



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/OOAJ/LSC/2013/0027

Property : Flats 8, 16, 20, 27, 30, 34, 38, 39, 42, 44
& 46 Southall Court, Lady Margaret
Road, Southall, Middx, UB1 2RG

Applicant : Southall Court (Residents) Limited

Representative : Mr P Ward

Respondent : Twelve Leaseholders of the 48 flats
in Southall Court

Representative : Not applicable

Type of Application : S.27A Landlord and Tenant Act 1985 and
Schedule 11 of the Commonhold and
Leasehold Reform Act 2002

Tribunal Members : Ms F Dickie, Chairman
Mr D Jagger, FRICS
Ms J Dalal

**Date and venue of
Hearing** : Monday 20 May 2013
10 Alfred Place, London WC1E 7LR

Date of Decision : Wednesday 3 July 2013

DECISION

Preliminary

1. The Applicant freeholder seeks a determination under section 27A of the Landlord and Tenant Act 1985 and under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 as to whether service and administration charges levied by the Applicant are reasonable and payable.
2. The Respondents are the leaseholders of 12 flats in Southall Court. At the hearing the Respondent Mr Edward Clancy, the leaseholder of flat 27, appeared in person, representing only himself. The other Respondents were not in attendance or represented.
3. The application is for the determination of service charges demanded in an invoice number 12/01 for the year 2011/12. Upon a previous application to the Leasehold Valuation Tribunal, case reference LON/OOAJ/LSC/2012/0412 in relation to the same invoice the sum of £2367.88 per flat was found to be reasonable and payable as a service charge. However, the Respondents in the present proceedings were not parties to that application and the present tribunal is not bound by it.
4. At the pre trial review that took place on 27 February 2013 the only Respondent who attended was Mr Clancy. No other Respondent has participated in the proceedings at all. Mr Clancy indicated that he was challenging the application on the basis that he had paid the service charges in question, by virtue of overpayments in previous years. The tribunal issued directions at the pre trial review for the landlord to prepare and send to Mr Clancy a running statement of his service charge account since the start of the service charge year 2007/08 recording all debit and credit entries.
5. Unfortunately, Mr Ward did not comply with this direction, but produced merely a list of insurance, maintenance and service charges, and sinking fund contributions with the work "paid" or "unpaid" next to each sum. He produced no proper account, with the date of each entry and a running total, and no other evidence of expenditure or of payment by the Respondents.
6. At no stage did Mr Clancy object to the directions issued, and it was not until the hearing that took place on 20 May 2013 that he made it clear to the tribunal that his argument as to carried forward service charge overpayments related to the service charge years from 2003/04. No directions had been sought or issued for the landlord to prepare a case or produce evidence in respect of the years 2003/04 - 2006/07.

The Hearing and the Tribunal's Determinations

7. Mr Clancy contended that he had made an overpayment of £2874.84 in respect of the cumulative period from 2003/04, and that his subsequent service charge liabilities were accordingly reduced by that sum. He referred to this being the overpaid balance on a payment of

£3,378.12 in respect of a 2009 invoice, since the accounts indicated that tenants' contributions had been only £500. However, since Mr Clancy had not explained his case at the Pre Trial Review or sought directions for disclosure of the relevant documents back to 2003/04, the tribunal could not be satisfied on the available evidence what the payment of £3,378.12 had been for, what his service charge liability for the years 2003/04 to 2006/07 had been, or that there had indeed been an overpayment. In the circumstances, it was not reasonable for the tribunal to adjourn the hearing for further evidence about this alleged overpayment. If Mr Clancy sought to rely on an overpayment the burden was on him to show on the evidence that there had been one, but the tribunal finds he failed to do this.

