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

Case Reference: LON/00BK/LSC/2011/0649

Premises: Ground Floor Flat 4 Warrington Crescent
Maida Vale
LONDON W9 1EL

Applicant: 4 Warrington Crescent Limited

Representative: Mr P Cove, Portfolio Manager

Respondent: Miss Elinor Wilson

Representative: JPC Law – until the date of the hearing

Date of hearing: 16th February 2012

Appearance for Applicant: Mr Wragg

Appearance for Respondent: N/A

Leasehold Valuation Tribunal: Dr Helen Carr
Mr Neil Maloney
Mrs Justice

Date of decision: 16th February 2012

Decisions of the Tribunal

- (1) The Tribunal determined that the matter should be dealt with on 16th February 2012 notwithstanding the non-appearance of the Respondent.
- (2) The Tribunal determines that the sum of £ 21,511.33 is payable by the Respondent in respect of the service charges for the years.
- (3) The Tribunal did not make a determination on the Applicant's application for costs.
- (4) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (5) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Central London County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge years 2008 - 2009 and 2009 – 2010 and to 31st March of service charge year 2010 - 2011.
2. Proceedings were originally issued in the Bedford County Court under claim no. 0BE00482. The claim was transferred to the Central London County Court and then in turn transferred to this Tribunal, by order of District Judge Lightman on 12th September 2011.
3. For the avoidance of doubt
 - (a) The transfer of claim to the LVT included a 2nd defendant Mr Henry Hendron. Mr Henry Hendron was counsel for the Defendant in the County Court and was named as 2nd Defendant for the purposes of a wasted costs order. This costs order has been discharged and the 2nd Defendant therefore plays no further part in these proceedings.
 - (b) The transfer transferred the service charge claim. The service charge claim is made up of service charges and administrative charges.
 - (c) The amount the Applicant is claiming is £21,918.83. The Tribunal does not have jurisdiction to determine the claim for Land Registry fees or the county court fee. The disputed amount therefore that is before the Tribunal is £21,511.33.

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

The hearing

5. The Applicant was represented at the hearing by Mr Jonathan Wragg of Counsel He was accompanied by Mr P Cove who is the portfolio Manager of Parkgate-Aspen the Managing Agent of the Property.
6. The Respondent's Solicitors, JPC Law, applied to the Tribunal for a postponement of the hearing on 15th February 2012. The request was on the basis of the Respondent's illness. The solicitors submitted a sick note which indicated that the Respondent was suffering from laryngitis. The application was refused on the basis that it was made at a very late stage and that the case could go ahead without the Respondent as long as her representatives were in attendance. The Respondent's solicitors were informed that they could renew the application at the Tribunal the following day. The solicitors then contacted the Tribunal to inform it that they would not be attending the hearing on 16th February as they had no instructions to attend.
7. The Respondent did not attend the hearing, nor did anyone appear to represent her. The Tribunal considered whether the hearing should be postponed. Counsel for the Applicant argued that the matter should proceed. The Applicant had fully prepared its case and it was not convenient for the matter to be postponed. It had been pursuing the claim for four years. Counsel pointed out that although the Respondent was represented by solicitors the directions had not been complied with in that no response to its statement of case had been received. This has meant that it was very unclear what matters the Respondent continued to dispute.
8. The Tribunal noted the lateness of the application for postponement and the failure to comply with directions. **It determined that it was reasonable and appropriate for the hearing to proceed.**

9. The background

10. The property which is the subject of this application is a ground floor flat at 4 Warrington Crescent London W9, a converted Victorian house now containing 6 flats.
11. 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.
12. 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

13. At the directions hearing on 8th November 2011 at which both parties' representatives were present it was agreed that the relevant issues for determination were as set out in paragraph 8 of the Amended Defence but that there were no issues relating to the reasonableness of the costs incurred or the quality of the workmanship, nor was there any issue on consultation. Therefore the issues to be determined by the Tribunal are as follows::
- (i) The correct percentage proportions to be paid by the Respondent
 - (ii) Whether there was proper certification of the service charge demands
 - (iii) Whether the Respondent is liable for overdue collection charges
 - (iv) Whether the Respondent is liable for legal fees
 - (v) Whether there is a provision in the lease for an additional levy
 - (vi) Whether there is a provision in the lease for a reserve fund
 - (vii) Whether the Respondent had been given access to the documentation underpinning the claim
 - (viii) Whether the sum of £14,792.54 should be offset against the demand
14. Having considered all of the documents provided, the Tribunal has made determinations on the various issues as follows below. It should be noted that Counsel prepared a skeleton argument which he handed to the Tribunal. The Respondent had not had sight of the skeleton argument. However it contained nothing new but simply summarised the case and pointed the Tribunal very helpfully to the relevant documentation in what was a relatively large bundle. The Tribunal therefore determined that the Respondent was not prejudiced by it considering the skeleton argument.

The correct percentage proportions

15. The Respondent in her amended Defence to the County Court proceedings put the Applicant to strict proof that the sums claimed are in the percentage proportions pursuant to clause 1(3) of the Third Schedule to the Lease. The Claimant has set out in detail in its Reply to the Defence at paragraph 13, on page 19 of the bundle its method of calculation. The Respondent has not replied to this information.

