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**HM Courts  
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Service**



**Residential  
Property  
TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL**

**Landlord and Tenant Act 1985 – Section 27A**

**LON/00AY/LSC/2011/0630**

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**Property** : **Flat 5 Leigham Hall, Streatham High Road,  
London SW16 1DN**

**Applicant** : **Beazer Investments Limited**

**Represented by** : **Miss Rosanna Foskett (Counsel)**

**Respondent** : **Mr Noel Brown**

**Represented by** : **Mr Brown appeared in person on 10 January.  
He did not appear on 13 March.**

**Date of Referral** : **5 September 2011**

**Date of Hearing** : **10 January, 13 March 2012**

**Date of Decision** : **5 April 2012**

**Tribunal** : **Mr Robert Latham MA (Barrister)**  
**Mr Peter Roberts Dip Arch RIBA**  
**Mr Peter Leighton LLB (Hons)**

**Decision of the Tribunal**

- (1) The sum of £2,311.84 claimed by the Applicant in proceedings brought against the Respondent in 1UC52343 being arrears of service charges is payable by the Respondent to the Applicant.
- (2) The Applicant is not asking the Tribunal to consider the reasonableness of the administration charge of £60. This relates to legal charges. The Applicant indicated to the Tribunal that they will ask the County Court to determine any costs to which they are entitled arising from this claim. It is not therefore necessary for us to consider

any application pursuant to s.20C of the Landlord and Tenant Act 1985.

- (3) The file is referred back to the Wandsworth County Court to determine (i) the claim for arrears of ground rent (£300); (ii) the claim to the Court fee of £85.00 and (iii) any claim to statutory interest which might be pursued because the Tribunal does not have jurisdiction to determine these claims.

### **The Application**

1. On 29 March 2011, the Applicant issued proceedings in the Wandsworth County Court (at p.12-13) claiming:

(i) The sum of £2,671.84 in respect of alleged arrears of ground rent and service charges. This includes a claim for an administration charge of £60 and arrears of ground rent of £300.

(ii) Statutory interest pursuant to s.69 County Court Act 1984 in the sum of £155.14 as at the date of issue and continuing at £0.58 per day until judgment; and

(iii) Court fees of £85 and solicitor's costs of £80.

2. On 11 April, the Respondent filed a Defence (at p.22-25). This reads:

"I had to install my own central heating some time ago and even though I have claimed before, no monies was ever refunded. According to the lease, the landlord must provide central heating, cleaning of all common parts and to keep the building in a reasonable order (decoration). The last time I had a dispute with the managing agents, I also claimed for the central heating system, but to no avail.

3. On 5 September (at p.36), District Judge Tilbury made an order that these proceedings be transferred to the Tribunal.

4. Directions were given on 4 October 2011 (p.2-6). On 27 October, a Procedural chairman varied the dates specified in the directions (p.8).

5. The Applicant should have served their statement of case by 4 November. This was not served until 20 December. This is at p.43-7. This sets out the relevant terms of the lease at p.52 and a summary of expenditure at p.43-47. On the same day, they served copies of the documents upon which they intend to rely. These should have been served by 2 December. On 22 December, the Applicant served a witness statement of Andrew McKeer, a Director of Prior Estates

the other tenants had opted for individual systems despite the terms of the lease. He also complained about the cleaning and the fact that the communal lights were on throughout the day. Mr Brown was given the opportunity to go through the service charge request, but did not want to do so. The note ends: "AMcK appreciates that NB is only concerned about the one issue of the heating now".

