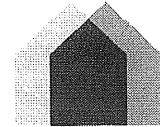


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**HM Courts
& Tribunals
Service**



**Residential
Property
TRIBUNAL SERVICE**

LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTIONS 27A OF THE LANDLORD AND TENANT ACT 1985 and
SECTION 20C OF THE LANDLORD AND TENANT ACT 1985**

**Case References
LON/00AS/LSC/2012/0612**

**Premises:
FLAT 12 DELL FARM
ROAD RUISLIP
MIDDLESEX HA4 7TX**

Applicant: JOHN JOSEPH BRENNAN

Respondent: DELL FARM MANAGEMENT COMPANY LTD

**Leasehold Valuation Mrs T Rabin
Tribunal: Mr N Martindale**

**Date of paper 17th December 2012
determination:**

Determination of the Tribunal

- (1) The legal, accountancy and other professional fees are not recoverable as service charges under the Lease
- (2) There is no corporation tax payable
- (3) The cost of window cleaning is not recoverable under the service charge
- (4) There is no provision for a sinking fund in the Lease
- (5) Any proceedings relating to monies claimed following the earlier Tribunal decisions must be pursued through the County Court.

The application

1. The Applicant issued an application to the Tribunal on 10th September 2012 seeking a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether certain items of service charges demanded in respect of the service charge years from 31st March 2009 to 2012 were reasonable and payable by the Applicant. The application relates to 12 Dell Farm Road Ruislip Middlesex HA4 7TX ("the Flat"). The Applicant is the long leaseholder of the Flat and the Respondent, a tenant owned company, is the freeholder of the Dell Farm Road ("the Property")
2. The issues before the Tribunal were whether:
 - (a) Certain items of expenditure such as legal and accountancy fees as listed in the application are recoverable under the terms' of the Lease
 - (b) Whether the Respondent is entitled to create a sinking fund
 - (c) Whether the costs of window cleaning for the flats is recoverable under the terms of the Lease
 - (d) Whether the Applicant has been refunded sums due following earlier proceedings
3. Although there were a large number of items to consider, the Applicant requested a paper hearing in the light of his health problems and the fact that there have been earlier proceedings.
4. The Tribunal were provided with a bundle of relevant documents which they carefully considered

5. The relevant legal provisions are set out in the Appendix to this decision.

Inspection

6. In view of the nature of the disputed items, the Tribunal did not consider that an inspection was necessary.

The Property

7. The Property comprises 24 flats in three 1960s purpose built blocks, 12 houses and communal gardens and garages.

The Evidence

8. The Applicant's evidence is set out in the application to the Tribunal and his response to the Respondent's comments on the application. This can be summarised as follows:

Legal, Accountancy and other professional fees

9. The Applicant is disputing that legal and accountancy fees are payable under the terms of the Lease. This is accepted by the Respondent in their response to the application. The Respondents state that, although the accountancy fees are included in the Respondents' accounts these are not demanded as part of the service charge items. The Respondent stated that they have opened a separate bank account in order to deal with funds that are not to cover the service charges. There was mention of £672 professional fees in service charge year 2011/12 but the Applicants have acknowledged that these fees are not recoverable under the terms of the Lease.
10. The Respondent maintains that the legal fees referred to relate to contributions of £750 by each of the long leaseholders (excluding the Applicant) as funds for the issue of modern leases to each of them. The Applicant has declined to enter into a new lease. The Applicant takes the view that this is not the case but that sinking fund assets have been transferred.

The Tribunal's decision

11. Both parties accept that the legal and accountancy fees are not recoverable under the terms of the Lease. The Respondents state that they make separate demands for accountancy fees and these funds are maintained in an account separate from the account from which service charges are paid. The Respondents have also stated that the legal fees have been paid by all the long leaseholders with the exception of the Applicant and that there is no charge to him.

12. The question of legal and accountancy fees was dealt with in the decision of the Tribunal dated 10th November 2009 and the Tribunal has no intention of revisiting this decision, especially as the Lease makes no provision for these costs. If the Applicant has any issues with the operation of the account with shareholders' funds, these must be challenged in accordance with the Companies Acts as the Tribunal has no jurisdiction in this matter.

