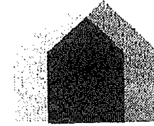
8122



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 Ref: LON/00AF/LSC/2012/0242

Premises: Top Flat 13 Anerley Hill, Crystal Palace, London SE19 2BA

Applicant: Mrs J Stocks

Represented: In person and assisted by Mr Stocks

Respondent: Ivator Investment Limited

Represented by: Mr Munns of Rayner Property

Also in Attendance: Mr Battersby director of Ivator Investments Ltd

Tribunal:

Ms M W Daley-	Lawyer chair
Mr H Geddes-	Professional member
Mr A Ring -	Lay member

Hearing date: 19 July 2012
Date of Decision: 5 September 2012

Decisions of the Tribunal

(1) The Tribunal determines that save for the deductions for major works in the total sum of £274.28 and deductions set out in paragraphs 48-57 the sum claimed by the Respondent for the service charges for 2010 and 2011 is reasonable and payable as set out below.

(2) The Tribunal makes the determinations as set out under the various headings in this Decision.

(3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

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 service charge years 2007-2012 .

2. At the Pre-trial review held on 25 April 2012, the Respondent 's representative Mr Munns informed the Tribunal that the Respondent had obtained a default Judgment against the Applicant in The Northampton County Court in respect of all the arrears for the period 2007,2008 and 2009 up and until 24 June 2010. The Tribunal stated that unless and until judgment was set aside, the Tribunal had no Jurisdiction to determine the payability of the service charges for those years.

3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant appeared in person, and was assisted by her husband in making representations to the Tribunal .The Respondent was represented by Mr Nicholas Munns, a Director of the Rayner Property Management Group managing agents, and Charles Battersby Director of Ivator Investments limited the freeholder of the premises

5. Immediately prior to the hearing the parties handed in a further supplemental bundle which had been prepared by the Respondents, including a full copy of the Directions. The documents also included invoices and email and other written correspondence between the parties.

The background

6. The property which is the subject of this application is a 1bedroom flat in a converted Victorian building.

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 will be referred to below, where appropriate.

The issues

8. At the Pre-trial review the Tribunal identified the following relevant issues for determination as follows:

   (i) The reasonableness of all the costs incurred during 2010 and 2011

   (ii) The reasonableness of the budget for 2012

   (iii) Whether the landlord has complied with the consultation requirements under Section 20 of the 1985 Act and the quality of the major works completed in 2011

   (iv) The amount of credit to the reserve fund

   (v) Whether an order should be made under section 20C of The Landlord and Tenant Act 1985

9. Point 9 of the Directions required the Applicant and Respondent to prepare a schedule setting out the charges that were in dispute. The Tribunal were pleased to note that the parties had completed the schedule, and it was possible to confine the matters in dispute to those charges which had been set out in the schedule. The Tribunal were not provided with details of the Applicant's objections to the service charges in relation to 2012, accordingly no determination was made for this period.

The service charge dispute in relation to 2010

10. An EDF Energy invoice in the sum of £16.35 included a late payment fee in the sum of 4p. The Applicant stated in the schedule that -: "... *We are not looking for a refund for this minimal amount. This does however make the management fees unreasonable as we expect these invoices to be paid on time."*

11. The Respondents did not accept that this should result in any reduction in the management fee and stated that, given the small amount of money involved, it was uneconomical for the Respondent to investigate the reason for the late payment.

The determination of the Tribunal

12. Given that there was no dispute concerning the reasonableness of this invoice, the Tribunal determined that this sum was reasonable and payable. Any issues concerning management were considered in relation to the management charge and the overall performance of the managing agents, as set out at paragraphs 19-29 below.

General issues relating to the validity of the invoices

13. The Applicant raised a general issue in relation to the invoices from Rayners, Managing Agents, including payments made by the managing agents for building insurance and the managing agents' fees.