11. At the meeting on 23 January, the Respondent made it clear that he did not wish to go back to the Tribunal for a further hearing. He agreed to set up a monthly payment to go towards the arrears.
12. On 30 January (p.4 "ARM1"), Mr McKeer wrote to the Respondent summarising the issues raised at the meetings and enclosing a copy of his file note. Mr McKeer proposed that the Respondent should make 24 monthly payments of £128.27 to clear the arrears of £3,078.59 which would avoid any need to return to the Tribunal. He asked the Respondent to sign and approve a copy of the letter or to write to the Tribunal accepting the proposal.
13. On 15 February (p.4 "ARM1"), Mr McKeer wrote a further letter seeking a response. On 23 February (p.10 "ARM1"), the Applicant's Solicitor wrote to the Respondent seeking confirmation that the matter was agreed and that the hearing should be vacated.
14. On 17 February, received by the Applicant on 23 February (p.11 "ARM1"), the Respondent wrote enclosing a cheque for £300. He complained that he still felt aggrieved about the situation. The common parts were not being cleaned. The lift gate had not been locked. He did not know why he bothered to complain. He made minor amendments to the file note. He complained that he could not now take out his boiler and was entitled to some compensation. Whilst this suggested that he did not wish to proceed with the application, he has not formally accepted the Applicant's proposal or written to the Tribunal to this effect.
15. On 5 March, Barclays notified the Applicant that the cheque of £300 had been returned unpaid. We were told that it had been represented.
16. On 13 March, the Applicant was again represented by Miss Foskett. The Respondent did not appear. Mr McKeer was present. However, the Tribunal did not consider that it was necessary for him to amplify anything in his two witness statements. The Tribunal have had regard to all the papers in the Application Bundle.
17. In the absence of any statement of case filed by the Respondent, the Tribunal have had regard to the defence which he filed in the County Court proceedings (see 2 above).

18. The Tribunal have also had regard to the matters raised by the Respondent at his meetings in January. Mr McKeer had investigated the complaints which had been raised. The cleaning related to pigeon fouling on the fire escape which had been remedied by a pest control company. Mr McKeer was unable to identify any problem with the lift gate.

### **The Background**

19. The property which is the subject of this application is 5 Leigham Hall, Streatham High Road, London, SW16 1DN. Leigham Hall consists of 40 flats all let on long leases. The flats are built immediately over 14 shop units on the ground floor. The block was constructed in the 1930s.
20. The Respondent is aged 74. He derives his leasehold interest from a lease dated 18 April 1984 whereby Aylmer Square Investment Limited granted a lease of 5 Leigham Hall ("the premises") for a term of 122 years from 26 June 1982. We understand that the Respondent acquired his lease around 1997. It is apparent that the Respondent has faced financial difficulties in discharging his financial obligations under the lease.
21. The Applicant acquired the freehold interest in late 2003 or 2004. Shortly thereafter, Prior Estates Limited were appointed as managing agents.
22. In June 2008, the Applicant issued Particulars of Claim against the Applicant in the Lambeth County Court (8LB02184). The relevant papers are annexed to Mr McKeer's second witness statement as "ARM2". The claim was for arrears of service charges in the sum of £3,552.17 for the period up to 31 December 2007 (see p.19-20). On 18 May 2005, an interim charge of £4,964.88 was raised in respect of the replacement of the gas heating installation for the block. This had been refunded on 2 September 2005 after the tenants had elected to install individual units.
23. On 24 June 2008, the Respondent had filed his defence and counterclaim (at p.21-3). He complained that the Applicant had failed to provide him with central heating and hot water for at least 14 months between March 2004 and September 2005. He had installed a combination boiler himself. He admitted that he had not paid any service charges from December 2005.
24. On 13 January 2009, the claim was due to be heard as a small claim. On 6 January (at p.24), the Applicant wrote to the Respondent pointing out that a total of £4,011 had been paid towards the outstanding arrears; £3,000 of which had been paid by the Applicant's mortgage company. £552.17 was outstanding, together with the costs and fees of

any of the sums claimed. When complaints have been raised, we are satisfied that the landlord has sought to respond to these.

30. The Tribunal notes that the lease imposes an obligation on the landlord to maintain and supply heating and hot water. Whilst the tenants have opted to provide their own individual central heating, the terms of the lease have not been varied. This is a matter which the landlord may wish to consider. This is irrelevant to the current claim as no service charges have been claimed for heating or hot water for the relevant period since 24 June 2008.

### **Other Matters**

31. We are not asked to consider the claim for the administration charge of £60. The landlord does not intend to charge any of their legal fees incurred in respect of these proceedings to the service charge account. No issue of any order under s.20C of the Landlord and Tenant Act 1985 therefore arises. Miss Foskett informed the Tribunal that the Applicant will rather seek their costs from the County Court which will award such costs as it considers to be reasonable.
32. The Applicant has not made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fee of £150 that it has paid in respect of the costs of this hearing.

Chair: Robert Latham

Date: 5 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.