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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985 ('the 1985 Act') (Following a transfer of proceedings from the Edmonton County Court (claim number 1UC753357))

Case Reference:	LON/00AP/LSC/2011/0822
Premises:	26 Arundel Court, Landsdowne Road, London N17 OLR
Applicant:	London Borough of Haringey (Landlords)
Representative:	Ms C. Awoloto (senior legal assistant) with Mr M. Bester and Mr M. Murray (both of Homes for Haringey)
Respondent:	Ms A. Bucknor (leaseholder) with Mr. W. Bucknor (occupier)
Representative:	In person
Dates of hearing:	26 April 2012 and 20 July 2012
Appearance for Applicants:	As above
Appearance for Respondent:	As above
Leasehold Valuation Tribunal:	Professor J. Driscoll, solicitor (lawyer chair), Mr I. Thompson FRICS Mr A. Ring
Date of decision:	28 August 2012

Decisions of the Tribunal summarised

- The tribunal determines that the sum of £3719.86 is payable by the respondent leaseholder to the applicant landlord in respect of service charges for relevant major works as these charges were reasonably and properly incurred in accordance with the provisions in the respondent's lease and relevant statutory requirements

- The tribunal is satisfied that the applicant landlord carried out a consultation exercise with the respondent leaseholder in respect of these works as required by section 20 of the Act

- The respondent leaseholder must reimburse the applicant landlord the hearing fee of £150 in accordance with Regulation 9 of the Leasehold Valuation Tribunals (Procedure) Regulations 2003. This sum is to be paid to the applicant landlord no later than 30 September 2012

- No order is made under section 20C of the Landlord and Tenant Act 1985 limiting the recovery of the landlord's costs in connection with the proceedings in this tribunal

- Otherwise this tribunal has no jurisdiction to deal with the costs and fees incurred in connection with the County Court proceedings

- This matter is now to be referred back to the Edmonton County Court for further action

The application

1. This is a claim seeking recovery of service charges relating to major works which were carried out in 2010. In 2011 proceedings were instituted to recover the sum of £3,972.61 in the Edmonton County Court and on the filing of a defence those proceedings were stayed and the disputed service charges were transferred to this tribunal for a determination under section 27A of the Act (a copy of this and other relevant statutory provisions are appended to this decision). An order to that effect was made by District Judge Silverman on 25 November 2011.

2. The parties to these proceedings are the London Borough of Haringey the landlords of the subject premises and Ms Bucknor the leaseholder of Flat 26.

We will refer to them as the 'landlords' and the 'leaseholder' respectively. The leaseholder owns her Flat in one of the buildings on an estate which consists of blocks of flats, garages, pram sheds and common areas. She does not live in her flat which she sublets to her brother and his family who pay her a rent and contribute to the expenses of running the flat, including the mortgage repayments.

3. It is common ground that the leaseholder is required to contribute to the landlords' costs in repairing, maintaining of the estate. Under the third schedule to her lease she is required to contribute a defined proportion of the costs of her block and to the costs of maintaining the estate. The fourth schedule requires her to contribute to the block charges by applying a formula based on dividing these costs by the total number of bedrooms in the block and then multiplying this figure by number of bedrooms plus one room of the Flat. Similarly her contribution to the estate costs is calculated by dividing these expenses by the total number of bedrooms plus one room for all the flats on the estate and then by multiplying this figure by the number of flats plus one room in the Flat. The leaseholder's flat has two bedrooms.

4. A pre-trial review was held on 20 December 2011 when directions were given and a hearing was set for 26 April 2012. The landlords prepared a bundle of documents including a copy of the lease and various documents relating to the works. At the hearing it emerged that there was an error in the lease in that the written definition of "the block" did not accord with the area defined as the block on the lease plan.. The landlords had apportioned the leaseholders service charges in accordance with the written definition. However, after checking the leases for other properties on the estate they conceded that this was the incorrect approach. As a result, the hearing had to be adjourned to 20 July 2012. The landlords were directed to serve a revised notice of the service charges by 4 May 2012. They have done this.

The hearing

5. At the adjourned hearing the landlords were represented by Ms Awoloto their senior adviser and she called Mr Bester their lead officer for major works and Mr Murray head of capital programmes team to give evidence. We also had a signed statement from Mr G. Clarke of their capital programmes team.

6. The leaseholder appeared in person with her brother Mr Bucknor who has occupied the Flat since 2009 with his wife and children. The leaseholder has lived elsewhere since 2009. She has given her brother permission to open any mail sent to her. In return for occupying the Flat her brother told us that he pays or contributes to the mortgage repayments and council tax. He also confirmed that he contributes to payments of the service charges. She did not have any other witnesses.

