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LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 SECTION 27A

SCHEDULE 11 COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Ref: LON/00AG/LSC/2010/0461

Ground Floor Flat, 19 Broomsleigh Street, London NW6 1QQ

Ms C L Piggott

Applicant

Regisport Limited

Respondent

Tribunal: Mr M Martynski (Solicitor)
Mr M Cartwright JP FRICS
Mrs G Barrett

Hearing: 11 October 2010

In attendance: Ms Piggot
Mr & Mrs Felton (Applicant's parents)
Mr R Trivett (Head of Property Mangement at Peir Management)
Ms J Skurr (Property Manager at Pier Management)

DECISION

Decision summary

1. The following Administration Charges are not payable:-

- The sum of £132.25 in respect of various emails/letters

All other Administration Charges levied (save for registration fees) and shown on the Applicant's service charge account up to the date of the Tribunal hearing are payable by the Applicant.

2. The Administration Charge in the sum of £120.00 plus VAT for the registration of a notice of transfer and charge is not reasonable. Only the sum of £84.00 plus VAT is reasonable and payable.
3. The Management Fee in the sum of £91.94 charged for the service charge year 2009/10 is reasonable and payable.
4. The Bank Postage fee (charged for the period 2010/11) of £4.05 is payable.
5. The sum of £30.66 in respect of a report from City Power Damp Investigation is not payable.
6. Insurance premiums for the service charge years 2006/7, 2007/8 and 2008/9 are unreasonable in amount. In respect of those years only the sums of £202.24, £256.63 and £221.50 respectively are payable.
7. The Tribunal makes an order pursuant to section 20C Landlord and Tenant Act 1985 in the Applicant's favour in relation to costs incurred by the Respondent in this application.
8. The Respondent is to reimburse the Applicant the fees that she has paid to the Tribunal in these applications in the total sum of £350.00.
9. It is recorded that the Respondent, through Mr Trivett of Pier Management has agreed to pay to the Applicant its share of expenditure incurred by the Applicant on drainage work (cost £150.00) and gutters and downpipes (total cost £465.30).

Background

10. The property at 19 Broomsleigh Street ('the Property') is a terraced Victorian house converted into two flats. The flat on the upper floor is owned by the Respondent (or a company associated with the Respondent company) and it appears, is let out to a weekly tenant. The Property is managed by Pier Management which is a company associated with the Respondent company.

11. When the application was issued, it concerned not only matters covered in this decision but also other matters including the proper apportionment of service charges between the two flats. The Applicant's lease provides that she has to pay a 'proper proportion' of the service charge. She stated in her application that she required a declaration on the 'proper proportion' payable by her. Prior to issuing the application the Respondent had been charging her on the basis of a 50% share of the service charge. It was not until the pre-trial review hearing on the application that the Respondent agreed (unconditionally) that a fair proportion (given the respective sizes of the flats at the Property) was 41% in respect of the Applicant's flat.

12. After the final hearing of the application, the Tribunal gave further directions allowing the parties to submit further documents and submissions on the issues of administration charges and insurance premiums. This decision takes into account those documents and submissions.

The issues and the Tribunal's decisions

Administration charges – letters and emails

13. The Applicant's lease specifically deals with various administration charges. In particular it states:

To pay on demand:

- (a) to the landlord or its managing agents a fee of not less than £25. plus Value Added Tax or such other reasonable fee as may from time to time be determined by the Landlord in respect of any and each enquiry affecting the management of or the payment of rent or the insurance of the building
 - (b) The costs of the Landlord or its Agents in respect of all or any visits to the Building in conjunction with any insurance claim
- [clause 2 (k) (1)]

14. The Respondent charged administration fees to the Applicant in respect of various letters and emails sent to her. None of the letters or emails were charged at a fee in excess of the minimum provided for in the lease. Where therefore the Tribunal has considered that a letter or email properly comes within the above clause, it has to allow in full the amount charged given that the amount is (to the extent that it does not exceed £25 plus VAT) set by the lease. For the record, had the amount not been set by the lease, the Tribunal would have found that the fees charged for the correspondence were unreasonable and would have reduced them.

