

**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/00AP/LSC/2011/0639

**Premises:** 167B Lordship Lane, London N17 6XF

**Applicants:** Residential Properties Limited (landlords)

**Representative:** Mr A. Berger of Feldgate Limited (managing agents)

**Respondent:** Mr K. Kirton (leaseholder)

**Representative:** In person

**Date of hearing:** 19 December 2011 (no inspection)

**Appearance for Applicants:** As above

**Appearance for Respondent:** As above

**Leasehold Valuation Tribunal:** Professor James Driscoll, solicitor (lawyer chair), Mr Ian Thompson BSc FRICS and Mrs Lorraine Hart

**Date of decision:** 15 January 2012

**Decisions of the Tribunal**

10. For each of the service charge periods in dispute the leaseholder challenges the costs of providing a manager and the costs of insuring the building. He also challenges the recoverability of certain other charges.
11. Mr Berger told us that his company were appointed managers of the building in 2003. In answer to our questions on whether a manager needs to be appointed for a building, which consists of just two flats, he replied that the landlord has the right under the lease to make such an appointment if they choose to.
12. He added that there are many firms of managing agents who do not take on such small blocks to manage as it is not cost-effective to do so. Mr Berger also suggested that his firm's fees, which are based on a charge per unit, are competitive and are reasonable. Later in the hearing, following a short adjournment, he produced a copy of his firm's contract with the landlords. It is a common form and is an agreement for less than 12 months (with one month written notice required to terminate the contract) and so not a qualifying long-term agreement to which the consultation requirements in section 20 of the Act and the regulations made under that section (that is the Service Charges (Consultation Requirements) (England) Regulations 2003) apply.
13. The leaseholder complains that he has had little contact with the managing agents. He claims that they have never carried out an inspection of the premises. He also told us that in or about 2003 he and the then leaseholder of the other flat sought to negotiate the transfer of the freehold to them. However, that proposal did not proceed. In addition, he claims that no repairs nor works have been carried out since purchasing the flat in 1998 and that there remain outstanding repairs to the property. He told us that he found the managing agents unhelpful and uncooperative. This is one of the reasons why he has found it difficult to communicate with them.

### **The background**

14. The property which is the subject of this application is a ground floor flat which is a two bed-roomed flat, one of two in the building originally constructed as a house, and later converted into the two flats.
15. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
16. The Respondent holds a long lease of the property which requires the landlord to provide services and the leaseholder 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. He purchased his flat in 1998. He has never lived there and instead rents it out. He lives in a house which he owns in a different part of London.

## **The issues**

17. At the start of the hearing, the parties identified the relevant issues for determination as follows:
- (i) The landlords claim that the leaseholder is in arrears of service charges and certain administration charges for the years 2006 to 2010.
  - (ii) The leaseholder argues that the charges are unreasonable and not recoverable from him under the terms of his lease. He also complains that the landlord has failed to carry out repairs as a result of which he has suffered damage.
18. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal made determinations on the various issues which are summarised above.

## **Reasons for the Tribunal's decision**

19. Pages 142 to 146 of the bundle of documents contain the signed accounts for each of the years in question which have been certified by the managing agents. As the main charges for each of the service charges years are the costs of insurance and the management fees we will consider these items first.
20. The leaseholder provided several copies of quotations he had obtained from the internet (see, for example, those on pages 148 to 151 of the bundle). These show quotations far below the costs of the insurance arranged on behalf of the landlord. He considers that a reasonable figure for his contribution should be between £120 and £140 per annum.
21. Mr Berger explained how the insurance was arranged in this way. He told us the firm of Oster act as brokers and each year check the market to find the most competitive insurance available. He does not accept that the quotations the leaseholder has obtained are comparable and doubts if they provide adequate cover for all of the risks of insuring the building. He added that his company has made administration fee charges for their work in completing questionnaires sent to them by the brokers. Mr Berger also explained that for the year 2007 it was decided to make two charges to ensure that from then on insurance was recoverable in advance of payment and not in arrears which had been the case before his firm were appointed as managing agents.
22. On balance we prefer most of the submissions made by Mr Berger on the costs of insurance. The annual charges (with one exception to which we return below) are in our opinion reasonable. It is well established that a landlord is not required to look for the cheapest cover available provided the actual charges are not excessive. It is often difficult for leaseholders to obtain alternative quotations on a 'like for like' basis. However, we do not think it

appropriate, let alone fair, for the managing agents to charge administration fees totalling £193.88 (inclusive of VAT) for their "involvement in insurance questionnaires.". These charges are not recoverable (see their invoice on page 111 of the bundle).

