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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT  
ASSESSMENT PANEL**

**IN THE MATTER OF THE LANDLORD & TENANT ACT 1985  
SECTIONS 27A & 20C and**

**IN THE MATTER OF FLAT 3, 247 HOLMESDALE ROAD LONDON SE25  
6PR**

**CASE NUMBER: LON/00AH/LSC/2009/0387**

**Parties : Stewart Avery Applicant  
Resolute Property Management  
Limited Respondent**

**Representations : The Applicant in person  
For the Respondent; Ms C Cherriman  
Michael Richards & Co – Managing Agents**

**Date of Application: 10<sup>th</sup> May 2009**

**Date of Direction  
Orders : 29<sup>th</sup> July 2009 and 14<sup>th</sup> January 2010**

**Tribunal Members : Mr A A Dutton (Chairman)  
Miss M Krisko BSc (EstMan) BA FRICS  
Mrs R Turner JP BA**

**Date of Hearing : 12<sup>th</sup> April 2010**

**Date of Decision : 27<sup>th</sup> April 2010**

## REASONS

### A. BACKGROUND

1. This application was made by Mr Stewart Avery, the owner of Flat 3, 247 Holmesdale Road, South Norwood ("the property") on the 10<sup>th</sup> May 2009. The Respondent to the application is the freeholder, Resolute Property Management Limited, who were represented during the course of these proceedings by Michael Richards & Co.
2. The application challenged service charges going back to 2005. In each year Mr Avery challenged the existence of a sinking fund; the reasonableness or otherwise of undetailed amounts of service charges and management fees; whether the services have been supplied and charged for and, in the case of the year 2005, a question of credit due for monies expended by him. For the year 2007 he also raised a query concerning the removal of refuse, and for 2009 he queried the budget used for the purposes of the interim service charge.
3. The parties had utilised the Tribunals mediation programme and some items had been resolved. Accordingly, at the commencement of the hearing we were advised by Mr Avery that the following issues were still to be considered:-
  - The cost of a Health & Safety audit, both in respect of that which was incurred in the sum of £354.85 in the year ending December 2008, and a budgeted figure of £375 for the year ending December 2009
  - The costs incurred in connection with the entry phone system
  - A query with regard to insurance
  - Maintenance charges
  - Management fees
  - Payments into and a right to demand monies to the sinking fund
  - The budgeted figure for communal electricity for 2009
  - The legality of the demands made
4. Prior to the hearing we had received a bundle from Mr Avery which did not appear to contain a number of documents which the landlord, we believe, would wish to have included. At the hearing Miss Cherriman produced a file which contained the annual accounts and the supporting invoices which was of assistance to us.

### B. INSPECTION

5. Prior to the hearing we had inspected the subject premises. The flat is to be found at the top floor of a three storey inner terraced house. The house is situated in a residential street with reasonable parking available for residents. The front garden is bordered by a hedge of approximately two

metres in height and the property, which consists of bay frontage to the ground and first floor, appears to be in reasonable external decorative order.

6. We were able to gain access to the common parts which we noted consist of a small entrance hall with stairs leading down to the ground floor property, a flight of stairs to the first floor property and a half flight to the second floor property. The electricity meter cupboard was situated in the hallway and the gas meters were externally fitted. The stairs had been carpeted to a reasonable quality and the internal decorations were average. There were three ceiling lights, all containing long life bulbs governed by a timer switch. A basic entryphone system was sited in the porch.