14. The Applicant in their statement of case stated that "*... These invoices ... have been paid and recharged to us ... are not valid invoices, some have unreasonable charges and some inconsistencies in the amount. We question all of the below and believe that they are not genuine, as they are [not usual to common?] invoices many not on headed paper.. they have all been created on the same computer (font & layout) More importantly, they lack obvious detail and they contravene either the HMRC regulations for invoices, or the Business Names Act 1985 and the Companies Act 2006*"

15. The Applicant had helpfully supplied copies of sections of this legislation together with a guide from Business Link – Invoicing and Payment Terms -in support of her assertion.

16. Mr Munns stated that the invoices were prepared on their behalf by the accountants, Elliott & Partners and this was the reason for their similarity . Mr Munns objected to the suggestion that the invoices were bogus and stated that the charges had been incurred by the managing agents on behalf of the freeholder. The Respondent dealt with this issue in relation to the invoices which were objected to below.

The approach adopted by the Tribunal

17. The Tribunal noted that there were legal requirements in respect of the preparation and presentation of invoices and would expect the managing agents to review their present arrangements to ensure that they comply with these requirements. However the Tribunal's

jurisdiction in these matters is governed by sections 18, 19 and 27 A of the Landlord and Tenant Act 1985 (as set out in the Appendix).

18. There is also a requirement on the Landlord to comply with the Service Charge (Summary of Rights etc.) (England) Regulations 2007 to provide the tenant with the protection afforded by their knowledge of the right to challenge payment on the grounds that the sums are considered unreasonable.

While the Applicant was clearly dissatisfied with the invoicing arrangements, the Tribunal were not convinced, on the evidence before them, that no service had been provided and that the invoices were a device to obtain payment where payment was not due .Accordingly the Tribunal decided that the correct approach was to apply section 19(1) of the Landlord and Tenant Act 1985 to the facts relied upon by the parties – i.e were costs reasonably incurred and, if so, were the services or works of a reasonable standard.

Invoice to Rayner Estates Office (management fees) in the sum of £599.25 for year ending 2010 and £874.32 for the year ending 2011

19. The Applicant stated that this was the first flat that she had owned; she had no knowledge of the sums normally charged in connection with property management. However, she still considered that the managing agent's fees were not reasonable for the level of management undertaken and the standard of the service provided (a view with which her husband concurred).

20. The Tribunal queried whether they had any other evidence concerning what they (Mr and Mrs Stocks) considered to be an appropriate level of charge, and whether they had knowledge of other managing agents' fees. The Applicant did not, and was content to leave the matter to the Tribunal's knowledge and experience of such charges.

21. Mr Munns, on behalf of the Respondent, informed the Tribunal that the management charge in 2010 equated to £170 plus vat per flat. The managing agents' fees per unit varied from £125 plus VAT to £300.00 for the properties that they currently managed and £170 was in accordance with the normal charging rate for properties of this nature.

22. The Applicant noted that management charge for 2011 represented an increase of approximately 43%. Mr Munns explained that there had been a re-evaluation of what the managing agents charged in relation to converted properties, as the conversions required more work than had first been envisaged.

23. The Tribunal asked whether the Respondent had undertaken any market testing. Mr Battersby stated that he had not. The managing agents, managed all of the freeholder's property holding, and the Respondent was aware that it had in the past proved difficult to find managing agents to take on the management of converted properties.

24. The Tribunal asked for information on the clause in the lease that enabled managing agents to be engaged by the freeholder to manage the property and for information on the duties undertaken.

25. Mr Munn's referred to the fifth schedule of the lease clause 1 (1) which stated – : "*Total Expenditure means the total expenditure incurred by the Lessors in any Accounting Period in carrying out their obligations under Clause 5(4) of this Lease and obligations under clause 5(4) of this Lease and any other costs and expenses reasonably and properly incurred in connection with the building including without prejudice to the generality of the foregoing (a) the cost of employing Managing Agents…*"

26. Mr Munn's also set out the tasks undertaken by the managing agents. They carried out six monthly inspections with photographic evidence, undertook responsibility for the payment of communal electricity, arranged insurance, maintained the building, collected service charges and accounted for charges received; this was all in the climate of the burden of increased legislation, including risk assessments and other inspections. In answer to the Applicant's query as to why the invoice was in the same font as the other invoices, this was because Elliott and Partners had generated the invoices on the managing agents' behalf.