The Tribunal's decision and its reasons

16. In the absence of any counter argument from the Respondent, and following calculations by the Tribunal of the relevant percentage proportions the results of which accorded with the statements made by the Applicant, **the Tribunal determines that the correct percentage proportions have been applied.**

Certification of the service charges

17. The Respondent argues in her amended defence that the service charges demanded have not been certified pursuant to clauses 1(3) – (9) of the Third Schedule to the Lease and are therefore not payable.
18. The Applicant argues that certification is not required where a management company is owned by the leaseholders themselves and argues in support of this the unreported case of *Warrior Quay v Joaquim* Lands Tribunal case LRX/42/2006. Moreover the bundle of documents provided by the Applicant includes certification of costs for the years in question.
19. The Respondent has not replied to the Applicant's statement.

The Tribunal's decision and its reasons

20. **The Tribunal determines that as the charges have now been certified they are payable.**

Liability for overdue collections charge and legal fees

21. The Respondent argues in her amended defence that the lease does not provide for the Applicant to be able to claim an overdue collection charge of £28.75 or legal fees from the Respondent totalling £571.88.
22. The Applicant in its response argues that it is entitled to the costs as these costs are expenditure incurred by the Landlord in and about the maintenance and proper and convenient management and running of the building as defined by clause (4) of the definition of Main Block Expenditure detailed in the Third Schedule. Further the Applicant also referred the Tribunal to clause 2.2 of the Lease.
23. The Respondent has not replied to the Applicant's statement.

The Tribunal's decision

24. **The Tribunal determines that the legal fees and the overdue collection charges are payable by the Respondent.**

Reasons for the Tribunal's decision

25. In the absence of any counter argument from the Respondent, and following perusal of the Lease, the Tribunal determined that the legal fees fall within clause 2.14 1 of the lease and the overdue collection charges within clause 2.2 of the lease.

The additional levy

26. The Respondent argues in her amended defence that the lease does not provide for the Applicant to be able to claim an additional levy. She further argues, without prejudice to her principal argument in this matter, that if an additional levy can be demanded it has not been certified and therefore there is no obligation to pay the additional levy.
27. The Applicant in its response argues that clause (9) of the Third Schedule provides for an additional levy should the amount which is demanded on account from the tenant be insufficient in respect of the amount actually spent in that financial year.
28. The Respondent has not replied to the Applicant's statement.

The Tribunal's decision

- 29. The Tribunal determines that the additional levy is payable by the Respondent. It is covered by clause (9) of the Third Schedule to the lease.**

Reasons for the Tribunal's decision

30. In the absence of any counter argument from the Respondent, and following perusal of the Lease, the Tribunal determined that the additional levy fell within clause (9) of the Third Schedule to the lease and that there was no requirement for specific certification of this amount as it is covered by the overarching certification requirement.

Reserve fund

31. The Respondent argues in her amended defence that the lease does not provide for the Applicant to be able to claim payments to a reserve fund.
32. The Applicant in its response argues that it is entitled to the payments to a reserve fund under clause 3.11 of the lease.
33. The Respondent has not replied to the Applicant's statement.

The Tribunal's decision

34. The Tribunal determines that the Applicant is entitled to reserve fund payments.

Reasons for the Tribunal's decision

35. In the absence of any counter argument from the Respondent, and following perusal of the Lease, the Tribunal determined that payments to the reserve fund are covered by clause 3.11 of the lease.

Access to documents

36. The Respondent argues in her amended defence that despite numerous requests from herself, her solicitors and her accountants the applicant has failed to provide adequately or at all satisfactory evidence to support its claims for service charges.
37. The Applicant in its response denies this. It states that the Respondent has attended the offices of the managing agents twice with her accountant and that the managing agents have informed the Respondent on four different occasions that she is at liberty to attend the managing agents' offices at a mutually convenient date and time to inspect documents in connection with the service charges.
38. The Respondent has not replied to the Applicant's statement.

The Tribunal's decision

39. The Tribunal determines that the Respondent has been given sufficient opportunity to peruse the relevant documentation.

Reasons for the Tribunal's decision

40. In the absence of any response from the Respondent, the Tribunal determines on the balance of probabilities that the Respondent has had sufficient opportunities to peruse relevant documentation.

Whether the payment by the Respondent of £14,792.54 should be set off against the claim

41. The Respondent argues in her amended defence that the payment of £14,792.54 by her mortgagee's solicitors which was cashed on 17th March 2008 should be set against the Applicant's claim.
42. The Applicant in its response argues that the payment of £14,792.54 was in discharge of arrears of £14,292.54 and an award of costs in connection with a

determination of those arrears by the Leasehold Valuation Tribunal. The arrears arose for the period prior to 25th December 2006.

43. The Respondent has not replied to the Applicant's statement.

The Tribunal's decision

44. **The Tribunal determines that the sum of £14,792.54 should not be offset against the current claim.**

Reasons for the Tribunal's decision

45. The Tribunal finds that the sum of £14,792.54 paid by the Respondent's mortgagee relates to a period prior to the current claim and was paid in discharge of its obligations arising from that earlier service charge period. It therefore cannot be offset against the current claim. To do so would in effect double count that payment.


Application for costs

46. The Applicant made an application for costs in the sum of £500 pursuant to paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.

47. The Tribunal has sympathy with the application for costs. The Respondent made the request that the Applicant's claim be transferred to the LVT but has failed to take necessary steps in the Tribunal proceedings. In particular she has not identified what if any issues remain in dispute nor provided any arguments to the Tribunal subsequent to the amended defence. However the Tribunal is concerned that the Respondent has not had an opportunity to respond to the costs application which was only made in the Applicant's skeleton argument. It therefore declines to make a determination on the costs application.

The next steps

48. The Tribunal has no jurisdiction over the county court fee, the land registry fee or the county court costs. This matter should now be returned to the Central London County Court.

Chairman:  Dr Helen Carr

Date: 16th February 2012

- (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.

- (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.