#### C. HEARING

7. At the hearing, Mr Avery represented himself and Miss Cherriman provided advocacy for the Respondent. We will deal with each item in dispute and start with the cost of the Health & Safety audit. Mr Avery's view was that this was not required and, if it was, the charge was too high. He told us that this is a small property with very limited common parts and therefore any charge should be quite small. He also queried how they got access to carry out the assessment as he was not approached and nor did he understand the other tenants had been approached for a key.
8. Miss Cherriman told us that this was the first time the survey had been done, and the invoice was for £354.85 inclusive. The company, 4-Site, provide Health & Safety consultation for the freeholder and are the preferred supplier. Although a report had been prepared, it had not been supplied to any of the tenants, although Miss Cherriman undertook to do so. She told us that this report had been undertaken for Fire and Health & Safety purposes. The figure contained in the budget for 2009 was not the same as this was for an asbestos survey which had also not been carried out before. It was considered this was prudent and indeed a requirement by law. We were told that 4-Site based its charges upon the size of the building and when questioned whether the same surveyor could have done both, we were told that in fact it was a different person who carried out the surveys. Mr Avery indicated that he could get the survey for the asbestos carried out at a lower rate and Miss Cherriman indicated that if he could produce evidence of such then they would consider utilising that supplier.
9. We then moved on to the charge for the entry phone. It appears that the entry phone may have been installed under the terms of a 14 year rental agreement. In the documents before us we saw that in 2005 the annual payment was £173.15 and in 2008 £190.82. A budget figure for 2009 of £100 had been sought. It appears from the invoices that there is an annual charge uplifted by the cost of living each year and that explains how it has risen. Mr Avery said that he had never seen the agreement. He had moved into the building some 13 years ago, and to have paid this amount of money for the very basic entry phone that existed, he thought was not good value. He believed he could replace the system for £150. We were told that the system was working satisfactorily. Miss Cherriman did not have the contract with her and was not really aware of its terms.
10. The insurance premium was challenged by Mr Avery. He produced no evidence to show that he could obtain insurance more cheaply elsewhere. We were told by Miss Cherriman that the landlord undertook the insurance

and the management agents had no involvement. We were told that they used their own brokers (Coppergate) and that the insurance had been effected for a number of years through Aviva. She did believe, however, that the market was tested each year and suspected that if a lower quote was obtained elsewhere, that was put to Aviva who would presumably reduce accordingly. We were told that no commission was received by the landlord. The charge for the last year was £266 for the subject premises, being Mr Avery's 30.64% contribution.

11. We then turn to the maintenance charge. This is a figure that appears in the budget of £300, notwithstanding the fact that there appears to have been no money spent on maintenance works in the various years in dispute prior to 2009. Mr Avery concluded that a figure of £50 per flat would be reasonable as a pot, against which funds could be expended. Miss Cherriman thought that £300 was a reasonable assessment of potential costs
12. The management fees had already been the subject of correspondence and the managing agents had agreed to reduce those to £125 plus VAT per flat. Although Mr Avery thought this was still on the high side, he was prepared to accept it.
13. There was also an issue concerning the sinking fund. Mr Avery believed that there was no provision for this to be recovered. However, Clause 5(q) of the Lease of the subject premises contains the following wording:-

*(q) To set aside (which setting aside shall for the purposes of the Fifth Schedule hereto be deemed an item of expenditure incurred by the Lessors) such sums of money as the Lessors shall reasonably require to meet such future costs as the Lessors shall reasonably expect to incur of replacing maintaining and renewing those items which the Lessors have hereby covenanted to replace maintain or renew*
14. Mr Avery did not think a sinking fund was necessary. Apparently £165 was collected from him on a six monthly basis and monies also collected from the other lessees, although it was not clear that they had in fact paid their due proportion. He told us that none of the tenants were happy with the payment and that it should desist. Miss Cherriman told us that the monies were held in an interest bearing account with the NatWest and that she could confirm the respective interest of each lessee. She told us that there were no planned major works, although there is likely to be external decoration within the next three years. She did confirm, however, that she thought there ought to be information available as to how much was held, where it was held, who has paid what and what it is being held for, and she confirmed that she would deal with that.
15. The two final issues related to communal electricity and the status of the demands for payment of the service charges. Mr Avery's only issue concerned the electricity sought in the 2009 budget. In the previous year, a charge of £86.39 had been made and he could not therefore understanding why the budget appeared to indicate that he should be paying £120 himself. He thought that the figure of £100 for the three flats would be reasonable. Miss Cherriman told us that she assessed the budget based on previous years' figures. Insofar as the demands are concerned, Mr Avery confirmed that he had received the necessary notices of his rights and obligations for

the year 2009 but not for the year before, and although he wanted to make a point that he did not think that he had been properly served with the demands for previous years, it was not something that he intended to pursue.

16. Miss Cherriman confirmed that there would be no claim for costs made and that indeed the Respondent would agree to refund the application fee of £100 within 14 days of the hearing.

#### D. THE LAW

17. We have considered the provisions of Section 27A of the Landlord & Tenant Act 1985 that require us to determine whether a service charge is payable and, if it is, to whom it is payable, by whom it is payable, the amount, the date and the manner in which it becomes payable. We have also borne in mind the provisions of Section 18 and 19 of the Act, and Section 20C, being the limitation of service charges, although in this case the Respondent has confirmed that no claim for costs will be made.

