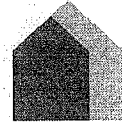


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LONDON RENT ASSESSMENT PANEL

**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 00AF/LSC/2012/0294

Premises: 4 Westbourne Apartments Birkbeck Road
Beckenham Kent BR3 4GY

Applicant(s): Gala Properties Limited

Representative: Acorn Estate Management Limited managing
agents

Respondent(s): Mr Andrew Stone

Representative:

**Leasehold Valuation
Tribunal:** Mr P Leighton LLB (Hons)
Mr N Martindale FRICS

Date of decision: 10th July 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £1514.63 is payable by the Respondent in respect of the service charges for the year 2011
- (2) The Tribunal determines that the sum of £870.68 is payable by the Respondent in respect of the solicitors costs and administration charges for the property at 4 Westbourne Apartments, Birkbeck Road Beckenham Kent
- (3) The Tribunal makes the determinations as set out under the various headings in this Decision
- (4) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985
- (5) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Bromley County Court.]

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges [and (where applicable) administration charges] payable by the Applicant in respect of the service charge years 2010 and 2011
2. Proceedings were originally issued in the Winchester County Court under claim no. IUD 19837. The claim was transferred to the Bromley County Court and then in turn transferred to this Tribunal, by order of District Judge Thomas on 30th April 2012.]
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant's representative and Respondent appeared at a pre trial review held on 25th May 2012 when directions were given that the matter proceed by way of a paper determination in the week commencing 9th July 2012. A Scott schedule and a written statement of case and supporting documents were submitted by the Applicant but nothing was received from the Respondent.

The background

5. The property which is the subject of this application is a purpose built 3 storey block of 6 flats with car parking and modest communal grounds situated in Birkbeck Road Beckenham.

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 will be referred to below, where appropriate.

The issues

8. At the pre trial review the parties and the tribunal identified the relevant issues for determination as follows:
 - (i) Whether the advance payment due on 22nd January 2010 was paid by the respondent as asserted by him
 - (ii) Whether the claimed arrears are payable to the freeholder rather than the management company Westbourne Apartments Management Limited
 - (iii) The reasonableness of the budgets which formed the on account demands for 2010 and 2011. The respondent alleged that historically some of the services had not been provided nor provided in full
 - (iv) The reasonableness of the disputed administration charges
9. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Issue 1

The Tribunal's decision

10. The tribunal determines that at the time when the demands were made the Respondent was in arrears as stated by the landlord. The Respondent's mortgagee paid the sum of £2018.30 in July 2011 which did not extinguish all arrears but reduced most of the arrears for the year 2010

Reasons for the Tribunal's decision

11. The Respondent purchased his flat in November 2006 and made monthly payments of his service charges up to April 2007. Since that date he has been continually in arrears and solicitors have been engaged to recover the service charges.

12. At the start of 2010 the respondent was almost £3000 in arrears. His lease requires him to make service charge payments in advance on 1 January and 1 July. All service charge demands were issued in the name of the management company to whom they were payable under clause 7.1 of the lease. As a result of ongoing arrears Acorn Estate Management on behalf of the freeholder appointed solicitor to proceed with recovery of service charge recovery for 2011, incorrectly showing an outstanding sum of £758.69 due for 2010. This arose through a misallocation of funds received from the mortgagee arising from previous proceedings in 2010.
13. No response was received from the Respondent and proceedings were commenced in Winchester county court on 26 July 2011. A defence was filed on 24 August 2011 by solicitors disputing that the sums were payable and requesting a transfer to the tribunal. The account produced by the applicants showed that when the proceedings were commenced the respondent was in arrears of service charges in the sum of £1514.63 to which were added solicitor's costs of £453.57 and £337.80 together with an arrears penalty of £60 making in total £870.57. The solicitor's charges related to the service of two notices under S.146 of the Law of Property Act 1925. The respondent's mortgagees paid the sum £2018.30 which covered a money judgment dated 23 December 2010 but not all associated costs of the S.146 notices. At the time that the second set of proceedings were commenced there were arrears on the claim form in the sum of £2271.32 plus £106 fixed solicitor's costs for the letter before action and office copies of the lease. The applicants acknowledge that the fixed costs figure should be £102 and not £106 so that the total should amount to £2373.32.
14. The burden of proving any payment rests upon the Respondent who has chosen to submit no evidence. In the circumstances the Tribunal is satisfied that the account put forward by the landlord is correct.

Issue 2

The Tribunal's decision

15. The tribunal determines that the claimed arrears are not payable to the freeholder under the terms of the lease but to the management company West Bourne Apartments (Beckenham) Ltd.

Reasons for the Tribunal's decision

16. The tribunal notes that clause 7.1 of the lease provides as follows: That the tenant is "...to pay the service charges to the Management Company in accordance with the provisions of the Second Schedule." It is clear from the second schedule that the obligations to provide the services fall to the management company although under clause 1(4) the provision of services facilities amenities improvements and other works to the estate are in the discretion of the management company or the landlord, but there is no

provision for the landlord to recover the service charges therefore the tribunal determines under S.27A of the 1985 Act that services are payable to the management company who can enforce them although not unless and until they are made a party to the proceedings

Issue 3

The Tribunal's decision

17. The tribunal determines that the budget that forms the basis of the on account payments demanded in January 2010 and 2011 are a reasonable assessment of the estimated expenditure.

Reasons for the Tribunal's decision

18. The applicants produced a Scott Schedule setting out the services provided and a detailed narrative in support. The respondent has chosen not to submit a statement of case or any analysis of the figures provided by the landlord and in the circumstances the tribunal determines that those sums are recoverable. The respondent alleges that in previous years certain services were not provided but has produced no evidential support or alternative suggestions as to the amounts recoverable.

Issue 4

The Tribunal's decision

19. The tribunal determines that the solicitor's costs of £453.37 and £337.80 in respect of the preparation and service of the S.146 notices are reasonable and recoverable and that the arrears penalty of £60 is not excessive.

Reasons for the Tribunal's decision

20. The respondent has raised no grounds for challenging the solicitor's costs. The tribunal has little information on which to proceed but in the experience of the tribunal the costs which are claimed are not excessive and the respondent has only himself to blame for not putting forward reasonable grounds for challenging those costs and being in persistent arrears almost from the commencement of his tenancy.

Application under s.20C and refund of fees

21. The tribunal has not seen any material which would justify the making of a Section 20C order in favour of the Respondent and accordingly does not do so.

The next steps

22. The Tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Bromley County Court, so that those matters can be finally determined

Chairman: _____
Peter Leighton



Date: 10th July 2012

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 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.

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.

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).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant

- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.

- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.