,
London SE15 6UW

Applicant(s): MGPI Property Investments Ltd

Representative: Mr Gevdet Mehmet (Director of Applicant Company)

Respondent(s): London Borough Of Southwark

Representative: Ms Ezania Bennett – Legal Representative

Date of hearing: 11 June 2012

Appearance for Applicant(s): Mr Gevdet Mehmet

Appearance for Respondent(s): Ms Ezania Bennett
Mr Gulam Dudhia – Accounts Manager

Leasehold Valuation Tribunal: Mrs N Dhanani LLB(Hons)
Mr S F Mason BSc FRICS FCI Arb
Mr L G Packer

Date of decision:

Decisions of the Tribunal

- (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 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

The application

1. The Applicant submitted an application seeking 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 2010/11 and 2011/12.
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 and the Respondent was represented by those named on the front of this decision.

The background

4. The property which is the subject of this application is a three bedroom flat on the fourth floor of a building known as Lindley House situated on the Lindley Estate.
5. The Applicant holds a long lease of the property which requires the Respondent as landlord to provide services and the Applicant as 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

6. At the start of the hearing the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for the year 2010/11. The parties confirmed that although the application was made in respect of the service charges for the years 2010/11 and 2011/12, they had agreed that the application should be limited to the service charges for the year 2010/11 only.

- (ii) The Applicant questioned the reasonableness of actual the service charge of £1,664.72, when compared to the estimated service charge of £937.02. The Applicant confirmed that he had paid and admitted liability to pay the estimated service charge in the sum of £937.02 but he challenged the reasonableness and liability to pay the balance of £727.70.
- (iii) The Applicant accepted liability to pay the service charge in respect of the Insurance premium but challenged liability to pay the following items of service charge in so far as the sums exceed the sum stated in the estimated service charge account for 2010/11:

Service charge item	Estimated service charge 2010/11	Actual service charge 2010/11	Amount in dispute
	£	£	£
Care and Upkeep	205.17	345.07	139.90
Door Entry Phone	25.46	402.48	377.02
Unitemised Repairs	280.31	342.28	61.97
Estate Lighting/Electricity	14.88	88.89	74.01
Total	525.82	1178.72	652.90

- (iv) During the course of the hearing it became apparent that there had been an error in the calculation of proportion of service charge itemised on the account as Care and Upkeep. Mr Dudhia on behalf of the Respondent confirmed that as a gesture of goodwill, and in order to progress the matter forward the Respondent would accept the sum of £230.11 in respect of the Care and Upkeep element of the service charge for 2010/11 on the basis that this was the amount charged in the service charge year 2009/10 for this item. The Applicant accepted liability to pay £230.11 for the Care and Upkeep element of the 2010/11 service charge. Although the Applicant had raised an issue in relation to the Palladin bin hire costs, since these costs formed part of the charges included under the Care and Upkeep heading the Tribunal was not required to make a determination on this point.

Applicant's Case

7. The Applicant relied on his statement of case and the oral submissions made at the hearing. He accepted that he is liable under the terms of his lease to pay a service charge. He acknowledged that under the terms of the lease the Respondent may adopt any reasonable method of ascertaining the leaseholders's proportion of service charge costs arising on the block and estate.
8. The Applicant submitted that he had thought that in considering the service charge for the year 2010/11 the Tribunal would also be considering the reasonableness of the cost of the major works started in 2009.
9. He stated that the actual service charge for 2010/11 is unreasonable when compared to the estimated service charge. He stated the Respondent had failed to predict the service charge accurately and had not behaved in a reasonable manner with regard to the expenditure on the building. He stated that the Respondent had not made clear the basis on which it calculated the estimated service charge. He submitted that in view of the recent major works to the estate and the block he had expected the service charges to be driven down due to the reduced maintenance requirements to the estate and the block.
10. The Applicant submitted that although he understands that the Respondent can adopt any reasonable method of ascertaining the proportion of service charge and may adopt different methods in relation to different items of cost and expenses, the use of different bed weighting for block costs and estate costs is complicated and lacks transparency. He stated that the bed weighting method gives the appearance of an unequal charge across the whole estate and the various blocks within the estate. He stated that because of the method of apportionment used by the Respondent there is no simple way to check the calculations in order to ascertain whether the charges have been calculated fairly and reasonably. The Applicant submitted that there should be one bed weighting to fit all the services and spread the costs of the block and estate evenly making the overall charges more "...sustainable and reasonable".
11. The Applicant also queried whether the Respondent should have undertaken the prescribed Section 20 statutory consultation in respect of individual items of service charge amounting to £250 or more.
12. **Door Entry Phone:** The Applicant disputed the method used for apportioning the cost of the door entry phone. He did not object to the amount itself but objected to the bed weighting method of apportionment.
13. **Unitemised Repairs:** The Applicant stated that he was not sure what items were being charged for under this heading and he stated that it was unclear whether the works were in relation to "...mandatory works or works ... caused through vandalism." He stated that the breakdown produced by the

