

**LEASEHOLD VALUATION TRIBUNAL****LONDON RENT ASSESSMENT PANEL****DECISION ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD  
AND TENANT ACT 1985 (AS AMENDED)**

Property: 300 Cable Street, London E1 0AE

Applicant: London Borough of Tower Hamlets

Respondent: Mr Kabir Mahmud

Application Date: Transferred from Bow County Court by Order dated 13<sup>th</sup>  
November 2006

Date of Oral Pre-  
Trial Review: 13<sup>th</sup> December 2006

Hearing Date: 12<sup>th</sup> March 2007

Representatives: Miss M Pari (legal officer for the Applicant)  
Miss B Onasanya (paralegal officer for the Applicant)  
Mr H Mahmud (the Respondent, representing himself)

**Members of Tribunal**

Mr P Korn (chairman)  
Mrs J Davies  
Ms S Wilby

**INTRODUCTION**

1. This is an application under Section 27A of the Landlord and Tenant Act 1985 (as amended) (the "1985 Act") for a determination of liability to pay service charges.
2. The application arises out of a Claim for recovery of service charge and interest dated 29<sup>th</sup> June 2006 (Claim Number 6EC00285) made by the Applicant to Shoreditch County Court. By an Order dated 13<sup>th</sup> November

2006, the case was transferred by Bow County Court to the Leasehold Valuation Tribunal (having previously transferred from Shoreditch County Court) to determine the reasonableness of the service charge raised.

3. A Pre-Trial Review at the Leasehold Valuation Tribunal took place on 13<sup>th</sup> December 2006.

## **BACKGROUND**

4. The Property is a two bedroom flat. The Respondent occupies the Property by virtue of a Lease dated 26<sup>th</sup> September 1988 and made between the Applicant (1) and JJ Jeffery, E Jeffery and CM Jeffery (2). The Lease was transferred to the Respondent and the transfer was registered at the Land Registry on 15<sup>th</sup> April 2003.
5. The amount being claimed by the Applicant as unpaid service charge is £1,208.34. This represents the total sum invoiced to the Respondent by way of estimated service charge for the service charge year 2005/2006.
6. The Applicant wrote to the Respondent's lender (NatWest) on 3<sup>rd</sup> April 2005 concerning the amount being claimed, and there was further correspondence with NatWest culminating in NatWest paying to the Applicant the sum of £1,208.34 plus interest of £94.24. The Applicant acknowledged payment but also requested payment of a further £200 in respect of solicitor's and court fees before being prepared to inform the court that the case was settled.

## **THE SPECIFIC ISSUES RAISED ON BEHALF OF THE APPLICANT**

7. Miss Pari for the Applicant argued that clause 5(c) of the Lease obliges the Respondent to pay to the Applicant in every financial year a sum on account of the service charge attributable to the Property and that clause 5(d) obliges the Respondent to make a balancing payment whenever the actual cost of services in respect of a financial year (once calculated) exceeds the estimated amount previously charged. Miss Pari also referred to clause 5(f) as entitling the Applicant to recover the Heating Charge on account and clause 5(h) as entitling the Applicant to recover the cost of improvements. Miss Pari also drew the Tribunal's attention to clause 6(b) as containing the Applicant's repairing etc obligations in respect of which service charge is payable.
8. Miss Pari then referred to the Particulars of Claim dated 29<sup>th</sup> June 2006 as submitted to the County Court. A service charge certificate was sent to the Respondent on 24<sup>th</sup> June 2006 showing that £1,208.34 was payable by way of estimated service charge for the year to 31<sup>st</sup> March 2006 and breaking this sum down into individual items. Under the Lease the estimated service charge was payable quarterly in advance, but the Respondent had failed to pay

any portion of the sum of £1,208.34 demanded. The Applicant requested payment of this sum by letters dated 16<sup>th</sup> March 2006 and 19<sup>th</sup> April 2006.

