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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985**

Case Reference: LON/OOAE/LSC/2012/0247

Premises: Flat 7, 22 Brondesbury Road, NW6 6AY

Applicant: Mr V Jankovich

Respondent: Mr M King

Date of hearing: 24 September 2012

**Present at hearing: Mr V Jankovich
Mr M King
Ms S Taylor (with Mr King)**

**Leasehold Valuation Tribunal: Mr M Martynski
Mrs E Flint DMS FRICS IRRV
Ms L West MBA**

DECISION

1. It is reasonable for Service Charges to be apportioned using the current percentage split between the leaseholders.
2. All Service Charges for the year ending June 2007 are reasonable and payable.

3. All Service Charges for the year ending June 2008 are reasonable and payable save for the costs of; (a) roof replacement to Flat 2 which were not reasonably incurred and which are not payable by Mr King, and; (b) management costs which are only payable in the sum of £247.00 (Mr King's share).
4. No Service Charge is payable by Mr King for the years ending June 2009, 2010 and 2011 those Service Charges having not been demanded within 18 months of them being incurred and now being out of time.
5. All Service Charges for the year ending June 2012 are reasonable and payable by Mr King save for the costs of external decorations which are only payable in the sum of £5,600.00 (including scaffolding). **This is however subject to Mr Jankovich responding to the Tribunal with the relevant documentation (if any) by 30 November 2012 – see paragraphs 41-43 of this decision.**
6. Mr King is to pay to Mr Jankovich the sum of £175.00 being half of the fees that Mr Jankovich has paid to the Tribunal for this application.
7. No order is made for any of Mr King's costs to be paid.
8. Mr Jankovich is not able to claim any of his costs of these proceedings from the Service Charge for 22 Brondesbury Road.

Background

9. The property in question is a two-bedroomed flat on the top floor of a four-storey semi-detached house. At basement level there are two flats each accessed via their own front entrance doors. At raised ground floor level there is a front entrance door leading to another five flats accessed via communal landings and stairs. The raised ground floor and first floors have two flats on each floor. Mr King's flat occupies the whole of the top floor.
10. At the front of the building is a bin store area to the left hand side (as one looks at the building from the street). There is then an area of hard standing on which there are two car parking spaces. Flats 1 and 4 each have a lease of one of these spaces.
11. To the rear of the building is a large garden. This garden is for the sole use of the two basement flats.
12. Mr King acquired the lease to his flat in 2006. For the purpose of these proceedings, the relevant parts of that lease read as follows:-

"the Common Parts" means the front garden, path, main entrances, passages, landings, staircases, means of refuse disposal (if any) and other areas included

in the title above referred to provided by the Landlord for the common use of residents in the Building and their visitors and is not subject to any lease or tenancy to which the Landlord is entitled to the reversion

THE Tenant HEREBY COVENANTS with the Landlord and with and for the benefit of the Flat Owners that throughout the term the Tenant will:

(4) Pay the Interim charge and the Service Charge at the times and in the manner provided in the Fifth Schedule hereto both such Charges to be recoverable in default as rent in arrear

"the Total Expenditure" means the total expenditure incurred by the Landlord in any Accounting Period in carrying out its obligations under clauses 5(5) and (6) of this Lease and any other cost and expenses reasonably and properly incurred in connection with the Building including without prejudice to the generality of the forgoing:.....

"the Service Charge" means a fair and reasonable proportion of the Total Expenditure

13. Clause 5(5) of the lease deals with the landlord's obligation to insure the building. Clause 5(6) of the lease obliges the landlord to maintain the building and the common parts and:-

All other parts of the Buildingnot included in this demise or the demise of any other Flat or part of the Building

14. Mr Jankovich's application sought a determination as to the reasonableness and payability of the Service Charge for the years 2006 to 2012 inclusive. In his response to the application, Mr King only challenged the reasonableness of some of the Service Charge over the years and it is only those challenges made in Mr King's Statement of Case and pursued at the hearing¹ that are dealt with in this decision. All other Service Charges are accepted by Mr King as being reasonable and payable.