#### E. FINDINGS

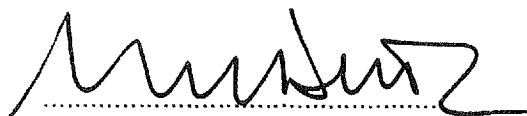
18. We turn then to our findings in respect of the issues in dispute and will deal with those on an individual basis.

19. The first issue is the Health & Safety expenses. These are comprised of a charge of £354.85 inclusive of VAT by 4-Site, for the purposes of carrying out Fire Health & Safety Risk Assessment. The charge was £302 plus VAT. The property in question has very limited common parts, but it appears to be increasingly common for managing agents to take steps to carry out these surveys, if only to provide themselves with security against future claims. **It does not seem to us that the attendance on site and the preparation of the report (which has yet to be seen) is unreasonable at £302 plus VAT and we allow that.** This is, however, on the understanding that copies of the report are provided to the tenants within the next 14 days. If they are not so provided, then Mr Avery is entitled to retain a sum equivalent to this amount until such time as the report has been forwarded to him.

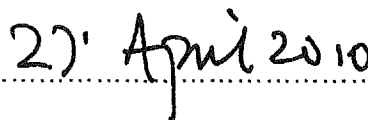
20. Insofar as the costs for an asbestos survey in the 2009 budget is concerned, again we accept that such a survey should be carried out if it has not been in the past. However, if the survey provides a negative response, we can see no reason for it to be done again unless circumstances change. Mr Avery said he may be able to get somebody perhaps more local who could undertake the work. **As this is a budget, we would allow a figure of £300.**

21. The entry phone on inspection was a somewhat dated system, being very basic, apparently consisting of a press button at the front door and a telephone in each flat to answer. The annual rental payment seems somewhat on the high side, but it does include provision for call out should the need arise. It does not however appear to be serviced on a regular basis. **We will, with reluctance, allow the sums claimed in respect thereof,** but we do expect the management agents to make a search for the contract in respect of this entry phone and to review same and confirm with the tenants within 21 days whether the contract is still subsisting, or not and the terms thereof.

22. The insurance challenge could not really be sustained. There was some concern as to whether or not the landlord was issuing demands that comply with statute in respect of this service charge, but that is something that will need to be reviewed for next year as we had no evidence before us. If Mr Avery wishes to challenge this item, then he will need to obtain like for like quotations for future years and review the matter at that time. **We therefore allow the insurance claims made by the landlord.**
23. Insofar as the maintenance charges are concerned, the budget figure for 2009 seems to be on the high side at £300. There appears to be no evidence of any repairs and maintenance in the previous years, and whilst we accept that it is worth having a pot which can be dipped into for minor matters, we would have thought that **£50 per flat was sufficient and we so order.**
24. The sinking fund in our view is provided for in the Lease by reference to the wording stated above. We think that it is a good idea and should be continued with. However, in an effort to achieve good communications it seems to us essential that the managing agents produce details of the account, the amounts that are held and the contributions made by the respective lessees and that the account is properly in accordance with legislation. If this is done, then hopefully the historic lack of trust there appears to be between Mr Avery and the landlord can be avoided. **The half yearly sums of £165 for Mr Avery are accepted to date but should be reviewed in the light of any plans for refurbishment by way of major works.**
25. Finally, we return to the communal budget and in particular the electricity. Miss Cherriman says she bases the budgeted figures on the previous year. The previous year shows an electricity charge of £86.39, and the previous year £70.81. It seems to us that a demand of £120 per flat is too high. We agree with Mr Avery that a charge of £100 as a total contribution is sufficient. Mr Avery's liability is 30.64% and we would have thought, for the sake of ease of accounting, if a figure of £30 was paid by him that should be sufficient. **Accordingly £30 for communal electricity for 2009 is allowed**
26. Finally, we confirm that there is no order for costs in favour of the landlord and also order that the Respondent by agreement reimburse to Mr Avery within 14 days the sum of £100 in respect of the application fee. In the alternative, that sum could be offset against any monies that Mr Avery owes in relation to outstanding service charges.



ANDREW DUTTON – Chair



Date