



**Residential
Property
TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER Sections 27A and 20C LANDLORD AND TENANT
ACT 1985 as amended**

Applicant: Powerscroft Limited

Respondents: Adleyheath Limited

Premises: 6 & 10 Chatsworth Court, 139-143 Chatsworth Road
London E5 0PS (together "the Premises")

Date of Application: Order from Clerkenwell & Shoreditch
County Court dated 29 October 2009

Date of Hearing: 4 February 2010

Appearances for Applicant: Mr A L Smith FRICS Symon Smith
managing agents for Landlord
Mr J Hon
Director of Powerscroft Limited

Appearances for Respondents: Mr D Hoffman of J S Estates
managing agent for Tenant

Leasehold Valuation Tribunal: Mrs J.Pittaway LL.B
Mr P Roberts Dip Arch RIBA

Date of Tribunal's Decision: 17 February 2010

DETERMINATION

1. The Respondent is liable to pay service charge in respect of both Flat 6 and Flat 10.
2. In respect of Flat 6 of the sum of £1,529.24 claimed £8.10 is service charge and payable.
3. In the absence of any evidence as to what the sum claimed for Flat 6 of £1,521.14 relates the Tribunal have no alternative but to determine that this sum is not an amount payable by way of service charge.
4. In respect of Flat 10 of the sum of £1,499.87 claimed £8.10 is service charge and payable.
5. In the absence of any evidence as to what the sum claimed for Flat 10 of £1,491.77 relates the Tribunal have no alternative but to determine that this sum is not an amount payable by way of service charge.
6. The court fee of £108 is payable by the Respondents.
7. The solicitor's costs of £238 are not payable by the Respondents.
8. Neither party is to pay the costs incurred by the other in connection with this Application.

INTRODUCTION

1. The Respondents are the lessees of both flats under two leases each dated 14 February 2003 and each for a term of 999 years from 14 February 2003.
2. The Application was referred to the Tribunal by Clerkenwell & Shoreditch County Court (Claim Number 9EC06249) dated 29 October 2009. The claim in the County Court was for £3375.11 made up as follows;

Amount claimed	£3029.11
Court fee	£ 108.00
Solicitor's costs	£ 238.00
3. By Directions of the Tribunal dated 2nd December 2009 the Tribunal tentatively apportioned the sum of £3375.11 as to £1,726.87 for one flat and £1,648.24 for the other flat, but was unable to attribute the sums to designated flats.
4. The Directions required agreed bundles to be delivered by the Applicant to the Tribunal and the Respondent in anticipation of the Hearing,

and directed that the Applicant identify the clauses of the leases on which it relied to recover the alleged arrears.

ISSUES AGREED AT THE HEARING

That of the sums claimed, the sum of £1,521.14 in respect of Flat 6 and £1,491.77 in respect of Flat 10 were sums that appeared as balances carried forward from the accounts of their predecessor managing agents in the accounts of Crabtree Property Management.

THE HEARING

1. The Hearing took place on 4 February
2. Mr Smith of Symon Smith appeared on behalf of the Applicants. Mr Hon also spoke on behalf of the Applicants.
3. Mr Hoffman of J S Estates appeared on behalf of the Respondents.

EVIDENCE

1. The Tribunal had before it a copy of the lease of Flat 10. ("Flat 10 Lease") No copy of the lease for Flat 6 was included in the bundle (notwithstanding the Directions). The Tribunal had before it official copies from H M Land Registry for Flat 6 which showed that the lease was granted on the same date, for the same term and between the same parties as the lease for Flat 10.

2. In his case to the Tribunal Mr Smith referred to

2.1 current arrears for Flat 6 of £1723.24 made up as follows;

balance brought forward from Crabtree	£1,529.24
Land Registry fee	£ 4.00
Solicitors fees	£ 115.00
Tribunal hearing fee	<u>£ 75.00</u>
Total	£1,723.24

2.2 current arrears for Flat 10 of £1836.87 made up as follows;

balance brought forward from Crabtree	£1,499.87
Solicitors fees	£ 115.00
Land Registry fee	£ 4.00
Court fees (6 & 10)	£ 108.00
HMCS Court fee	35.00
Tribunal hearing fee	<u>£ 75.00</u>
Total	£1,836.87

3. Mr Smith explained that there were arrears of service charge in the sums of £1529.24 for Flat 6 and £1499.87 for Flat 10 when his firm took over the management of the block of flats. He did not know from where these sums derived. He agreed with the Tribunal's suggestion that on the basis of the accounts before the Tribunal the sums appeared to consist of two elements. First, for each flat the Statement of Account of Crabtree Property Management showed the sum of £12508.10 due in respect of S20 Major Works charged to each flat on 9 February 2006. Between 3 November 2006 and 2 March 2007 five payments each of £2500 had been made for each flat, leaving a balance due in respect of such works of £8.10 for each of the flats. Mr Hoffman did not disagree that these sums might be outstanding. The second element appeared in the Crabtree Statement of Account for each flat as the actual balance brought forward when Crabtree Property Management took over the management of the flats from Hawksworth, who had previously managed the block. Mr Smith had no information as to what these sums related. He submitted that the Respondents should have particularised the sums to which they had objected.