The issues and the Tribunal's decisions

The Service Charge apportionment

15. Mr King objected to the way in which the Service Charge had been apportioned over the years. As can be seen from the extracts from his lease quoted above, Mr King's share of the Service Charge is "*a fair and reasonable proportion of the Total Expenditure*".
16. Mr Jankovich has been charging Mr King a 20.6% share of the Total Expenditure ever since he acquired the freehold of the building. He says that he simply charged the leaseholders the same percentage share as his predecessor in title. Neither party knew exactly how Mr King's and the other leaseholders' percentage proportions came to be set. Both parties believed

¹ Not all the challenges raised in the Respondent's Statement of Case were pursued by him at the hearing

however that the percentages more or less reflected each individual flat's square footage in relation to the other flats.

17. Mr King argued that it was wrong only to take into account each flat's internal space when deciding what was a flat's fair and reasonable proportion of the Total Expenditure. He argued that, if a flat had the exclusive use of external space, that space should be taken into account as well as the internal space. This would mean that the basement flats, which had exclusive use of the rear garden (and in the case of flat 1 exclusive use of a parking space), and flat 4, with exclusive use of parking space, should pay a much higher percentage of total expenditure than the current percentages.
18. The Tribunal clarified with Mr Jankovich that, if a flat owner had a lease of a parking space or part of the garden, any costs in respect of that parking space or garden would be the sole responsibility of that flat owner and not part of the general expenditure to be contributed to by all lessees. On that basis, it was entirely fair and reasonable for the percentage contribution of the flats to the total expenditure to be based on the internal square footage of each flat. This is a common way for a Service Charge to be shared between flats in a building. Therefore the Tribunal finds that the current method of apportioning expenditure is reasonable.

Year ending 2007 – Tree pruning - £320.00

19. The trees in question are two Lime trees on the front left hand side to the building when viewed from the road. On considering various plans and looking at a view of the building from Google Street maps, it was apparent that these trees were more than likely by the bin stores to the side of the parking space owned by one of the flat owners.
20. Mr King was concerned that the reasons for pruning the trees was solely for the benefit of the leaseholder with the car space under the tree (a Lime tree produces a sticky substance that was falling on the car) and for the benefit of the leaseholder of the basement flat on that side of the building so that she could get more light into her flat.
21. Mr Jankovich could not be entirely sure of the exact reasons for getting the trees pruned. He recalled that there was an issue with sticky material falling on cars.
22. It was clear from the leases and the plans and photographs available to the Tribunal that the Lime trees sat on a part of the property that is a common part. The Tribunal considers that if the trees were pruned for one or both of the reasons put forward by the Respondent, the pruning was reasonably done. As the trees are on the common parts, the cost of pruning was properly put on the Service Charge payable by all leaseholders.

Year ending 2008 - Roof repairs - £1050.00

23. Mr Jankovich stated that the leaseholder of the basement flat, flat 2, reported to him that she had a leak coming into her flat. Mr Jankovich said that he went to the flat to inspect. However he kept no notes of his inspection nor could he remember with any clarity what he saw there or what investigations he made to establish the source and cause of the leak.
24. Mr Jankovich had already had some repairs carried out to a roof on another part of the building earlier that year and it was common ground between the parties that this work had been done well. Mr Jankovich therefore decided to use the same company to replace the roof area over the basement flat. Unfortunately, Mr Jankovich was unable to say with any detail exactly what work was carried out and he did not have with him the any report from the contractor setting out what was wrong and what exactly was done by way of replacement/repair. All the invoice for the work recorded was 'carry out roofing works'.
25. Mr King, who is a builder by trade, said that as far as he knew, the leaking into flat 2 came not from the roof, but sideways from flat 4. Mr King had kept an eye on the works as they progressed. He was concerned that an ordinary flat roof had been replaced with a roof incorporating two skylights that had not been there before (Mr Jankovich said that the sky lights had been paid for separately by the leaseholder of flat 2). The covering over this roof was mineral felt, the same sort of material, according to Mr King, that would be put on a shed. Mr King said that it was not suitable for a flat roof.
26. Given the legitimate questions raised by Mr King about the need for the replacement of the roof and the quality of the roof, the onus was on Mr Jankovich to demonstrate the need for a new roof and to justify the type of roof/roof covering installed. He was not able to do either of these things and accordingly the Tribunal cannot find, as requested by Mr Jankovich, that the sums claimed from Mr King in respect of this roof were reasonably incurred and Mr King's share of that cost is not payable by him.

