



HM Courts  
& Tribunals  
Service

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**LONDON LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/00AP/LSC/2012/0683**

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

Applicants: Mrs F E Kyei and Mr B Kyei  
Respondent: Noblestar Estates Ltd  
Property: 7C Ruskin Road, London, N17 8ND  
Date of Hearing 22 April 2013

Appearances

Applicants

Mrs F E Kyei Leaseholder in person

Respondent

Did not attend and was not represented

Leasehold Valuation Tribunal

Mr I Mohabir LLB (Hons)

Mr J F Barlow JP FRICS

Mrs L L Hart

### ***Introduction***

1. This is an application made by the Applicants under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for a determination of the reasonableness of various service charges claimed by the Respondent for the years ended December 2005 to December 2012.
2. The Applicants also sought to challenge various administration charges dealt with below. The Tribunal’s determination in relation to these matters are made pursuant to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (as amended)
3. The Applicants are the leasehold owners of the subject property pursuant to a lease dated 3 October 2005 granted to her by Ravenscroft Properties Ltd for a term from the same date and expiring on 2 October 2130 (“the lease”). Where necessary, the relevant terms of the lease are referred to in the body of this decision as to their meaning and effect.
4. On 15 October 2012 the Applicants made this application to the Tribunal and on 7 November 2012, a pre-trial review was held. Directions were issued, which attempted to clarify the issues raised by the Applicants. At the hearing, these were further refined and are set out below. However, the Tribunal ruled that the Applicants were not entitled to raise an issue regarding a potential buildings insurance claim for a leak to Flat B as this had not been particularised in the application or at the pre-trial review. Furthermore, there was no evidence as to the cause of the leak and whether it fell within the buildings insurance cover.

### ***The Law***

5. The substantive law in relation to the determination regarding the service charges can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

*“(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."*

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges. Where the reasonableness of service charge costs falls to be considered, the statutory test is set out in section 19 of the Act.

6. As to the administration charges, the relevant law to be applied is to be found in Part 1 of Schedule 11 of the Act. Paragraph 1(1) defines an administration charge as:

*"1(1)... and amounts 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 application for such approvals,*
- (b) ...*
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord...*
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.*

*(2) ...*

*(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 the formula specified in his lease."*

7. Logically, the Tribunal must, firstly, determine the issue of liability to pay administration charges under the terms of an Applicant's lease in the manner required by paragraph 5(1) of Schedule 11.

8. Once a Tribunal has determined the extent of any liability, it can go on to consider the reasonableness, under paragraph 2, of any administration charges claimed. Paragraph 2 simply provides that variable administration charges are

payable only to the extent that the amount of the charge is reasonable. Regrettably, the Act does not provide any statutory definition of what amounts to reasonableness. Nevertheless, the approach taken by this and other Tribunals is that the test of reasonableness (by extension of the test under section 19 of the 1985 Act) is satisfied where the costs or administration charges claimed have been reasonably incurred and are reasonable in amount.

***Decision***

9. The hearing in this matter took place on 22 April 2013. Mrs Kyei appeared in person on behalf of the Applicants. The Respondent did not attend and was not represented.
  
10. It should be noted that the Tribunal used its best endeavours to make its findings in this case despite the paucity of the evidence filed by the parties.

***Service Charges***

***Buildings Insurance Premiums***

11. The Applicant's bare submission was that the Respondent was not entitled to charge an additional 15% in addition to the buildings insurance premiums as a service charge cost.
  
12. From the schedule filed by the Respondent, it appeared that the following amounts were in fact charged in addition to the buildings insurance premiums:

12.05.06	£52.36
03.05.07	£50.74
14.05.08	£53.43
  
13. The lessees' covenant to pay the maintenance charge is set out at paragraph 4.2.2 of the lease and, *inter alia*, requires a contribution to be paid in respect of those costs incurred by the lessor in carrying out its obligations under clause 5, which requires the lessor (at clause 5.1) to insure the building.

14. Having carefully considered these clauses of the lease, the Tribunal concluded that they did not permit that lessor to levy an additional charge of 15% in addition to the buildings insurance premiums. Consequently, there was no entitlement on the part of the Respondent to do so for the year 2006 to 2008. There was no evidence before the Tribunal that the Respondent had also made this charge for May 2010, 2011 and 2012. However, it follows that if such charges have been made, they are also disallowed entirely.

### ***Management Fees***

15. The Respondent has charged a management fee of £50 for each of the years ended 25 December 2005 to 25 December 2012.
16. The Applicants' bare submission was that this cost was not reasonable because no management of the building had been undertaken by the Respondent. For example, there was a hole in the wall in the communal parts that had not been repaired for some years and relied on photographic evidence of the damage. In addition, Mrs Kyei said that a light outside Flat A had never been repaired since she commenced living there in 2005. She asserted that the communal areas were never cleaned and that in fact she was the person who did so.
17. The Tribunal accepted the evidence of Mrs Kyei in relation to the management failures she complained of and found in those terms. It seemed apparent that the only management function carried out by the Respondent was to arrange the buildings insurance. Accordingly, the Tribunal was satisfied that the management fees charged by the Respondent for each of the relevant years was not reasonable and allowed a nominal amount of £10 for each year.

