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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

CASE NUMBER: LON/00BE/LSC/2010/0118

**IN THE MATTER OF FLATS C D & G 14 COLDHARBOUR LANE
CAMBERWELL LONDON SE5 9PR and**

**IN THE MATTER OF THE LANDLORD & TENANT ACT 1985 SECTION 27A
AND SECTION 20C**

**Parties : Mr H Christmas (Flat G)
Mr C M Annum & Mrs E Annum (Flat C)
Ms C Ball (Flat D) Applicants
New Service Limited Respondent**

**Representation : For the Applicants:-
Mrs C Tweedy (niece of Mr H Christmas)
For the Respondent:-
Mr K Darkwah – Property Manager of Salter Rex
Managing Agents of the Property**

Date of Application: 4th February 2010

**Date of Pre-Trial
Review : 10th March 2010**

Date of Hearing : 10th June 2010

**Tribunal Members : Mr A A Dutton (Chairman)
Mr P M J Casey MRICS
Mrs J Clark JP**

Date of Decision : 20th July 2010

REASONS

A. BACKGROUND

1. This application was made by Mr Christmas on the 4th February 2010 seeking to challenge what appeared to be an additional service charge rendered by Salter Rex for the period ending the 31st December 2008 for the 18 months proceeding that time. This also covered a period during which another managing agent (Andertons) had been responsible for the property. In the application, Mr Christmas also asked whether he was in arrears of service charges, why Salter Rex were entitled to withhold insurance monies and raised issues concerning proposed building works and lack of cleaning. There are some 15 residential flats and 6 commercial units making up the property at Coldharbour Lane.
2. We should also record that on the 24th May 2010 Mr and Mrs Annum and Ms Ball were added as parties to these proceedings. Apparently Mr and Mrs Annum's and Ms Ball's case is exactly the same as Mr Christmas, although with one glaring difference, namely the terms of their leases to which we will refer to in due course.
3. Prior to the hearing, but only just, the Respondent through their managing agents had lodged a bundle of papers which contained a statement by Mr Kwame Darkwah, the Property Manager, who attended the hearing, some correspondence and invoices and a copy of Mr Christmas' lease.
4. The Directions issued by the Tribunal on the 10th March 2010 clearly indicate that the Respondent would be responsible for preparing the bundle of documents and that copies should be sent to the Tribunal before the 5th May. There is a typographical error, but that is patently obvious and it was clearly the intention, as corrected by subsequent correspondence, that one bundle should also be provided to the Applicant. A bundle was provided, but the Respondent did not include any of Mr Christmas' disclosure.
5. Accordingly, on the day, we were provided with four indexes by Mrs Tweedy. The first related to a service charge adjustment of £1,246.80 for the period 1st January 2008 to the 31st December 2008. The second related to the apportionment of service charges between the residential properties and the commercial premises. The third related to a late payment charge levied by Andertons, and the fourth to proposed redecoration and building works. This latter matter was not something that troubled the Tribunal on this occasion. Mrs Tweedy also relied upon a letter of the 31st May 2010 to Mr Darkwah

which put forward the case on behalf of Mr Christmas, Mr and Mrs Annum and Ms Ball.

6. It is perhaps appropriate at this stage to turn to the leases. Mr and Mr Annum's and Ms Ball's lease are in similar terms. These set out the apportionment of the service charge based upon rateable values and list in some detail the service requirements.
7. Mr Christmas' lease, which is an original one dated from the 4th January 1958, had no such provisions. The lease, for a term of 99 years, requires Mr Christmas to carry out the repairs to his property and the only covenants on the part of the landlord are to provide quiet enjoyment and to keep insured the adjoining or adjacent premises. There is also a covenant that the landlord will at the request of the tenant enforce the terms of the lease. There are no service charge provisions contained in Mr Christmas' Lease. We bear that in mind in the matter to which we now turn and our decision.