15. Dealing now with the charges in detail. The Tribunal finds that the following letters/emails sent to the Applicant do not come within the terms of the clause set out above and are not payable or are for other reasons not payable:

- (a) *Letters – 27 February 2009 & 9 July 2010 – charge £23.00 (per letter)*; these are simply letters threatening legal action in respect of alleged unpaid monies. They do not follow any enquiry made by the Applicant. There is no other provision in the lease that would allow the Respondent or its managing agent to levy an Administration Charge in respect of a letter of this nature.
- (b) *Email – 20 April 2010 – charge £28.75*; this email, apart from thanking the Respondent for a letter, deals with the issue of apportionment and states a position on the issue from which the Respondent later resiled after this application was issued. It cannot therefore be reasonable for an administration charge to be levied even if this email came within the lease clause in question.
- (c) *Emails dated 17 August and 14 December 2009 – charge £28.75 per item*; copies of these emails were never produced. Accordingly the charges made in respect of them cannot be shown to be reasonable or payable.

16. The Tribunal finds that the following letters/emails are payable by the Applicant under the terms of the above clause:

- (a) *Letter – 28 May 2009 – charge £28.75*; the Applicant made clear her dissatisfaction with the content of this letter written to her by Pier Management in response to various queries made by her. However, the letter clearly is a response to an enquiry and does give (at least to some extent) plausible answers to questions raised by the Applicant.

- (b) *Letters/email dated 14 January, 2 & 23 March 2010 – charge £28.75 per item; each piece of correspondence was dealing with an enquiry raised by the Applicant and so comes within the ambit of the lease clause in question. Therefore the charge in respect of each is payable by the Applicant.*

Administration charges – registration fees

17. The Applicant's lease provides for a fee to be paid to the landlord of not less than £35.00 plus VAT in respect of registration of transfers, mortgages or charges [clause 2(1)(f)].

18. The Applicant has been charged £60 plus VAT (per notice) for giving notice of a transfer and charge. She claimed that the fee (in total £141.00) was excessive.

19. The Respondent stated that the Applicant had provided no evidence to show that the charge was unreasonable.

20. The Tribunal considers that the charges are unreasonable. This conclusion is reached for the following reasons. First, the Tribunal's own experience of such charges is that they are more usually in the region of £20-£40. Second, the Tribunal had regard to the fact that it is only five years since the lease started. If one takes the view that the base starting figure was £35 plus VAT¹ and applies a rough increase along with RPI (from the date of the lease to March 2008 which is when the charge was made), one would arrive at a figure of around £42.00. Third, the Tribunal looked at the work involved on the part of the Respondent for the registration; the registration of the documents would have cost the Respondent very little in time or effort.

21. Accordingly the Tribunal has concluded that a reasonable sum at the time would have been £42.00 plus VAT for each document making a total of £98.70.

Service Charges – Management Fee

22. Only one fee has been charged and that was for the year April 2009 – March 2010 in the sum of 94.94 which is £79.95 plus VAT.

23. The fee was challenged by the Applicant on the grounds that, first, no significant management was actually carried out, the managing agents were there on a stand by basis only, and; second, what management has been done has been done badly. In particular the Applicant was concerned that:-

- She had to go to considerable time and trouble to get the managing agents to deal with maintenance issues and that the administration of those issues was done badly
- Her service charge account was confusing and several items on it had misleading descriptions
- The management company and the freeholder were very closely linked and there would need to be little consultation to be done between them

24. The Tribunal noted that the managing agents did not inspect the building. There was no evidence that they followed up and checked work carried out there. It was true that the

¹ The Tribunal realises that the lease provides for a figure *not less than* £35.00 and that this is not necessarily a starting figure

Applicant's service charge account was confusing in at least one place where an item had been mis-described.

25. The Tribunal further noted that the agents claimed, during the service charge year in question (2009/10) from the Applicant administration fees for letters and emails of £172.50. This brought sums claimed by them up to nearly £265.00. The lease empowers charges to be made for visits to the property in connection with insurance claims and administration charges to be charged at the rate of 15% of the value of any works carried out to the Property. The lease further allows of course a charge for the registration of various types of document.

26. The management fee has to be seen in the context of the right under the lease to charge a very large amount of money for each and every enquiry raised by the Applicant and in the light of the other charges described above. That leaves the only work to be done for the standing fee as the arrangement of the insurance (which of course is dealt with by brokers), the collection of the ground rent and the maintenance of a service charge account and service charge accounts each year.

