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LON/00BK/LSC/2006/0290

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

**DECISION ON APPLICATION UNDER
LANDLORD AND TENANT ACT 1985 Section 27A**

Property Flat 7, Burlington Close, Elgin Avenue, London W9 3PS

**Applicant/
Landlord** ESTMANCO (ELGIN AVENUE) LTD
Respondents/ Mr. Omar Ibnahaten
Mrs. Halima El Badadaoui

Tribunal Ms M Daley Chairman (LLB.Hons)
Mr. M Mathews FRICS
Mr. D Wills (Lay member)

Date of Hearing 27 th November 2006 and 17th January 2007

Appearances Mr. Olatanjoye
Ms Gavrielides.
Ringley Chartered Surveyors

Application for a determination of liability to pay Service Charges

1. The Application

On 8th August 2006, The Applicant made an application to the Residential Property Tribunal for a determination in respect of their entitlement for Service Charges for the following years -:

- (i) 29 September 2002- 28 September 2003
- (ii) 29 September 2003-28 September 2004
- (iii) 29 September 2004-28 September 2005
- (iv) 29 September 2005 to 28 September 2006
- (iv) The Applicant also sought a determination of the reasonableness of the Service Charges including administrative charges.

2. Documents Received

The Tribunal had received:-

- (i)-A copy of the application form
- (ii)-A copy of the Lease-
- (iii) Applicant's Statement of case
- (iv) LVT directions dated 21 September 2006
- (v)Accounts for Estmanco- 2003-2005
- (iv) Up to date Statement of Account together with a breakdown of Debits and Credits 2003-2004
- (vi) Service Charge Estimate for 2003- 2007
- (vii) Audit Trail of all demands, Reminders and final notices
- (viii) Leasehold Land Registry search
- (ix) Copies of invoices and Documents for proof of the administration charges
- (x) Letters from Solicitors Dowse and Co dated 25 May 2006 and Pannone LLP dated September 2006.
- (xi) Copy of the Leasehold Valuation Tribunal Directions dated 14 December 2006

3. The Law

Section 27A Landlord and Tenant Act 1985

- (i) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable.

Section 19 (2) of the Landlord and Tenant Act 1985

(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

Schedule 11 of the Leasehold and Commonhold Reform Act 2002.

(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,

(2) (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.

Reasonableness of administration charges

2. A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

3 (1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that-

- (a) any administration charge specified in the lease is unreasonable, or
- (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(3) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be-

- (a) the variation specified in the application, or
- (b) such other variation as the tribunal thinks fit

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease affected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

Notice in connection with demands for administration charges

4. (1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

5. Liability to pay administration charges

(1) An application may be made to a leasehold valuation tribunal for a determination

(a) whether an administration charge is payable and, if it is, as to 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).

4. The Lease

A copy of The Respondent's Lease was enclosed in the bundle and the terms that were relied on are set out as referred to at the hearing.

5. Description of the Property

The premises are a three bedroom, maisonette, with communal gardens and garage in a purpose built modern block of flats

6. The Hearing

i. 27th November 2006

The Applicants at the hearing were represented by Mr. Olatanjoye and Ms Gavrielides. Mr. Olatanjoye put The Applicant's case quite simply, that clause 3(1) of the Lease stated that the Respondent was obliged -: *To pay to the Lessor (subject to clause 7 hereof) an annual service charge (in this Lease called the "Aggregated Service Charge") of an amount determined in accordance with the provisions of and at the time or in the manner specified in clause 4 hereof*

The Applicant's representative stated that service charges in the sum of £8336.01 was outstanding for the period 2003, 2004, and 2005 and that despite re-mortgaging the respondent had failed to pay the outstanding Service Charges. At the pre-trial review the Respondent indicated that he was not disputing the reasonableness of the charges, he stated that he had failed to pay the charges because he was unable to afford to pay them. However at the hearing on 27th November 2006 on behalf of the Respondent, the Respondent's daughter raised the issue of the standard of the work and maintenance of the garden. On The Applicant's behalf the issue of the validity of the administrative charge was also disputed.

