



**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS  
UNDER SECTIONS 20C AND 27A OF THE LANDLORD AND TENANT ACT 1985**

**Case Reference:** LON/00BJ/LSC/2012/0214  
**Premises:** 88 Cromford Road, London SW18 1NY

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**Applicants (tenants):** Mrs Karen Darvell  
Ms F Watson

**Respondent (landlord):** Management Properties Limited

**Respondent's representative:** Trust Property Management

**Date of Decision** 20 August 2012

**Decisions of the Tribunal**

1. The disputed service charges are payable as follows:  
Management fees
  - a. 2010 - £470 plus VAT
  - b. 2011 - £759.75 including VAT
  - c. 2012 - £900 including VAT pro rata to the date of acquisition.
2. Fees for the Asbestos report, surveyor's fee and key copying are allowed in full.

**Background**

3. The subject premises are a terraced house converted into three flats. The Applicants are the lessees of two of those flats. The lessee of the basement flat is not a party to these proceedings. The Respondent is the freeholder and is represented by Trust Property Management. The relevant legal provisions are in an appendix to this decision.
4. Application has been made for a determination of service charges payable in respect of the years ending June 2010, 2011 and 2012. An application is also made for an order under section 20C of the Landlord and Tenant Act 1985 that the landlord's costs in these proceedings may not be added to the service charge. Directions were issued on the application dated 15 May 2012. Neither party has requested an oral hearing and the tribunal has determined this matter

on the papers. Also before the tribunal is a separate application under section 88(3) of the Commonhold and Leasehold Reform Act 2002 for determination of the costs payable by the RTM company (which has by now acquired the right to manage) in consequence of the claim notice served on the landlord. The tribunal has issued a separate decision on that application.

5. A previous determination of the Leasehold Valuation Tribunal under s.27A of the Landlord and Tenant Act 1985 was made on 6 August 2010 (case reference LON/00BJ/LIS/2010/0006) in respect of service charges up to the year ending 2009. That tribunal determined reasonable management fees for 2008 would be no more than £450 and for 2009 £460.
6. The subject premises are a Victoria terraced house converted into three flats. The Applicants' flats share a communal entrance door which leads to their flat entrances. Neither Applicant has access to the rear garden of the premises which is accessible through Flat A only.
7. The service charges in dispute are:

2010

Asbestos survey £152.95 per flat

Surveyor's fee £97.92

VAT on management fees of £470.

2011

Management fees £253.25 per flat

Gutter clearance £26.67 per flat

2012

Management fee £300 per flat (pro rata to date of acquisition of right to manage)

Arrears management fee £67.20 per flat.

**Asbestos Survey and Surveyor's fee**

8. The Applicants' complaint that the management company did not arrange access to the rear of the property for either report, and that the findings contained in them are therefore not complete. They believe that as a result the property was included in a repeat inspection programme because of the presumed presence of asbestos in roof tiles, when no samples were taken by the landlord's contractor 4site to confirm its presence. This is in spite of the asbestos survey having been

"Type 2", which involves the collection and testing of samples. The Applicants report that Mrs Darvell contacted another asbestos inspection company who stated they would return with appropriate ladders to inspect the roof at no extra cost. They also report having spoken to a contractor who would provide sampling and lab analysis for the same price as that charged by 4site. No evidence of the costs of other contractors is produced.

9. Mrs Darvell and Ms Watson allege it is unreasonable to charge for a Type 2 asbestos sampling report when no samples were taken, and when visual inspection only of the roof at the front of the property was made. The Applicants direct the tribunal's attention to the determination of a Leasehold Valuation Tribunal in case LON/00AU/LSC/2009/0759 and 0826 which was adverse to the landlord on a similar point (Trust Property Management having been the managing agent and representative of the landlord in those proceedings).
10. Mr Mires for the landlord explains that the fee for a Type 1 and Type 2 report are the same and additional fees are payable for sampling, which was not carried out in this case. He states that he tendered for this inspection and report.
11. The tribunal is not bound by a finding of a previous Leasehold Valuation Tribunal and must reach its own determination based on the evidence before it in this particular case. It is the view of the tribunal that it was reasonable and appropriate to undertake the asbestos survey and that the cost was reasonable. A landlord is not obliged to obtain the lowest possible quotation and in any event the Applicants have not demonstrated that the inspection could be carried out at a substantially lower cost. The report was incomplete because of restricted access to the front but there is evidence that the managing agent attempted to arrange access to the ground floor flat and continued to try to arrange a reinspection by 4site until the right to manage was acquired. Whilst the Applicants observe that no record of past remedial work is recorded in the asbestos report, this is not relevant to this type of report, which should contain a history of work to the asbestos containing materials.
12. It would have been preferable for samples to have been taken to inform the precise management plan, though the tribunal accepts this would have been at additional cost. Whilst the research is incomplete the responsibility for its completion now lies with the right to manage company. Additional charges may now be payable for its completion and for samples, but nevertheless the tribunal finds that the cost of the original report at £450 plus VAT is reasonable in the circumstances. It is satisfied that the reinspection was considered necessary in any event because of the presumed asbestos in the roof tiles. There was benefit to the tenants in obtaining this report because it identified materials likely to contain asbestos and suggests a management programme for that risk.
13. With regard to the surveyor's report, the Applicants consider it unreasonable to have undertaken this work only 10 months after major refurbishment of the building had been undertaken. The Applicants claim that the managing agent was fully aware of the extent of the work carried out (undertaken to rectify subsidence). The inspection took place on 19 March 2010 by a Mr Philips of

Benjamin Mire Chartered Surveyors who did not get access to the rear of the property.

