



Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AK/LSC/2010/0260

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATION UNDER SECTION 27A OF THE LANDLORD & TENANT
ACT 1985**

Address: 9 Parr Close, Enfield, Middlesex, N9 0UX
Applicant: Salmon's Brook (Edmonton) No.3 Residents Company Ltd
Respondent: Mr N Parchment
Date of Transfer: 1 April 2010
Inspection: 2 September 2010
Hearing: 2-3 September 2010

Appearances

Applicant

Miss H Dickie Solicitor of Shoosmiths
Mr A Jenner Hillcrest Estate Management Ltd, Managing Agents

Respondent

Mr N Parchment Leaseholder

Members of the Tribunal

Mr I Mohabir LLB (Hons)
Mr F L Coffey FRICS
Mrs J A Hawkins BSc MSc

DECISION

Introduction

1. On 6 July 2009 the Applicant issued a claim against the Respondent in the Edmonton County Court for arrears of service charges and management fees in the sum of £2,188.36. On 2 August 2009 the Respondent served a Defence alleging, *inter alia*, that the charges claimed had not been reasonably incurred and were unjustifiable. By an order dated 1 April 2010 made by District Judge Cohen, the proceedings were transferred to the Tribunal.

2. The Respondent is the present long leaseholder of the premises known as 9 Parr Close, Enfield, Middlesex, N9 0UX which he holds under a lease dated 26 October 1987 and made between (1) Laing Homes Ltd (2) Salmon's Brook (Edmonton) No.3 Residents Company Ltd and (3) Patrick Joseph Crowley and Maria Pauline FitzGerald for a term of 125 years from 1 January 1987 ("the lease").

3. Essentially, clause 7 of the lease obliges the Applicant to manage the estate and the buildings within it and under clause 3 (4) it is entitled to recover any costs are incurred. It was common ground that the service charges in issue are recoverable as relevant service charge expenditure under the terms of the lease. It was also common ground that the Respondent's contractual liability to contribute towards that this expenditure is 1.82%. For these reasons, it is not necessary to set out the terms of the lease that give rise to this liability.

The Issues

4. A pre-trial review took place on 2 June 2010 at which the Tribunal attempted to identify the challenges being made by the Respondent. He had not complied with any of the Tribunal's Directions given on this occasion prior to the hearing. However, at the initial hearing in this matter on 2 June 2010, the challenges being maintained by the Respondent were refined to the following matters.

5. This matter was only concerned with the estimated service charge expenditure in each of the service charges ending 31 December 2008 and 2009 and further administration charges and legal fees totalling £1,002.38 incurred in 2009 to instruct the Applicant's solicitors to commence debt recovery proceedings. The heads of service charge expenditure challenged by the Respondent are:
- (a) General repairs
 - (b) Electricity expenditure
 - (c) Cleaning (replacement of electricity bulbs)
 - (d) Removal of dumped rubbish
6. Miss Dickie, for the Applicant, accepted that the interest being claimed contractually against the Respondent for the costs in issue did not fall within the definition of a service charge under section 18 of the Act and, therefore, the Tribunal did not have jurisdiction to make any determination in relation to this matter. In the event that the Applicant wished to pursue this claim, but this matter would have to be remitted back to the County Court for determination.
7. Each of the heads of expenditure and the arguments advanced by both parties is further particularised below.

The Relevant Law

8. The substantive law in relation to the determination of this application can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

"(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."

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges.

9. Any determination made under section 27A is subject to the statutory test of reasonableness implied by section 19 of the Act. This provides that:

"(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 provision of services or the carrying out works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly."

Inspection

10. The Tribunal inspected the estate, of which is the subject property forms part, on 2 September 2010. The block is of modern construction being of brick and concrete under a tiled roof. Evidently constructed in the 1980s, it is arranged on 3 floors and with access to the internal common staircase being controlled by means of a door entry-phone system

Decision

11. The hearing in this matter also took place on 2 September 2010. Miss Dickie, a Solicitor from the firm of Shoosmiths, appeared for the Applicant company. The Respondent appeared in person.