Year ending 2008 - Management Fees - £297.00 per flat

27. The Tribunal considered it appropriate, given the management failing on the issue of the roof described above, to reduce the management fee for this year payable by Mr King to £247.00.

2009/2011 costs – section 20B Landlord and Tenant Act 1985

28. The Respondent alleged that various sums claimed in the Service Charge were not payable because they had not been demanded within 18 months of having been incurred.
29. Section 20B Landlord and Tenant Act 1985 provides as follows:-

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
 - (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.
30. In respect of the costs incurred in the Service Charge year 2008/9, Mr Jankovich was unable to show the Tribunal any demand or any other notification sent to Mr King informing him that the costs in question in that year had been demanded. Mr King denied ever getting a demand or notification. Accordingly the Tribunal finds that none of the Service Charges claimed for the Service Charge year 2008/9 are payable by Mr King.
31. As to the year 2009/10 the Tribunal was shown an email dated 6 May 2011 sent to Mr King's email address which attached as a pdf document a Service Charge demand for the year in question dated the same day, that is 6 May 2011. The Tribunal was shown the copy of the demand sent with the email. Mr Jankovich explained that he printed out the Service Charge demand the same day that he sent the email and that his system was programmed to put the current date on any document that was printed. Mr Jankovich said that as well as sending this demand by email, it had been sent by post in October 2010. Mr Jankovich was not able to produce any copy letter to Mr King enclosing the demand or any other proof that it was sent out. Mr King had denied getting any demand for the year in question or being notified of the expenses incurred in that year at any point prior to May 2011.
32. The Tribunal concludes therefore that the first time that Mr King was put on notice of expenditure for the Service Charge year ending June 2010 was on 6 May 2011. Accordingly, any expenditure incurred for that Service charge year 18 months prior to 6 May 2011 is not now payable. The expenditure for that Service Charge year was in fact incurred in September 2009 which is more than 18 months prior to May 2011 and it follows that no Service Charge for the year ending June 2010 is payable by Mr King.
33. As to the year 2010/11, Mr King said that the first time that he had seen the demand for this year was in the Tribunal papers submitted by Mr Jankovich in or about May or June 2012. Mr Jankovich was not able to produce any copy letter to Mr King enclosing the demand or any other proof that it was sent out.
34. The Tribunal concludes therefore that the first time that Mr King was put on notice of expenditure for the Service Charge year ending June 2011 was, at the earliest, May 2012. Accordingly, any expenditure incurred for that Service charge year 18 months prior to May 2012 is not now payable. The expenditure for that Service Charge year was in fact incurred in July 2010 which is more than 18 months prior to May 2012 and it follows that no Service Charge for the year ending June 2011 is payable by Mr King.

