

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

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

**LANDLORD AND TENANT ACT 1985 SECTION 27A**

**LON/00AH/LSC/2011/0363**

**Premises** Flat 8, 114 Portland Road, London SE25 4 PJ

**Applicant:** Mr John Hedley

**Respondent:** Starline Marketing Limited

**Date of hearing:** 1 September 2011

**Tribunal:** Ms M Daley LLB (Hons)  
Mrs G Davies FRICS  
Mr O Miller BSc

**Date of decision:** 11 November 2011

## 1. Background

- (a) The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 of the reasonableness and liability to pay service charges for the year ending March 2011 and 2012.
- (b) A directions hearing was held on 12 July 2011, which was attended by the applicant, The Respondent did not appear and was not represented. The directions required the Respondent to (a) provide copies of the service charge budget for the year ending 31 March 2011 (b) provide copies of all receipts relating to the expenditure incurred and paid in 2011(c) provide certified accounts of the year ending 31 March 2011(d) and a copy of the service charge budget for the year ending 31 March 2012.
- (c) On 28 July 2011 the Tribunal made an order in accordance with Regulation 6 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 to join the following leaseholders to the application – (i)Mr Philip R Nixon flat 9, 114 Portland SE25 4PJ (ii) Ms Laura Parfitt and Ms Sophie Stone Flat 4 114 Portland SE25 4PJ.
- (d) The Respondent did not comply with all of the directions, in that no service charge accounts were provided although a letter was sent to the Tribunal dated 5 July 2011, setting out the Respondent’s position. The Respondent did not appear and was not represented at the hearing.

## 3. The Law

Section 18(1) of the Landlord and Tenant Act 1985 (“the Act”) provides that, for the purposes of the relevant parts of the 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.

Section 19(1) provides that 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 payable shall be limited accordingly.

Section 19(2) of the Act provides that, 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) of the Act provides that that 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 payable.

[Section 27A(3) of the Act provides that an application may 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.]

## The Inspection

2. On the afternoon of the hearing the Tribunal inspected the premises; the Premises are a converted 1930's Cinema which is situated on the corner of two busy roads the entrance of the property is opposite a bus stop. The premises comprise 15 flats, situated on three floors. There is a small frontage part of which has mature planters; part of the frontage has been fenced off to provide a small patio garden for flat 4.
3. The Tribunal noted that the premises were clean and tidy although four lights were not working at the premises.

## The Hearing

4. At the hearing the Applicant Mr John Hedley attended the hearing and represented himself, and the other applicants (the other applicants did not attend). The Respondent did not appear and was not represented.

The service charge amounts for 2011 and the budget estimate for 2012 were as follows:-

| <b>Service charge headings</b>           | <b>Total Charge 2010/11</b> | <b>Total Charge 2011/12</b> |
|--|-----------------------------|-----------------------------|
| Insurance                                | £1700                       | £1890                       |
| Sinking Fund                             | £4107                       | £5250                       |
| Management Charge                        | £1119                       | £1424                       |
| Cleaning of common parts                 | £1119                       | £1424                       |
| Accountancy fees                         | ££336                       | £350                        |
| Electricity for common parts             | £298                        | £328                        |
| Garden Maintenance                       | £300                        | £300                        |
| Health and Safety & Fire Risk Assessment | £484                        | £500                        |
| Water Utilities                          | £3850                       | £4200                       |

5. The Applicant percentage service of the charges was originally 13%. The Applicant explained that he purchased flat 8 after the conversion of the property, which was completed in 2010. At that stage only 11 flats were built, subsequently three further flats had been built, although currently only eight of the flats appeared to be occupied. **There had been no alteration of the Applicant's percentage contribution.**
6. Mr Hedley stated that he had faced frustration in his efforts to sort out his service charges and various issues at the building as the Landlord and Management company had changed its name without notifying the leaseholders, additionally although demands had been served these demands did not comply with the statutory requirements as there was no summary of rights and obligations. Mr Hedley provided copies of the demands, which had been served by the managing agents Here Property Management dated 17 March 2011 and 4 March 2011. Neither document had a copy of the statutory notice attached. The Applicant also complained of the difficulties that the leaseholders had experienced in having their leaseholder/residents association recognised.
7. Mr Hedley was asked to set out his dispute concerning the other charges.  
*The cost of Insurance*
8. The Tribunal were referred a copy of a document which had been supplied by the Respondent. This document was in two parts a *key fact Property Owner Policy Summary*, together with a policy schedule that provided details of the insured and the property, there was a hand written date of 1.03.11, the information in the schedule was that the premises comprised 15 self- contained flats.
9. The Applicant made no objection to the amount claimed for insurance; his objection was to the fact that no information had been provided which confirmed the amount of the premium or indeed confirmed whether the premium had been paid. Given this he could not accept the amount claimed as reasonable without further evidence to support the sum claimed.