The Applicant was asked to provide the tribunal with a proper breakdown of the Service Charges and to set out how each item in the management account related to the demand for Service Charges payable by the Respondent. The Applicant through their representative Ms Gavrielides indicated that they were unable to provide the documents at the hearing and the matter was adjourned part heard, and further directions were given. The matter was reconvened on 17th January 2007, and both The Applicant and the Respondent were given an opportunity to provide additional evidence to the Tribunal.

ii. 17th January 2007

Prior to the hearing on the 17.1.07 additional documents were received by the Tribunal in compliance with the directions given on 27.11.06.

The Applicants referred to the income and expenditure accounts provided at page 46 of the bundle which showed the projected income for the block of flats, which contained the premises occupied by the Respondents, The Applicants' representatives, explained that the projected income for 2003 was £44964.36

The Respondent's lease set out the percentage of the Service Charges that were payable by the Respondent which was 3.435 % of the block expenditure and 0.764% of the Estate Expenditure (referred to at page 22 of the lease). This meant that in 2003 the quarterly demand for the Respondent was £390.23.

At the hearing, The Applicant did not produce the quarterly demand, and explained that this was because this demand was computer-generated and that the quarterly demand provided a breakdown of all of the expenses based on the percentage charged to the Respondent. The Applicant's could not now show each separate demand over the period for which service charges were claimed. This was because these computer-generated demands were not collated and filed. The Applicants could however show the total activity on the Respondent's account by reference to credits and debits from 2001 to the present.

Mr. Olatunjoye explained that normally a letter was sent with the Service Charge Demand together with an estimate of the charges, and that although it may not be explicit enough for the ordinary layman, in his experience when someone did not understand the demand, they would ask for clarification, and The Applicants or their representatives would provide this in a letter or a fax.

The Tribunal was taken through the Respondent's statement of account and it was explained that an invoice served on Estmanco the management company would result in an entry on the Respondents account and it would then be shown in his statement of account.

The Tribunal considered the legal charges, The Applicants' relied on clause 2 (9) of the lease which states:-

To pay all costs charges and expenses (including Solicitors costs or surveyors fees) incurred by the Lessor 2 (9) for the purpose of or incidental to the preparation and service of any notice under Section 146 of the Law of Property Act 1925 requiring the Lessee to remedy a breach of any of the covenants by the Lessee herein contained notwithstanding that forfeiture may be avoided otherwise than by relief granted by the court

The Tribunal noted that when Ringley Legal Services sent an invoice to Estmanco the management company, an item was debited for this amount on the Respondent's statement of account. The Tribunal noted that some of these items related to court summons fees and other cost, in connection with a money judgment, which had been obtained at Clerkenwell county court in the sum of £3701 with a cost order against the Respondent in the sum of £178.75. The Applicants explained that they would have invoiced the management company who should then have billed the cost awarded by the court to the Applicant. There was no evidence that this had been done; it appeared that the full amount that Ringley Legal Services had invoiced the management company for was charged to the Respondent account.

The Tribunal then considered the items in the detailed accounts for Burlington Close (The subject block for the Respondent's premises and Marble House a neighbouring block) provided by Estmanco for 2003

The Applicant's representatives then explained the detail behind the various headings. The Audited accounts were accepted at the Annual General Meeting, an external company carried out The Audit and the Auditors were re-appointed at the AGM.

Legal and Professional fees had been spent on feasibility projects to maximize income for the estates. There was a Management fee for £29,639.44 (28/9/03) for the management of each unit, which worked out to be about £200 per unit.

The Applicant's representative informed the Tribunal that the Insurance detailed at page 104 of the bundle was the cheapest and most economical and the management agents did not receive a commission for the insurance.