General Repairs

12. The estimated expenditure claimed in 2008 and 2009 for this head of expenditure is £500 and £1,800 respectively.
13. The Respondent made two main submissions. Firstly, that a proportion of the cost claimed for 2009 was unreasonable because, for example, there had been no repairs carried out to the liking in the block immediately behind his for the entire year. The Respondent could not remember if he had reported this matter to either the managing agent or the Applicant. Furthermore, he could not propose what figure the Tribunal should disallow in the event that this submission succeeded. In reply, the Applicant contended that no tenant had

- reported any defective lighting in 2009. Had this been the case, the cleaning contractor would have dealt with it as part of its duties.
14. No evidence had been provided by the Respondent that either the lighting complained of was defective or that the Applicant, notice, had failed to carry out the necessary repairs. Accordingly, the Tribunal made no deduction for this item from the general repairs budget.
 15. The second submission made by the Respondents was that the proportion of the general repairs budget for 2008 and 2009 attributable to the cost of repairing a section of the boundary fence and front door of his block had not been reasonably incurred.
 16. In relation to the boundary fence, the Respondent stated that it was regularly damaged by persons climbing over it and, historically, it had been set on fire. He contended that a metal fence should be installed thereby avoiding the regular cost of having to repair and maintain or replace parts of the boundary fence from time to time. The Respondent further contended that there was no evidence of competitive quotes been obtained for any work undertaken or the monitoring of such work.
 17. In relation to the front door, the Respondent accepted that repairs have been carried out in both years, however, they had been done to the bad standard. For example, the frame around the door still remained very insecure despite the repairs.
 18. The Applicant maintained that the contractor who had carried out any repairs, maintenance and replacement (of part) of the boundary fence had been properly monitored. It had not been in a position to produce any evidence of the quotes that had been obtained for any work carried out because it did not know what the Respondent's case was until the hearing itself. In any event, it was admitted that, under clause 5 of the lease, the Applicant is only required to ensure that any repairs carried out are of a reasonable standard. The Applicant advanced no argument in relation to the repairs carried out to the front door.

19. The Tribunal determined that the budget estimate for the cost of having to repair, maintaining and replace parts of the boundary fence from time to time was reasonable. It was common ground that the boundary fence is subject to continual damage caused by third parties and under the terms of the lease the Applicant is obliged to carry out any necessary repairs. To do so it must include a budget provision for this work in each of the service charge years. If not, the Applicant would potentially be placed in the invidious position of being subject to criticism by one or more tenants and possibly in breach of its covenant to repair.
20. As to the repairs carried out to the front door, the Tribunal accepted the Respondent's submission that they had subsequently been carried out unsatisfactorily. On inspection, the Tribunal noted the insecure door frame. However, the Tribunal was dealing with the position retrospectively at the time the budget estimates had been prepared. The repairs themselves had been carried out at a later stage. Therefore, it was not open to the Tribunal to find that, at the time, the estimate was unreasonable for either year. It follows, that the Tribunal made no deduction from the overall estimate for this item. The Tribunal noted that the actual expenditure incurred under this head for both years was in fact greater than the estimated amounts. In the event that they Respondent sought to challenge the actual expenditure incurred then the sums spent in effecting repairs to the front door can properly be considered then.

Electricity Expenditure

21. The budget estimates for electricity in 2008 and 2009 was £1,670 and £1,740 respectively. There is no gas supply to the building or the estate.
22. The Respondent submitted that the estimated expenditure was excessive because the timer switch for the communal lights in his block was defective and at the lights had remained on for longer than most necessary. He asserted that the cleaner was changing approximately 5 bulbs a week in the common parts as a result and this should have put the applicant notice that electricity consumption was excessive. He was able to make this assertion because he was at home during the day. Furthermore, he contended that he had

telephoned the managing agent, Hillcrest, in 2008 to report the problem on two occasions and had spoken to a man called 'Peter'. He made a further telephone call again in 2009. The Respondent, therefore, submitted that half of the estimated expenditure had not been reasonably incurred and contended that half of the budget estimates for each year should be disallowed.

23. The Applicant told the Tribunal that the defective timer had been replaced in about March 2010 when it had been put on notice that it was defective. The Applicant contended that it had not been made aware of the problem in 2008 or 2009. Indeed, no complaints had been received from any tenant before the repair was carried out.
24. The Tribunal found that the budget estimates for electricity in 2008 and 2009 was reasonable. It was clear that the estimates for both years had been based on the previous year's estimate with a small increase. The expenditure incurred in 2007 was £1,590. Therefore, the Tribunal found that the relatively minor increases sought for 2008 and 2009 were reasonable.