B. HEARING

8. Mr Darkwah was invited to give evidence first on behalf of the Respondent. He told us that he believed that Salter Rex had inherited a mess from the previous managing agents and that they were struggling to come to terms with the matter. We have to say that this became apparent during the course of the hearing, although it is not possible for us to say whether the mess was solely down to HML Andertons or as a result of Salter Rex's subsequent involvement.
9. Mrs Tweedy's concerns are set out in her letter of the 31st May 2010 to which Mr Darkwah responded in his witness statement. We do not intend to go into great detail in respect of the written matters because the parties have these documents. However, there is confusion because, for the year ending December 2008, HML Andertons have produced accounts covering 18 months. This deals with the 12 months up to June of 2008 when HML Andertons were managing the property and the 6 months for which Salter Rex managed to the December 2008 year end. In the papers we had before us a statement of income and expenditure from HML Andertons up to the 23rd June 2008 which shows service charges of some £19,458.90 with a surplus left of £6,698.69. In particular, we noted that insurance was claimed for this period of £8,512.53 and management fees of £3,495 and administration fees of £1,133.87. We will return to those matters later in the Reasons.
10. Mrs Tweedy, in her letter of the 31st of the May, drew to Salter Rex's attention the costs that they appear to have incurred during their 6 month management period. These included further insurance

payments of some £7,939.58, plus increased cover for insurance terrorism of £943.95, and management fees of £4,406.26.

11. Mrs Tweedy challenged the basis upon which certain items of expenditure were apportioned between the commercial and residential properties. It appears accepted that insurance and professional fees have been apportioned between all units, giving a 4.55% liability to residential tenants. However, although it seems that Andertons were charging the management fees to the commercial premises as well, thus arriving at 4.55% distribution, Salter Rex appeared not to have done so and had reverted to the percentage applicable for those expenses relating solely to the residential units of 6.67%. However, Mr Darkwah confirmed that this was wrong and that he would revert to the 4.55% and the service charges for the years for which Salter Rex had been managing will need to be amended. We have dealt with this in the schedule attached and this seems to satisfy Mrs Tweedy on the apportionment point. What however did cause some concern was monies that apparently had been received from HML Andertons, but had not been specifically allocated to the residents. It appears from the documentation that we had in the bundle that HML Andertons had prepared a bank reconciliation to the 29th May 2008 in which they appear to have paid to Salter Rex £8,203.56. This is confirmed both by an internal expense input and also in a schedule of ledger enquiries showing that sum having been received on the 3rd July 2008. On that same list there appears to have been a further transfer of funds from HML Andertons in the sum of £2,947.88. It appears clear therefore that contrary to assertions that Mr Darkwah initially raised, HML Andertons have passed over to Salter Rex all the monies that they were holding on behalf of the residents and did so in 2008. The monies total £11,151.44, but have still not been allocated between the residents. After the hearing, Mrs Tweedy had written to the Tribunal setting out her calculation as to how these funds should be apportioned between the parties. Because this has arrived after the event, it is not appropriate for the Tribunal to make any particular findings in respect of these matters. However, the Respondent may wish to take note of the work that has been undertaken by Mrs Tweedy when they consider how the money is apportioned between the occupiers of the premises.
12. In addition to these matters, Mrs Tweedy also sought clarification of and challenged in the year 2008 the management charges, professional fees and insurance. We were told that the management charge is £230 per unit, which Mrs Tweedy thought was reasonable, but for this first 6 months a sum substantially in excess of that had been charged by the managing agents.