The Applicant's representative stated that the amount for pest control detailed at page 105 of the bundle was for a regular and re-occurring Pharaoh Ants infestation. The Applicant's representatives explained that the directors of the management company who lived at the block, treated small outbreaks were they could, and that this reduced the cost. Charges for refuse and cleaning related to the common parts and the charges also provided for the maintenance and upkeep of the garden. The premises had heating supplied by a block boiler that also supplied hot water to each property and the heating charges set out in the bill were for the cost of this service to the block. (It would not have been practical or possible for The Respondent to disconnect from the heating system.)

Clause 3 (5) stated -:

In addition to the costs expenses and outgoings incurred by the lessor as aforesaid during the relevant financial year the Aggregated Service Charge shall be deemed to include not only the costs expenses and outgoings which have been actually disbursed incurred or made by the Lessor during the relevant financial year in respect of the above-mentioned heads of expenditure but also such sum or sums on account of any other costs expenses and outgoings which the Landlord shall have incurred at any time prior to the commencement of the financial year in respect of the said heads of expenditure and such other sums as the Accountant may in his absolute discretion consider it reasonable to include (whether by way of amortization of costs expenses and outgoings already incurred or by in the amount of the Aggregated Service Charge of the relevant financial year

The Applicant relied on this provision to collect Service Charges for a Reserve Fund; this sum was collected to spread the cost of items such as external decoration and roof repairs across a longer period of time.

The Applicant, stated that this pattern occurred in all of the years for which demand was made and that if there was an under spend this was re-credited to the Lessees.

The Applicants considered that the service charges for the premises were reasonable.

The Administration Charge

The Applicants view of the administrative charge was that demands had been served on the Respondent, they cited the items in the statement that related to legal cost as proof that they had served demands for the administrative charges, as these would have been included in the quarterly demand. In the circumstance The Applicant considered that both the Service and Administrative charges were reasonable and asked for a determination to that effect.

7. The Respondents case

The Respondent was not asserting that the work relating to the service charge had not been carried out, and he was no longer raising an issue concerning the work carried out in the garden. He had seen a document that he now understood was a statement of account for his property, but he could not recall receiving a quarterly demand. He admitted that he had re-mortgaged and had spent a considerable amount on improving the flat and had brought a car prior to being made redundant. After losing his job, he had been unemployed between 12 July 2003 and 27 November 2005, during that period he had received a statement of account for the two blocks of flats, (similar to that produced to The Tribunal). When he had presented the information to the DHSS, to try and obtain assistance with the cost of the service charges, an officer from the DHSS had informed the Respondent that this was insufficiently detailed. As a result he had not received any help towards the cost of his Service Charges during his period of unemployment.

He had made an offer to pay the arrears of Service Charges at the rate of £200 per month to The Applicant but this offer had not been accepted (despite this the Applicant had put the money aside). Mr. Olatunjoye accepted that who ever had dealt with Mr. Ibnahaten could have provided a Breakdown sufficient for the DHSS, which would have assisted the Respondent in obtaining benefit, which he could have applied to his service charge arrears.

The Respondent did not however dispute the reasonableness of the Service Charges and the fact that it was due, although the Respondent disputed The Applicant's entitlement to the Administrative charges. The Respondent also wished the Tribunal to consider an application from The Respondent under Section 20 (c) Landlord and Tenant Act 1985 in respect of the cost of the hearing.

The Applicant's in reply to the Section 20 (c) application stated:-

That they should receive the cost of the Tribunal proceedings as they had identified the issues in page 9 of The Applicant's statement and The Applicant's also sought to rely on the provisions of clause 2(9) of the Lease as entitling them to the cost of the LVT proceedings. The Applicants had prior to the hearing written to the Tribunal on 15 November and indicated that they would provide invoices, if the Respondent disputed the reasonableness of the Service Charges, They had not received an indication as to invoices disputed and had therefore turned up without invoices on the first day of the hearing.