9. When asked why the service charge certificate did not contain more detail as to what the total estimated expenditure was for the estate and what percentage was payable by the Respondent, Miss Pari said that the estimated service charge for the year 2005/2006 was simply the same as the actual service charge for the year 2004/2005 and the information was therefore available from the previous year's service charge certificate.
10. Miss Pari referred to Miss Onasanya's letter to the Respondent dated 4<sup>th</sup> September 2006, which stated that the Applicant had no record of having received the Respondent's letter of 12<sup>th</sup> October 2005 taking issue with the level of service charge in respect of a number of properties, including the Property the subject of this application.
11. Miss Pari acknowledged that the letter of 12<sup>th</sup> October 2005 was in fact received after all, but she referred the Tribunal to the letter from the Applicant's Dispute Resolution Administrator addressed jointly to the Respondent and a Dr R Begum which was wrongly dated 24<sup>th</sup> August 2005 (apparently sent on 24<sup>th</sup> October 2005). This was sent in response to the Respondent's letter of 12<sup>th</sup> October 2005 (or possibly in response to a form sent with that letter – this point was not entirely clear), and the letter advised the Respondent that under the Applicant's internal complaints procedure an individual form needed to be filled out for each property in order for the complaint to be investigated. Miss Pari said that no response to that letter dated (incorrectly) 24<sup>th</sup> August 2005 was received and therefore the complaints procedure was not activated.

#### **RESPONSE BY THE RESPONDENT**

12. The Respondent contended that he did submit an individual form in respect of the Property in response to the letter dated (incorrectly) 24<sup>th</sup> August 2005 but had not retained a copy and therefore did not have any proof. He suggested that a possible proof was receipt of a response on one of the other properties complained about (77 Burley House), the argument being that if he received a response it must be because the Applicant received an individual form in respect of that property and if it received that form then it is likely that it received a form for the Property the subject of this application as they were sent in together.
13. The Respondent questioned why certain items were in the service charge at all. For example, he was not aware of there having been any need for TV aerial maintenance during 2005/2006 and yet there was a charge for it. He also queried other items, including the one relating to fuel charges.

14. The Respondent referred to his letter to the Tribunal dated 21<sup>st</sup> January 2007 in which he set out against each disputed item what he believed would be a reasonable alternative charge. His evidence was copy print-outs showing how much he was being charged on three other properties. The Respondent informed the Tribunal that he had calculated the alternative proposed charges by taking the average of the amount being charged on these other properties.
15. The Respondent said that he had not any information from the Applicant to justify the amount being charged, although he confirmed that after the letter of 12<sup>th</sup> October 2005 his next letter of complaint to the Applicant was not until 13<sup>th</sup> September 2006. He also said that the Applicant should have contacted him first before writing to his lender (NatWest) to request payment of the outstanding service charge amounts.

#### **RESPONSE ON BEHALF OF APPLICANT**

16. In relation to the Respondent's comparison between the service charges for the Property and the service charges payable on other properties, Miss Pari for the Applicant said that there could be any number of reasons why the costs were higher for this Property. The layout could be different, for example.
17. As regards the response apparently received by the Respondent to his complaint in relation to 77 Burley House, Miss Pari said that this did not prove that his complaint about this Property had been received, and in any event it could well be that a response was received in relation to 77 Burley House because the letter of 12<sup>th</sup> October 2005 raised a specific issue in relation to that property.
18. As regards the letter to NatWest, Miss Pari said that this was a last resort after the Applicant had received no payment from the Respondent (despite sending requests for payment in writing and specifically informing the Respondent that it would be contacting NatWest prior to commencing legal proceedings). The Applicant also commented that it was customary to contact the lender in these circumstances to give the lender an opportunity to protect its security.
19. Specifically as regards the increase in fuel charges from the previous year, Miss Pari commented that it was common knowledge that fuel prices had increased recently. She also noted that the estimated service charge in dispute was by its very nature an estimate, and of the individual items in the actual service charge some were higher and some were lower than the estimate. Specifically as regards the Respondent's complaint about the cost of TV Aerials Maintenance being included in the estimated service charge, the Applicant agreed that no TV aerial maintenance was carried out in the service charge year 2005/2006 which was why there was no charge for TV aerial maintenance in the actual service charge. (A copy of the statement of actual expenditure was provided at the hearing.)

