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Residential
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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/00BE/LSC/2013/0107

Premises: 21 Rutley Close, London SE17 3NP

Applicant: London Borough of Southwark

Representative: London Borough of Southwark, Home Ownership
and TMI Division

Respondent: Mr R P Halsam

Representative: In Person

Date of hearing: 17.6.13

Appearance for Applicant: Mr G Brutton (Income Enforcement Officer)

Appearance for Respondent: In Person

Leasehold Valuation Tribunal: Ms N Hawkes (Lawyer Chairman)
Mr A Lewicki BSc(Hons) FRICS MBEEng
Mr C S Piarroux JP CQSW

Date of decision: 24.6.13

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Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £550.74 was payable by the Respondent in respect of estimated service charge for the year 2011/12 when the County Court proceedings were issued on 6th July 2012 but that this sum has now been paid in full. The Tribunal notes that the Respondent is entitled to be reimbursed the sum of £4.51 from the Applicant in respect of the actual service charge for this year.
- (2) The Tribunal determines that the sum of £309.23 was payable by the Respondent in respect of estimated service charge for the year 2012/13 when the County Court proceedings were issued on 6th July 2012 but that this sum has now been paid in full. The Tribunal notes that the Respondent is entitled to be reimbursed the sum of £4.51 in respect of the estimated service charge for this year.
- (3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, by consent, so that none of the landlord's costs of the Tribunal proceedings may be passed to the Respondent through any service charge.
- (4) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Lambeth County Court.

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 estimated service charges payable by the Applicant in respect of the service charge years 2011/12 and 2012/13.
2. Proceedings were originally issued in the Northampton County Court under Claim No. 2YK72133. The claim was transferred to the Lambeth County Court and then in turn transferred to this Tribunal, by order dated 19th November 2012 of DDJ Lawrence.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Mr G Brutton (Income Enforcement Officer) at the hearing and the Respondent appeared in person.

The background

5. The property which is the subject of this application is a two bedroom flat in a block comprising 266 residential units which is situated in a housing estate in the London Borough of Southwark.
6. 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.
7. The Respondent 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 and will be referred to below, where appropriate.

The issues

8. At the start of the hearing, the parties identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of a service charge demand received by the Respondent in the sum of £668.04 in respect of the service charge year 2010/2011. The Respondent initially claimed that he was entitled to a credit in respect of this demand which should be set off against the sums claimed in the County Court proceedings.
 - (ii) The payability and/or reasonableness of estimated service charge for 2011/12 relating to "Care and Upkeep" and, in particular, cleansing the roofs; washing internal ceilings and walls; carrying out window cleaning; and gardening.
 - (iii) The payability and/or reasonableness of estimated service charges for 2011/12 relating to "Care and Upkeep" and, in particular, cleansing the roofs; washing internal ceilings and walls; carrying out window cleaning; and gardening.
9. Insofar as these matters fall outside the scope of the originally pleaded case, the Applicant was in a position to deal with them and the Tribunal considered it proportionate to do so.
10. Having heard evidence and submissions from the parties and having considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The payability and/or reasonableness of a service charge demand received by the Respondent in the sum of £668.04 in respect of the service charge year 2010/2011

11. The Respondent initially disputed that this sum was reasonable and/or payable because he believed that it related to the installation of approximately twenty perforated metal window coverings which were installed by the Applicant following instances vandalism on the estate. The Respondent argued that the metal window coverings were an eyesore and an unacceptable means of repairing broken windows.
12. The Applicant gave evidence, which the Tribunal accepts, that the demand in the sum of £668.04 relates to other aspects of the service charge and that the Respondent was not in fact charged for the installation of these metal window coverings.
13. However, the Respondent received email correspondence from the Applicant, in particular emails dated 29th May 2012 and 11th June 2012, which led him to believe that he was being charged in respect of the metal window shutters and, in the absence of this correspondence, he may well have paid the outstanding service charge without the need to issue proceedings.
14. It is in the context of this background that the Applicant has consented to the making of an order under section 20C of the Landlord and Tenant Act 1985, so that none of the landlord's costs of the Tribunal proceedings may be passed to the Respondent through any service charge.

The payability and/or reasonableness of estimated service charges for 2011/12

The Tribunal's decision

15. The Tribunal determines that the amount payable in respect of estimated service charges for the year 2011/12 at the time of the issue of proceedings was £550.74 and that this sum has now been paid in full.