The Applicant's had by the date of the reconvened hearing provided a breakdown of the Service Charges claimed.

8. The Determination of the Tribunal

1. The Tribunal considered all of the Accounts for the periods

- (i) 29 September 2002- 28 September 2003
- (ii) September 2003-28 September 2004
- (iii) 29 September 2004-28 September 2005
- (iv) 29 September 2005 to 28 September 2006

The Tribunal considered the detailed estimate for each of the years stated above, together with the Respondents proportion of the charges. The Tribunal also noted that the Respondent was not disputing the Service Charges, and the Tribunal was satisfied that The Applicant was able to show how the Respondent's charges had been calculated and that the charges could be justified by reference to the estimates that were provide.

2. The Tribunal decided, that the charges were reasonable and that the amount for Service Charges set out below were payable by the Respondent to The Applicant Estmanco (Elgin Avenue).

3. The Tribunal were satisfied that the reserve fund contributions were provided for by the terms of the lease, and were reasonable in accordance with section 19 (2) of the Landlord and Tenant Act 1985.

4. The Tribunal considered that the Administrative cost were not reasonable as The Applicant had failed to comply with the requirements set out in the Commonhold and Leasehold Reform Act 2002

In particular that The Applicant had failed to comply with the Requirements set out in Schedule 11 4. (1) Which states a *demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charge.*

The amount had simply been added to the Respondent's account and there was no evidence that a separate demand had been served or that any summary of the rights and obligations had been given to the respondent. The Tribunal also noted that The Applicant had applied for a money judgment in 2003, in which cost had been awarded to the Applicant. The Tribunal considered that, The Applicant was, even if a demand had been served, (which complied with the requirements) estopped from demanding more than the sum awarded by the court, in respect of legal Charges due for that period.

5. The Tribunal also considered the terms of the lease which at 3.5, stated:-

To pay all costs charges and expenses (including Solicitors costs or surveyors fees) incurred by the Lessor 2 (9) for the purpose of or incidental to the preparation and service of any notice under Section 146 of the Law of Property Act 1925 requiring the Lessee to

remedy a breach of any of the covenants by the Lessee herein contained notwithstanding that forfeiture may be avoided otherwise than by relief granted by the court

6. The Tribunal considered that this clause, (3.5) did not specifically provide for an administrative charge or for interest to be charged as set out in the schedule of charges billed to the respondent and included in his service charge account.


7. The Tribunal therefore determined that the sum of £ 1445.49 for administrative charges and interest should be reduced from the total for Service Charges in accordance with the Tribunal's findings.

8. The Tribunal considered the Respondent's Application under section 20 (C) of the Landlord and Tenant Act 1985 and determined that the matter could have been dealt with within the original time estimate of one day, if The Applicants had provided a proper audit trail of the accounts and the individual demand for Service Charges. Even though the Respondents had provided no information about disputed amounts, The Applicant had not produced sufficient evidence, so as to satisfy the Tribunal as to how the charges had been broken down. For this reason, the tribunal considered that the Applicant's cost should be limited to that of one day's hearing and preparation. These cost would only be payable by the respondent if a demand was served which complied with the requirements of the Commonhold and Leasehold Reform Act referred to above.

9. Accordingly the Tribunal, determine, that the Service Charges claimed by The Applicant were £9786.57 up to the date of the hearing. The Tribunal determined that the sum of £ 1445.49, made up of administration charges should be deducted from the Respondent's account accordingly the Tribunal determine that the sum of £8341.08 was to be paid by the Respondent to The Applicant.

10. However the Tribunal was not wholly satisfied, by the system for generating demands. It was noted that the demands were generated by computer and no file copies were kept. The tribunal noted that rather than individual quarterly demands for each of the quarters of

2003, 2004, and 2005 the system aggregated the total due. This was confusing; each quarter's demands should be capable of showing what was due for that period.

CHAIRMAN.....

DATE 22-2-07 .