23. We are also concerned at the decision to make two charges for the insurance in 2007. When we first saw this certificate we wondered why the costs of insuring the building appeared to have escalated for this year. Despite Mr Berger's explanation we do not think it fair for the landlords to charge double the actual costs without prior consultation with the leaseholder or at least some explanation for this. That said, these were costs that had to be incurred and despite our misgivings over charging for two years at the same time, we do not consider it appropriate to reduce the charges.
24. We turn next to the management charges and repeat the point that the lease allows the landlord to appoint managing agents. As this is a power in the lease, the leaseholder cannot challenge the decision to appoint a manager for the premises even though they consist of just two flats.
25. However, the leaseholder can challenge the level of charges. All such charges must be reasonable and the level of service must be of a good quality (see section 19 of the Act in the appendix to this decision). The leaseholder claims that the managing agents have not visited the property, that they have ignored his complaints and are difficult to deal with. Although he does not live in the property he knows people who run businesses close by who have told him that they have not seen anyone other than the residents in or near the property.
26. In response to the leaseholder's complaints Mr Berger told us that members of his firm, the landlord and their appointed surveyor have visited the premises several times. He added that the general level of the management fees charged have been approved in decisions of this tribunal in other applications. Mr Berger confirms that his firm's charges are based on a fee per unit. He considers that the fees are competitive.
27. We note that the charges have risen from £150 per flat in 2006 and 2007 to £200 per unit for 2009 and 2010. On the basis of the evidence and the documents, we have concluded that the managing agents have had the responsibility for setting service charges, sending out demands and attempting to recover unpaid charges. They also arrange the insurance. Mr Berger assured us his company, the landlords and their surveyors have visited the property. With no disrespect to the leaseholder he was unable to substantiate his complaints that there have been no visits or inspections. His contention that local business occupiers have not seen any visitors is not, in our opinion, persuasive.

28. On the basis of this body of evidence and on our knowledge and professional experience, we do not think that the charges are too high. Accordingly we determine that the management charges are reasonable and recoverable.
29. Those two main matters having been dealt with, we now turn to a number of miscellaneous issues. First, is the cost of instructing an agent to carry out tests to see if there are any asbestos problems in the property. The leaseholder told us that he has not seen any report and Mr Berger explained that the report has yet to be commissioned. Mr Berger will not commission any reports unless the leaseholder agrees to pay for them. As this expenditure has yet to be incurred we do not consider that the landlord can charge for fees or expenses that have not been incurred.
30. The second matter relates to certain 'administration charges'. The leaseholder challenges these. Mr Berger told us that this is claimed for the time spent in trying to recover arrears of service charges. He drew our attention to the eighth schedule (clause (11)(a)) of the lease which allows the landlord to recover 'All legal and proper costs... In the enforcement of the covenants on the part of the Lessee..'. His firm charges £100 per hour (exclusive of VAT) for pursuing arrears and submitted that 10 hours had been spent . . Mr Berger also said that this work is justified as part of any work preparatory to the service of a forfeiture notice under section 146 of the Law of Property Act 1925. The standard management charge only includes one letter and additional charges will be claimed for any additional work.
31. We are against the landlords on this part of their claim for a number of reasons. First, we have concluded that most of the work they have undertaken in managing the property relates to the setting and the collection of service charges. Second, the landlord is seeking an order for costs in the county court proceedings and this matter will be remitted to the court for further action. Third, Mr Berger admitted that the leaseholder has not been given a notice of rights as required by schedule 11, paragraph 4 of the Commonhold and Leasehold Reform Act 2002 and in the regulations made under that provision. It follows that the leaseholder is entitled to withhold payment of the charges.

#### **Application under s.20C and refund of fees**

32. At the end of the hearing, Mr Berger made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that he had paid in respect of the hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal does not order the leaseholder to refund any fees paid by the landlord. The payment of the hearing fee was a necessary part of the court order transferring the application to this tribunal. Moreover, the landlord will seek its costs once this application has been remitted to the court.

**The next steps**

34. The Tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Edmonton County Court along with a copy of this determination.

Chair:

James Driscoll

Date:

15 January 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.