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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER [SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985] [& SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002]

Case Reference: LON/00AW/LSC/2011/0844

Premises: Flat 3, 4 Queens Gate Place, London SW7 5NT

Applicant: 4 Queens Gate Place Ltd

Representative: Roshanian Payman International Solicitors

Respondent: Mrs. Anisa Ali Alsamahiji Adeeb

Representative: Shaffie Al-Adeeb and Raed Ali Alsamahaji
(Respondents sons)

Date of hearing: 10th April 2012

Appearance for Applicant: Ms. Fiona Marchitelli (Solicitor),
Ms. Shiva Mahmoodi (Legal Assistant),
Mr. Stuart Ogilvy of Kenniston & Associates,
Managing Agents for the Applicant

Appearance for Respondent: None

Leasehold Valuation Tribunal: Mr. L Rahman (Barrister)
Mr. H Geddes JP RIBA MRTPI
Mr. P Clabburn

Date of decision: 27th April 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £1,893.40 is payable by the Respondent in respect of the service charge for the period September 2011 to March 2012. Having already paid 90%, the balance to be paid by the Respondent is £189.34.
- (2) None of the service charge for the periods September 2010 - March 2011 and March 2011 - September 2011 is currently payable as there is no evidence they have been demanded in accordance with the relevant statutory regulations.
- (3) If the statutory regulations are complied with, then subject to section 20B of the Landlord and Tenant Act 1985, the charges payable by the Respondent would be £1,893.40 for each period. Having already paid 90%, the balance to be paid for each period would be £189.34.
- (4) The Tribunal makes no order under section 20C of the Landlord and Tenant Act 1985 as the Respondent did not make any application for such an order.
- (5) The Tribunal determines that the Respondent shall not refund any Tribunal fees paid by the Applicant.
- (6) The Tribunal does not make any order for costs.

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 estimated service charges of £1,893.40 for each of the following half year periods, namely September 2010 to March 2011, March 2011 to September 2011, and September 2011 to March 2012.
2. An application was made to the Leasehold Valuation Tribunal on 7th December 2011.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Ms. Marchitelli, Ms. Mahmoodi and Mr. Ogilvy. The Respondent did not appear. The Respondent was not represented by anyone.
5. At the outset the Applicant made an application for the hearing to be postponed. The Applicant stated the parties were hoping to settle the matter

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

the Applicant still failed to prepare a bundle for the Tribunal for today's hearing.

11. In view of the fact that the Applicant had prepared a bundle for the linked case concerning Flat 4C, which covered some of the issues concerning this case, the Tribunal were able to start with the case concerning Flat 4C and put this case back to give the Applicant an opportunity to prepare a bundle for this case. The relevant bundle was prepared for the afternoon. Unfortunately, the pages had not been numbered.

The issues

12. The Respondent did not attend the Pre Trial Review. The Respondent failed to send a statement in response to the Applicants statement of case. The Respondent failed to attend the final hearing. The only evidence before the Tribunal, from the Respondent, is the letter dated 3rd April 2012. The Respondent has failed to identify which items under the service charge were disputed and why. The Respondent has failed to explain how the heating issue in her flat was relevant to the payability or reasonableness of the service charges.
13. The Applicant explained at the hearing that the total amount of the unpaid service charges was £5,680.20 (£1,893.40 for each of the 3 periods) and that at the end of February 2012, the Respondent had paid 90% of the outstanding balance. Only 10% (the Tribunal calculate this to be £568.02) remained unpaid. Mr. Ogilvy stated the 10% applied through all the 3 periods. He stated only £189.33 remained unpaid for each of the 3 service charge periods. The Tribunal calculate the amount to be £189.34.
14. Mr. Ogilvy was asked to refer the Tribunal to copies of the actual service charge demands. It transpired that copies of the service charge demands were not in the Applicants bundle. The Applicant was given an opportunity to have the relevant demands faxed to the Tribunal. The Applicant was only able to provide a copy of the service charge demand for September 2011 to March 2012.
15. Mr. Ogilvy referred the Tribunal to the estimated service charge figures for 2009-2010, the service charge annual accounts for the year ending 31st August 2010, the service charge annual accounts for the year ending 31st August 2011 and a breakdown, item by item, of the actual expenditure for the year ending 31st August 2011.
16. Having heard the evidence and submissions from the Applicant and considered all of the documents provided, the Tribunal finds as follows.
17. Under the lease the Respondent is liable to pay 10.33 % of the costs and expenses incurred by the Applicant during each year ending on 31st August. The expenses for each successive year shall be estimated by the Applicant.

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

Ap [REDACTED]

■ [REDACTED]

from the Applicant the Tribunal does not order the Respondent to refund any fees paid by the Applicant. The Applicant had substantially lost, as 2/3 of its claim was not currently recoverable. The Applicant failed to provide a bundle, therefore the matter had to be put back. The explanation for failing to comply with the Tribunal's Direction was wholly unacceptable. Overall, the Tribunal found the Applicant's case was poorly presented at the hearing despite having legal representation. The Applicant's bundle lacked basic information such as a copy of the service charge demand for the relevant periods. The Applicant's representatives at the hearing stated they were unaware what a service charge demand should contain. The Applicants representatives confirmed to the Tribunal that since November 2011, before proceedings were started, it was believed an expert report was necessary. The Applicant suggested a postponement was necessary, to obtain an expert report, so the matter could be resolved amicably. The Tribunal therefore question whether it was reasonable for the Applicant to make an application to the Tribunal before obtaining such a report.

24. The Respondent did not apply for an order under section 20C of the 1985 Act. The Tribunal therefore makes no order.
25. The Applicant made an application for costs. The Tribunal has power to award costs under Schedule 12, paragraph 10 of the Commonhold and Leasehold Reform Act 2002. The Tribunal makes no order for costs. The Tribunal finds the Respondent had not acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. Based upon the Applicants own evidence, both the parties were looking to settle the matter in a reasonable and amicable manner and further investigations were needed. The Respondent had now paid 90% of the outstanding balance and the remainder was to be settled on the basis of a report from a plumbing expert.

Chairman:



Date:

27th April 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.