

**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/00AG/LSC/2012/0664

**Premises:** 35 Seymour House, 58-60 Tavistock Place,  
WC1H 9RH

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**Applicant:** Pietro Vecera

**Respondent:** London Borough of Camden

**Date of Determination:** 5 February 2013

**Leasehold Valuation Tribunal:** Mr Robert Latham  
Mrs Alison Flynn MA MRICS

**Decisions of the Tribunal**

The Tribunal determines that the estimated sum of £902.99 is payable by the Applicant for hot water, heating and gas included for the service charge year ended 31 March 2013 and that the said estimate is reasonable.

**The Application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether the charges of £902.99 for hot water, heating and gas included for the service charge year ending 31 March 2013 are reasonable. This is an estimate.
2. The Respondent have confirmed that they do not seek to recover any expenses incurred in these proceedings by way of service charge. It is not therefore necessary for us to consider any application under s.20C of the Act.
3. Directions were given on 6 November 2012. Pursuant to these directions:

(i) The Respondent have set out their case at p.13-18. A number of documents are exhibited at p.19-43.

(ii) The Applicant has set out his case at p.44.

(iii) The Respondent has not filed any statement in reply.

(iv) Neither party has filed any witness statements.

(v) A Bundle has been prepared to which reference is made in this decision.

4. The relevant law is set out in the Appendix.

### **The Tribunal's decision**

5. The lease is at p.45-77. It is accepted that the Respondent covenants to supply heating and hot water and is able to recover the cost of this service. Hot water is to be provided throughout the year, whilst central heating is to be provided between 1 October and 30 April. Provision is also made for payments to be made in advance. The apportionment of the charges is regulated under the Fourth Schedule. By paragraph 4.3, the Respondent is given a discretion as to how to apportion the heating charges, provided that it acts "fairly and reasonably in the circumstances".

6. There has been a long running dispute as to the reasonableness of the heating charges that the Applicant is required to pay. A LVT made a determination on 27 March 2007 in LON/00AG/LIS/2007/0004. The Applicant challenged, amongst other things, heating charges of £518.36 for 2004/5 and £914.44 for 2005/6. The LVT were not provided with a full explanation as to how the precise allocation of the heating charge had been made. However, it was satisfied that the allocation was reasonable. The LVT was satisfied that the charges were reasonable in amount and reasonably incurred.

7. On 16 April, the Respondent invoiced the Applicant £1,855.20 (at p.19). This included £902.99 in respect of "heating/hot water/gas supply" (p.20). This is the estimated charges for the year ending 31 March 2013. In September 2013, the actual cost will be ascertained and an appropriate reconciliation will be made.

8. The Applicant disputes his liability to pay this sum. Initially, he utilised the Respondent's complaints procedure. On 6 August 2012 his complaint was recorded (see p.32). He complained that he had not been provided with an adequate explanation as to how this had been computed. He asserted that this sum was excessive, given the size of his flat (a two bedroom flat) and the heating appliances (three radiators, namely in the living room and the two bedrooms).

9. On 7 September 2012, the Respondent replied to his complaint (at p.32-35). A breakdown was provided of the charges over the previous five years. The Respondent explained how all weightings had been reviewed in 2011. The calculation of the new weightings used industry-standard heat loss calculations and recent government statistics on hot water usage. As a result of this review, the Applicant's share was increased from 0.016529% to 0.018566%, an increase of some 12.3%. The 2012/3 estimate had been based on the new weightings. The 2011/2 estimate had been £828.30. This had been calculated using the pre-review weightings, but the new weightings were to be reflected in the actualised 2011/2 accounts which were due later that month. That sum has now been computed and is £902.47 (see p.17).
10. The Applicant was not satisfied with this response and made his application to the LVT on 9 October 2012 (at p.5-12). He complained that the charge was excessive because his flat is so small and only has three radiators. He noted that there were no radiators in the bathroom, kitchen or hallway.
11. The Respondent's statement of case, dated 30 November, is at p.13-18. The Respondent set out the relevant terms of the lease. They explain how the heating charge has been computed and apportioned. They attach the estimated costs for two other flats: (i) £902.99 for a two bedroom flat (at p.25); and (ii) £637.56 in respect of a one bedroom flat (at p.26). They noted that the actualised heating cost for 2011/2 had been £902.47, whilst they had estimated the cost for 2012/3 at almost the same sum, £902.99. We are also told that an options Appraisal has been completed for the full heating system replacement servicing Seymour House, albeit that this is not strictly relevant to our determination.
12. The Applicant's response is dated 7 December (at p.44). He repeats that he considers the charge to be unreasonably high for a two bedroom flat with just three radiators. He notes that the radiator was removed from his kitchen many years ago. There is a suggestion that this should have been replaced. However, he does not seek to challenge the basis upon which the Respondent have made their apportionment.
13. The substance of the Applicant's complaint is that the estimated charge of £902.99 for 2012/3 is excessive for a two bedroom flat with just three radiators. We repeat that this is just an estimated charge. A reconciliation will be made in September when the actual cost has been ascertained. Given that the actual cost in 2011/2 turned out to be £902.47, it is difficult to see how this estimate can be challenged. Indeed, given the recent increases in gas prices, the actual cost is likely to be higher. We note that the estimate for the Respondent's charges is based on a predicted increase of 20% from October 2011 and a further 12% from October 2012 (see p.34).
14. We are satisfied that the sum demanded is reasonable. This is based on the actual costs incurred by the Respondent in operating this communal hot water and heating system. The Applicant does not seek to challenge the basis by which the total costs have been apportioned. The Applicant's share is

with that charged to other equivalent flats. Indeed, it seems to be relatively favourable when compared with the sum of £637.56 charged to a one bedroom flat.

15. Given our decision, we do not consider it appropriate to make any order under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that he had paid in respect of the application.

Chair:



(Robert Latham)

Date: 5 February 2012

## **Appendix of Relevant Legislation**

### **Landlord and Tenant Act 1985**

#### **Section 18 – Meaning of “service charge” and “relevant costs**

- (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 – Limitation of service charges: reasonableness**

- (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 – Liability to pay service charges: jurisdiction**

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.

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

### **Leasehold Valuation Tribunals (Fees) (England) Regulations 2003**

#### **Regulation 9 – Reimbursement of fees**

- (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).