*The Sinking Fund*

10. The lease provided a clause 7 (4) b-: (that) *The Service Provision shall consist of a sum comprising- an appropriate amount as a reserve for or*

*towards such of the matters specified in Clause 7(5) as are likely to give rise to expenditure after such Account Year being matters which are likely to arise either only once during the then unexpired term of the lease or at intervals of more than one year including... such matters as the decoration of the exterior parts of the Building...*

11. The Tribunal noted that there was provision for a sinking fund in the lease. Mr Hedley accepted that the Respondent could ask for a contribution by way of service charges to the sinking fund. However his objection was that there was no information provided about how this sum was held, or to confirm the existence of a sinking fund account. Given this he did not have confidence that the managing agents/landlord would hold this fund and apply it for planned maintenance.
12. In addition the building was a new development, and Mr Hedley considered that the landlord had provided no justification for the sums claimed as appropriate provision for the sinking fund.

#### *Management Charges*

13. Clause 7 5 (d) provided for the payment of management fees in that management fees were properly a “relevant expenditure” within the meaning of the Service Provision. However Mr Hedley was concerned about the standard of management given the lack of information provided to the tenants concerning the changes to the management company referred to above, the failure of the managing agents to deal with issues concerning the electricity supply and also the fact that they had not provided copies of invoices requested or a summary of rights and obligations.
14. Mr Hedley also considered that there was a minimal amount of management of the premises accordingly he objected to the management charges claimed as he did not consider that there were reasonable, given the standard of the management.
15. The Tribunal asked about the services that were being provided at the building, and the fact that the managing agents had responsibilities for making payment for the cleaning of the communal areas and the communal electricity etc. Mr Hedley did not accept that the managing agents were undertaking these functions.

*Cleaning of common parts and Garden Maintenance*

16. The Tribunal were informed that there was a very small frontage at the property, which was mainly paved, and that this did not amount to a garden. There was also a section at the side of the building, which had been fenced off to provide a patio for one of the flats. (This was confirmed on inspect of the building). Mr Hedley did not accept that this area required maintenance or was being maintained by the landlord.
17. The access to the building was from a doorway, which was accessible from the street. Mr Hedley noted that until fairly recently the only parking space at the building had been occupied by a vehicle, which belonged to the landlord's builder.
18. The Tribunal wanted to know what the position was concerning the common parts. Mr Hedley stated that the residents at the building were fairly clean and tidy and it was his understanding that they cooperated in ensuring that the common parts were generally in good condition.
19. The Landlord provided invoices for the cost of cleaning. These were handwritten and were in the format of receipts from a receipts book. It was difficult to ascertain from the handwritten invoices, the identity of the individual or individuals who were carrying out the cleaning.
20. The Tribunal noted on inspection that the common parts appeared to be tidy and generally in good condition, and there was an absence of litter of the frontage of the building and no indication of unwanted mail.

*The cost of electricity-*

21. Mr Hedley had experienced major problems with obtaining details of the cost of electricity for his flat and also for the common parts. He stated that it had become apparent to him that the builder who had converted the property had obtained a supply from the grid in a manner that had not been authorised by any of the electricity providers. The effect of these was that although electricity was supplied to the building. The Electricity supplier did not have a NPNA number for the building and had not been able to give Mr Hedley, details so as to enable him to obtain an account. As a result Mr Hedley had not been able to provide this information to his tenant. Mr Hedley understood that this was the position for the whole

of the building accordingly the landlord could not verify the sums claimed for electricity for the common parts.

*Water Utilities*

22. Mr Hedley had received direct demands for the water utilities for the whole building. This was despite reassurances from the managing agents that this had been in error and that the landlord was responsible for payment of this charge, and Mr Hedley was responsible for a contribution toward the cost. Mr Hedley stated that he had not received anything from the landlord, which confirmed that they had arranged for the landlord to be billed for this cost rather than Mr Hedley and at the date had still received demands.

*Accountancy Fees and Health and Safety Reports*

23. Mr Hedley's objection to both of these charges was that there was no information to confirm that either of these services had been carried out. There were no accounts produced in accordance with the direction, and accordingly he did not accept that the cost claimed was reasonable and payable.

24. His objection to the safety reports was on the grounds that the premises were newly converted and redeveloped; given this, he did not understand why the landlord would not have carried out the necessary fire risk assessments and health and safety compliance prior to the leaseholders purchase of the building, additionally there was nothing to confirm that these reports had been carried out.

*The decision of the Tribunal*

25. The Tribunal find that the service charge demands did not comply with the **Service Charges (Summary of Rights and Obligations) (England) Regulations 2007**, accordingly the sums demanded are not payable until the Applicant serves a demand in the correct format which includes the summary of the tenants' rights and obligations.