27. However, the Tribunal is well aware that few reputable agents would be willing to take on the management of such a small building for less than £150-£250 per year. On top of this agents would generally charge a fee for arranging works where tenant consultation was needed and may charge accountancy fees as well.

28. On balance and taking into account the Applicant's allegations of incompetence, the Tribunal is of the view that the management fee, as it is very low, is justified. If it were the case that administration charges amounted to more per year than they have done so far (as adjusted), the Tribunal may have taken a different view.

Bank Postage fee - £4.95

29. This is a fee charged for the period 2010/11. It was said by Mr Trivett to be a service charge rather than an Administration Charge given that it was part of the management fee.

30. Insofar as no management fee appears to have been charged for the period 2010/11, such a small charge could not be said to be unreasonable and so it is payable. However, if a management fee were to be charged, it may well be the case that such petty disbursements would be expected to be within the managing agent's overheads and so not be payable.

Service charges - City Power London Limited - £30.66

31. A report was commissioned from City Power London Limited in August 2008 regarding various issues reported by the Applicant. The report (which is only one page long) made recommendations regarding a guttering problem and commented that some damp appeared to be within the Applicant's flat and some appeared to be in communal areas (the cause of this damp in communal areas could not be identified but recommendations were made as to further investigations to be made). The Applicant, for reasons unknown, has only been charged a third of the cost of this report.

32. The Applicant objected to the charge for this report as the report did not lead to any action being taken in respect of the issues that it highlighted. The Applicant further objected to it on the grounds that she did not authorise it and that it was, in her opinion, inaccurate in some respects.

33. The representatives from Pier Management present at the hearing were not able to explain the thinking behind obtaining the report from this contractor or the contractor's area of expertise. They were also unable to put the report into context, for example by explaining the use that was made of the report or the action taken following the report.

34. Given that the report does not appear to have been of any use, or alternatively that no use was made of it, the Tribunal considers that the cost of the report was unreasonably incurred and accordingly the Applicant is not liable to pay towards it.

35. For the record, the Tribunal does not uphold the Applicant's complaint that she did not authorise the report, the Respondent did not need her authorisation. The issue of the alleged errors in the report is academic given the Tribunal's decision regarding payment for it.

Service charges – insurance charges

36. The charges in question (on the figures put forward by the Applicant which were not challenged by the Respondent) were:-

06/07 - £421.85

07/08 - £535.87

08/09 - £462.53

37. Unusually, the Respondent appears to insure the two flats within the Property separately. Each flat has been given separate insurance figures (i.e. re-building costs). This does not appear to be in accordance with the lease which requires the building as a whole to be insured.

38. It is the Applicant's case that; (a) the insurance premiums are far too high for a building of this nature; (b) she should not have to pay an additional premium for insurance against terrorism (which make up respectively, £56.47, £59.86 and an unknown amount of the premiums set out above), and; (c) that the Respondent was paid substantial commission on the premiums, credit for which should be given to the Applicant.

39. The Applicant had two alternative quotes for insurance. The Tribunal ignored these as it was far from clear what type of insurance these quotes were for (the wording on the quotes suggested they may be for contents insurance) and what those quotes covered.

40. The Applicant's father gave evidence that he considered the building in question to have a square footage of approximately 1400 feet which equated with his own home. His buildings insurance was £513.20. Applying such a premium to the Applicant's building would make her share around £210.

41. As to the terrorism premium that was paid, the Applicant argued that there was no need for such cover in respect of a modest property outside of central London and that a private

householder insuring his or her own property in a similar location would not chose to insure against such a risk if that involved paying, as it did in this case, a substantially higher premium.

42. In the Tribunal's own experience, some element of terrorism cover is now common in London. The Respondent, when insuring its portfolio can have regard to the general needs of that portfolio and does not have to take into account the exact nature and location of the Property. The Tribunal did not have any evidence to judge the amount of the terrorism element and does not have sufficient knowledge itself to assess that element of the premium. The Tribunal is unable to conclude that this part of the premium is unreasonable and accordingly concludes that the terrorism element of the premium is payable (subject to the overall limits as to what is payable for insurance as set out later in this decision).

43. Moving on to the question of commission, despite being ordered to do so, the Respondent failed to provide the Tribunal or the Applicant with any details of the commission that it received.

