

LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER S.20C OF THE LANDLORD AND TENANT ACT
1985 & SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD
REFORM ACT 2002**

Case Reference: LON/00AL/LVA/2013/0001

Premises: 5 Mennie House, Royal Herbert Pavilions,
London SE18 4PR

Applicant(s): Ms Mary Spelman

Respondent(s): Royal Herbert Freehold Ltd.

**Leasehold Valuation
Tribunal:** Ms F Dickie, Chairman
Ms M Krisko, FRICS

Date of decision: 12 June 2013

Decisions of the Tribunal

- (1) The disputed administration charges are not payable.
- (2) The Respondent shall refund the Applicant's £50 tribunal application fee.
- (3) The Tribunal does makes an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. By an application received on 11 April 2013 the Applicant seeks a determination pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"). The Applicant challenges two administration charges totalling £150 which the Respondent's managing agent, Premier Management Partners, sought to recover.

2888

2. The tribunal issued directions on 15 April 2013 for the determination of this application on the papers unless an oral hearing was requested. No such request having been received, the tribunal has proceeded to decide the application on consideration of the papers alone.
3. Ms Berwin, on behalf of Premier, has submitted a statement of case in which she explains the charges as follows:

"The Application has two strands. Firstly, that one administration charge of £50 plus VAT was placed on the account in dealing with the large number of emails from Ms Spelman regarding her service charges and her lease, which is not covered by our terms of agreement. It was however a minimal fee and had it been based on actual time spent would have been considerably higher.

The Applicant also stated that an Administration fee of £100 including VAT had been placed on her account in respect of responding to her solicitor in detail regarding the same issue. This was not correct. Though we had written to her stating a fee would be placed on the account for the work involved in responding to the solicitor, the decision was taken not to charge her and no such amount was charged to her account or ever appeared on it."

4. In a letter dated 23 April 2013 to the Applicant, Ms Berwin agreed to waive the fee of £50 plus VAT "as a gesture of goodwill" and without admitting any liability. She also enclosed a statement showing that the fee of £100 plus VAT had not actually been levied upon her. The Applicant responded in a letter to the tribunal dated 25 April 2013 as follows:

"I would like the Tribunal to proceed to a determination on whether the charges were payable for each of the four grounds in the Application."

5. Her reasons, in summary, were that she wanted the tribunal to determine whether such administration charges are payable under the lease and at law. The exchange of communication in question related to the proper proportion of total service charge expenditure payable by the Applicant under her lease. The proportion is specified as 1/234, but Clause 8.05 allows the landlord to substitute this proportion for another in certain circumstances and if notified to the lessees. It is not a matter for the tribunal to determine this dispute within the present application. Either party may apply to the tribunal under s.27A of the Landlord and Tenant Act 1985 for a determination as to the percentage payable.
6. In respect of the administration charges that are the subject of this application, Ms Berwin has not relied on any clause in the lease permitting the recovery of an administration charge for dealing with

leaseholder enquiries. The tribunal can identify no such lease term. Accordingly, the administration charges for handling tenant enquiries are not payable.

7. An application fee of £50 has been paid and the landlord's concessions regarding the fees were not made until after the proceedings had been issued. The tribunal determines that the Respondent should refund the £50 application fee to the Applicant.
8. The Applicant having been successful in her application, the tribunal considers it appropriate to grant her further application for an order under s.20C of the Landlord and Tenant Act 1985 preventing the landlord from recovering any of the costs of these proceedings through the service charge.

Chairman:



Ms F Dickie, Chairman

Date:

12 June 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

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).