27. The Tribunal asked the Applicant, what sum she considered to be reasonable as management fees for the level of service received. Both Mr and Mrs Stocks agreed that no fee was reasonable given their dissatisfaction with the level of management.

The decision of the Tribunal

28. The Tribunal did not accept the Applicant's view that no management fee was justified, and in reaching their determination, applied the Tribunal's knowledge and experience of managing agents' fees

29. The Tribunal determined that the total cost of managing agents' fees claimed for managing the premises are within the range of reasonable fees and in all the circumstances the fees claimed under this heading are reasonable and payable.

The charges for Building insurance for 2010/11 in the sum of £1124.00 and in the sum of £850.00 for 2011/12

30. The Applicant queried the validity of these invoices and stated that they had not been provided with information to satisfy them that there was insurance in place for the building. Although information had been provided by way of a policy summary, there was no information connecting the policy summary with who the insurance provider was. The Applicant did not have any comparable evidence on the cost of insurance. However while Mr Stocks conceded that the premium for 2011/12 was reasonable at £850 it called into question the reasonableness of the premium of £1124.for the previous year.

31. The Tribunal asked whether the insurance was provided by way of a block policy. Mr Munns stated that it was not part of a block policy and had been arranged by the brokers. The cost of the policy directly related to the claims history and the type of property which he described as, "a converted property with timber floors".

32. Mr Munns stated that the freeholder organised the insurance through an independent broker who tested the market on their behalf. There was a policy number and the policy was underwritten by Three Lions Underwriting Limited.

33. The relevant clause in relation to the insurance was clause 5 (4) (c*) To insure and keep insured the Building (unless such insurance shall be vitiated by any act or default of the Tenant or any person claiming through the Tenant or his or their servants agents licensees or visitors) against loss or damage by fire and such other risks as are usually contained in a comprehensive insurance policy in some Insurance Office of repute in the full reinstatement value thereof including an amount to cover professional fees and other incidental expenses in connection with the rebuilding and reinstating thereof being damaged or destroyed by fire or other insured risks as soon as reasonably practicable..."*

34. Mr Battersby provided the Tribunal with an email dated 18 July 212 from Chris Braysher FCII, Chartered Insurer. This email set out the claims history of the building and the pattern of increase/ decrease of the insurance premiums for the building and also gave details of who the insurers were for each of the periods in question (a copy of the email was provided to the Applicant).

35. Mr Battersby concluded by stating -: *" At 2011 renewal we reviewed the rating again as the poor claims history had improved somewhat with no claims in almost 3 years so were able to negotiate a reduction to £850.00."*

The Decision of the Tribunal

36. The Tribunal accepted the evidence of the Respondent concerning the cost of the insurance premium, and determined that the sums claimed for both years were reasonable.[repeated in para 40]

37. The Tribunal noted that the lease gave the Landlord considerable discretion concerning the placement of insurance. The Tribunal noted that the concerns raised by the Applicant were the manner of the presentation of the invoice for insurance, the lack of complete documentation concerning the insurance provider and the cost in the sum of £1124.00.

38. The Tribunal accepted the evidence of Mr Battersby who provided helpful information on the reason for the fluctuation in the cost and also provided a comprehensive summary of the providers and the issues that affected the insurance premium over the years. The Tribunal noted that there was a direct relationship between the cost of insurance and the claims history, and that there was no disadvantage to the leaseholders, as it was their property's claims history, rather than a general claims history which was the consequence of being part of a block policy.

39. The Tribunal however considered that it was reasonable for the Applicant to be provided with a full copy of the policy, or sufficient information to identify the provider. **The Tribunal direct that the Respondent should provide [a copy of the [schedule] of the policy] this information to the Applicant within 21 days of the Tribunal's determination.**

40. The Tribunal find that the sums of £1124.00 for insurance year ending, 2011and £ 850.00 for the year ending August 2012 are reasonable and payable.[see para 36]

The Accountant's fees 2010 in the sum of £108.00 and 2011 in the sum of £108.00

41. This was for preparing the invoices, preparing the service charge accounts and budget. The sum invoiced was £108.00 for each of the periods in issue.