8. The tribunal therefore finds no such overpayment was made and that no sums can be brought forward into the years from 2007/08 that form the subject of this application. The tribunal therefore applies a nil balance to Mr Clancy's service charge account from the start of the service charge year 2007/08.
9. Mr Clancy challenged the landlord's demands, which invited him to inspect the invoices. He had written to Mr Ward on 6 January 2013 to request a meeting to discuss his liability. He requested an inspection of a summary of costs. He referred to historic service charge overpayments from 2004/05. He did not receive a reply to that letter. He said he had attended the LVT because of the landlord's failure to sit down with him and determine his liability, and the landlord's practice making it difficult to determine what is due and owing. Mr Clancy also raised concerns that it was not uncommon for the landlord to issue duplicate invoices, issue the same sum in different invoices, and to produce demands for payment and accounts very late indeed. He expressed concern that the landlord's accounting practices were most unclear, and described Southall Court as being "in the grip of a culture of suspicion and mistrust; this in turn is affecting the collection of charges which is adversely impacting the maintenance of the estate and the interests of leaseholders."
10. Owing to the variation of the Respondents' leases, since 2008/09 audited accounts have been required before the adjusted actual service balance in addition to the estimate can become due. Mr Ward conceded that no such accounts had been prepared. This causes the tribunal substantial concern. It is unsurprising in the circumstances that leaseholders are unsure of the landlord's proficiency in handling the service charge account.
11. Mr Ward excused the failure to produce audited account for so long as a product of the drain on company time and resources caused by all of the litigation and management problems on the estate. However, in the opinion of the tribunal this is a poor excuse and suggests a failure to prioritise a landlord's obligation. It is unsurprising that non payment of service charges is such a serious problem on the estate (the tribunal notes for example that 25% of leaseholders are Respondents to the

present application) where there is such a lack of transparency on the part of the landlord. The tribunal itself found it very difficult to follow and understand the landlord's invoicing, the form of which contained much narrative, reference to the conduct of certain leaseholders and numerous footnotes. Having considered the state of the landlord's evidence in the present case, the tribunal considers that the financial management of the estate falls short of what is to be expected. The tribunal understands the management of the estate has recently been put in the hands of professional managing agents, and it is hoped that this will provide benefits.

12. On the attached schedule the tribunal sets out in columns the service charges sought by the landlord for the years from 2007/08, the sum the tribunal finds is payable, and the sum that it finds Mr Clancy has paid. Accordingly, the tribunal finds that the sum outstanding and due from Mr Clancy, as an accumulated balance and not just in relation to the invoice that is the subject of the landlord's application, is £3907.06. In respect of the other Respondents, no argument has been put forward which required the tribunal's determination as to any sums paid. In respect of those Respondents, the second column of figures in the schedule shall be applied by the landlord in respect of the constituent parts of invoice 12/01 that forms the subject of the application.

Fees and Costs

13. The tribunal being dissatisfied with the landlord's failure to comply with directions, its lack of preparedness for the hearing and, in particular, the frustratingly obscure state of its accounts, it declines to make an order that Mr Clancy refund the application and hearing fee paid. For like reasons, and owing to the landlord's failure fully to communicate with Mr Clancy over his enquiries as to the historic state of his account, the tribunal makes an order on Mr Clancy's application under s20C of the Landlord and Tenant Act 1985 that the landlord is prohibited from charging the costs of these proceedings to the service charge account.