7. We discovered that the landlords having recalculated the charges sent the leaseholder a revised statement on 3 May 2012. At the start of the hearing we

were handed a detailed breakdown of the costs of the major works. A copy was given to the leaseholder just before the hearing started. As revised the landlords now claim the sum of £2,837.83 for the block charges and the sum of £618.51 for the estate charges. With a management fee of £309.23 the total now claimed is the sum of £3,765.57 (that is £207.04 less than the original demand).

8. The leaseholder told us that she has not paid anything yet to the charges demanded and that she had offered to pay lower sums but those offers were refused by the landlords. The landlords' position is that the major works were carried out following a full consultation process and that they were carried out to the required standards.

9. Her objections to paying the full amount demanded are:

   (a) that she did not receive a copy of a consultation notice sent to the leaseholders on 27 July 2010 so her contribution to the works are capped at the maximum statutory limit of £250

   (b) That she should not be charged for works to either the pram sheds or garages which she has no rights to use these facilities under her lease

   (c) She questions whether the costs have been properly allocated, and

   (d) She challenges the quality of the works

10. At the hearing she added that, if the tribunal found that there had been compliance with the consultation requirements, the costs of the block charges should be reduced by one-half as that would be a reasonable sum to pay.

11. Ms Awoloto, the landlord's solicitor opened and summarised her case speaking to her signed statement dated 20 July 2012. She told us that she would call evidence in support of her submission that the respondent was properly served with documents as part of the consultation process that preceded the commencement of the works.

12. She drew to our attention a letter sent to the leaseholder dated 3 May 2012 by her colleague Mr Bester with details of the leaseholder's revised charges. The revised total is the sum of £3,765.57. We were also shown a copy of a document called 'Record of Decent Homes Practical Completion'.

13. We also had a copy of a statement of Mr Clarke, a project manager for the major works programme stating that the section 20 notice procedure was started on 20 September 2010 stating 18 August 2010 as the closing date for observations. The works started on 20 September 2010 and they were completed and signed off on behalf of the landlord (as being of a reasonable standard) on 17 December 2010.

14. The head of the landlord's capital programmes team gave evidence based on a written statement he signed on 12 July 2012. He had overall charge of the major works programme which included 1 - 69 Arundel Court in which the leaseholder's flat is to found. He also explained the scope of the works, the consultation procedure and the completion of the works. Exhibited to his statement is a copy of the final account, photographs of the premises and a copy of a news letter which was distributed to residents in March 2010.

15. The other witness called on behalf of the landlord is Mr Bester who is their lead officer for major works with responsibility for the statutory consultation for leaseholders where major works are proposed that will affect them and for which they will be required to contribute to the costs by paying service charges.

16. Mr Bester drew our attention to the leaseholder's lease which requires her to notify her landlord of any change of address and if she has sublet the property. He told us that the only address the landlord has is her flat in the subject premises. All the consultation and related documents were sent to her at the address of the flat and nothing has been returned by the post office as being undelivered.

17. Later in 2010 invoices and related documents were sent to the leaseholder by post to her flat. Copies were exhibited to his statement.

18. As she did not pay the invoice a reminder was sent to which she replied by email on 5 December 2010 objecting to the costs as being too high and of very little benefit to her flat. Various other letters were sent demanding payment including a revision to the charges once the landlord realised that she should not have been charged for works to a pram shed as one has not been allocated to her.

19. Mr Bester told us that his responsibilities include arranging the posting of documents relating to consultation and recording this. We were shown a copy of document called a certificate of service dated 20 July 2010 for Arundel Court. In several cases documents were sent to addresses other than the flat concerned (called the 'correspondence address) which Mr Bester explains shows that many leaseholders who sublet notify the landlord of an address for service and other communications.

20. This document was signed by Mr Bester on 20 July 2010 certifying that he served copies of the documents by post. He drew to our attention that the fact the leaseholder's property and correspondence address is the same.

21. In answer to questions from the tribunal and the leaseholder Mr Bester stated that he is unaware of any other leaseholder stating they have not received correspondence from him.

22. Both the leaseholder and her brother gave evidence. Mr Bucknor told us that he and his family (wife and two children) moved into the flat in 2009 where they have lived ever since contributing to the expenses and outgoings.

23. He told us that he always had the leaseholder's authority to open any post addressed to her and that he has always notified her of any post received. He was adamant that he did not see any correspondence relating to the major works until reminders were received. Nor does he recall receiving the leaflet advising residents of the proposed works.

24. He accepts that works took place but he told us that he thought they were not properly supervised and that some of the work was not done properly. He told us that he was bolstered in these conclusions by other residents including a tenant who works as a builder who told him that the costs were far too high. He only knows this fellow-resident as 'Patrick".