42. The Applicant's main objection was the manner of the invoices, and the fact that the Applicant would have expected Elliott and Partners as accountants to comply with HMRC requirements on invoicing.

43. Mr Munns on behalf of the Respondent, asserted that the actual sum charged was reasonable, and that this was lower than the normal range of accountant's charges. The Applicant could not provide any alternative costing for accountant's fees. It was therefore left to the

Tribunal to use its knowledge and experience to determine the reasonableness of this charge.

The Decision of the Tribunal

44. The Tribunal had sight of the accounts/ summary of expenditure prepared by the Accountants. Using their knowledge and experience of the level of fees normally charged for this kind of work the Tribunal were satisfied that the costs claimed were reasonable and payable.

Charges in the sum of £76.38 and £52.41 for building services

45. The Applicant was prepared to concede these sums as reasonable and payable and the Tribunal accepted the concessions

Additional charges made by the Respondent outside of the management fees

46. The first charge in respect of this heading was a fee in the sum of £70.00. This sum was described by the Respondent as a small charge for time spent by "our surveyors' department outside the standard charge covered by the unit cost." Mr Munns was asked to give additional information about the work undertaken, which was for monitoring the performance of contractors who had been engaged to fix the roof.

47. There was also a charge to Survez Surveyor's, a firm which often did work in place of the managing agent's surveying department, for example when they were busy, as they were based approximately 10 miles from the property

48. In this instance the charge was in the sum of £332.50 and £84.00 for monitoring work in relation to inspecting dampness at the premises and preparing a specification for contractors.

49. There were two further internal surveyors charges, one in the sum of £50.00 (invoiced on 28 March 2011) for dealing with the contractor's queries in relation to the roof and internal works, and a charge of £126.55 incurred in March 2010. The Tribunal were informed that this was for drawing up the specification in relation to the major works.

50. The Respondent submitted that these charges involved the use of surveyor time, and that this was over and above the normal managing agent's duties.

The decision of the Tribunal

51. The Tribunal did not have the benefit of a management agreement which set out the menu of charges. The Applicant did not consider that the surveyors had done a good job (although they were unspecific as to detail) and considered that they should not be paid.

52. On the issue of reasonableness of the charge, the question for the Tribunal was whether the charges were covered by the standard management charge, and if not were the additional charges reasonable for work undertaken over and above the general management of the property.

53. The Tribunal determined that where the charges related to preparing of specifications for major work, this was additional work. However in respect of two of the items, the fee for £70.00,for monitoring performance, and of £50.00, for dealing with contractor's queries, this was not considered by the Tribunal to be over and above the regular duties of the managing agent. Accordingly the Tribunal determine that these amounts are not reasonable and payable.

54. The Tribunal noted that the fees for Survez Surveyors were payable as sums for drawing up a specification. It was clear however that had this work been carried out internally, the charge would have been within the range of £70-£125.00. Accordingly the Tribunal have limited the recoverable sum to £125.00 for this item

The Reserve Fund

55. It was not clear to the Tribunal exactly what the Applicant's objection was to this sum. It appeared that in relation to the major work, the concern was that the sums from the reserve had not been used, or that they were being charged for major works in circumstances where there was a viable amount in the reserve fund to pay for this work.

56. Mr Munns stated that the reserve was provided for by clause 4(4) of the lease, and that £1650 had been drawn from the reserve fund as a contribution to the cost of the work.

57. Clause 4(4) h (i) states -: "*To set aside(which setting aside shall for the purposes of the Fifth Schedule… an item of expenditure incurred by the lessors) such sums of money as the Lessors shall reasonably require to meet such future close as the Lessors shall reasonably expect to incur of replacing repairing maintaining and renewing those items…*"

58. The accounts showed that the current sum in the reserve was £2150.00

The Decision of the Tribunal

59. The Tribunal were satisfied that the clause permitted collection of service charges for the purpose of establishing a reserve fund. The Tribunal are satisfied on a balance of probabilities that the amount claimed by way of provision for the reserve fund is reasonable and payable.

