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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTIONS 27A OF THE LANDLORD AND TENANT ACT 1985 AND THE
COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

Case Reference: LON/ 00AW/LSC/2013/0149

Premises: Flat 4, 1 Redcliffe Street SW10 9DR

Applicant(s): Juergen Senge

Representative: Phillipp Senge

Respondent(s): Karsen House Limited

Representative: Karin Renshaw (Director and Company Secretary
of Karsen House Limited)

Date of determination: 27 May 2013

**Leasehold Valuation
Tribunal:** Ms N Haria LLB(Hons)
Ms M Krisko FRICS

Date of decision: 10 June 2013

8d12

Decisions of the Tribunal

- (1) The Tribunal determines that no sums are payable by the Applicant to the Respondent in respect of the service charges for the following periods:
 - a. 1 July 2010 to 31 December 2010, and
 - b. 1 January 2011 to 31 December 2011
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision
- (3) The Tribunal determines that the Respondent shall pay the Applicant £70.00 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service payable by the Applicant in respect of the service charge years 2010 and 2011.
2. In relation to each year the Applicant seeks a determination as to the following:
 - (i) The frequency of the payment of ground rent, and
 - (ii) Whether or not the Respondent (freeholder) is entitled to levy a service charge for any works or services provided after the date on which Redcliffe Street RTM Company Limited acquired the Right to Manage the building in which the property is situated.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The parties did not request a hearing. Accordingly the matter was determined on the papers.

The background

5. 1 Redcliffe Street, London is a period building in Chelsea, which comprises of four flats. The property which is the subject of this application is a two bedroom flat in a period conversion.

6. 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.
7. The Applicant 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 and will be referred to below, where appropriate.
8. The Respondent Karsen House Limited is the freehold owner of 1 Redcliffe Street, London. The leaseholders of the four flats comprised in the building are:
 - (i) Garden Flat – Karin Renshaw
 - (ii) Flat 2 – Yasser Pasha
 - (iii) Flat 3 – Luca Roberi
 - (iv) Flat 4- Juergen Senge
9. The parties admit that Redcliffe Street RTM Company Limited acquired the right to manage the property at 1 Redcliffe Street.

The Applicant's case

10. The Applicant submits that Redcliffe Street RTM Company Limited acquired the right to manage the property at 1 Redcliffe Street on the 8 June 2010. The Applicant states that the Respondent has recently issued two service charge demands to the leaseholders. The Applicant produced copies of the two service charge demands.
11. The first demand is entitled " Costs incurred on common areas 1 July 2010 to 31 December 2010" and it itemises the following costs:
 - (i) Ground rent (24 June 10 to 24 Sept 10) - £25
 - (ii) Ground rent (25 Sept 10 to 24 Dec 2010) - £25
 - (iii) Management fees (1 Jul 09 to 31 Dec 10) - £125

12. The Applicant submits that the Respondent has made an error in relation to the dates given for the management fees. The Applicant submits that the dates do not match the period specified for the ground rent and the period stated in the heading, therefore there is an error in dates for the management fee and in fact they relate to the period of 1 July 2010 to 31 December 2010.
13. The second demand is entitled " Costs incurred on common areas 1 January 2011 to 31 December 2011" and it itemises the following costs:
- (i) Costs relating to all flats
 - (a) Clearing on communal area (human faeces) -£80
 - (b) Drain clearance (Nov 11) - £114.00
 - (ii) Costs relating to flat 2
 - (a) Cleaning on communal area(x3) - £240.00
 - (iii) Ground rent (25 Dec 10 to 24 Mar 11) - £25
 - (iv) Ground rent (25 Mar 11 to 23 June 11) –£25
 - (v) Ground rent (24 June 11 to 24 Sept 11) - £25
 - (vi) Ground rent (25 Sept 11 to 24 Dec 2011) - £25
14. The Applicant submits that the Respondent is not entitled to demand payment of service charges for the periods in question as the RTM Company had already acquired the right to manage before the periods in question.

The Respondent's Case

15. Ms Renshaw on behalf of the Respondent submits that managing agents under their managing agreement and the Respondent as freeholder are expected to have due care for the property and to arrange that essential works and periodic maintenance to be carried out efficiently. In addition she contends that that they are required to ensure all statutory notices are issued to leaseholders and detailed records and accounts are maintained and reported at an annual general meeting. The Respondent submits that despite oral and written communication the managing agents have fallen short in the performance of their duties.
16. The Respondent submits that under the leases, the freeholder is constrained to perform the covenants and where the managing agent has failed to perform the duties, the law provides that the freeholder must ensure that the necessary works are properly done as stipulated in the leases.

17. The Respondent claims to have undertaken various items of works at I Redcliffe Street as specified in the statement of case ranging from the maintenance of mains drainage to cleaning out the bins.
18. Having considered the evidence and submissions from the parties and all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The Tribunal's decision

19. The Tribunal determines that the Respondent is not entitled to issue service charge demands and that the amounts relating to service charges claimed in the service charge demands for the periods claimed are not payable by the Applicant to the Respondent.
20. The Tribunal has no jurisdiction to make any determination in respect of the ground rents. However the Tribunal notes that the Applicant covenants in the lease to pay a ground rent of £25 per annum by equal quarterly payments.

