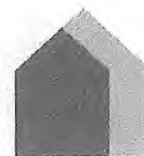


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**HM Courts
& Tribunals
Service**



**Residential
Property
TRIBUNAL SERVICE**

London Rent Assessment Panel

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT
ACT 1985**

Case Reference: LON/00BH/LSC/2012/0786

**Premises: Essex Mansions, Essex Road South, Leytonstone London
E11 1JP**

**Applicants : Mr Richard Nagle, Mrs Margaret Rosaleen
Nagle and Mr Gavin Richard Nagle**

Representative : Mr Gavin Nagle

**Respondents : (1) Mr d Pignatiello Flat 1
(2) Mr A Faruki Flat 2
(3) Mr R Adegbite Flat 11
(4) Mr K Gurriah Flat 12
(5) Mr I Lallmamode Flat 20**

Representatives : None

Date of Hearing : 6 March 2013

Date of Decision : 12 March 2013

Leasehold Valuation Mr John Hewitt Chairman

Tribunal : Mr Christopher Gowman MCIEH MCMI BSc

Decisions of the Tribunal

1. The Tribunal determines that:
 - 1.1 The 3rd Respondent, Mr R Adegbite (Flat 11) has agreed and admitted that sums of £482.10 were payable by him on 1 April and 1 October 2012 by way of payments on account of his service charge liability for the period 1 April 2012 to 31 March 2013.

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- 1.2 On 1 October 2012 the sum of £486.10 was payable by the 5th Respondent, Mr I Lallmamode (Flat 20) to the Applicant by way of a payment on account of his service charge liability for the period 1 April 2012 to 31 March 2013.
- 1.3 It requires each of the 3rd Respondent, the 4th Respondent, Mr K Gurriah (Flat 12) and the 5th Respondent shall by 5pm Monday 31 March 2013 pay to the Applicant the sum of £83.34 being a reimbursement of fees of £250 paid by the Applicants to the tribunal in connection with these proceedings.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

The Application

2. On 23 November 2012 the Panel Office received an application from the Applicants pursuant to section 27A of the Act seeking a determination that certain sums of money were payable by the Respondents to the Applicants by way of payments on account of services charges for the period 1 April 2012 to 31 March 2013.
3. By the time of the oral pre-trial review some of the Respondents had made payments in whole or in part of their liability and application proceeded against the Respondents as noted in the directions [30].
4. By the time of the commencement of the hearing some of the Respondents had made payments in whole or in part so that the hearing was to proceed in respect of the following:

3rd Respondent, Mr Adegbite (Flat 11) £486.10 claimed due on 1 April and 1 October 2012;

4th Respondent, Mr Gurriah (Flat 12) £459.01 claimed due on 1 October 2012; and

5th Respondent, Mr Lallmamode (Flat 20) £486.10 claimed due on 1 October 2012
5. At the hearing the Applicants were represented by Mr Gavin Nagle. He told us that terms of settlement had been agreed with the 4th Respondent, Mr Gurriah and a determination of the application as against him in respect of service charges was not now required.
6. Neither the 3rd Respondent nor the 5th Respondent had arrived for the hearing by 10:00. Time was allowed in case they had been detained on their way to the hearing. Neither of them had arrived by 10:10 and the hearing commenced in their absence. Just after the start of the hearing our case officer handed to us an email from the 3rd Respondent timed as received at 10:01. The email stated:

"I just would like to confirm I agree to pay these service charges, as my lender has agreed to pay them.

*Yours sincerely
remi adegbite [sic]"*

We find the effect of this email is that Mr Adegbite has now agreed or admitted that the two sums were due and payable by him as demanded within the meaning of subsection 27A(4)(a) of the Act so that the application as against him should not proceed further because we have no jurisdiction in relation to it. We have therefore simply recorded his agreement and admission for the record for the purposes of both section 27A of the Act and section 81 Housing Act 1996 in so far as that may be necessary.

7. Accordingly the hearing proceeded as regards the 5th Respondent, Mr Lallmamode only in respect of service charges and as regards the 3rd, 4th and 5th Respondents in respect of the application for reimbursement of fees.