13. Insofar as the insurance was concerned, she thought the level of insurance premium was high and also challenged that a broker's fee had been claimed of £1,029.54. It appears also during the period July 2008 to July 2009 there had been a reassessment of the value of the property which had resulted in an increase in the insurance by a further £1,022.22. She believed that the insurance was high and attempted to obtain quotations to match the existing insurance, although she was not able to confirm the claims history of the property or whether the people who had provided her with a quotation (Allianz) were aware that there were short term lets in the property.
14. She also challenged a fee claimed by Salter Rex of some £2,468 for the survey of the property which gave rise to the increase in insurance cover. A copy of the survey has never been provided and it appeared to be work that was actually carried out by Salter Rex through their professional department. This was carried out on the 24th July 2008. Mrs Tweedy had made enquiries through the RICS and came to the conclusion that an appropriate fee for this work would have been in the region of £1,390 inclusive of VAT.
15. She also raised whether or not the accountancy charges in respect of the preparation of the accounts should be borne by all occupiers for the premises. Mr Darkwah had no copies of the commercial leases available, but thought that as the management and other expenses related to all units in the development that the division of the accountancy charges should also be dealt with on that basis, namely a 4.55% split.
16. Insofar as the 2009 accounts were concerned, Mrs Tweedy queried some specifics. On the 19th August 2009 a Gary Starr had attended the premises and had not been able to get access, but had nonetheless charged £75. This she queried as the managing agents had keys to the common parts. The same happened when a security company attended in June 2009, again unable to gain access and charged £184. This was repeated to an extent by the same company when they attempted to carry out works, but were unable to do so because there was no power as works were being carried out by other tradesmen. In addition to the above, a challenge was raised to the electricity charges which were subject to additional charges levied in respect of warrants obtained by the electricity company. We did not need to go into this in too greater detail because Mr Darkwah agreed that an appropriate charge for electricity for the year would be £600, which the tenants accepted.
17. We were also asked to consider a fee rendered by Andertons in the management accounts for a number of invoices relating to penalties charged for debt management reminder letters. These appear to

have been claimed against individual tenants, but also appear in the service charge accounts. A figure is shown under the heading HML Andertons in the accounts for the year ending December 2008 of £1,134 which was a duplication of the charges rendered to individual lessees purportedly for matters in breach of their lease.

C. THE LAW

18. The law relating to the assessment of service charges and the manner in which we deal with those is contained at Section 27A of the Landlord & Tenant Act 1985. This requires us to determine service charges and who should pay them, to whom they should be paid and how and when they should be paid. We are also asked to consider whether or not the costs of these proceedings should be removed from the service charge as we are entitled to do, assuming it to be just and equitable by the provisions of Section 20C of the Act.

D. FINDINGS/DECISION

19. Our findings in respect of the matters are as follows:-

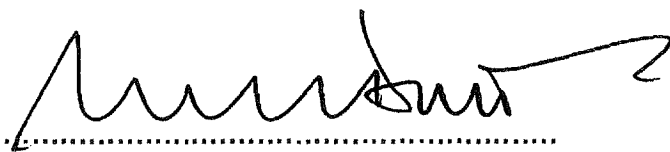
- i) In respect of the administration fee charged by HML Andertons in the amount of £1,134, this is disallowed in full. Firstly, this is not a service charge issue and, secondly, it appears that HML Andertons had been seeking to recover these monies from the individual lessees. Certainly in the case of Mr Christmas, there is no ability to do so under the terms of the lease. It is debateable whether there is any right to do so in respect of Mr and Mrs Annum's and Ms Ball's lease. In any event, it is not clear whether they were ever asked to pay these sums. We do however order that the sum of £1,134 shown in the accounts for the year ending 31st December 2008 should be struck out.
- ii) Insofar as management fees are concerned, we would agree that a figure of £230 per unit plus VAT is not unreasonable. However, it appears that Salter Rex have loaded these charges for the year 2008, which we find unacceptable. Accordingly, we order that for the year ending December 2008 they are entitled to charge only £230 plus VAT for each unit, but divided in half as it is only a 6 month period. For the whole of 2009, they can continue that charge at the rate of £230 plus VAT for each unit. We do question however, the sense of having a combined service charge account which involves commercial premises. We have no knowledge as to the terms of the commercial leases, but we would have thought that for future purposes it would make sense if Salter Rex divided the management arrangements between the residential units and the commercial premises, thus avoiding these difficulties. Where there are costs that are common to both, then those can be dealt with on the 4.55% basis, but it is very

difficult to tell from the accounts how those apportionments and other expenses, for example general repairs and pest control, have been dealt with.