### ***Sinking Fund***

18. A sinking fund contribution of £300 was demanded by the Respondent for the year ended 25 December 2011. The Applicant's bare submission was that this had not been reasonable because the Respondent had not demonstrated any need to collect this contribution and, in any event, no works had been carried out.

19. In the absence of any evidence of planned works, repairs or maintenance or evidence that the sinking fund contribution was being held in a separate account for such purposes, the Tribunal found that the sinking fund contribution of £300 had not been reasonably incurred and should be credited to the Applicants service charge account.

### ***Section 20 Schedule & Notice***

20. The Respondent has charged the sum of £110.40 on 31 October 2011 for preparing a schedule of estimates and a further sum of £130 on 27 December 2011 for the preparation and serving of a section 20 notice. Mrs Kyei made no specific submissions in relation to this matter.
21. The tribunal was satisfied that these costs were *prima facie* recoverable under clause 4.2 of the lease. Mrs Kyei had accepted that the property had not been maintained by the Respondent and needed to be addressed especially in respect of the roof disrepair. It follows, that the cost of the preparation and service of a schedule of works and the relevant section 20 notice must be reasonably incurred. However, the Tribunal considered the amounts claimed to be unreasonable and allowed £50 in respect of each matter, being £100 in total.

### ***Administration Charges***

#### ***Cost of Reminder Letters and Letter to Mortgagee***

22. The Respondent made a charge of £25 for each reminder letter sent to the Applicants and their mortgagee regarding their service charge arrears. The Applicants submitted that these charges were not reasonable because the Respondent did not wait for their wages to be paid to allow for payment to be made before send the reminder letters.
23. The Tribunal was satisfied that clause 2.4.2 permitted the Respondent to make these charges. Mrs Kyei accepted that she paid her service charges late because of the financial difficulties she has encountered since her husband left her in 2006.

24. However, the Tribunal concluded that the Respondent was only entitled to charge the reasonable cost of taking any steps to recover the service charge arrears. The Respondent was not entitled to profit from doing so. The Tribunal, therefore, found that administration charge of £25 (later rising to £30 from May 2011) made by the Respondent for writing to the Applicants and their mortgagee was unreasonable. The Tribunal found that a charge of £20 per letter was reasonable. From the schedule provided by the Respondent, a total of £700 had been charged. Based on the Tribunal's finding of £20 per letter, a lower figure of £405 was allowed as being reasonable.

#### ***Bank Charges & Returned Cheques***

25. These charges were made by the Respondent as a result of cheques issued by Mrs Kyei in payment of her service charges being returned unpaid by her bank. She submitted that these charges were not reasonable because she had issued post dated cheques to the Respondent, which had been banked before the due date.
26. From the schedule provided by the Respondent, it appears that these charges are the same cost at £20 per letter for three letters written to the Applicants on 26 March 2007, 17 July 2008 and 7 July 2011. The Tribunal found these charges to be reasonably incurred and allowed the sum of £60 in total. However, there appears to be an anomalous charge of £50 also made on 26 March 2007 for a returned cheque. In the absence of any explanation from the Respondent as to how this additional amount was incurred, it was found not to be reasonably incurred and was disallowed by the Tribunal.

#### ***Interest***

27. Contractual interest is claimed by the Respondent arising from the Applicants' (admitted) service charge arrears. Mrs Kyei simply repeated her submission that because the Respondent had cashed her post dated cheques early and had not waited until she had been paid, the interest charged was unreasonably incurred.

28. The Tribunal has already found above that the administration costs incurred by the Respondent for having to pursue the Applicants for the service charge arrears are reasonable. It follows, therefore, the interest charged at the contractual rate set out at clause 3.18 of the lease on the arrears in the sum of £10.42 must also be reasonable.

***Section 20C & Fees***

29. The Tribunal then considered the application made by the Applicants under section 20C of the Act. On the basis that the Applicants had largely succeeded in the application and the fact that the Respondent appears to have been overcharging, it was incumbent on the Tribunal to make an order that the Respondent shall not be entitled to recover any of costs it may have incurred in this matter on the basis that it is just and equitable to do so.

30. For the same reasons, the Tribunal also orders that the Respondent reimburse the Applicants the sum of £220 within 28 days, being the fees they have paid to the Tribunal to have this application issued and heard.

Dated the 12 day of June 2013

CHAIRMAN.....

Mr I Mohabir LLB (Hons)