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**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 Reference: LON/00BB/LSC/2013/0082

GROUND FLOOR FLAT 70 TERRACE ROAD LONDON E13 0PB

**Applicants: DALKATOR LTD represented by Circle
Residential Management Ltd**

Respondents: MR SAAD & MRS PHYLLIS JOYCE ASOWAH

**Leasehold Valuation
Tribunal: Mrs T Rabin
Mr H Geddes**

**Date of paper
determination: 7th May 2013**

Determination of the Tribunal

- (1) The interim charge for 2012 is reasonable and payable by the Respondents
- (2) No penalty costs are awarded

The application

1. The Applicants issued an application to the Tribunal seeking a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether the amount of interim service charges payable for service charge year 2012 was reasonable and payable by the Respondents and when this should be paid. The application relates to the ground floor flat 70 Terrace Road London E13 0PD ("the Flat"). The Applicant is the freeholder of 70 Terrace Road aforesaid ("the Property") and the Respondents are the long leaseholders of the Flat.
2. The Property consists of two leasehold flats situated as to the Flat on the ground floor and another flat on the first floor.
3. There was a pre-trial review held on 12th March 2013 when the Chairman suggested that this matter should be dealt with on paper only. The Applicant insisted, through its representative, on an oral hearing and this was set down for 7th May 2013. On 20th March 2013 an application was made by the Applicant's representatives for an adjournment of the hearing and this was refused. On 27th March 2013 there was a further application from the Applicant's representatives for the matter to be dealt with on papers only. This application was allowed but subject to the Applicant producing written agreement from the Respondents to a paper hearing.
4. No further communication was received from the Applicant's representative or the Respondent and a Tribunal was convened to hear the application on 7th May 2013. No one attended at the allocated time of 1.30 pm and it was only after a telephone call had been made to the Applicant's representative that it became apparent that no one was going to attend. The failure to notify the Tribunal that no one was attending was a discourtesy to the Tribunal and a waste of public funds. The Tribunal, having convened, determined the matter in the absence of the parties using the information provided.
5. The relevant legal provisions are set out in the Appendix to this decision.

The Evidence

6. The Applicant's evidence is set out in the application to the Tribunal and supporting documents. No response or submissions have been made by the Respondents. The issues can be summarised as follows:

- The reasonableness of the interim service charges for service charge year 2012
 - Whether the sum is payable by the Respondents;
 - When the interim charge is payable
7. The Tribunal considered the evidence before it, which included a schedule of the service charges for the periods ending 31st December 2012, 2011 and 2010, the insurance certificate for cover in 2012 and a statement to the effect that the management fees were £600 plus VAT.

The Tribunal's decision

8. The Tribunal notes that the final figures for the service charge year 2012 have now been determined as demonstrated by the service charge statement of account issued on 28th February 2013. The Applicant has made submissions and produced evidence in relation to the way in which the interim costs were determined and the actual costs were stated to be £1,945.97. The estimated costs were reasonable, although the Tribunal noted that the management fee was on the high side but within the range of reasonableness. The Tribunal are not considering the service charge accounts but only the interim charge, which it determines is reasonable.
9. In the Tribunal's view this application was misconceived as the sums are now historic, the actual figures having been determined. There is no evidence that there is any dispute to the proposed interim charge. The interim charge appears to be reasonable in the light of the historic costs in earlier years and the actual sum stated to have been expended by the Applicant in service charge year 2012.
10. The parties should note that the only determination made by the Tribunal is that the interim charges are reasonable. This is not a determination as to the reasonableness of the actual service charges for 2012.
11. The Tribunal determines that the amount payable in respect of the interim service charges for the Flat for service charge year 2012 is £1000 payable as to £500 for the period from 1st January to 30th June 2012 and £500 for the period from 1st July to 31st December 2012.
12. The Applicant made an application for penalty costs under Schedule 12 Paragraph 10 of the Commonhold and Leasehold Act 2002, details of which are in the schedule. The Tribunal can make an order limited to £500 of the costs of any party if the Tribunal is satisfied that the party has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

13. The Applicant seeks to rely upon the failure of the Respondents to file a response and their failure to participate in these proceedings. There is no obligation for a party to respond to an application issued by another party, although a failure to do so might result in prejudice. The Tribunal do not find that the Respondents have acted in a way which is unreasonable and do not consider that there is any justification for penalty costs to be awarded
14. There was no application for an order under Section 20C of the Act.



Tamara Rabin – Chair

7th May 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.
- (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.