- iii) The charge for the professional fees of £2,468 is in our view excessive. This was a service provided by Salter Rex to revalue the premises for insurance purposes. Mrs Tweedy had been able to obtain some information from the RICS indicating a charge of £1,390. However, she herself accepted that this may be a fairly basic expense, and we find therefore that a reasonable sum to be allowed for that professional fee is £1,500 and therefore reduce the sum of £2,468 accordingly.
 - iv) Insofar as the insurance broker's fee is concerned, we will on this occasion reluctantly allow it. It appears not to have continued for later years and may to an extent have been inherited from HML Andertons. Be that as it may, it is a sum that we, with reluctance, allow.
 - v) Turning to the 2009 accounts, we allow Mrs Tweedy's challenge to the three invoices which we have referred to above. Accordingly, we disallow the invoice of £75, £184 and a further one of £184, all of which appear under the building repairs heading, or electrical repairs heading for the 2009 accounts. We also record the fact that Mr Karkwah agreed the electricity charge for 2009 at £600 and not the £1,532.86 recorded, much of which was taken up as a result of arrears and warrant fees as a result of non-payment of the electricity costs. It seems to us that there can be no argument put forward that funds are not available for paying the electricity as of course Salter Rex are retaining over £11,000 from funds received from HML Andertons. We will return to that subject later in this decision section.
20. We record for the purposes of this decision that as things presently stand the apportionment as to 4.55% of expenses between all units should apply to insurance, any further professional fees including accountancy charges and management fees. Insofar as the budget for 2010 is concerned, we understand contributions have been paid by the Applicants and provided those follow the 2009 accounts we would not seek to adjust those.
21. Mrs Tweedy had asked at the conclusion of her hearing that we make an order under Section 20C and also for reimbursement of the fees paid by Mr Christmas. Insofar as Mr Christmas' lease is concerned, there is no provision for the landlord to recover any costs, as they are not obliged under the lease to carry out any service charge provisions other than insurance of adjoining premises. Further, insofar as Mr and Mrs Annum's lease and Ms Ball's lease is concerned, whether

those leases provide for the recovery of legal costs in respect of these proceedings or not, is in our findings irrelevant, because we find that the actions of Salter Rex in this matter are such that it would be inappropriate for them to be able to recover the costs through the service charge regime and we therefore order that Section 20C will apply. Further, given that the application was commenced by Mr Christmas, and it is clear from his lease that he has none of the obligations which Salter Rex seem to attribute, that he should be reimbursed in full the fees of his application and the hearing, which total £250. It is appropriate to remind Salter Rex that Mr Christmas' lease is dated and has very limited obligations on his part, or indeed on their part. They need to take this into account. Mr Christmas, who is 100 years old, has adopted the view that if works are carried out which are of benefit to him and the other residents he does not wish to stand by the terms of the lease in their exactness. However, Salter Rex need to bear that in mind should they seek to recover any expenses from him.

22. We also order that the landlord is not entitled to recover any service charges for the years ending December 2008 and 2009 insofar as any remain outstanding from the applicants, until they have resolved the distribution of the monies that they have received from HML Andertons and have had now since 2008. It is for that reason that we commend them to review the letter sent by Mrs Tweedy after the event, which gives an indication as to how they could be apportioned.
23. We have made adjustments to the accounts as set out in the schedule attached which we hope will assist the parties.



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20th July 2010

ANDREW A DUTTON - Chair

**LEASEHOLD VALUATION TRIBUNAL
CASE NO LON/00BE/LSC/2010/0118**

18 MONTH PERIOD ENDED 31 DECEMBER 2008

Items of Expenditure	Sum Claimed	Sum Allowed	%	Payable per Applicant £
Accountancy	775	775	4.55	34
Admin Fee	1,134	0		
Building Repairs	375	375	6.67	25
Cleaning	3,037	3,037	6.67	203
Drain Clearance	108	108	6.67	7
Electrical Repairs	1,528	1,528	6.67	102
Electricity	382	382	6.67	25
General Repairs	1,258	1,258	6.67	84
Health & Safety	411	411	6.67	27
Insurance Building	17,116	17,116	4.55	779
Insurance Terrorism	970	970	4.55	44
Management Fee	9,441	6,468	4.55	294
Pest Control	141	141	6.67	9
Professional Fees	2,468	1,500	4.55	68
Refuse Collection	229	229	6.67	15
Security & Fire Alarm	1,114	1,114	6.67	74
Sundry Expenses	8	8	6.67	53p
Telephone Lift	154	154	6.67	103
Travel	558	558	6.67	37