20. On the question of provision of information, Miss Pari said that it was extremely time-consuming and impractical for the Applicant to provide all of its tenants with copies of all invoices as a matter of course. The Applicant's standard procedure was to send out information packs with the actual (as opposed to the estimated) service charge certificates, giving the tenants information as to what to do and who to contact if they have any queries in relation to any service charge items.
21. In response to a question from the Tribunal, Miss Pari said that the Applicant did periodically go out to tender in respect of specific maintenance contracts, but she was unable to provide any evidence of the Applicant having gone out to tender on any particular items or contracts, nor was she able to offer any specific evidence as to the reasonableness of the individual service charge items. Miss Pari did however make the point that the Respondent had not provided any evidence of any of the works having been sub-standard.

#### **BASIS OF CALCULATION OF ESTIMATED SERVICE CHARGE**

22. The Tribunal asked the Applicant to explain the relationship between the estimated service charge for 2005/2006 and the actual service charge for 2004/2005. The Applicant had stated earlier that the estimated service charge was based on the previous year's actual service charge, but a brief examination of the figures revealed a significant discrepancy. The actual service charge for 2004/2005 was £1,061.56, whereas the estimated service charge for 2005/2006 is £1,208.34.
23. Miss Pari and Miss Onasanya for the Applicant were unable to explain the discrepancy and it was agreed that there should be a brief adjournment. After the adjournment the Applicant produced (with the Respondent's consent) copies of a fax that had been sent through by someone at the Applicant's office purporting to explain and justify the discrepancy. However, this obscured rather than clarified the position, as some of it was illegible and in any event Miss Pari and Miss Onasanya had difficulty in linking it to the difference in figures. They suggested that the discrepancy was partly linked to inflation and partly linked to some costs being fixed and others being variable but acknowledged that this analysis did not explain the actual difference between the figures.

#### **THE LEASE**

24. The Respondent was invited by the Tribunal to address the Tribunal on the wording of the Lease, but he confirmed that he accepted that the Lease allowed the Applicant to recover each of the separate heads of service charge and therefore was not disputing the service charge on the basis of the wording of the Lease.

## **NO INSPECTION**

25. The members of the Tribunal did not inspect the Property. Neither party requested an inspection, and the Tribunal's view was that inspection was not necessary in order for it to make a determination in the circumstances of this particular case.

## **THE LAW**

26. Section 19(1) of the 1985 Act provides:

“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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard

and the amount shall be limited accordingly.”

27. Section 19(2) of the 1985 Act provides:

“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.”

28. “Relevant costs” are defined in Section 18(2) of the 1985 Act as “the costs or estimated costs incurred or to be incurred by or on behalf of the landlord...in connection with the matters for which the service charge is payable”.

“Service charge” is defined in Section 18(1) of the 1985 Act as “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 cost of management, and (b) the whole or part of which varies or may vary according to the relevant costs”.

29. Section 27A of the 1985 Act gives a leasehold valuation tribunal jurisdiction to determine (on an application made to it) “whether a service charge is payable and, if it is, as to...the amount which is payable...”.

## **APPLICATION OF LAW TO FACTS**

30. The Applicant argued and the Respondent accepted that the reasonable cost of the relevant service charge items was recoverable as a matter of construction of the wording of the Lease itself, and the Tribunal accepts that the provisions

quoted by the Applicant together with the list of items set out in the Eighth to Tenth Schedules to the Lease are sufficiently wide to entitle the landlord thereunder to charge for the heads of expenditure which are the subject of this application.

