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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/00AS/LSC/2014/0105

Premises: 14 & 18 Heather Close, Uxbridge, UB8 3QD

**Applicants: Mrs Quayson (Lessee Flat 14)
Mr Hopkins (Lessee Flat 18)**

Representative: In Person

Respondent: Heather Holdings

**Representative: Mr J Wheatley (Freeholder and lessee of
Flat 16)**

Date of hearing: 30 May 2014

Appearance for Applicant(s): In Person

Appearance for Respondent(s): Mr Wheatley

**Leasehold Valuation Tribunal: Judge E Samupfonda
Mr T Sennett
Mr A Ring**

Date of decision: 5 June 2014

Decisions of the tribunal

- (1) The tribunal determines that the sums of £240 for the year 2008-9, £260 for the year 2009-2010 and £260 for the year 2010-2011 are not payable by the Applicants in respect of the service charge.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (3) The leaseholders attending the hearing agreed that the cost of the hearing fee of £290 should be divided equally between them. The tribunal therefore determines that Mr Wheatley and Mr Griffiths shall pay the Applicants £145 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicants.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years 2008-2011.

The hearing

2. The Applicants appeared in person at the hearing and Mr Wheatley, the freehold owner and lessee of flat 16 represented the Respondent.

The background

3. The property, which is the subject of this application was originally designed as a pair of semi detached houses but built as 4 self-contained flats. Approximately 6 years ago, Mr Wheatley lessee of flat 16 and Mr Griffiths lessee of flat 20, as Heather Holdings, purchased the freehold from the Local Authority. The Applicant lessees of flats 14 and 18 declined to participate at that time. All 4 properties appear to be held on the original Local Authority Right to Buy leases. The tribunal was provided with a copy of the lease for flat 14.
4. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
5. At the Case Management Conference held on 20 March 2014, the tribunal identified that the issue to be determined was the reasonableness and payability of the annual service charges as claimed by the Respondent, a total of £760 per Applicant for the years 2008-2011. The Applicants challenged the cost of the management fee, repairs and building insurance. Whilst Mr

Wheatley acknowledged that he had served demands for payment, he offered to waive the claim because neither Applicant would make payments and he said that he had therefore given up.

6. During the hearing, the tribunal was provided with a copy of an extract of an undated letter written by Mr Wheatley to the tribunal in which he stated "I wish to communicate that Heather Holdings does not wish to pursue any leaseholder for previous years. My associate Mr Mark Griffiths, has been consulted and he confirms that he is happy to drop any charges from previous years."
7. In that letter, Mr Wheatley also offered to contact the Woolwich Building Society's solicitors Solex stating that "Mrs Ruth Quayson is up to date with any and all charges."
8. Mr Wheatley confirmed that the offer to waive the service charge was still open and unqualified and that he would take it forward. He also confirmed that he would copy Mrs Quayson into his email to Solex solicitors.
9. Both Applicants confirmed that they would shortly pay their contribution towards the cost of the building insurance. Mr Wheatley confirmed that once payment has been received, he would provide each Applicant a full un-redacted copy of the insurance policy.
10. In the circumstances there were no matters for the tribunal to resolve.

Application under s.20C and refund of fees

11. At the end of the hearing, the Applicants made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that they had paid in respect of the hearing. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders that Mr Wheatley and Mr Griffiths refund £145 towards the cost of the fees paid by the Applicants within 28 days of the date of this decision.
12. At the hearing, the Applicants applied for an order under section 20C of the 1985. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

Chairman: Evis Samupfonda

Date: 5 June 2014

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (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.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (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 provisions 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 27A

- (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.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

- (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 Upper 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 Upper 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).