Signed Ms F Dickie

Chairman

Dated Friday 5 July 2013

2007/08				Case Reference: LON/00AJ/LSC/2013/0027
Item	Charge Due According to Applicant	Tribunal Decision Charge Due	Amount Paid	
Insurance	107.81	107.81	107.81	The parties were agreed that this amount had been paid.
Service Charge	0			
Maintenance Charge	3378.12	3378.12	806.26	The amount due for this year was the amount determined by the LVT in case LON/00AJ/LSC/2008/0591, subject to certification of the accounts by an accountant. Mr Clancy was a Respondent in these proceedings. He was unhappy that it had taken so long for the landlord to certify the accounts - which had been done on 18 December 2012. This tribunal finds that, certification of the account having been obtained, the sum is due and it has no jurisdiction to revisit the matter. Mr Clancy had made a payment of £806.26 calculated as the balance outstanding after credit for overpaid sums brought forward, but for the reasons in paragraphs 7 and 8 the tribunal finds there is no such overpayment. Mr Clancy relied on the decision in case /0591, para 20 regarding the maintenance charge for the years 2003/04 and 2004/05: "we determine that a maintenance charge of £1002.78 was payable on 24 June 2003, and that a maintenance charge of £426.65 was payable on 24 June 2005 by each of the respondents". Mr Clancy sought to argue that appropriate adjustments had not been made to his account as a result of this decision.
Sinking Fund				
				Total paid 2007/08
2008/09				
Insurance	212.05	0	0	Whilst the landlord said this amount for insurance had been paid, Mr Clancy denied that it had or that he had received a demand to pay it. Mr Ward could not produce an invoice for insurance for this year. The tribunal is satisfied it was not paid. The amount for insurance was the same as that charged in invoice 9/01 for £212.05. Mr Ward admitted an error in the repetition of this sum. The tribunal is not satisfied that the sum was demanded from any leaseholder and finds it is not due as a service charge. It is now too late to demand it by virtue of s.20B of the Act, since it is more than 18 months after the

				expenditure was incurred.
Service Charge				
Maintenance Charge	500	500	0	This amount is not a variable service charge. It is payable under a direct covenant with the landlord in the varied lease (in respect of which the tribunal has no jurisdiction).
Sinking Fund				Mr Clancy had made no payments this year. The tribunal finds nothing was paid to the service charge account. There can be no reliance on allegedly overpaid service charges in previous years.
				Total paid 2008/09
2009/10				
Insurance	212.05	0		Mr Ward said he only invoiced for actual insurance costs, not estimated. Accordingly, since no audited accounts have been yet prepared, according to the varied lease terms no insurance is due from any leaseholder
Service Charge	2053.43	2053.43	2053.43	Mr Clancy produced evidence of payment (within 2 larger cheques covering this year and the subsequent one) of £482.50 and £1570.93. He did not assert that he had made any other payments this year, and tried to assert that his maintenance charge was covered by his previous overpayments. £2053.43 for the interim service charge was found to be payable by the Upper Tribunal for the roof replacement [2011] UKUT 218 (LC)
Maintenance Charge	500	500		£500 is payable by direct covenant 5th schedule 2(2) (in respect of which the tribunal has no jurisdiction)
Sinking Fund	300	300		The sinking fund contribution is due under a direct covenant in the lease
2010/11				
Insurance	232.4	0	232.4	As above, this sum is not due. Insurance and sinking fund contribution were paid by Mr Clancy in the payment of £1029.40 paid 29 June 2010.
Service Charge				
Maintenance Charge	1238.26	500	0	Mr Clancy gave evidence that he had not paid this amount, in spite of the landlord's records to the contrary. The tribunal is satisfied it was not paid. £1238.26 was found payable by a previous LVT in case LON/00AJ/LSC/2012/0412, issued on 20 November 2012, to which Mr Clancy was not a party. This tribunal is not bound by that decision, the previous tribunal having apparently not been presented with the issue of the absence of audited accounts for this year. Of this sum £500 was the maintenance

				charge, payable in advance by a covenant in the lease. The remainder appears to be the actual service charge, in the sum of £738.26. The tribunal finds this sum is not payable, and will not be payable by any leaseholder unless and until a set of audited accounts is served on the Respondent in compliance with the requirements in the lease.
Sinking Fund	313.5	313.5	313.5	There was no dispute this sum was due and paid.
2011/12				
Insurance	287.62	0	232.4	Mr Ward said he had incorrectly repeated his figure of £232.40 for insurance for the year 2011/12 in his statement of charges due for this year, and the real amount should be £287.62. The tribunal is satisfied that the invoice issued for the year 2011/12 is likely to have been for the lower amount, this being the amount that was paid. Accordingly, the tribunal finds that the insurance due for 2011/12 was only £232.40 and not the higher sum. However, this is not due from any leaseholder until audited accounts are served and the amount currently due is nil.
Service Charge				
Maintenance Charge				
Sinking Fund	330.12	330.12	330.12	There was no dispute that the invoice had been received and it had been paid.
		7982.98	4075.92	

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