4. Mr Smith made no submission as to the reasonableness of the sums carried forward from Hawksworth. He stated that the other tenants in the block had paid such sums but there was no evidence before the Tribunal to substantiate this.

5. Mr Hoffmann submitted that the liability to pay service charge under the lease of Flat 6 had not been shown by reason of the lease for Flat 6 not having been included in the bundle before the Tribunal.

6. Mr Hoffman submitted that the demand for the sums of £1521.14 for Flat 6 and £1491.77 for Flat 10 had not been substantiated. He referred to a number of letters in the bundle before the Tribunal that he had written to Symon Smith. These included an e mail of 24 March 2009 referring to his understanding that the sums went back to Hawksworth's period of management, his letter of 6 July 2009 referring to the absence of justification or explanation from Symon Smith as to how the arrears had accumulated and his e mail of 5 November 2009 referred to a failure to respond to the requests for a breakdown of the opening balances.

7. Mr Hoffman queried to what the solicitors fees related; he queried whether any solicitors had been involved in the preparation of the Court claim which had been signed by Mr Smith. He pointed to Mr Smith having incorrectly indicated in the statement of truth in the Claim Form to the County Court that Symon Smith were solicitors and submitted that this was an abuse of process.

8. Mr Hoffman requested a contribution to the Applicant's costs.

INSPECTION

There was no inspection of the Premises and neither party suggested that an inspection would assist the Tribunal.

RELEVANT PROVISIONS OF THE LEASES

1. Paragraph 31 of the Fourth Schedule of the Flat 10 Lease provides that the Tenant is to pay the Landlord the Interim Charge and the Service Charge as provided in the Seventh Schedule of the Flat 10 Lease. The Seventh Schedule defines the Service Charge with reference to, inter alia, the matters referred to in the Sixth Schedule.
2. The Sixth Schedule of the Flat 10 Lease sets out the items falling within the Service Charge. These include, at Paragraph 5, the legal charges incurred by the Landlord in the enforcement of covenants conditions and regulations contained in the leases granted of the various premises in the building known as Chatsworth Court.

REASONING FOR THE TRIBUNAL'S DETERMINATION

1. Notwithstanding the absence of a copy of the lease of Flat 6 the Tribunal considered that, given the evidence before it as to payments made by way of reimbursement of service charge by the Respondents, on the balance of probability the lease of flat 6 was in a similar form to that for Flat 10 and that the liability to pay service charge was in a similar form, mutatis mutandis.
2. In the absence of any evidence as to what the "B/Fwd balance as at 19/07/05" in the Crabtree Statement of Account for each Flat relates the Tribunal cannot determine whether any part of these amounts (£1521.14 for Flat 6 and £1491.77 for Flat 10) is service charge. If it were service charge there is no evidence before the Tribunal as to what services the sums relate and whether the sums were reasonably incurred.
3. The Tribunal's jurisdiction was limited by the matters referred to it by the County Court. It does not cover the additional sums referred to by Mr Smith in his case to the Tribunal.
4. Of the sums the Applicants sought to recover £8.10 in respect of each flat was arrears of service charge. Costs of administration and legal fees incurred by the Applicants' agents and solicitors in seeking to recover the arrears of service charge from the Respondents are administration charges within the meaning of paragraph 1(1) Part 1 of Schedule 11 of Commonhold and Leasehold Reform Act 2002 and are therefore recoverable to the extent

that they are included in the application to the County Court and are reasonable. Of the charges claimed by the Applicants in the County Claim the court fee of £108 is reasonable and payable by the Respondents. The Applicants provided no evidence that any solicitors had been involved in the claim made to the County Court. In the absence of such evidence the Tribunal are unable to determine that any legal fees were incurred and are payable.

9. The Tribunal is not satisfied that either party has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings and accordingly makes no award of costs as contemplated by paragraph 10 of schedule 12 of Commonhold and Leasehold Reform Act 2002.

THE LAW

Section 27A Landlord and Tenant Act 1985 as amended by Commonhold and Leasehold Reform Act 2002 provides

- (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 by which it is payable; and
 - (e) the manner in which it is payable
- (2) Subsection (1) applies whether or not payment has been made

Section 18 Landlord and Tenant Act 1985 provides

- (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

Section 19 Landlord and Tenant Act 1985 provides

- (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) when they are incurred on the provision 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 20 Landlord and Tenant Act 1985 provides

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of the tenants are limited.....unless the consultation requirements have been either-

- (a) complied with in relation to the works or the agreement, or
- (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

Part 1 of Schedule 11 of Commonhold and Leasehold Reform Act 2002 provides

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 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Paragraph 10 of schedule 12 of Commonhold and Leasehold Reform Act 2002 provides

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.

Chairman:


Mrs J S Pittaway

Date:

17 February 2010