Corporation Tax for each of the service charge years in dispute

13. The accounts for each of the service charge years in question refer to a small amount of corporation tax as being payable. The Respondent stated that the company is a non-profit making company and is therefore not liable for corporation tax. The Applicant at paragraph 27 on page 95 of the Bundle withdraws the claim in relation to corporation tax.

Window cleaning

14. The Applicant maintains that cleaning the windows is not an item that can be included in the service charges. The Applicant also said that there was no attempt to obtain a competitive quote.
15. The Respondent accepts that the Lease only refers to cleaning of the common parts but maintains that the provisions of Clause 3(7) which states "*....to defray such other costs as may be necessary to maintain the Buildings as good class residential flats*"

The Tribunal's decision

16. The Tribunal agrees that the Lease makes no provision for cleaning the windows. It is clear from the definition of "the demised premises" that the windows and window frames form part of the Flat and are demised to the lessee. The Respondents' suggestion that Clause 3(7) allows them to charge for window cleaning is unsupported by the evidence.

Sinking Fund

17. The Applicant maintains that the Lease does not make provision for a sinking fund and the Respondent accepts that this is the situation. They did point out that without some funds in reserve the Respondents would be unable to meet their day to day obligations. They pointed out that there were years in which there was a surplus at the end and other years where there was a deficit.

The Tribunal's decision

18. Whilst it is common ground between the parties that there is no provision for a sinking fund, it is in the Tribunal's view good practice for a sinking fund to be

established in order to make provision for major works and to ensure that there are funds available for urgent repairs.

Monies due to the Applicant following earlier LVT decisions.

19. The Applicant maintains that the refunds due to him following the Tribunal decisions in 2009 and 2010 had not been paid to him. The Respondents have provided details of monies they claim have been paid to the Applicant following these decisions

The Tribunal's decision

20. The Tribunal does not have jurisdiction in relation to monies determined as due to a party by the Tribunal. Any such claim must be pursued through the County Court

Conclusion

21. There is a long history of dispute between the Applicant and the Respondents and there have been two earlier Tribunal determinations. The Property has 24 flats and 12 houses but the Respondents are managing the Property without the benefit of professional support. As in many estates of the 1960s the lease terms are not commensurate with modern practices and the Respondents have tried to put in place modern leases that should provide a proper framework for management and in the Tribunal's view, the Respondents might consider appointing managing agents to manage the Property. It appears that, of the long leaseholders, 23 of them are agreeable to the proposal but the Applicant will not enter into such a lease. In the Tribunal's view a modern lease would have a beneficial effect on the value of the leases as no one wants to purchase a flat with an unworkable lease.
22. The Respondents state that they are making an application to the Tribunal under the Landlord and Tenant Act 1987 for the Tribunal to determine the terms of the new leases. The Tribunal would welcome such an application.
23. The Tribunal has noted the comments made by the chair of the Tribunal who made the decision on 14th September 2010 in which the hope that the Applicant's challenges would come to an end. The decision ended:

“ The Tribunal feels that it is time for the Applicant to realise that it is in the best interests of all the leaseholders to work together and it is hoped that he will use the considerable energy that he has put into these and the previous proceedings to working with, rather than against his fellow leaseholder
24. This Tribunal endorses those sentiments. It seems that the Respondents have made efforts to regularise the payments following the previous Tribunal decisions. Since the Respondents are a tenant owned company, it follows that any proper costs that are not recoverable under the terms of the Lease

are payable by the shareholders in the Respondents, being the freehold owner.

Penalty Costs

25. The Tribunal has the power to award up to £500 costs against a party to these proceedings if they feel that one or other has acted unreasonably or vexatiously. There has been no such behaviour on the part of either party and no order is made

Fees

26. The Respondents maintain that they have separated the payments due from shareholders and long leaseholders. No service charge accounts were included in the bundle by either party. In the light of its findings, the Tribunal considers it appropriate for 50% of the application fee to be reimbursed to the Applicant

Section 20C

27. In light of the Tribunal's findings, it would be appropriate for 50% of the costs of these proceedings to be regarded as relevant costs for the purposes of Section 20C of the Act and the Tribunal therefore makes an order under Section 20C for 50% of those costs.



Tamara Rabin – Chair

17th December 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.
- (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.