25. The leaseholder also confirmed that she was unaware of the proposed works and the costs. She claims that the landlords are aware of her address as she remembers calling them to inform them of this. As to the works and in addition to the pram shed she objects to paying to the costs of maintaining the garages as she has no right to such a garage under her lease. (In response, Ms Awoloto told us that the garage costs are not as a matter of policy charged to leaseholders).

26. She doubted the authenticity of the leaflet and she suggested to Mr Murray that this was only produced and printed since the hearing in April, an accusation he vehemently denied.

Reasons for our decision

27. We have two main issues to determine: first, did the landlord consult this leaseholder (if he did not, then the service charge recovery is limited and capped at £250); second, were the quality of the works of sufficient standard. These two issues are dealt with in turn.

28. There are also issues of whether the leaseholder is required to contribute to the costs incurred in maintaining the garages and the pram sheds. Having examined the terms of the lease and having heard from the parties we have had concluded that on the proper construction of the lease the landlord can charge leaseholders for these costs. As we noted in paragraph 25 above the landlord does not charge leaseholders for the garage costs as a matter of policy (presumably as the landlord receives a rent for these garages). However, the landlord does charge for the costs of maintaining the pram sheds and they are entitled to charge (and leaseholders are required to pay) their reasonable expenses as these are chargeable as 'estate charges' under Part 2 of the third schedule to the lease.

29. As to the service of notices, common sense and experience teach us that occasionally letters and packages though properly posted are not delivered. In the residential context the problem may be more pronounced where a leaseholder is an investor who has sublet the flat and the arrangements for collecting post are not satisfactory. It is for the landlord to establish on the balance of probabilities that they served the relevant consultation documents. We are on balance satisfied that it is likely that all the relevant post was delivered to the flat for the following reasons:

- There is no evidence that any other leaseholder in the same block did not receive letters

- Whilst some absentee leaseholder's arrangements for delivery and collection of post are far from satisfactory this cannot be said of this case where the leaseholder's arrangements are almost ideal as her brother opens all post and advises her of any matter addressed to her

- She contacted the landlord only after a final demand for payment was received

- We have the landlord's evidence of the arrangements for recording posting of consultation documents

- In a letter to the tribunal dated 20 April 2012 the leaseholder used the flat as her address

30. As to the criticisms of the actual works, the leaseholder did not produce any independent evidence, expert or otherwise, of any deficiencies with the work. Earlier in these proceedings the leaseholder objected to having to contribute costs towards the upkeep of pram sheds and the garages. However, the position over the pram sheds has been corrected. Leaseholders are not charged by the landlords for the upkeep of the garages as these are rented out to non-residents and in some cases to residents and the landlords have decided as a matter of policy that leaseholders should not be charged for the costs of maintaining this part of the estate.

31. However, the tribunal does find that it is appropriate to make a small reduction on the costs of works in relation to the replacement of the 'shiplac cladding'. The landlord procured these works as a package that included, not only the subject property, but also other blocks of flats. The landlord has produced a revised final account that, in almost every case, provides a sufficient level of detail to enable the actual cost of works to block 25-36 Arundel Court to be identified. The one exception is the replacement of shiplac cladding where the Landlord applied a pro rata amount. However, the area of shiplac cladding to block 25-36 is limited and, it would seem, less than the amount that the landlord has allowed.

32. We, using our own judgement and experience, make a reduction of £420.78 to the total cost of the works to the block (being a net allowance of 6m of replacement cladding). When the necessary adjustments to professional and management fees are applied to this reduction, we determine that the cost of works that is reasonable and payable by the leaseholder is £3719.86.

Costs

33. Both sides raised issues on costs. The landlord submits that it should be reimbursed for the costs of the hearing fee in this tribunal; the leaseholder submits that no order should be made under section 20C of the Act.

34. As this is an application we have been directed to hear by the Court and the fact that our findings favour the landlord we can see no basis on which the landlord should not be entitled to include as future service charges any costs incurred in the tribunal stages of the case. They had no choice but to bring proceedings to recover the unpaid charges and to continue with the claim after it was transferred to this tribunal.

35. However, we agree that in the circumstances of this case and in light of the evidence given by the leaseholder and her brother, that it is appropriate that the leaseholder reimburses the landlord for the costs of the hearing fee. She should do this by 30 September 2012

36. In light of our determinations of the matters transferred by the Court the case is now to be returned to the Court. Clearly any matters related to the costs of the Court proceedings and interest claimed on the service charge arrears are matters for Edmonton County Court.

Chair:	
	James Driscoll
Date:	28 August 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.