The lease

8. As regards Flat 20, the lease is at [95]. It is dated 30 December 1978. It grants a term of 139 years from 29 September 1937 at a ground rent starting at £25 per year and rising to £75 per year during the term. The ground rent is payable by two equal payments in advance on 25 March and 29 September in each year.
9. By sub clause 2(2)(a) the tenant covenants to pay by way of further rent a service charge equal to 3.41% of certain expenses incurred or to be incurred by the landlord and as set out in some detail. The regime is that the landlord's financial year is the period 1 April to 31 March following. At the end of each year the amount of the actual service charge payable is ascertained and certified by the landlord's auditors. By sub clause 2(2)(b)(iv) [99] the tenant covenants with the landlord:

"The Lessee shall with every half yearly payment of rent reserved hereunder pay to the Lessor such sum as the Lessor or its Managing Agents may determine in advance and on account of the service charge"

The Budget

10. The principal issue for the hearing was the reasonableness (or otherwise) of the budget set for the year 1 April 2012 to 31 March 2013. A copy is at [110]. The total comes to £28,510.
11. Mr Nagle took us through the budget setting process which was carried out by the Applicants in conjunction with their managing agents. Mr Nagle explained that in large part the budget took into account historic experience with due allowance for anticipated increases due to inflation or otherwise and having regard to projects planned for the ensuing

year. Mr Nagle answered several questions put to him by members of the tribunal and we found his answers to be clear and satisfactory.

12. We were thus satisfied that the budget of £28,510 to be reasonable for the subject development which is a purpose built block of 31 flats. The share of the budget attributable to Flat 20 is £972.19. The Applicants determined that this should be paid by way of two equal half yearly payments of £486.10 each on 1 April and 1 October 2012. Although both dates are a few days later than those specified in the lease for the payment of ground rent we find that this is not a material factor. It is open to the landlord to ask for the instalments to be paid on dates later than those specified in the lease, although, of course, the landlord cannot ask for them to be paid on dates earlier than those specified.
13. Copies of the two demands sent to the 5th Respondent are at [129 and 129]. Mr Nagle explained to us the form content and circumstances in which the demands were sent out and we were satisfied that they were compliant demands. Mr Nagle said that the 5th Respondent had paid the first demand but not the second.
14. We were thus satisfied that the sum of £486.10 demanded of the 5th Respondent to be paid on 1 October 2012 was reasonable in amount and it is payable by him to the Applicants. We have therefore made an appropriate determination.

Reimbursement of Fees

15. At the conclusion of the hearing an application was made for the reimbursement of fees of £250 paid by the Applicants in connection with these proceedings. Mr Nagle submitted that the Applicants had endeavoured to collect in the sums demanded of the Respondents but had not been successful. They were thus forced to issue the application in order to obtain the relevant determinations. Mr Nagle submitted that the fees of £250 should be shared equally between the three Respondents – 3rd, 4th and 5th Respondents - who had not paid the sums demanded of them by the time the Applicants were obliged to pay the hearing fee.
16. Having considered the relevant submissions and correspondence we find that it is reasonable to require the 3rd, 4th and 5th Respondents to each reimburse the Applicants one third of the fees incurred because it is fair, just and equitable that they do so. We have therefore made an appropriate requirement.

Law

17. Relevant law we have taken into account when making our determination is set out in the Appendix below.

Chairman: John Hewitt
John Hewitt

Date: 12 March 2013

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.

Note: Reasonableness: The application of the test:

The application of the test was helpfully explained by HHJ Karen Walden-Smith in *Havering LBC v Macdonald* [2012] UKUT 154 LC (17 May 2012) and may be summarised as follows:

1. It is by virtue of the provisions of section 27A of the Landlord and Tenant Act 1987 (inserted by the Commonhold and Leasehold Reform Act 2002) that an application may be made to the LVT for a determination whether a service charge is payable and, if it is, as to the amount which is payable.
2. As is consistent with other decisions as to what is meant by "reasonableness", in determining the reasonableness of a service charge the LVT has to take into account all relevant circumstances as they exist at the date of the hearing in a broad, common sense way giving weight as the LVT thinks right to the various factors in the situation in order to determine whether a charge is reasonable. The test is "whether the service charge that was made was a reasonable one; not whether there were other possible ways of charging that might have been thought better or more reasonable. There may be several different ways of dealing with a particular problem or matter. All of them may be perfectly reasonable. Each may have its own advantages and disadvantages. Some people may favour one set of advantages and disadvantages, others another. The LVT may have its own view. If the choice had been left to the LVT it might not have chosen what the management company chose but that does not necessarily make what the management company chose unreasonable" per His Honour Judge Mole QC in *Regent Management v Jones* [2010] UKUT 369 (LC).
3. Once a tenant establishes a prima facie case by identifying the item of expenditure complained of and the general nature (but not the evidence) of the case it will be for the landlord to establish the reasonableness of the charge. There is no presumption for or against the reasonableness of the standard or of the costs as regards service charges and the decision will be made on all the evidence made available: see *Yorkbrook Investments Ltd v Batten* (1986) 19 HLR 25 (as applied in *Schilling v Canary Riverside Development PTD Limited* LRX/26/2005 and *Regent Management Limited* (supra).

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.

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).