



**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/00BK/LSC/2013/0077

**Premises:** Flat 6 Albert Court 353 Edgware Road, London  
W2 1BU

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**Applicant:** Greentree Estates Limited

**Representative:** Mr James Naylor –Solicitor  
Mr. Terence Langton Property Manager Crabtree  
Property Management LLP

**Respondents:** Mr Mahmood Khan

**Representative:** The Respondent did not appear and was  
unrepresented

**Date of hearing:** 17 June 2013

**Appearance for Applicant:** As above

**Appearance for Respondent(s):** As above

**Leasehold Valuation Tribunal:** Ms M W Daley LLB ( Hons)  
Mr M Cairns MCIEH  
Ms S Wilby BA

**Date of Decision:** 17 June 2013

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### **Decisions of the Tribunal**

- (1) The Tribunal determines that the sum of £7105.11 is reasonable and payable for proposed major works, (this sum being payable in advance, in accordance with the terms of the lease).
- (2) The Tribunal find that the sum of £1786.74 for the service charges for the period 25 March 2012-24 March 2013 is reasonable and payable.
- (3) The Tribunal determine that the sum payable for additional management charges in the sum of £360.00 is reasonable and payable.
- (4) The Tribunal determines that no order shall be made under section 20(C) of the Landlord and Tenant Act 1985.
- (5) The Tribunal directs that this matter shall be remitted back to the Clerkenwell County Court for further order.

### **The application**

1. The Applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable in respect of the service charge period 25 March 2012-24 March 2013, and for a determination that the sums demanded for major work of £7105.11 was reasonable and payable.
2. The Applicant issued proceedings in the Clerkenwell County Court, for the total outstanding sum of £9273.00, on 8 November 2012.
3. On 24 January 2013, this matter was transferred to the Leasehold Valuation Tribunal by order of District Judge Sterlini.
4. In his one page Defence filed at the County Court under claim no 2YNO8995, the Respondent Mr Khan stated that he would be working abroad until January 2013.
5. Directions were given by the Leasehold Valuation Tribunal on 4 February 2013.
6. The relevant legal provisions are set out in the Appendix to this decision.

## The background

7. The property which is the subject of this application is a flat situated in a block of twelve similarly constructed dwellings above commercial properties situated on the Edgware Road, London W2.
8. The Respondents held a long lease of the property which requires the landlord to provide services and the tenants to contribute towards their costs by way of a variable service charge). Each leaseholder is responsible for 1/12 of the service charges.

## The issues

1. At the pre-trial review on 4 February 2013, the Tribunal identified the following issues to be determined (1) The reasonableness and payability of the cost of the major works (2) the reasonableness and payability of the service charges for 25 March 2012-24 March 2013 (3) the reasonableness of the additional management charges. following sums for the year ending 31 December 2011
2. The background to the application was set out in the Applicant's statement of claim issued in the county court. The Tribunal noted that the County Court claim also included the sum of £21.15 interest; however the claim for interest was outside the scope of The Tribunal's Jurisdiction.

## The hearing

9. The Applicant was represented by Mr James Naylor of Crabtree Law LLP, and Mr T Langton property manager employed by Crabtree Property Management LLP. The Respondent did not appear, (no information was received from the Respondent about any difficulties that he might have had attending, neither was there a request for an adjournment).

*The Major work in the total sum of £84,572.16 (Respondent's share being, £7105.11)*

10. The Tribunal asked the Applicant to set out how the demand for payment of the proposed sum for the major work had complied with section 20 of the Landlord and Tenant Act 1985. In reply Mr Naylor referred to copies of the first stage letter sent on 7 July 2010 setting out the Applicants proposal to carry out

the works and inviting the leaseholders' observations and to nominate contractors to tender for the major works contract.

11. The proposed work were-:
  - The upgrade of the roof
  - The water tank replacement
  - External redecoration
  - External maintenance of the Brickwork and rainwater goods and
  - Internal redecoration.
12. This was followed by a notice of statements and estimates and a tender report, which had been prepared by Peter Scott & Associates Chartered building surveyors dated 6 June 2011.
13. The Tender report noted that two contractors had tendered for the work -: Chartered Properties and Triton Restoration. The report proposed that the lowest tender submitted by Chartered Properties be accepted. Mr Naylor stated that there had been no observations or comments from Mr Khan or indeed from any of the leaseholders on the proposed works. A demand for the sum of £7105.11 was sent to the Respondent on 28 September 2012. In accordance with the terms of the lease under clause 2(iii) b. of the lease such sums were payable in advance of expenditure. The lease stated "*b. to pay to the Lessor on 25 March in every year during the said term in advance a contribution which shall be the yearly sum of not less than Two hundred pounds or such other sum as the Lessor or its Agent shall determine ... being a proportion from the date hereof until the 25 day of March ...*"
14. Mr Naylor stated that the Respondent had not paid the outstanding demand, and the Applicant had been unable to carry out the work. The work was necessary given the condition of the building, and the fact that the work had been outstanding since 2010 when the proposal was first put forward.
15. In his Defence submitted to the County Court, Mr Mahmood stated that the building had never properly been looked after by the company, and complained of peeling paint and water leaking. He also noted that security was poor and that his brother had been assaulted in the common parts of the premises.