44. It was the Respondent's case that insurance is placed on a portfolio basis, not by individual property. Following from this it was argued that the Respondent did not derive commission from the Property in isolation. It appeared to be the Respondent's contention that either one property on its own does not attract commission or that the commission earned on the portfolio cannot be apportioned per property within that portfolio.

45. The Tribunal rejects this argument. Clearly no commission would be earned were it not for the individual properties within the portfolio. A part of the commission earned is attributable to the Property. If the Respondent fails to give details of the commission or assist in apportioning that commission to the Property, the Tribunal is entitled to do the best it can on the evidence available to it.

46. The Applicant's father gave evidence that he ran a small property management company and that that company's brokers received 25% commission on premiums. Of that 25%, 10% is taken by the broker and 15% passed on to the company.

47. The Tribunal had regard to the case of *Williams and another v London Borough of Southwark, Chancery Division, Lightman J, 23 March 2000* where it was accepted that a leaseholder should be entitled to the benefit of a commission earned by the landlord from its insurers.

48. The Tribunal concludes that it was more likely than not that a commission or discount of up to 25% of the premium is paid/allowed to the Respondent on the policy and that the benefit of this commission should be, but is not, passed to the leaseholder.

49. After considering further evidence supplied by the parties subsequent to the hearing, the Tribunal noted the following:

50. The building sum insured had been calculated using the model produced by the Royal Institution of Chartered Surveyors Building Cost Information Service (BCIS model) for the

Association of British Insurers. The BCIS model is designed to be used by non Chartered Surveyors and the Tribunal accepts that, despite its limitations, it is from a highly respected source and can be relied upon.

51. The notes to the BCIS model make clear that it cannot be used for flats and professional advice should be taken for flats. By using the BCIS model in this way the rebuilding cost will be increased by, in effect, allowing for two sets of foundations and two roofs. The Tribunal notes that the area of the building is not agreed between the parties. Although a drawing has been supplied by email from the Respondent it does not contain a graphic scale or any dimensions that can be used to verify its actual scale. It cannot therefore be relied upon. The BCIS model uses gross external as the method of calculating the area. Only the Respondent has provided an area on this basis (it includes area of external walls and common parts) and the Tribunal relies upon the area given of 162m² as being, on the balance of probabilities, the most likely accurate measurement.

52. The Tribunal has made its own assessment of the rebuilding cost of the two-storey terrace house with roof extension converted horizontally to two flats. It considers that cost to be £250,000. This is only for the purpose of making a decision on this case and the parties are advised that for any other purpose a professional valuation should be sought in accordance with the notes to the BCIS model.

53. The Tribunal noted that the Respondent continued to fail to disclose whether insurance commission was being received by the Landlord or its agent and if so how much. In the absence of this information the Tribunal has decided that 15% of premium (excluding insurance tax) is normal in respect of commission and it decides to reduce the revised premiums payable accordingly.

54. The Tribunal has in summary pro rated the premium by the changed valuation, taken off 15% commission, and applied the agreed 41/59% split. This results in the following figures:-

06/07 £202.24

07/08 £256.63

08/09 £221.50

Costs and fees

Costs

55. The Applicant has been largely successful in her application, especially if it is borne in mind that, it was only after this application was issued and pursued, the Respondent conceded the apportionment issue in full.

56. Accordingly the Tribunal considers that it would be appropriate to make an order pursuant to section 20C Landlord and Tenant Act and orders that none of the costs incurred, or to be incurred, by the Respondent in connection with this application are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

57. For the reasons given above, the Tribunal orders that the Respondent pay to the Applicant the sum of £350.00 being the fees that she has paid to the Tribunal in order to pursue this application.

Penalty Costs

58. An application was made by the Applicant for an order that the Respondent pay further costs to her. The Tribunal only has power to make such an order if it is of the view that one party to the application has behaved in a way, in relation to the application (a party's actions outside of the application are irrelevant) that could be described as frivolous, vexatious, abusive, disruptive or otherwise unreasonable. Although there was behaviour on the part of the Respondent which could be described as unreasonable (not disclosing commissions or explaining why this information was not disclosed) the Tribunal does not consider that the Applicant has incurred any specific or additional cost in respect of that behaviour. Accordingly the Tribunal makes no order on this application for costs.

Mark Martynski

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Mark Martynski
Tribunal Chairman
17 December 2010