14. The previous tribunal noted the Applicants' objections to a survey which the managing agents indicated they wished to carry out. That tribunal "struggled to see what objection there could be to the report in light of the fact that the Respondent was not directly involved in the works and would need to be apprised of the current state of the property to ensure they were complying with their own maintenance obligations". However, it made no determination on this matter as the charge had yet to be levied and the amount of it was not known.
15. The tribunal on the evidence and argument put forward takes the same view as the previous LVT. There had been no survey since 2003. The fact that there had been recent works in relation to subsidence did not absolve the landlord of its obligation to maintain the property, and an inspection in order to plan any such maintenance was reasonable in the circumstances. The cost was reasonable notwithstanding that the surveyor was unable to get access to the rear via the downstairs flat.

### **Management Fees**

16. In light of the decision of the previous tribunal as to management fees, which the Applicants consider to have been inclusive of VAT, they argue that a reasonable management fee for 2010 should have been £470 inclusive of VAT, with an annual increase of £10 per annum thereafter. The Applicants dispute in any event that this adjusted management fee as ordered by the previous tribunal would be reasonable in 2011 and 2012 since they consider the managing agent did not undertake any duties except to arrange insurance.
17. The tribunal takes note of the decision of the previous tribunal but is not bound by it. It is not necessary for this tribunal to determine whether or not that tribunal's figure for management was inclusive of VAT or not. The issue for this tribunal is to reach its own determination on the evidence as to a reasonable management fee for the services provided in the years ending 2010 - 2012.
18. Management fees have been charged as follows:

#### £470 plus VAT for 2010

Services provided in this year included obtaining the surveyor's report and the asbestos report, obtaining insurance and entering into a significant amount of correspondence with the leaseholders.

#### £759.75 including VAT for the year ending 2011 – equating to £211 plus VAT per flat.

19. The managing agent has provided an accounting function inclusive in the management fee, and arranged gutter clearance. There is evidence that the

managing agent made significant efforts to arrange access to the rear of the property, though these were not successful.

20. The previous tribunal did not assess management fees as including any element of property inspection by the agent or surveyor. The tribunal therefore rejects the Applicants' argument that an adjustment on this fee of £10 per year ought to include the services of a surveyor to conduct a condition survey. Smaller properties usually have a higher management fee per unit. These charges lie within the market range and are not unreasonable for a block of this size and nature. The determination of the previous tribunal was based on its finding that the management service had been "minimal at best and well short of what they could expect at worst". The tribunal finds the evidence is not sufficiently persuasive that the managing agent has provided a poor service in the years that are the subject of the present application and the service provided was more extensive than previously. In these circumstances the tribunal finds that the management fee is reasonable and payable in full.

Year ending 2012 – Management fee of £187.50 per quarter

21. Invoices show a VAT inclusive charge for management of £225.00 per quarter, equating to £300 per flat per annum including VAT. In this year services included chasing arrears and correspondence regarding access, obtaining a key and the gutter cleaning that had taken place. The annual figure charged still remains within a market range and though it represents a significant increase on the previous year the tribunal finds this is reasonable in the circumstances. The managing agent is entitled to receive a commercially viable fee for its services. However, the tribunal disallows entirely the additional management fee charged for chasing service charge arrears, which is a service the managing agent should provide within his normal fee, unless an administration charge is made to a defaulting tenant (it is not in this case) and the lease provides for its recovery.

**Gutter Clearance**

22. Only one gutter at the property was cleared because access was not arranged to the rear of the property. The Applicants consider £80 to be an unreasonable charge for this work. The tribunal finds the fee of £80 reasonable and payable as a service charge for the work carried out to clear the gutters at the front of the property.

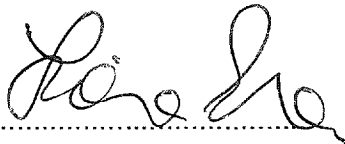
**Keys**

23. The tribunal has considered the dispute over the cost of key copying which was raised in the section 88(3) application by the RTM company. The tribunal takes the view that the landlord was entitled to a copy of the keys and to provide a copy to its agent. The locks having been changed by the tenants some years ago, they had the responsibility to provide these copies. The charges of £22.46 are reasonable and payable as a service charge by the lessees.

## Costs

24. It appears unlikely that the lease can be construed to permit the recovery of the landlord's costs of these proceedings through the service charge. Mr Mire refers to the ability to recover "all clerical administrative and management expenses". However, this covenant within Clause 1 of the lease is to pay such expenses "reasonably and properly incurred by the Lessor in performing and carrying out its covenants under clause 4". By Clause 4(e) the landlord covenants "to take reasonable steps to enforce the Lessees covenants....". However, in these proceedings the landlord is a Respondent and it not taking steps therefore to enforce Lessees covenants. However, the question of recoverability of the costs of these proceedings as a service charge is not a matter which the tribunal has jurisdiction in the present application to determine. The matter for its determination is the s.20C application. In light of the relative lack of success of the application, the tribunal declines to make such an order.
25. Both parties seek an order for costs under Paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002. However, the tribunal finds that neither party has acted "frivolously, vexatiously, abusively, disruptively or otherwise unreasonably" in connection with these proceedings, and it therefore dismisses both applications for costs. The tribunal declines to order reimbursement of fees.

Signed .....



Chairman

Dated 20 August 2012

## Appendix of relevant legislation

### Landlord and Tenant Act 1985

#### Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### Section 27A

- (1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and

- (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
  - (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
  - (a) has been agreed or admitted by the Tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

### **Section 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 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.