



LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985 AND
SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Case Reference: LON/00BK/LSC/2012/0845

Premises: Flats 7 and 15, Queens Court,
4-8 Finchley Road, London NW8 6DR

Applicant: Queens Court St Johns Wood Ltd

Representative: Premier Management Partners

Respondents: Chehade Ibrahim Bawarchi (deceased)
Najla Chehade Bawarchi (deceased)
Lilly Bawarchi } Flat 7
Nadia Kjekshus } only

Representative: None, save for Peachey & Co for Lilly Bawarchi

Leasehold Valuation Tribunal: Mr NK Nicol
Mr T Johnson FRICS

Date of decision: 25th June 2013

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £11,304.70 is payable for Flat 15 in respect of the service charges for the years 2011/12 and 2012/13.
- (2) The Tribunal has no jurisdiction to determine the payability of the sum of £10,000 claimed in relation to an insurance excess for damage allegedly caused from Flat 15.
- (3) The application in relation to Flat 7 has been withdrawn following payment of outstanding service charges and the Tribunal makes no order in relation to Flat 7.

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- (4) The Tribunal determines that the Respondents shall pay the Applicant £350 within 28 days of this decision in respect of the reimbursement of the Tribunal fees paid by the Applicant.

The application

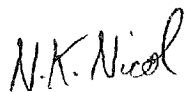
1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 as to the amount of service charges and administration charges payable by the Respondents in respect of the service charge years 2011/12 and 2012/13 (running from April to March each year). By e-mail dated 25th June 2013, the Applicant purported to add the latest charge of £4,664.70 for the half-year from 1st April 2013 but this was not part of the application and cannot be added in so late.
2. The Tribunal held a pre-trial review and issued directions on 23rd January 2013. In accordance with those directions, the Applicant has provided a large bundle of relevant documents fronted by an 18-page statement of case and the Tribunal has determined the application on the papers, without a hearing. Neither the Respondents nor any representatives for them have taken part.
3. By letter dated 29th April 2013, Peachey & Co stated that the owners of Flat 7 had discharged the arrears of service charge and there was no further dispute between the parties. Therefore, the application in respect of Flat 7 must be regarded as withdrawn and the Tribunal will not consider it further.
4. The relevant legal provisions are set out in the Appendix to this decision.

The issues

5. The first two named Respondents are the registered proprietors of the subject property, Flat 15. They died in 2006 and 2004 respectively. No letters of administration have been taken out although it is understood that the first Respondent's grandson, Mr Blake Lucas, is in the process of trying to sort it out. He wishes to sell the property, at least in part to discharge debts of the estate.
6. There is no immediate prospect of ongoing service charges being paid and so the Applicant is understandably looking to its remedies for forfeiture. In any event, the Applicant claims advance service charges of £11,304.70 for the years 2011/12 and 2012/13. The statement of case provides a thorough breakdown and explanation of the charges, supported by a large bundle of relevant invoices and other documents. No challenge has been raised by anyone as to the validity of these charges and so the Tribunal has no reason to question their reasonableness. They all appear to come within the express terms of the lease, a copy of which was included in the bundle.

7. The sum includes one charge of £60, being an administration fee incurred in chasing the arrears. This is a very modest sum in the circumstances and, again, there is no apparent basis for challenging it.
8. However, the Applicant's claim includes a sum of £10,000 in respect of an insurance excess claim recharge. At the time of the pre-trial review, it appeared to be part of the application and the question was raised as to whether the Tribunal had jurisdiction. This Tribunal is satisfied that it does not as this appears to be a claim for damages for breaches of covenant. However, the Applicant's statement of case makes it clear that this element is not now part of their application. Any remedies may be pursued instead through the courts.
9. The Applicant paid a fee of £350 for their Tribunal application. Their hand has been forced by the failure to sort out the estate after the deaths of the first two Respondents. In the circumstances, the Tribunal is satisfied that it is appropriate to order the Respondents to reimburse the fee.

Chairman:



NK Nicol

Date:

25th 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.

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

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).