Reasons for the Tribunal's decision

16. The Respondent challenged the payability and/or reasonableness of estimated service charges for 2011/12 relating to "Care and Upkeep" and, in particular, he stated that the roofs had not been cleaned; that the windows had not been cleaned externally; that there had been no planting in the flower beds; and that the Applicant had not washed the internal ceilings and walls.
17. Mr Williams, an Area Cleaning Manager, gave evidence on behalf of the Applicant. He accepted that the Applicant had not cleaned any roofs in the relevant area, explaining that the roofs were over 2 metres high and only roofs which are less than 2 metres high are cleaned by the Respondent's internal

cleaning staff. He also accepted that the windows had not been cleaned externally and that there had been no planting in the flower beds. However, he also gave evidence that the Respondent has not been charged for any such work.

18. Mr Williams did, however, state that the Respondent has been charged for the washing of the internal communal walls and ceilings of the block twice a year. The Respondent gave evidence that this work was not in fact carried out. On being shown a photograph of an internal ceiling which was taken by the Respondent, Mr Williams accepted that this work may not have been carried out and pointed out that washing could be detrimental due to the condition of the ceiling.
19. The Tribunal finds on that, in the service charge year 2011/12, the relevant roofs were not cleaned; the windows were not cleaned externally; and that there was no planting in the flower beds but that the Respondent has not been charged for any such work.
20. The Tribunal also finds that the Applicant did not wash the internal ceilings and walls of the block and that the actual and estimated service charges include a charge for this work which has not been specifically itemised by the Applicant. The Tribunal considers that it is necessary and proportionate to adopt a broad and pragmatic approach to the assessment of the amount by which the Respondent has been overcharged, having regard to the limited amount of information available and the relatively low value of this aspect of the application.
21. Applying its expert knowledge and experience, the Tribunal finds that the likely cost of cleaning the internal walls and ceilings of the block is in the region of £300 on each occasion. The charge applied by the Applicant was for carrying out this work twice a year so it is likely that the leaseholders have been overcharged in the region of £600 per year. The Respondent's share of this cost is $\frac{2}{266} \times £600$ which amounts to £4.51 for the year. The sum of £4.51 therefore falls to be deducted from the service charge payable by the Respondent in the service charge year 2011/12.
22. The actual service charge figures for this year are now available and the charge for the care and upkeep of the block in 2011/12 is £201.33. Deducting the sum of £4.51 from this figure leaves the sum of £196.82 which is still above the estimated service charge of provision of £193.22 for care and upkeep. Accordingly, the Tribunal finds that the estimated service charge for the year 2011/12 was reasonable (but that notes a deduction of £4.51 should be made from the actual service charge for the year 2011/12).

The payability and/or reasonableness of estimated service charges for 2012/13

The Tribunal's decision

23. The Tribunal determines that the amount payable in respect of estimated service charge for the year 2012/13 at the time of the issue of proceedings was £309.23 and that this sum has now been paid in full. The Tribunal notes that the Respondent is entitled to a refund in the sum of £4.51 from the Applicant in respect of the estimated service charge for this year.

Reasons for the Tribunal's decision

24. The Respondent challenged the payability and/or reasonableness of estimated service charges for 2012/13 relating to "Care and Upkeep" on the same grounds that he challenged the 2011/12 charge, namely, he stated that the roofs had not been cleaned; that the windows had not been cleaned externally; that there had been no planting in the flower beds; and that the Applicant had not washed the internal ceilings and walls. The parties' evidence on these issues in respect of both service charge years was the same.
25. The Tribunal finds on that in the service charge year 2012/13 the roofs were not cleaned; that the windows were not cleaned externally; and that there was no planting in the flower beds but that the Respondent has not been charged for any such work.
26. The Tribunal also finds that the Applicant did not wash the internal ceilings and walls of the block and that the estimated service charge includes a charge for this which has not been specifically itemised by the Applicant. The Tribunal considers that it is necessary and proportionate to adopt a broad and pragmatic approach to the assessment of the amount by which the Respondent has been overcharged and that it is appropriate to apply the same calculation that has been applied in respect of the year 2011/12.
27. The actual figures for the service charge for this year are not yet available and the Tribunal has no grounds for concluding that the service charge has been under estimated. The Tribunal therefore finds that the sum of £4.51 should be deducted from sum of £313.74 claimed by the Applicant in respect of estimated service charge for this year and that the balance of £309.23 was payable at the date of issue of the County Court proceedings. This sum has now been paid in full and the Tribunal notes that the Respondent is entitled to be reimbursed the sum of £4.51 in respect of the estimated service charge for this year.

Application under s.20C and refund of fees

28. At the hearing, the Applicant consented to the making of an order under section 20C of the 1985 and the Tribunal determines that it is just and equitable in the circumstances of this case for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

The next steps

29. The Tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Lambeth County Court.

Chairman: _____
Naomi Hawkes

Date: 24.6.13

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 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.