Cleaning

25. The budget estimates for cleaning in 2008 and 2009 were £2,446.40 and £3,866 respectively. Part of the cleaning costs includes the cost of the cleaning contract to replacing bulbs to light in the common areas.
26. The Respondent's challenge here followed from the argument he advanced in relation to the electricity expenditure. He submitted that, as a consequence of the lights in the common parts being left on for longer than was necessary, the cost of having to replace a greater number of bulbs had not been reasonably incurred. He argued that the Applicant's failure to notice the increased consumption of light bulbs meant that it was not effectively monitoring costs.
27. In reply, the Applicant contended that the managing agent cannot monitor the number of light bulbs consumed. It was not reasonable for them to do so or to infer that there was a problem with the communal lights as a result of the

increased consumption. No such complaint had been made by any other tenant.

28. The Respondent had adduced no evidence whatsoever to support his assertion that there had been excessive consumption of light bulbs in 2008 and 2009 as a consequence of the purported defective light switch to the light in the common areas. The Tribunal had little difficulty in dismissing the submission and found that the estimated cleaning costs, including the cost of replacing light bulbs, for both years was reasonable.

Bin Hire

29. The budget estimates for bin hire in 2008 and 2009 were £624 and £650 respectively. The Respondent simply submitted that these costs had not been reasonably incurred because it was more economic to buy a set of bins as opposed to hiring them.
30. The Applicant submitted that the costs were reasonably incurred because the bins have to be compatible with the Council's lifting equipment by being circular bins. Any new bins purchased would be square and not compatible.
31. The Tribunal found the estimated cost for bin hire in 2008 and 2009 was reasonable. Irrespective of compatibility, the Respondent had adduced no evidence that it was more cost-effective to purchase instead of hiring the bins.

Rubbish Clearance

32. A budget estimate of £150 was provided for in 2008 and 2009 for the cost of removing dumped rubbish and pest control on the estate. The Respondent accepted that dumping on the estate was a regular occurrence. He submitted that the estimates were not reasonable because the owners of the flats that were sublet should meet this cost because it was their tenants that were dumping of rubbish. In other words, the cost should not fall on the service charge account.

33. The Applicant told the Tribunal that the rubbish dump was cleaned up by the gardener and another firm. The gardener would report the dumping to the managing agent and arrangements were made to have it cleared. This was done on an ad hoc basis.
34. The Tribunal found the estimated cost in 2008 and 2009 of having to clear the rubbish dumped on the estate to be reasonable. In the Tribunal's judgement, the cost of investigating and pursuing any individual tenant who may be responsible for the dumping of rubbish would be disproportionate and it is highly likely that the cost of undertaking any such exercise would exceed the cost of clearing the rubbish on an ad hoc basis.

Administration Charges

35. The total sum claimed by the Applicant was £1,002.38. Of this figure, the sum of £50 was claimed an administration charge incurred in 2009, being the cost charged by the managing agent to refer this matter to its solicitors, Shoosmiths, to recover the arrears owed by the Respondent. It submitted that the cost was reasonable because it involved writing letters before action and reminders to the Respondent.
36. The remaining balance of £952.38 was claimed for the legal costs incurred by the Applicant up to the issue of proceedings in the County Court. Indeed, at the hearing, the Applicant sought to claim increased legal costs of £8,266.66, being the costs it had incurred up to the hearing. It relied on a detailed breakdown of costs in support of the submission that they had been reasonably incurred and was reasonable in amount.
37. The Applicant submitted that it was contractually entitled to recover these charges under either clause 2(7) and/or clause 6B(7) of the lease. The Respondent simply submitted that the costs claimed were excessive.
38. The Tribunal found that the Applicant was contractually entitled to recover this charge variously under clause 2(7) and/or clause 6B(7) of the lease. Having regard to the letters before action and reminders sent to the Respondents by the managing agent, Hillcrest, prior to referring this matter to

its solicitors, the Tribunal found the administration charge of £50 claimed in this regard to be reasonable.

39. As to the legal costs, the Tribunal found that the Applicant was not entitled to claim the greater sum of £8,266.66 because paragraph 9 of the Particulars of Claim limits this claimed to the lesser amount of £952.38 as a liquidated amount. The Applicant had not sought nor had it been given permission to amend the Particulars of Claim. Accordingly, the Tribunal found that the legal fees of £952.38 were reasonable. It may well be that the Applicant is contractually entitled to recover from the Respondent the total costs it has incurred in seeking to recover the arrears owed by him but this will have to be pursued separately and possibly by way of further proceedings.

Dated the 20 day of October 2010

CHAIRMAN.....

Mr I Mohabir LLB (Hons)