Respondent suggested some vandalism had occurred and the cost of the works should have been recovered as an insurance claim as opposed to a service charge item. He stated that it was unreasonable of the Respondent to pass on the cost of such repair to the Applicant by way of a service charge. The Applicant confirmed he did not challenge the cost of pest control although he was of the view that the item should have been included under the Care and Upkeep heading. The Applicant confirmed that having seen the Respondent's case, he accepted that there was no charge for fly tipping.

14. **Estate Lighting:** The Applicant challenged the number of visits to the estate to rectify the same problem. He stated that major works which included works to the estate lighting had started in 2009 and were likely to finish in 2013 and so he was unsure why the actual charges exceeded the estimated charges.

Respondent's Case

15. The Respondent relied on the statement of case, the witness statement of Gulam Dudhia and oral submissions made at the hearing by Ms Bennett and Mr Dudhia on behalf of the Respondent.
16. Ms Bennett objected to a determination by the Tribunal of any issue in relation to the major works as she stated that there was no mention of this in the original application or in the Applicant's statement of case.
17. Ms Bennett referred to the lease and stated that the Respondent relies on the various covenants and provisions of the lease and contends that the service charges levied on the Applicant are reasonable and in accordance with the lease. The details are set out in the Respondent's statement of case.
18. Ms Bennett explained that the Respondent's bed weighting method of apportionment was chosen as the fairest method of apportionment of service charge in about 2003/04 after consultation with the Leaseholders Council (a leaseholder representative body). She stated that this method of apportionment is used in respect of all the properties in the Respondent's stock. She stated that the service charges are variable and are based on actual cost of services provided throughout the relevant year. The total cost of each service is apportioned according to the bed weighting method. She also stated that the method of apportionment had been in place for some years prior to the purchase of the leasehold interest in the property by the Applicant.
19. She explained that there are 32 flats in Lindley House, the block is separated by staircases and each section of the block houses 8 flats. Each property is attributed a basic bed weighting of 4 with an extra unit added for each bedroom. The Applicant's property is a three bedroom flat and as a result has a bed weighting of 7. She stated that there are 52 units in Lindley House. Therefore the Applicant's block contribution is $7/52$. She stated that the total bed weighting of all the units on the estate is 1852 and the Applicant's contribution in respect of the estate costs is therefore $7/1852$.

20. **Door Entry:** Mr Dudhia explained that the estimated service charge is sent out at the beginning of the year and at that stage they have no idea of the actual cost of providing the door entry system as this depends on the number of call outs for repair and the nature of repairs. He stated that the estimated amounts are calculated based on an average of the last three years service charge for the door entry system. He stated that for the year in question there were three unexpected costs incurred in respect of the door entry system. He stated that part of the cost of the works includes the cost of overheads which include the costs of staffing call centres and engineers costs for inspecting repairs. He confirmed that the door entry system costs are apportioned on a bed weighting of 7/52.
21. **Unitemised Repairs:** Mr Dudhia stated that the charge covers communal repairs to the blocks and the estate and the cost is apportioned to individual units using the bed weighting method. He stated that the estimated amount was based on past experience with type of block and based on the actual cost of attending to reactive repairs over a three year period. He stated that the chlorination of the tanks is not undertaken every year, but it was undertaken in the year in question. He also stated that there was an excess on the Insurance of £1000 so it was not cost effective to make claims on the insurance in respect of any repairs costing less than £1000.
22. **Estate Lighting:** The Respondent's statement of case states that this charge covers the maintenance of the lamp columns and replacement light bulbs on the estate and the block as well as the electricity consumed. Mr Dudhia stated that the cost is in part in for reactive repairs as well as for usage. He also stated that there had been several fires attributable to the electrics so they now test the electrics every five years.

The Tribunal's decision

23. 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.
24. The Tribunal did not consider the issue of the major works as the original application did not raise the issue of the major works although the Tribunal noted that reference had been made to the major works in the Applicant's statement of case, it was not raised as a specific issue for determination prior to the hearing. The Tribunal took into account the fact that the Respondent had not had an opportunity to make any submission on the issue.
25. The Consultation process in relation to major works is prescribed under the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Consultation Regulations"). The process prescribed by the Consultation Regulations is very detailed and specific. The consultation requirements apply where the works are qualifying works (ie basically any works that result in a contribution of more than £250 from any one leaseholder). Where a landlord

undertakes such works then unless the consultation requirements have either been complied with or dispensed with only £250 can be recovered from a tenant in respect of such works. The service charge accounts for 2010/11 do not include a charge for any qualifying works and so the consultation requirements do not apply.