The Major Works Costs

60. The Applicant supported by her husband set out that she was unhappy with the cost and standard of the major works, which had been for the external redecoration.

61. Mr Munns stated that the tender process had been correctly followed and that this had resulted in the appointment of A B Mace who had provided the lowest tender. The Applicant had not objected to this appointment, neither had they taken any steps to input to the consultation process, or set out the issues that they had by way of a snagging list.

62. The Tribunal were informed that it was accepted by both parties that, somewhat unusually, the leaseholder was responsible for the repair to the windows of their property. This meant that although the external decoration was the landlord's responsibility, any disrepair of the window was the responsibility of the tenant. The landlord would then re-decorate in accordance with the obligation under the lease.

63. Mr Munns stated that all the Leaseholders in the building had asked for the work to be deferred from the planned works date in 2009 until 2011. The Respondent had noted that the windows were still in disrepair. The contractor had been asked to paint over the windows unless the wood was rotten.

64. Mrs Stocks stated that the works were shoddy. The Tribunal were taken through various photographs which were in the bundle. The main issues were a hole in the soffit of the communal porch; the non-painting of the rear window (the Applicant's flat) due to a misunderstanding; the painting of the rainwater goods; and the extent to which a scaffolding tower had been necessary. Mr Stocks also referred the Tribunal to damaged masonry. Mr Stocks also stated that the surveyors had not inspected the work and the work had been poor and the supervision non-existent.

65. The Tribunal observed that, although the Applicant was unhappy with aspects of the work, the works in themselves might be expected to have had some value. The Applicant was asked to give an indication of the sums they considered reasonable for the amount of work that had been undertaken. Mr Stocks on behalf of his wife stated that the work was worth nothing as it would need to be redone.

66. Mr Munns referred the Tribunal to a request for a list of snagging items which was in the bundle; the inspection had taken place in April 2012, and the Applicant had not responded or provided any information.

67. He acknowledged that a misunderstanding had led to the rear window not being repainted

68. In respect of the repair items, the decorator had not been responsible for repairs and a deduction of £60.00 had been made in relation to the porch repair; in respect of the rear window, the Respondent was prepared to make a deduction. There had also been a problem with the contractor becoming ill and this had led to the snagging items taking longer than expected to be dealt with. However that would be remedied.

69. Mr Munns submitted that the cost of the major work which included 20% surveyor's fees was reasonable in all the circumstances.

The decision of the Tribunal

70. The Tribunal noted that major works had been undertaken in a somewhat haphazard fashion in that the masonry had not been repaired prior to the redecoration; there was also the added difficulty that the landlord was responsible for redecoration, in circumstances where the repairs of the window were the responsibility of the tenants.

71. It was however clear from the photographs that the redecoration had been carried out and that this was an obligation in the lease for which the landlord could make a charge.

72. There is the need for some masonry repair, however the tenant has not been asked to pay for work which has not been carried out. The Tribunal had not been asked to consider any future or proposed work, or form a view as to whether this would mean that additional sums would be required for redecoration. The Tribunal considered that subject to a deduction for the Respondent's failure to redecorate the window and the porch the cost of the work was reasonable.

73. The Tribunal noted that the premises consisted of seven windows; accordingly it was appropriate to deduce 1/7 from the cost of the major works in the sum of £164.28. The Respondent also set out a reduction of £60.00 in relation to the cost of the porch.

Application under s.20C and refund of fees

74. At the end of the hearing, the Applicant made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure)

(England) Regulations 2003 for a refund of the fees that she had paid in respect of the application/ hearing. The Respondent opposed this deduction on the basis that the Respondent had offered to meet with the Applicant to try to resolve these issues before the Application was issued and the Applicant chose to press ahead without trying to resolve the matters.

75. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal does not order the Respondent to refund any fees paid by the Applicant.

76. In the application form and at the hearing, the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determine that the lease makes no provision for recovery of the landlord's cost of the Tribunal hearing.

77. However, for the avoidance of doubt, the Tribunal nonetheless determine that it is not just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, and accordingly the Tribunal decline to make an order in the Applicant's favour.

Chair Ms M W Daley LLB Hons

5 September 2012

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

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.