26. The Tribunal have in anticipation that the Applicant will either before the determination or shortly afterwards serve a further demand, made



findings in respect of the reasonableness and payability of the charges claimed.

27. **The Insurance-:** The Tribunal find that the cost claimed for the insurance premium is reasonable and payable upon prove of the premium, the period of the insurance, and a copy of the policy being provided. **The Tribunal determine that the sum claimed is reasonable and payable. In the sum of £1700 and £1890 for 2011 and 2012.**
28. **Management Fee-:** The Tribunal noted that there were significant shortcomings with the management of the premises.
29. (1) There was a lack of invoices (ii) the invoices were not sufficiently detailed. (iii) There was no formal written management agreement or annual meetings with the leaseholders at which issues relating to accountability could be raised. **The Tribunal determine that the sum recoverable for management fees should be limited to £50 per property per annum.**
30. **The Accountancy fee-:** The Tribunal noted that no accounts were produced and there was no evidence of any accounts having been prepared; given this the Tribunal are not satisfied that the cost is reasonable and payable. **The Tribunal find that the cost of this item is not reasonable and payable,**
31. **Cleaning the Common Parts-:** The Tribunal having considered the invoices and the evidence, and based on our inspection of the building, in which we noted that the common parts were tidy and in good condition and there was cleaning equipment in the cupboard, **we find that the cost of cleaning the common parts is reasonable and payable. (Subject to a timely demand being served) In the total sums of £1119 and £1424 for the period in question.**
32. **The cost of Gardening –:** The Tribunal noted that there was very limited frontage at the building, and that although it was clean and tidy, and there were no signs of litter, given the limited nature of the garden it is reasonable for the cost of gardening to be included in the cost of cleaning. We accordingly find that no additional cost is payable for the cost of gardening.

33. **The Utility Bills-:** The Tribunal note that there are real problems with the utility bills which are beyond the scope of this Tribunal's jurisdiction. It is clear that the landlord is liable to pay for the cost of the utility bills, and that the leaseholders are liable to make a contribution. Given this the Tribunal consider that the leaseholders are liable for the cost of the water rates. Accordingly we find that on receipt of a demand and copies of the utility bill that the Applicants are liable to pay service charge contribution. The Respondent shall **within 21 days** provide copies of the bills.
34. In respect of the cost of electricity the Tribunal are very concerned about the system that exist at the premises and are concerned that once the position is regularised the leaseholders are likely to have to make a considerable contribution towards the cost of the electricity, accordingly we find that the cost of £298 and £324 as reasonable and payable on provision of a proper demand and upon receipt of copies of the electricity bills.
35. **The Tribunal determine that copies of the bills should be provided within 21 days.** The Applicant's should note that in the event of the Respondent being unable to provide bills. The sum claimed of £298 and £324 represents the total sum that the Tribunal find to be reasonable and payable for this period. The Respondent will not be able to claim any excess as a balancing charge.
36. **Health and Safety Reports-:** The Tribunal consider that it is reasonable for inspections to be carried out on a three yearly basis, and for provision to be made for inspections. No evidence has been received concerning the reports. The Tribunal have also had to use its knowledge and experience in the absence of any other evidence, concerning the cost of such reports. In our view this should not exceed £350 for each of the years in question.
37. However this sum is not payable until copies of the reports are provided. **In the event that the Landlord is unable to provide a copy of the report within 21 days, the Tribunal determine that the Applicants shall have no liability to pay service charges for the cost of these reports.**

38. **The Sinking Fund-** The Tribunal noted on inspection of the premises that given the nature of the building, there was real concern that the cost of external redecoration may in time be considerable, in the circumstances it is reasonable for a contingency fund to make provision for the cost of planned maintenance. Properly produced service charge accounts should set out how much is in this fund and provide information to confirm that the sum is held in a separate account.
39. **The Respondent shall within 21 days confirm the details of how much is in the account and provide information to confirm the existence of a separate account.** On proof of this, and upon service of a proper demand the sum shall be payable.

*The Application for cost and section 20C*

40. At the hearing Mr Hedley asked for the hearing fee to be reimbursed and for an application under section 20 C of the Landlord and Tenant Act 1985. The Tribunal have determined that as the Respondent did not comply with the Service Charge Regulations 2007 the charges are not payable until the Respondent has complied, given this it is not appropriate for the Respondent to be able to claim costs in relation to these proceedings, (we note that it would be entirely inappropriate given the Landlord's lack of participation). Accordingly we consider that it is just and equitable for a section 20C application to be granted.
41. We determine that the applicant shall also be entitled to recover the cost of the hearing and application fees in the total sum of £250.00.

CHAIRMAN...*Ms M W Daley*.....

DATE...11 November 2011