26. The Tribunal considered the provisions of the lease and are satisfied that the lease permits the Respondent to provide the services that are in issue and to charge the Applicant a service charge. Since there is no dispute between the parties as to the provisions of the lease it is not necessary for the purposes of this decision to set out in detail the provisions of the lease.
27. The Tribunal noted that the Applicant did not claim that any of the services were not provided or that the services provided were inadequate, his main issue was the increase in the actual service charge when compared with the estimated service charge. Pursuant to Schedule 3, Paragraph 2(1) of the lease the Respondent is obliged to provide a reasonable estimate of the amount which will be payable by the lessee for the year. Pursuant to Schedule 3, Paragraph 2(2) the lessee covenants to pay the estimated service charge in advance on account by equal payments on the quarter days (1 April, 1 July, 1 October and 1 January).
28. The Tribunal noted the explanation given on behalf of the Respondent as to the methods used to calculate the estimated service charge using an average of the previous three years service charge. The Tribunal is of the opinion that it is inevitable that such an estimated service charge would not include any provision for unexpected one off repairs which had not occurred in the preceding three years. The Tribunal accepts that this method of estimating a service charge may result in the greater deviation in the actual service charge when compared to the estimated service charge, however the Tribunal does not consider that this alone renders the method of calculating the estimated service charge unreasonable. An estimated service charge is simply a guide to the likely actual service charge and although it would be preferable for the actual service charge to be closer to the estimated service charge, the Tribunal accepts that this is not always possible particularly where the service charge relates to a property within a large estate. Provided there is a good and credible explanation as to why the actual service charge is much higher than the estimated service charge, this alone does not mean the actual service charge is unreasonable.
29. The Tribunal is charged with determining the reasonableness of the service charge. In doing so the Tribunal considers the provisions of the lease as well as the reasonableness of the service charge in relation to the actual service rendered. The basis on which the service charge is estimated is one of many factors taken into account by the Tribunal in determining the reasonableness or otherwise of an item of service charge. It is clear that in this case the estimated service charge fell far short of the actual service charge for the year in question. The Tribunal is satisfied that the service charges are reasonable on the basis of the credible explanation given in the submissions made on

behalf of the Respondent. The Tribunal notes that where there has been an error in the calculations of the service charge the Respondent has conceded the point.

30. The Applicant challenged the bed weighting method of apportionment used by the Respondent.
31. Schedule 3, Paragraph 6(2) of the lease provides:

“The Council may adopt any reasonable method of ascertaining the said proportion and may adopt different methods in relation to different items of costs expenses.”

The Tribunal accepts that there are a number of reasonable methods of apportionment of service charge, including the Respondent's bed weighting method, which is quite commonly used by local authority landlords. The Tribunal noted that the bed weighting method of apportionment was approved by the Leaseholders Council. Further, it had been used for the apportionment of service charge for some years prior to the Applicant's purchase of the leasehold interest. The Tribunal notes that, although the Applicant suggested in the hearing that the apportionment ought to be more directly linked to the size of properties, for example by square footage, this alternative would in fact give the owners of larger flats, such as the Applicant, a bigger share to pay, compared to the present basis. In summary, the Tribunal considers the Respondent's method of apportionment to be reasonable. The Tribunal also considers it fair and reasonable to attribute different bed weightings depending on whether a particular service is shared by properties within the block in which the property is situated or by the whole estate.

32. Accordingly in respect of the items of service charge in issue the Tribunal determines the following amounts to be reasonable and payable by the Applicant to the Respondent in accordance with the terms of the lease:

Service charge item	Estimated service charge 2010/11 £	Actual service charge 2010/11 £	Amount Determined reasonable £
Care and Upkeep	205.17	345.07	230.11
Door Entry Phone	25.46	402.48	402.48

Unitemised Repairs	280.31	342.28	280.31
Estate Lighting/Electricity	14.88	88.89	88.89
Total	525.82	1178.72	1001.79

Application under s.20C

33. In the application form the Applicant had applied for an order under section 20C of the 1985 Act. Ms Bennett on behalf of the Respondent, landlord confirmed that no costs would be passed through the service charge, and on the basis of this the Applicant withdrew his application for an order under section 20C of the 1985 Act.

Chairman:

Mrs N Dhanani

Date:

27th July 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.