2012 – Decorations- £7780.00

35. This sum for external decorations carried out in 2012 was made up of three parts as follows:-
- £3141.00 for the exterior woodwork
 - £2839.00 for the external masonry
 - £1800.00 for scaffolding
36. Mr King said that he had got the works in question priced by a Mr Stockwell in 2008 and had got a quote for £3,800. He contacted Mr Stockwell again in 2011 and Mr Stockwell agreed that he would do the work for the same price as was quoted in 2008.
37. Mr Jankovich said that he had contacted Mr Stockwell and that Mr Stockwell had 'played around' for a time stalling Mr Jankovich until Mr Stockwell eventually said that he could no longer do the work. Mr King then put Mr Jankovitch in touch with another contractor, a Mr Wellman, who agreed to do the work for £3,800. In fact this quote was set out in the consultation process regarding the works followed by Mr Jankovich. In that consultation process, the quote of £3,800 was the cheapest quote by some way.
38. Mr Jankovich then took soundings from all the leaseholders as to the various quotes obtained. The only leaseholder to express a preference for Mr Wellman's quote was Mr King. Other leaseholders expressed definite preferences for other contractors. Mr Jankovich set out in his papers extracts from the various responses of the leaseholders, he did not set out the actual responses of those leaseholders in full or the correspondence Mr Jankovich which they were in answer to. It was impossible to know therefore the context in which the leaseholders' views, which included statements such as "not Mike Kings guy" and "who is your guy who is reliable and trustworthy" were expressed. It is clear from the extracts of the leaseholders' responses that Mr Jankovich clearly had expressed views regarding the quotes and those views had possibly influenced the responses from leaseholders.
39. Beyond considering the views of the leaseholders, there was no evidence from Mr Jankovich as to why he chose the contractor who had provided a much more expensive quote than Mr Wellman to carry out the work. In the Tribunal's view, in a case where a contractor is chosen to undertake major work and the contractor chosen is significantly more expensive than other quote/s, it is incumbent upon a landlord to give some objective and logical reason why he chose the more expensive contractor. This is especially so in this case given that the context in which opinions of leaseholders were taken is unclear.
40. In the circumstances therefore, the Tribunal concludes that the costs of the work in question were only reasonably incurred insofar as they do not exceed £3,800 plus £1,800 for scaffolding making a total of £5,600.

41. However, that is not the end of the matter. After the hearing, the Tribunal noticed that there appears to have been a failure by Mr Jankovich to properly comply with the statutory consultation procedure. Upon entering into the contract with the contractor chosen to do the work, there is no evidence that Mr Jankovich then notified the leaseholders of this fact and gave reasons for choosing a quote that was not the lowest quote as required by paragraph 13 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003 (see the extracts from the relevant legislation at the end of this decision).
42. If there has been a failure to serve the required notice as described above, the result will be that Mr King's contribution to the cost of these works will be limited to just £250.00 in any event.
43. The Tribunal is conscious that Mr Jankovich did not have the chance to say anything about this aspect of the matter at the hearing. Accordingly he has until **30 November 2012** to send to the Tribunal and to Mr King a copy of any notice that he did serve complying with paragraph 13 of the Regulation (if he did serve one) together with proof of service. If the Tribunal is satisfied that the notice was served, Mr King's contribution to the costs of the work in question will be limited to his share of £5,600.00.

2012 – Tree pruning - £280

44. These are the same two Lime trees as were discussed earlier in this decision. Mr Jankovich arranged for the trees to be pruned following a request from one of the leaseholders who complained that they were getting too large. Mr King was concerned at this expenditure given that the trees had been pruned in 2007.
45. The Tribunal is aware that Lime trees are fast growing and that they would have grown considerably in five years. According we find that it is reasonable for the trees to have been pruned.

Management fees - general

46. Mr Jankovich's fees (via his Management company) have been; £1,500.00 for the Service Charge year ending 2007 and then £297.00 per flat (£2079.00) from thereon.
47. Mr King considered these fees to be too high and was concerned that the management fee was not increased properly for the year ending 2008. In an email, Mr Jankovich stated that the management fee had been amended to a per flat basis and that would favour people like Mr King with larger flats. The change did benefit Mr King, but at the same time, the management fee overall for the building went up.
48. The Tribunal considers the Management fee to be reasonable. It is a fee that is in line with the market. It is likely that if an independent management company were used, the fee would be higher. The Tribunal further considers

that the failings of management that it has identified have been sufficiently punished by the decisions made above as to the amounts that have found not to be payable by Mr King.

