



**Residential
Property**
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL**

LANDLORD AND TENANT ACT 1985 – Sections 27A and 20C
Schedule 11 to the Commonhold and Leasehold Reform Act 2002

Ref: LON/00AP/LSC/2006/0089

Property: 19A High Road, London, N15 6ND

Applicant: Miss Sarah Barrington-Kendall

Respondent: Westleigh Properties Ltd

Date of Paper Determination: 21 March 2007

Tribunal Members: Mr S Shaw LLB (Hons) MCI Arb
Mr F James FRICS

INTRODUCTION

1. The background to this matter can be gathered from further Directions issued by the Tribunal on 6 December 2006. In short, the case involves two applications, both dated 5 October 2006. The first is the determination of the liability to pay certain service charges which have been raised during the service charge years 2005 and 2006. The second application is in respect of management fees which have also been levied in the context of service charges but in respect of which the Applicant has taken out a second application for variation of an administrative charge pursuant to Section 11 of the Commonhold and Leasehold Reform Act 2002.
2. Directions were originally given by the Tribunal on 23 October 2006. However, it appeared that this matter might be resolved by mediation and those Directions were varied by a further Directions Order on 6 December 2006. In the event, apparently, it has not been possible to resolve this matter through mediation and the case has therefore been restored to the Tribunal to make a determination on the papers and without attendance by the parties. The Directions last made on 6 December 2006 required the Applicant to send to the Tribunal and the Respondent by 4pm on 14 February 2007 a statement setting out various matters but essentially identifying the service charge costs in dispute and putting forward (if so contended) any reasonable alternative figures for the costs in dispute. There does not appear to be before the Tribunal any such statement; however the Applicant has written a letter to the Tribunal, dated 7 March 2007, and has appended various documents to that letter. Since the letter was sent some three weeks after the date stipulated in the Directions, the Respondent has requested, in a letter dated 19 March 2007, that the Tribunal excludes consideration of this statement and the documents when making its determination in this matter. Whilst it seems to the Tribunal regrettable that the Applicant did not endeavour to file these documents in accordance with the Directions, equally it would seem somewhat artificial at this stage to ignore the documents, particularly since, however belatedly, the Respondent has had copies of the relevant material and commented upon it in a letter to the Tribunal dated 19 March 2007. It is proposed in the circumstances shortly to summarise the respective positions of the parties and then to make a determination on the basis of the material before the Tribunal.

THE APPLICANT'S CASE

3. It has not been entirely easy to extricate precise issues upon which the Applicant seeks a determination because her letter of 7 March 2007 is not in the form directed in the two Orders referred to above. In the original Directions Order dated 23 October 2006, the Tribunal identified the issues to be determined as effectively the Applicant's contribution to the insurance premium for the years ending 31 December 2005 and 2006 (these were £389.50 for each of those years). In addition, the Applicant was challenging her contribution towards the management fee for the same years of £65.19 and £19.48 respectively.

4. In her letter of 7 March 2007, the Applicant generally complains that the invoices and statement of account presented to her are confusing and, interestingly, queries not charges made to her but credits made to her, in specific, relatively small, sums. She does not in fact produce any alternative quotations for insurance and appears to say nothing more about the management fee other than that "my lease states that I should pay no more than 5% in management fees. I suspect that I am being charged more than this." No particulars are given in relation to this suspicion.
5. So far as the Respondent is concerned, the Tribunal has received a letter dated 19 March 2007 from Lorraine Scott, who is the Legal Support Manager of BLR Property Management, the managing agents of the Respondent landlord. She asserts that although the Applicant has indicated that she has not understood the credits applied to her account, they have in fact been explained by her over the telephone to the Applicant. In fact she asserts that she specifically explained a particular credit of £157.79 being a refund received from the previous managing agents for the insurance of the property and also to explain how the 5% management fee has been calculated. In a further letter dated 15 March 2007, the Respondent sets out more fully its case in relation to the management fees and insurance and indeed the budget for the year ended 2006. At paragraph 2 of the section of the letter dealing with the management fees for the year ending 2005, Ms Scott explains that the service charge certificate for the year ending 31 December 2005 shows a management fee of £195.57 of which the Applicant's share would have been £65.19. However, this was revised in March 2006 and a credit applied for the benefit of the Applicant in the sum of £45.71 so that the actual sum charged was £19.48. Since the expenditure for that period was insurance at £1,168.50 of which the Applicant's share was £389.50, her 5% management charge on that figure equals £19.48. She goes on to assert that not only is this a very low management charge but it is in fact uneconomic for the Respondent's agents. This is certainly in accordance with the Tribunal's experience and, there having been an explanation for the figure and it appearing obvious that the figure is not excessive, the Tribunal can find no reason for this to be anything other than reasonable within the meaning of the Act.
6. So far as the general assertion which had been made by the Applicant that she had been "double-billed" for certain items of expenditure, Ms Scott explains that she investigated this. She says that upon inspection of the accounts, she noted that the previous agents had failed to refund some sums overpaid on insurance. Communication with the previous agents has not always been easy but the result of the efforts of Ms Scott were that a cheque for the refund due to the Applicant was received (in the sum of £157.79) and this credit was applied to the Applicant's account on 1 December 2006 (and it indeed appears in the account as a credit).
7. So far as the budget for the year ended 2006 is concerned, she states that the agents originally issued estimates of expenditure for management fees based on the company's internal calculation of the level of fees required for the property but that sum error in this regard was corrected in March 2006 when the demand for the interim service charges was reduced by £194.61. Once

