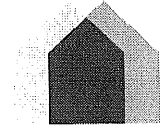




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**LONDON RENT ASSESSMENT PANEL**

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

**Case Reference:** LON 00AJ/LSC/2012/0680

**Premises:** Basement Flat 55 Mount Avenue Ealing W5 1PN

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**Applicant(s):** Messrs S and N Taylor

**Representative:** In Person

**Respondent(s):** Ms Sue Bradford

**Representative:** In Person

**Tribunal**  
**Mr P Leighton LLB**  
**Mr C Gowman**

**Date of Decision** 15<sup>th</sup> January 2013

### **Decisions of the Tribunal**

- (1) The Tribunal determines that the sum of £75 is payable by the Respondent for the year 2010/11 ]
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985
- (3) The Tribunal determines that the Applicant shall not recover any reimbursement of the Tribunal fees paid by the Applicant

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges [payable by the Respondent in respect of the service charge year 2010/11
2. Directions were given on 19<sup>th</sup> October 2012 and the case was allocated for a paper determination based on the papers submitted by each party
3. The relevant legal provisions are set out in the Appendix to this decision.

### **The background**

4. The property which is the subject of this application is a Victorian house divided into 10 flats. The respondent occupies the basement flat.
5. 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.]
6. 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 and will be referred to below, where appropriate.
7. There have been numerous previous proceedings in the tribunal and in the county court between these parties going back to 2005. In particular there have been findings by at least two tribunals indicating that the quality of management by the Applicant (Mr S Taylor) has been poor and that his attitude towards the leaseholders leaves something to be desired. The Applicant spends much of his time in Greece and apparently manages the property through a company of which he appears to have a controlling interest.

### **The issues**

8. In the original application the landlord claimed for a number of items of service charge. It was plain after the service of the Schedule that a number of items had either been paid or admitted and the only item for the Tribunal to resolve was the claim for a management fee in the sum of £3750 amounting to £375 per flat.
9. Having considered all of the documents provided, and the parties' submissions the Tribunal has made determinations on the various issues as follows.

### **Management Fee**

#### **The Tribunal's decision**

10. The Tribunal determines that the amount payable in respect of the management fee for 2010/11 is £ 75

#### **Reasons for the Tribunal's decision**

11. It was originally held in 2005 that Mr S Taylor was not entitled to recover a management fee but since then he has set up a limited company in which is the controlling director and shareholder and seeks to recover the amount paid to the company
12. A later Tribunal in 2010(Chair Mrs M Daley) held that the management fee was recoverable as a fee to the company but commented on the poor quality of management and limited the management fee to £75 per dwelling amountng to a total of £750
13. In the course of the decision the tribunal commented as follows::

*"56 The Tribunal noted that there were significant shortcomings with the management of the premises.*

*57 (1 there was a lack of invoices for smaller items in the invoices were not sufficiently detailed (2) there was a lack of consultation with the leaseholders and notification of when works were due to be carried out*

*(3) There was no formal written management agreement or annual meetings with the leaseholders which issues relating to accountability could be raised (4) on occasion it was necessary to contact Mr Taylor in Greece as by his evidence he resided in Greece for part of the year. This had resulted in the leaseholders having organised drain repairs themselves and we accept Mrs Bradford's evidence that on occasion leaseholders had cleaned the bin stalls.*

*58 the tribunal determines that the sum recoverable for management fees should be limited to a £75 per property*

14 There is no evidence before the tribunal to suggest that the quality of management has been improved all that additional services had been provided further in addition the amount claimed by the landlord is far in excess of the amount usually allowed by way of management fees even for professional managers, where the market rate is approximately £250 per unit.

15 in the circumstances the Tribunal can see no justification for increasing the management fee beyond the sum of £75 per unit as allowed by the Tribunal in 2010

### **Application under s.20C and refund of fees**

16 In the application the Applicants sought an order under this Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that they had paid in respect of the application/ hearing. Having considered the papers and taking into account the determinations above, the Tribunal does not order the Respondent to refund any fees paid by the Applicants. The bulk of the claim is admitted and in most cases paid. The remaining issue which is disputed namely the management fee has been determined largely in the Respondent's favour.

17 No application having been made by the Respondent in the proceedings the Tribunal makes no order under Section 20C to disallow the costs of the landlord

Chairman: \_\_\_\_\_  
Peter Leighton

Date: 15<sup>th</sup> January 2013



### **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, or
  - (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.