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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A & 20C OF THE LANDLORD AND TENANT ACT 1985 AND SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Case Reference: LON/00BB/LSC/2013/0150

Premises: FLAT 9, THE FIRS, MILTON AVENUE, EAST HAM, LONDON E16 1BH

Applicant(s): LONDON BOROUGH OF NEWHAM (LANDLORD)

Representative: WILKIN CHAPMAN SOLICITORS

Respondent(s): MR MOHAMED MIZANUR RAHMAN (TENANT/LESSEE)

Representative: IN PERSON

Date of hearing: 30 APRIL 2013

Appearance for Applicant(s): NONE

Appearance for Respondent(s): MR MOHAMED MIZANUR RAHMAN
MR MOHAMED RAHMAN (TENANT'S SON)

Leasehold Valuation Tribunal: (1) MS L SMITH (LEGAL CHAIR)
(2) MR J BARLOW JP FRICS

Date of decision: 3 June 2013

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Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £1097.60 claimed in County Court proceedings 2YM18195 is not payable by the Respondent for the reasons set out below
- (2) The remainder of the issues as raised in the consolidated claim brought by the lessee and the lessees of Flats 2 and 22 The Firs (case reference LON/00BB/LSC/2012/0795) are dealt with in the determination under that reference.
- (3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge
- (4) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Bow 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 Respondent, claimed in the sum of £1097.60.
2. Proceedings were originally issued in the Northampton County Court under claim no. 2YM18195. The claim was transferred to the Bow County Court and then in turn transferred to this Tribunal, by order of Deputy District Judge Mulkis on 20 February 2013.
3. On 27 March 2013, the Tribunal gave directions in this case. Those directions consolidated this case with case reference LON/00BB/LSC/2012/0795. That latter case concerns a claim by the lessees of Flats 2 and 22 The Firs which raised issues concerning the service charges for the building which are the same as those raised by the Respondent in this application. Since this case is transferred from the County Court and the issues are raised by the Respondent in this case and by the applicants in the other case, the Tribunal deals with those issues in the decision in that latter case.
4. At the directions hearing, the Applicant did not appear and was not represented. Since the Respondent did not understand to what the amount claimed in the County Court related, the Applicant was directed to provide a written explanation and breakdown for the figure together with any documents relied upon by 5 April 2013 and the Respondent was directed to respond thereto. The Applicant failed to comply with that direction and the Respondent was unable to comply therefore with the direction for him to respond.
5. It is noted that the Particulars of Claim refer to "a breakdown of the service charge major works arrears" which is said to be annexed to the Particulars of Claim at Annex 2. There is no Annex 2 to the copy of the Particulars of Claim

provided to the Tribunal nor to the copy served on the Respondent. The Applicant also includes a claim for an administration charge of £50 said to be payable under "paragraph 14 at page 12 of the Lease". Clause 5 (14) provides that the Lessee should pay "all expenses" incurred in the preparation and service of a notice under section 146 of the Law of Property Act 1925. The County Court proceedings are not for forfeiture of the Lease. In any event, payability of that charge depends on whether it was properly demanded and whether the amounts demanded are themselves payable. The Applicant has not provided a copy of the demand for the administration charge and, as noted above, there is no indication to what the amounts claimed relate.

6. On 29 April 2013, the Applicant wrote to the Tribunal. The heading of the letter bears the reference of both this and the consolidated case. The content of that letter bear setting out in full:-

"I write to apologise for the fact that we have not provided the papers for the hearing above and will not be able to do so in time for the hearing tomorrow. I am also not able to appear in person to provide this apology. The case was being dealt with by Brian Bailey, Senior Service Charge team leader who left his position suddenly and did not pass over the case before his sudden departure. We would wish to contest the case if possible but realise that we are at the mercy of the Tribunal as to whether an adjournment would be possible given the circumstances. As mentioned at the initial pre-trial review we also would be interested in mediation in order to resolve this issue Once again may I apologise for any inconvenience caused"

7. In relation to mediation, the Tribunal notes that the Applicant was represented at the directions hearing in the other case on 13 February 2013. There is no indication that the Applicant offered mediation but in any event the Tribunal indicated that it did not consider that mediation would be effective.
8. Rule 30(3) provides that a Tribunal may adjourn a hearing but that if this is done at the request of a party "it must consider that it is reasonable to do so having regard to –
- (a) The grounds for the request;
 - (b) The time at which the request is made; and
 - (c) The convenience of the parties.
9. The Applicant provided little justification for an adjournment requested on the day before the hearing. There was for example no reason given why the person who signed the letter could not appear in person or indeed why the solicitors instructed in the County Court proceedings could not be instructed to attend. The Respondent (and the Applicants in the conjoined hearing) strongly opposed the application. In this case, the Respondent's son explained that he had had to take a day off from his employment to attend. The Respondent also suffers from health problems which were being exacerbated by the stress of these proceedings. The Respondent also

pointed out that the Applicant in this case had failed to comply with the directions in both this case and the conjoined case as well as failing over a long period to respond to the Respondent's concerns about the service charges claimed. These matters had been going on for over 7 years and the Respondent (and Applicants in the conjoined case) voiced concern that if the adjournment were granted, the Applicant local authority would simply continue to delay matters.

10. The Tribunal therefore refused the Applicant's request for an adjournment. It therefore considered the matter on the papers as transferred from the County Court and heard the Respondent's submissions that he did not know to what the amount claimed in this case related.
11. For the reasons set out at paragraph 5 above, the Tribunal was unable to discern from the papers to what the amount claimed related and there were no documents to show that this amount had been properly demanded or that the amounts claimed were reasonable. Accordingly, the Tribunal determines that the amount claimed is not payable.

Application under s.20C

12. As noted in the directions order, Respondent applied for an order under section 20C of the 1985. Having heard the Respondent's submissions and taking into account the above determinations, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

The next steps

13. The Tribunal has no jurisdiction over County Court costs. This matter should now be returned to the Bow County Court.

Chairman:



Ms L Smith

Date:

3 June 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 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;
 - (b) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (c) 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;
 - (d) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (e) 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.

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).