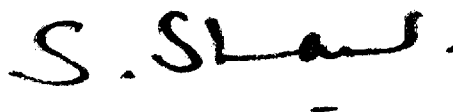
again, credit in this sum appears in the Applicant's statement of account. The total sum therefore charged by way of interim charge was £408.98 (giving credit for the sum just mentioned) which was the estimate of expenditure of insurance required during the forthcoming year and no payment on account of the management fees had been demanded.

8. It has not been entirely easy to determine this case because of some lack of clarity in identifying the precise issues in dispute and also, in fairness to the Applicant, it does appear that some of the documentation supplied on behalf of the Respondent has not always been easy to decipher and, on some occasions, has required correction in favour of the Applicant. However, the Tribunal, doing the best it can on the information available, is now satisfied that the correct figure for insurance premium and management fees has been charged (and where appropriate corrected) in the statement of account dated 15 March 2007 and appearing at page 1 of the Respondent's bundle of documents. The Applicant states that the total outstanding in that account is £721.79 which is a greater figure than the £630.90 appearing in a statement of account served on her just shortly before on 26 February 2007. The difference would appear to be a balancing service charge of £90.89 which fell due for the period from 1 January 2006 to 31 December 2006. Such a balancing service charge is not unusual where there is a reconciliation of a previous estimate which requires some adjustment at the end of the accounting year. The credits now applied to the account are significant and would appear to be the appropriate credits in accordance with the information before the Tribunal. No alternative quotations or figures have been suggested by the Applicant in respect of insurance and the figures claimed have been explained by the Respondent in their documents without further comment from the Applicant.
9. In the circumstances, the Tribunal is satisfied that the explanation given on behalf of the Respondent is such as to render the charges now made, and adjusted, reasonable within the provisions of the 1995 Act with the exception of a sum of £65.80 appearing in the account and described as a "arrears recovery fee". The Tribunal has received no representations as to the term of the lease entitling the raising of such a fee, but even if there is such an entitlement under the lease, the Tribunal does not consider that it would be reasonable in a case of this kind. The Applicant has had to pursue this matter in order to obtain the refunds and adjustments which now appear in her account and which, albeit to some relatively small extent, have vindicated some of her concerns. It is fair to say that some of the problems caused have occurred during the period when the present managing agents did not have management of the property and before they assumed such management. However, this is the position they have inherited and accordingly the Tribunal would direct that this further relatively small sum of £65.80 be disallowed and also credited to the Applicant's account.
10. The Respondent has further asked the Tribunal to condemn the Applicant in costs for the various reasons set out in the Respondent's statement, towards the end of the statement dated 15 March 2007. Once again, although the Tribunal has certain powers in relation to costs, and although the Applicant

did not strictly comply with the Tribunal's Directions, nonetheless, some of her concerns have been justified and indeed rectified by the bringing of these proceedings. In all the circumstances the Tribunal does not consider that this is a case in which it would be appropriate to make an order for costs in relation to either party to the proceedings.

11. For the avoidance of doubt, therefore, the Tribunal concludes that the sums now charged in respect of the insurance premium and the management fees as appearing in the statement of account dated 15 March 2007 are correct and the only other adjustment not already made, on the information before the Tribunal, would be a further credit in relation to the arrears recovery fee, for the reasons indicated above.

Tribunal Chairman: S Shaw



Dated: 21 March 2007

JG