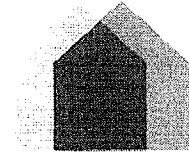


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Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LANDLORD AND TENANT ACT 1985

LON/00AH/LSC/2009/0770

Premises: Flat 1, 62 Holmesdale Road
London SE25 6JF

Applicant: Mr M Agugu

Respondent: Cormorant Ltd

Represented by: Mr C Case, Hampton Wick Estates Ltd

Tribunal: Mr NK Nicol
Mr D Banfield FRICS
Mrs R Turner JP

Date of Hearing: 08/04/10

Date of Decision: 08/04/10

REASONS FOR DETERMINATION

1. The Applicant is the lessee of the subject property at Flat 1, 62 Holmesdale Road, South Norwood, London SE25 6JF. He believes he has been overcharged in relation to his service charges for each year since the Respondent became his landlord in 2004, although he also complains that he has found it difficult to understand the relevant documents sent to him by their managing agents, Hampton Wick Estates Ltd. He seeks a determination under s.27A of the Landlord and Tenant Act 1985 as to the payability of the service charges in respect of each of the years ending in 2005 through to 2009.
2. The Tribunal heard the application on 8th April 2010. Mr Agugu attended on his own behalf and the managing agent, Mr Case, attended on behalf of the Respondent. Each side presented their own bundle of documents.
3. The subject property is the ground floor flat in a two-storey converted terraced house. The two properties to one side, numbers 64 and 66, are similarly arranged and are owned and managed by the same companies as in this case. As is normal with such properties, the service charge accounts do not contain many items. In each year there is a charge for buildings insurance and a management fee. In 2007 there was an additional charge for roofing repairs and associated surveyors fees (which are not challenged) and in 2009 a sum was collected for the reserve fund in anticipation of external decoration works. The Applicant's proportion of the costs has always been 50%.
4. The buildings insurance premium for the relevant years has been as follows:-

Date	Amount	Brokers	Insurers
11.03.04-20.11.04	£1,120.43	Princess Insurance	Ace
20.11.04-20.11.05	£1,797.11	Princess Insurance	Ace
20.11.05-20.11.06	£1,957.76	Princess Insurance	Ace
20.11.06-20.11.07	£1,383.23	Princess Insurance	Endurance
20.11.07-17.04.08	£672.70	Princess Insurance	Endurance
17.04.08-16.04.09	£542.92	Ellis David	NU/Aviva
17.04.09-16.04.10	£618.41	Ellis David	NU/Aviva

5. The fee charged by Hampton Wick Estates Ltd to the Respondent, and passed on in the service charge accounts, for each of the relevant years was as follows:-

Y/e 24.03.05	£460
Y/e 24.03.06	£480
Y/e 24.03.07	£495
Y/e 24.03.08	£250
Y/e 24.03.09	£495

6. The external decoration works are due to take place in the summer of 2010 at an estimated cost of £2,500, based on a specification drawn up by Collier Stevens, surveyors. It had been intended that the works should have been completed by now but Mr Case was unable to explain the delay. In any event, the idea had been to collect half the cost in each of two years. Therefore, in the year 2008/9, the sum of £1,250 was added to the service charge account in anticipation of the works as a reserve fund. Such a fund is permitted under paragraph 2 of the Fifth Schedule to the lease.
7. The Applicant's case rested on a previous decision of the Tribunal in relation to a neighbouring flat. He said that his charges should be reduced in the same way as for the lessee in the previous case. In fact, it turned out that there were two decisions. The Applicant's bundle contained a decision which, according to the frontsheet, related to the flat immediately above his where the lessee was Mr Alexander. It would appear that the frontsheet was put on the wrong decision and, instead, the decision relates to the ground floor flat at number 66 where the lessee is Mr McLoon. The Respondent's bundle had the correct decision in relation to the flat above the Applicant's. For simplicity, the decisions are referred to hereafter as the Alexander decision and the McLoon decision.
8. The Alexander decision is dated 11th September 2007. Mr Alexander was charged exactly the same amounts in service charges as the Applicant in this case. The Tribunal reduced the insurance charge to £850 for 2004, £1,000 for 2005 and £1,150 for 2006 plus amounts for terrorism and property owners cover. The Tribunal also reduced the management fee to £250 for each year. Following this decision, the Respondent credited the Applicant's service charge account with the

sum of £1,090.38 in relation to insurance and £122.50 in relation to management fees. They also reduced their fee for the year ending March 2008 (see paragraph 5 above).

