



LONDON RENT ASSESSMENT PANEL

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

Case Reference: LON/00BG/LSC/2012/0753

Premises: 1 Derwent House, Southern Grove, London E3
4PU

Applicant: Mr P Clough

Representative: None.

Respondent: East End Homes Limited

Representative: None.

**Leasehold Valuation
Tribunal:** Mr L Rahman (Barrister)
Mr K M Cartwright JP FRICS

Date of decision: 28.01.2013

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 charges payable by the Applicant in respect of the 2011/12 financial year.
2. The Applicant confirmed he was happy for the application to be dealt with on paper if the Tribunal thought it appropriate. There was an oral pre trial review on 11.12.12. Both parties attended and agreed the issue could be determined without a hearing.

The background

3. The property which is the subject of this application is a 2 bedroom ground floor flat in a purpose built block. The Applicant is the long leaseholder of the

premises. The Applicant purchased the lease on 27.4.12. The Respondents are the freeholders. The service charges relate to the premises.

4. 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.
5. 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 will be referred to below, where appropriate.

The issues

6. At the pre trial review, the parties identified the relevant issue for determination as follows:
 - (i) Whether the Applicant was liable to pay towards the costs relating to the maintenance of the lift and the door entry system.
7. The Respondent accepted at the pre trial review the Applicant was not liable for the communal heating cost and stated this charge would be removed from the account.
8. (It is not clear why the Respondent had initially charged the Applicant for the cost of the communal heating or why the Respondent subsequently agreed to remove the charge from the service charge account. It is not clear whether this particular item had been included in the service charge account for earlier years. The Tribunal have not been provided with any arguments by either party on this particular item and given the parties agree that the communal heating cost should be removed from the account, the Tribunal make no finding as to whether or not this would have been recoverable under the lease.)
9. Having considered all of the documents provided, the Tribunal determines as follows.

Lift: £175.02 and Door Entry: £74.03

10. The Applicant states he lives on the ground floor of the building. Access to his flat is directly from the street via his own front door. He has no access to the building and does not use the door entry phone or the lift.
11. The Applicant states he is only required to pay a reasonable proportion attributable to his flat. The Applicant states the costs relating to the lift and the door entry are not attributable to his flat. They are not held in common, as the Applicant does not have access to either. Furthermore, "attributable" means

an object that is associated with. The lift and door entry, to which the Applicant does not have access to nor is connected with, cannot be attributable to the demised premise.

12. The Respondent states Clause 5(5) of the lease outlines the Respondents obligations and the expenditure of service charges, which includes the maintenance, repair, and renewal of the lift and the door entry system. Under the Fifth Schedule, Clause 1(1), the total expenditure means the total expenditure incurred by the Respondent in carrying out their obligations prescribed by Clause 5. Clause 1(2) of the Fifth Schedule outlines that the service charge is a reasonable proportion of the total expenditure as it is attributable to the demised premises.
13. The Respondent states the Applicant is effectively arguing that he is liable to pay a service charge when there is a direct benefit for him, not based upon a reasonable apportionment of the total expenditure. The Respondent relies upon an earlier Tribunal decision (pages 60-64), in relation to a different property, for the proposition that a leaseholder is bound by the terms of the lease which is a contractual document governing the respective obligations of the parties.
14. The Respondent also states that prior to the Applicant's purchase of the property on 27.4.12, the usual buyer and sellers enquiries were raised regarding previous service charges and ongoing estimated costs. The previous service charge demands, which included charges for both the lift and the door entry system, were provided to the Applicant. The Applicant did not raise any queries regarding the liability to pay for these items.

The Tribunal's decision

15. It is unclear how the actual proportion that is payable by the Applicant has been calculated. The service charge demand, on page 20 of the bundle, states it is 2.0215% for the lift and the door entry, and is charged under the Block Charges. The lease simply refers to a "reasonable proportion" (Fifth Schedule, Clause 1(2)). However, the Tribunal note the Applicant does not dispute the amount payable, i.e. the proportion, but whether he should pay anything at all for the lift and the door entry.
16. The Tribunal determine the Applicant is liable to pay for the costs relating to the lift and the door entry.

Reasons for the Tribunal's decision

17. The Applicant is required to pay a "service charge" (Clause 4(4)).

18. The service charge is defined as a reasonable proportion of the total expenditure as is attributable to the demised premises (Clause 1(2) of the Fifth Schedule).
19. The total expenditure means the total expenditure incurred by the Respondent in carrying out their obligations under Clause 5(5) and any other costs and expenses reasonably and properly incurred in connection with the Building (Clause 1(1) of the Fifth Schedule). The lease refers to the "Building" as the buildings of which the demised premises form part of.
20. Under Clause 5(5), the Respondent is required to maintain and where necessary renew or replace any existing lift (sub-clause (m)) and maintain the electric porter system serving the main entrances to the building (sub-clause (n)).
21. The lease does not provide for the flat to be excluded from having to contribute to costs where they do not benefit from the expenditure, as suggested by the Applicant. The lease simply provides for a "reasonable proportion" of the total expenditure to be paid.
22. The Applicant has not explained how the words "attributable to the demised premises" might be construed when read together with the provisions of the lease as a whole.
23. The Tribunal note the Applicant was made aware of the basis upon which the service charges were calculated at the time of the purchase of the property.
24. The Tribunal therefore find, reading the provisions of the lease as a whole, the intentions of the parties was that the leaseholders pay a reasonable proportion of the total expenditure and those matters set out in Clause 5(5).

Application under s.20C and refund of fees

25. The Applicant has not 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. Accordingly, no order is made.
26. The Applicant did not apply for an order under section 20C of the 1985 (see section 9 of the Application form, page 13 of the bundle). Accordingly, no order is made.

Chairman: L. Rahman
(signed electronically)

Date: 8.2.13