Costs and fees

49. Mr Jankovich asked for an order that Mr King pay to him the fees that have been paid to the Tribunal in these proceedings. Mr King asked for an order that none of Mr Jankovich's costs incurred in these proceedings be put on the Service Charge and in addition asked for an order that his costs be paid by Mr Jankovich.

Fees

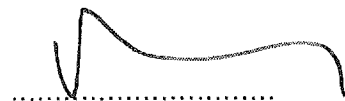
50. Both parties have been successful on various issues. It has to be remembered that Mr King did not contest many of the items of expenditure set out originally in Mr Jankovich's application and conceded on others at the hearing.
51. In the circumstances the Tribunal considers that the parties should both bear the burden of the Tribunal fees equally and accordingly orders that Mr King must pay to Mr Jankovich the sum of £175.00 being half of the fees that Mr Jankovich has paid to the Tribunal for this application.

Costs – Section 20C Landlord and Tenant Act 1985

52. An order is made that none of the costs incurred by Mr Jankovich in this application can be placed on the Service Charge. The reason for this is that had Mr Jankovich better managed the Property it is likely that these proceedings may not have been required and other leaseholders should not have to bear any part of the costs incurred in this application.

Costs – Schedule 10 Commonhold and Leasehold Reform Act 2002

53. The Tribunal can only order one party to pay any other costs (other than those dealt with in the paragraphs above) if one party has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. There is no question of Mr Jankovich having acted in this way and no order for payment of Mr King's costs is made.



Mark Martynski, Tribunal Chairman

24 October 2012

Extracts from the relevant law

Landlord and Tenant Act 1985

20C Limitation of service charges: costs of proceedings

- (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 Lands 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;
- (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;]
- (b) 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;
- (c) in the case of proceedings before the Lands Tribunal, to the tribunal;
- (d) 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.

Service Charges (Consultation Requirements) (England) Regulations 2003

SCHEDULE 4

CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS OTHER THAN WORKS UNDER QUALIFYING LONG TERM OR AGREEMENTS TO WHICH REGULATION 7(3) APPLIES
Part 2 Consultation Requirements for Qualifying Works for Which Public Notice is Not Required
Notice of intention

8

- (1) The landlord shall give notice in writing of his intention to carry out qualifying works—
- (a) to each tenant; and
- (b) where a recognised tenants' association represents some or all of the tenants, to the association.
- (2) The notice shall—

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
 - (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
 - (c) invite the making, in writing, of observations in relation to the proposed works; and
 - (d) specify—
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.
- (3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

9

- (1) Where a notice under paragraph 1 specifies a place and hours for inspection—
- (a) the place and hours so specified must be reasonable; and
 - (b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.
- (2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

10

Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

11

- (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.
- (2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

- (3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—
- (a) from the person who received the most nominations; or
 - (b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or
 - (c) in any other case, from any nominated person.
- (4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—
- (a) from at least one person nominated by a tenant; and
 - (b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).
- (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
- (a) obtain estimates for the carrying out of the proposed works;
 - (b) supply, free of charge, a statement ("the paragraph (b) statement") setting out—
 - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
 - (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and
 - (c) make all of the estimates available for inspection.
- (6) At least one of the estimates must be that of a person wholly unconnected with the landlord.
- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—
- (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
 - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
 - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
- (a) each tenant; and
 - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)—
- (a) specify the place and hours at which the estimates may be inspected;
 - (b) invite the making, in writing, of observations in relation to those estimates;
 - (c) specify—
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.
- (11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

12

Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

13

- (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—
- (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
 - (b) where he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.
- (2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.
- (3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.