9. The McLoon decision is dated 20th November 2007. The charges for insurance and management were again identical. On this occasion, the Tribunal reduced the insurance charge to £350 for each year but reduced the management charge to the same £250 for each year. The Tribunal commented that Mr Case's expressed intention to raise his fees back to their original level, as he did for the year ending March 2009, as bordering on the contemptuous towards the Tribunal. The Applicant asked the Tribunal to follow the figures reached by the Tribunal in the McLoon case where they differed from those in the Alexander case.
10. It would appear from the two Tribunals' full reasoning that they had in front of them more evidence in relation to insurance than did the current Tribunal. The Applicant reported at page 6 of his bundle on quotes he had obtained from four brokers, including Ellis David, the Respondent's current brokers, ranging from £363.32 to £575.70. However, no details were provided of the sum insured, the extent to which the claims history had been considered or any other relevant matters.
11. On the other hand, the Respondent had only provided the total amount of each premium, without any details of the policies. He sought to explain the high premium prior to 2008 as being a reflection of the high risk of subsidence in the area and the substantial reduction in the premium when the Respondent then changed brokers as being down to aggressive marketing by Norwich Union/Aviva. However, he admitted that the terms of each policy had not changed other than in respect of the sum insured which had risen from £244,823 in 2004 to £304,000 in 2009 entirely by index-linking, not by revaluation.
12. The Tribunal had to deal with the evidence it front of it. The previous Tribunal decisions contain persuasive reasoning but are not binding and do not constitute evidence in themselves. Based on the Tribunal's own expert knowledge and experience, and using the Applicant's quotes as a rough guide, the Tribunal is satisfied that the premiums obtained for the last two years via Ellis David are entirely reasonable in amount. In contrast, the premiums obtained by the

Respondent via Princess Insurance Agencies are clearly excessive. The reasons put forward by Mr Case do not begin to explain such a large difference. Despite two clear previous Tribunal decisions, he did not seek to provide any evidence to persuade this Tribunal to follow a different approach.

13. The building insurance premiums obtained via Princess Insurance Agencies covered a four-year period from March 2004 to April 2008. The total charge for that period amounted to £6,931.23, of which the Applicant's proportion was £3,465.61. The Respondent credited him with £1,090.38 which means he was charged £2,375.23 over that period. In the Tribunal's opinion, using the premiums obtained from Ellis David as a base figure, and taking into account possible fluctuations in the insurance market over the relevant period, a proper charge would have been no more than an average of £500 per year, making a total of £2,000. Given that the Applicant's share would have been £1,000, the Tribunal has concluded that he has been overcharged by £1,375.23,
14. In relation to the management fee, the Tribunal finds itself in complete agreement with the Tribunals which made the two previous decisions. Mr Case explained his fee by saying that it was based on his minimum charge of £250 per unit. What the Respondent chooses to pay their managing agent is entirely a matter for them but the costs passed through to the service charge must be reasonable in order for the service charge to be payable. The subject property requires minimal management. A higher charge is not justified by the minimal additional work required to arrange the roofing works done in 2007 or that done so far for the external decorations. The Tribunal is satisfied that the amount for management included in the service charge account should be no more than £250 per year, of which the Applicant's share would be £125. Over the five years under consideration, he was charged £967.50 (£1,090 less the credit of £122.50) instead of a maximum of £625, constituting an overcharge of £342.50.
15. Like the Tribunal in the McLoon case, the Tribunal was concerned about Mr Case's attitude to Tribunal decisions. Technically, each decision is made on the evidence before that Tribunal and there may well be circumstances justifying an increase in later years in relevant charges. However, Mr Case conceded that there had been no change in circumstances since the previous Tribunal decisions justifying the increase in fees back to his original amount. Nor did he seek to

present any fresh evidence which the previous Tribunals had not seen. On that basis, the Respondent had no reason to increase this element of the service charge and it is easy to see why this might be regarded as contempt for the Tribunal. At the very least, acting in this way just promotes litigation as aggrieved lessees return again and again to the Tribunal to get the management charges reduced. In the absence of a change of circumstances or fresh evidence, it is both wrong and futile for the Respondent to impose charges which differ so clearly from the principles laid down by the Tribunal.

16. In relation to the collection of £1,250 for the reserve fund, of which the Applicant's proportion was £625, the Tribunal is satisfied that this is a reasonable sum to collect in the circumstances (see paragraph 6 above).
17. The Applicant also sought an order under s.20C of the Landlord and Tenant Act 1985 that the Respondent's costs of these proceedings should not be added to the service charge. The Tribunal doubts whether the lease would permit it but has decided to make the order in any event so as to provide clarity. The Applicant has clearly succeeded in the majority of his claim, obtaining a total credit against his service charges of £1,717.73 (see paragraphs 13 and 14 above). The Tribunal is satisfied that it is just and equitable to make the order.

Chairman.....*N.K. Neal*.....

Date 8th April 2010