31. The next point to consider is whether the disputed heads of expenditure fall within Section 18 of the 1985 Act, such that they fall to be limited under Section 19 of the 1985 Act if not reasonably incurred and/or if incurred in respect of services or works which are not of a reasonable standard. The Tribunal considers on a construction of the wording of the Lease that the service charge is variable and that therefore the disputed items fall within Section 18.
32. The Tribunal also considers that none of the exceptions set out in Section 27A of the 1985 Act apply and that it therefore has jurisdiction to make a determination in respect of the disputed service charge.
33. As the disputed amount is an estimated service charge, it is "a service charge...payable before the relevant costs are incurred" within Section 19(2) of the 1985 Act (quoted above). As such, "no greater amount than is reasonable is so payable...".
34. As a general starting point, the Tribunal considers that basing the estimated service charge on the previous year's actual service charge (as the Applicant initially claimed was the case) is reasonable in the absence of any specific reason why it would be unreasonable due to particular circumstances (for example, a large and highly unusual item of expenditure in the previous year). However, as stated above, there is a discrepancy between the actual service charge for 2004/2005 and the estimated service charge for 2005/2006. The Applicant was unable satisfactorily to explain the reason for the discrepancy and therefore on the evidence before it the Tribunal is of the view that the increase is not reasonable.
35. The next question to determine is whether the estimated service charge for 2005/2006 would be reasonable if it were equal to the actual service charge for 2004/2005. The Respondent's main evidence to counter the proposition that such an amount would be reasonable was his evidence of service charges on other properties. However, neither the Applicant nor the Tribunal had seen the other properties or been provided with sufficient detail to be able to judge whether the service charge costs for each of these properties ought to be similar, and as the Applicant pointed out there were various reasons why the service charge on each property might justifiably be different.
36. The Respondent does not appear to have challenged the actual service charge for 2004/2005 at any point, but instead later chose to challenge the estimated service charge for the following year. He objected in October 2005, but is

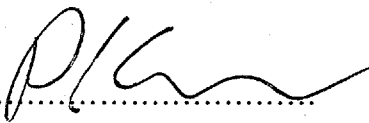
unable to demonstrate to the Tribunal's satisfaction that he followed the correct procedure to activate the Applicant's complaints procedure or that he was unaware of that procedure. The Respondent then did not write to the Applicant to pursue his complaint further until September 2006. In the meantime, he appears simply to have ignored the Applicant's letters requesting payment and failed to respond when informed by the Applicant that it intended to commence legal proceedings and to contact the Respondent's lender.

37. It should be noted that the Applicant did not offer any evidence to demonstrate that any of the service charge costs were reasonably incurred, and it should have realised that it would be expected by the Tribunal to do so. However, in the absence of any compelling evidence justifying the Respondent's contention that the estimated service charge was unreasonable and in the absence of evidence of the Respondent requesting information in a manner which could reasonably be expected to elicit a response, and the Applicant then unreasonably failing to respond, the Tribunal is forced to rely on the presumption that the actual service charge for 2004/2005 is a reasonable basis for determining the estimated service charge for 2005/2006.

#### **DETERMINATION**

38. The Tribunal determines that the estimated service charge for the service charge year 2005/2006 of £1,208.34 was not reasonable and that a reasonable amount would be an amount equal to the actual service charge for the service charge year 2004/2005, namely £1,061.56.
39. Miss Pari stated that the Applicant would not be seeking to recover the costs incurred by it in connection with the proceedings before this Tribunal, and therefore it is unnecessary for the Tribunal to determine whether an order should be made under Section 20C of the 1985 Act.
40. Miss Pari also stated that the Applicant did not wish to apply under regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for reimbursement by the Respondent of the fees paid by the Applicant in connection with these proceedings and therefore it is unnecessary for the Tribunal to make a determination on this point.

CHAIRMAN.....  
Mr P Korn



Date: 19<sup>th</sup> March 2007