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Residential  
Property  
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**LEASEHOLD VALUATION TRIBUNAL for the**  
**LONDON RENT ASSESSMENT PANEL**  
**LANDLORD AND TENANT ACT 1985**

**LON/00BG/LSC/2010/0552**

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**Premises:** 12 Nova Court West  
Yabsley Street  
London E14 9SA

**Applicants:** Mrs C Hall  
Mr A Hall

**Respondent:** Swan Housing Association

**Represented by:** Mr R Pearce  
Ms J King

**Tribunal:** Mr NK Nicol  
Mr F Coffey FRICS  
Mr P Clabburn

**Date of Hearing:** 25/11/10

**Date of Decision:** 25/11/10

## Landlord and Tenant Act 1985 s.20B

8. The Applicants' application is for the Tribunal to determine the payability of certain service charges in accordance with s.27A of the Landlord and Tenant Act 1985. The same Act also contains the following relevant provisions:-

18. (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.

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.

9. The Respondent pays estimated and actual service charges demanded by Hallmark on behalf of the freeholder. They pass on these charges to their tenants when they become liable to pay the service charge demands. Sometimes this process will result in a charge to the Applicants being in respect of a liability incurred by the freeholder more than 18 months before the resulting service charge is demanded from them. The Applicants understood this to fall foul of s.20B, in particular because the Respondent has not served any notice in accordance with s.20B(2).

10. However, the Tribunal's understanding of s.20B(1) is that the relevant costs for the Respondent are not the liabilities incurred by the freeholder but their own liabilities. For the Respondent, the 18-month time limit runs from when their liability arises with the service of the service charge demand from their landlord, the freeholder. The definition of "relevant costs" in s.18(2) does refer to a superior landlord but that is simply to demonstrate that the reasonableness of such charges is open to challenge. If the Tribunal were to adopt the Applicants'

argument that the 18-month time limit applies from whenever the original liability is incurred, the Respondent could find themselves in a position where they are unable to pass on a charge through no fault of their own.

11. On the basis of the Tribunal's understanding of s.20B, the Applicants did not allege that there were any charges which may not be payable by reason of s.20B which had not already been resolved, other than the aforementioned communal electricity charge. The Tribunal has already determined that that is not payable and so there is no need to consider how s.20B impacts on it as well.

### **Reimbursement of fees**

12. The Applicant incurred an application fee of £70 and a hearing fee of £150. Under reg.9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003 the Tribunal may order the Respondent to reimburse these fees to the Applicant.
13. Mr Pearce conceded that it would be appropriate for the Respondent to pay half of the fees but the Applicants applied for the full amount to be reimbursed. They pointed to the extensive correspondence in which they had sought information from the Respondent but received no or no adequate reply. On at least one occasion, the Respondent had even closed their file. Mr Pearce suggested that this was not relevant because the Applicants were referring to their complaints system whereas this dispute fell under a separate service charge dispute procedure.
14. The Tribunal is not satisfied that the Respondent responded appropriately or promptly to the Applicants' queries. The distinction between two different kinds of dispute would seem to be as fine as it is potentially misleading and pointless and does not seem to answer the Applicants' allegations.
15. In any event, the Applicants have succeeded substantially on their application and the Tribunal is satisfied that it would be appropriate to order the Respondent to reimburse them the full amount of £220.

## Conclusion

16. The Applicants limited themselves to the above issues because they understood all other matters to have been agreed with the Respondent. If it turns out to be the case they have misunderstood their position, and that they acted reasonably, the Tribunal would in all likelihood allow them to revisit this application. The Tribunal hopes and expects that this would not be necessary. Subject to that, the Tribunal has, in summary, reached the following conclusions on the matters put in front of it:-

- (a) No part of the communal electricity charge of £12,681.76 is payable.
- (b) It is recorded that the Respondent now intends to reimburse the Applicants the sum of £140.92 in relation to "communal cleaning/concierge".
- (c) There are no charges which remain in dispute which are relevant to the application of s.20B of the Landlord and Tenant Act 1985.
- (d) The Respondent shall reimburse the Applicants their Tribunal fees totalling £220.

Chairman.....

*N. K. Nicol*

Date 25<sup>th</sup> November 2010