### ***The determination of the Tribunal on the Major works***

16. The Tribunal having considered the documentary evidence determine that the Applicant has complied with section 20 of the Landlord and Tenant Act 1985, and has properly demanded the sum claimed. Having considered the submissions of the Applicant, The Tribunal determines that the sum claimed for major work is reasonable and payable in advance in accordance with the lease.
17. The Tribunal noted that Mr Khan had in the one page Defence complained about the condition of the building and had not put forward any reason as to why the scheme of work proposed should not proceed as proposed. Accordingly the Tribunal find that the amount claimed in the sum of £7105.11 is reasonable and payable.

### ***The service charges for 25 March 2012 to 24 March 2013 in the sum of £1786.74***

18. Mr Naylor on the Applicant's behalf referred to the budget, the demand sent by the managing agents, and the actual accounts for 2011/12, upon which the budget for 2012/13 was based.
19. Mr Naylor explained that the managing agent did not yet have the actual figures for 2012/13 or the accounts, however it would be subject to the same approach as the previous year in that the invoices would be inspected by the accountant prior to the service charge account being prepared.
20. The main heads of expenditure for the budget were:- Audit and accountancy £325.00, cleaning £1440.00, communal electricity for the common parts £550.00, entryphone maintenance £200.00, entry phone rental £430.00, health and safety audits £600.00. Management fees £4464.00, pest control £1377.00, repairs and maintenance £3000.00, insurance £8720.00 and insurance excess in the sum of £310.00. There were also expenses that related to the bank charges for the designated property accounts.
21. Of the items, the Tribunal asked for additional information on the management fees, the insurance, the health and safety audits and the pest control.
22. Mr Langton stated that the normal range of management fees charged by Crabtree Property Management were between- £300.00-£350.00. (The actual charge worked out to be £372.00 per unit). He considered this particular property to be rightly at the higher end of charges, citing that there were difficulties in collecting the service charges, problems with the repairs at the building and security issues that resulted in this fee being justifiable.

23. Mr Langton stated that he normally visited the property at least once a month; however it was not uncommon for him to make additional visits in between.
24. In relation to the health and safety reports there was a schedule of reports that needed to be carried out each year; because of the condition of the property this included an annual asbestos survey. It was however anticipated that the major works would result in the removal of the asbestos which would mean that this report would no longer be necessary. The other planned report for this year had been a fire safety audit.
25. Mr Langton noted that the premises were situated above Restaurants and takeaways which were owned by different freeholders. However the result was that this meant that pest control was an issue at the premises, which required a provision to be made in the budget for pest control.
26. In respect of the insurance, Mr Langton noted that this was arranged through brokers Coppergate, by the freeholder. Mr Langton did not have any information about whether or not commission was paid to the freeholder by the broker. He stated that it was a company that was independent from the freeholder and that it was also responsible for claims handling. The additional sum of £310.00 was provision for insurance excess under the terms of the policy.
27. Mr Langton was asked about whether Mr Khan had made any complaints about the condition of the property or the service charges or indeed any of the matters set out in his Defence, such as the lack of security and the condition of the property. Mr Langton stated that no complaints had been made about these issues or about the management of the property, other than as set out in the defence. Mr Langton refuted the matters set out insofar as they were described as "extremely poor and criminal work of this company..."
28. Mr Langton cited that there was a difficulty in that there were problems with leaseholder not paying in accordance with the lease, and the managing agents were constantly having to juggle the payments and ask the freeholders for sums, all of which contributed to the issues raised by Mr Khan and the difficulties in managing the premises.

***The decision of the Tribunal on the service charge payable in the sum of £1786.74. Claimed***

29. The Tribunal having considered the budget noted that the actual sums claimed were based on the previous year's expenditure, (for which there were invoices). The Tribunal were also satisfied that there were reasonable explanations put forward for the sums claimed. The Tribunal also noted that no objections had been put forward by Mr Khan for any of the sums claimed. **Accordingly the Tribunal noted that the sums of, £1786.74 are reasonable and payable.**

*The sum of £360.00 additional management fee*

30. This was payable for the cost of chasing the arrears. Mr Naylor noted that this was the second occasion upon which it was necessary to take legal action against the Respondent, and that in the past he had not paid until a money judgement was issued.
31. He stated that the cost of £360.00 was reasonable and the work undertaken involved sending follow up letters and sending detailed instructions to solicitors. He referred the Tribunal to clause 2 (i) d of the lease which dealt with the cost incurred in contemplation of forfeiture of the lease. Mr Naylor stated that the proceedings brought in the county court which were transferred to the Leasehold Valuation Tribunal were the first stage of proceedings in contemplation of forfeiture and as such were payable in accordance with the lease.

**Application under s.20 C of Landlord and Tenant Act 1985**

32. The Respondent had not made an application under section 20 of the above act, and in deciding whether to grant an order, the Tribunal determined that given its findings, in that it determined that all the sums claimed were reasonable and payable it was not reasonable for such an order to be made.
33. This matter shall be remitted back to the County Court as stated above.

Ms M W Daley Chair

Date: 17 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).
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