Reasons for the Tribunal's decision

21. On the acquisition date of the right to manage (in this case the 8 June 2010) the RTM company takes over all the management functions for the premises under the lease. This is the case even where the management functions have been delegated to another party such as a managing agent. Regardless of who is responsible for the management of the property, these functions pass to the RTM company on the acquisition date. The relevant provisions are contained in Sections 96, 97 and 107 of the Commonhold and Leasehold Reform Act 2002. In this case the letter date 10 March 2010 from Seedons solicitors confirms that the landlord did not serve a Counter Notice and so the Right to Manage was acquired on the date set out in the notice served by the leaseholders which is the 8 June 2010.
22. Upon acquisition of the Right to Manage, the day to day responsibilities for the management of the building pass to the RTM Company, and as a result the original manager is no longer entitled to carry out these functions. The Respondent as freeholder still retains responsibility in respect of matters fall outside the day to day maintenance obligations such as providing quiet enjoyment. Monies due to the Respondent as landlord prior to the acquisition date and not yet paid remain due to the Respondent.
23. The Tribunal noted that the Respondent did not dispute that there has been an error in the dates in the first service charge demand, and the Tribunal is persuaded by the submissions made by the Applicant that although the demand states the management fees relate to the period 1 July 2009 to 31 December 2010, they in fact relate to the period 1 July 2010 to 31 December 2010. Accordingly these fees relate to a period after the acquisition of the

Right to Manage and as such the Respondent is not entitled to charge such fees.

24. In relation to the other sums charged these clearly relate to the period after the RTM Company acquired the Right to Manage. The Respondent was not entitled to undertake the cleaning of the communal parts and drain clearance (for which a charge has been made) as these are general day to day maintenance obligations. Accordingly, the Respondent cannot seek to charge as a service charge the cost of undertaking those maintenance obligations to the leaseholders.

Application for the refund of fees

25. The Applicant made an application 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. Having considered the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

The next steps

26. The Tribunal has no jurisdiction over ground rent. This is a matter for the County Court.

Chairman: N Haria

Date: 10 June 2013

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

Section 96

- (1) This section and section 97 apply in relation to management functions relating to the whole or any part of the premises.
- (2) Management functions which a person who is landlord under a lease of the whole or any part of the premises has under the lease are instead functions of the RTM company.
- (3) And where a person is party to a lease of the whole or any part of the premises otherwise than as landlord or tenant, management functions of his under the lease are also instead functions of the RTM company.
- (4) Accordingly, any provisions of the lease making provision about the relationship of—

- (a) a person who is landlord under the lease, and
- (b) a person who is party to the lease otherwise than as landlord or tenant, in relation to such functions do not have effect.
- (5) "Management functions" are functions with respect to services, repairs, maintenance, improvements, insurance and management.
- (6) But this section does not apply in relation to—
 - (a) functions with respect to a matter concerning only a part of the premises consisting of a flat or other unit not held under a lease by a qualifying tenant, or
 - (b) functions relating to re-entry or forfeiture.
- (7) An order amending subsection (5) or (6) may be made by the appropriate national authority

Section 97

- (1) Any obligation owed by the RTM company by virtue of section 96 to a tenant under a lease of the whole or any part of the premises is also owed to each person who is landlord under the lease.
- (2) A person who is—
 - (a) landlord under a lease of the whole or any part of the premises,
 - (b) party to such a lease otherwise than as landlord or tenant, or
 - (c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,
 is not entitled to do anything which the RTM company is required or empowered to do under the lease by virtue of section 96, except in accordance with an agreement made by him and the RTM company.
- (3) But subsection (2) does not prevent any person from insuring the whole or any part of the premises at his own expense.
- (4) So far as any function of a tenant under a lease of the whole or any part of the premises—
 - (a) relates to the exercise of any function under the lease which is a function of the RTM company by virtue of section 96, and
 - (b) is exercisable in relation to a person who is landlord under the lease or party to the lease otherwise than as landlord or tenant,
 it is instead exercisable in relation to the RTM company.
- (5) But subsection (4) does not require or permit the payment to the RTM company of so much of any service charges payable by a tenant under a lease of the whole or any part of the premises as is required to meet costs incurred before the right to manage was acquired by the RTM company in connection with matters for which the service charges are payable.

Section 107

- (1) A county court may, on the application of any person interested, make an order requiring a person who has failed to comply with a requirement imposed on him by, under or by virtue of any provision of this Chapter to make good the default within such time as is specified in the order.
- (2) An application shall not be made under subsection (1) unless—

- (a) a notice has been previously given to the person in question requiring him to make good the default, and
- (b) more than 14 days have elapsed since the date of the giving of that notice without his having done so

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.