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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/00AH/LSC/2012/0522

Premises: 3 Aspen Court, 88 Auckland Road, London SE19 2DF

Applicant(s): Jamala Estates

Representative: N/A

Respondent(s): Piervalley Limited

Representative: Stonedale Property Management

Date of hearing: 23rd October 2012

Appearance for Applicant: Mr Nicholas Robinson Director and Company Secretary

Appearance for Respondent: Mr Azmon Rankohi Legal representative accompanied by Mrs S Oakenfold Property Manager

Leasehold Valuation Tribunal: Dr Helen Carr
Mr Peter Roberts Dip Arch RIBA

Date of decision: 23rd October 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £862.63 is payable by the Applicant in respect of the disputed service charges for the years 2011 (£375.84) and 2012 (£486.79).]
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicant seeks 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 Applicant in respect of the service charge years 2011 and 2012.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. At the pre-trial review of this application it was directed that the matter be determined on the basis of documents alone and without an oral hearing, unless either of the parties requested otherwise. The Applicant requested an oral hearing which was set down for 1.30pm on 23rd October 2012.
4. The Applicant was represented by Mr Nicholas Robinson Company Director and Secretary at the hearing and the Respondent was represented by Mr Azmon Rankohi Legal Representative who was accompanied by Mrs Susie Oakenfold Property Manager with the Respondent.

The background

5. The property which is the subject of this application is a studio flat situated within a development comprising ten leasehold apartments contained within a single building. The development also consists of landscaped garden areas, garages, bin stores and a shared private driveway. The development was completed in the mid 1980s.
6. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

7. The Tribunal, drawing on the documents provided by the parties and with the agreement of the parties at the hearing, identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for the service charge year ending 31st December 2011 relating to insurance, management fees and health and safety costs
 - (ii) The payability and/or reasonableness of estimated service charges for the service charge year ending 31st December 2012 relating to insurance, electricity, general repairs, management fees and health and safety costs
8. Having considered all of the documents provided and the submissions of the parties, the Tribunal has made determinations on the various issues as follows.

Insurance charges for 2011 and 2012

9. The Respondent charged £4,011.98 for insurance in the service charge year ending December 2011. The Applicant's proportion is 5.55%, totalling £222.66. The demand for estimated insurance costs for the year ending December 2012 was £4,200, of which the Applicant is required to pay £233.10.
10. The Applicant argues that it has not been provided with the details of the insurance policy nor a copy of the current schedule and therefore is unable to accept or reject the insurance. The Applicant believes that the insurance market should be tested each year and that in view of the amount of the insurance premium the landlord or its agents should report to the Lessees and say which quotation it is proposed to accept and why. This would give the Applicant the opportunity to obtain an alternative quote.
11. The Applicant's argument in connection with the sum demanded in 2012 is that it is simply a replication of the amount of the 2011 insurance without any explanation.
12. At the hearing the Applicant produced a quotation from AXA which gave an insurance premium of £3103.91. The Respondent had not had sight of this quotation, which the Applicant said had not been possible because the Respondent had not provided it with sufficient information to get a quote earlier.
13. The Respondent provided a statement from Charles Bettinson Head of Insurance at Estates and Management Ltd (E&M) who act as agent of the

landlord in respect of insurance. He states that insurance renewal information is sent to the managing agent at least four weeks prior to each renewal. Any interested party is at liberty to contact the Respondent for copy information or to ask questions. No questions or request for information have been received.

14. He also states that remarketing exercises are undertaken on a regular basis and remarketing exercises were undertaken prior to renewals in 2010 and 2011. This resulted in 2010 in a move of insurers from Axa to Zurich, in order to avoid a significant premium increase. He argues that there is no obligation to undertake an annual remarketing exercise although if a request was made it would be considered carefully. No such request has been made by the Applicant, nor has the Applicant provided any alternative quotation.
15. Mr Bettinson states that in negotiating the current insurance a previous fire claim of £23,181 was disclosed. Although the claim was in 2005, as it had influenced Axa's pricing decisions it was considered that it was a material fact which had to be disclosed.
16. Mr Bettinson attaches to his statement details of premiums, claims and remuneration received for the period in question. He states that all remuneration received by E&M and Tyser is inclusive within the insurance premium and not additional to it and for services within the insurance provision.
17. The average remuneration over the period in question received by E & M was 12.25% of the total insurance costs. The Applicant does not believe that this is excessive or unreasonable. E&M are authorised and regulated by the FSA to receive remuneration from insurance and complies with all regulations associated with this.
18. E&M provide all services included with insurance provision other than handling liability claims, handling buildings claims over £100,000, handling subsidence claims and issuing of settlement cheques. All other services which make up the insurance provision are provided by E & M and Tyser.
19. In connection with the demand for 2012 Mr Bettinson states that the actual premium did not increase but reduced from £4,011.98.
20. In response the Applicant argued that this should have been anticipated in setting the budget figure. .

The Tribunal's decision

21. The Tribunal determines that the amount payable in respect of insurance for the service charge year ending December 2011 is £222.66 and for the service charge year ending 2012 is £233.10.

Reasons for the Tribunal's decision

22. The Tribunal determined to accept the Respondent's evidence about the market testing and reasonableness of its processes for acquiring insurance for the property. The Applicant produced its comparable quotation too late for the Respondent to check its comparability and reliability, particularly in relation to the claims history. Moreover the Respondent is not obliged to accept the cheapest insurance and the Applicant's evidence was insufficient to suggest that the charges were other than reasonable.

Management fees demanded in 2011 and 2012

23. The Respondent demanded a total of £2,400.00 in management fees in the service charge year 2011 of which the Applicant was responsible for £133.20, representing 5.55% of the total. In 2012 the total charged for management fees was £2,496.00 with the Applicant's share being £138.53p.
24. The Applicant considers that the management fees demanded in 2011 and 2012 to be outrageous. It argues that a reasonable management fee would be 15% of actual expenditure. The Applicant argues that if a flat fee is charged then it should be considerably less than £200 per unit. He did not have comparable evidence although he suggested that a figure of just over £100 was paid for a similar flat in a similar location, although that flat was part of a block of 70 properties.
25. The Respondent explains that it charges a management fee of £200 plus Vat per plot for the year ending December 2011 and £208 plus VAT per plot for the year ending 2012, an increase of 4% on the previous year. It argues that charging a fixed fee follows the advice of the RICS Service Charge Residential Management Code.
26. The Respondent argues that the fee is reasonable given the location of the property and the level of management provided. The fee covers site visits, arranging works, reading meters, checking cleaning and gardening, preparing budgets checking and paying all invoices, managing insurance claims, meeting residents on site by appointment and dealing with all correspondence from residents. The 4% increase it argues as reasonable given the annual rate of inflation for 2011 was 4.5%.

The Tribunal's decision

27. The Tribunal determines that the amount payable in respect of management fees is £133.20 for the service charge year ending December 2011 and £138.53 for the service charge year ending December 2012.

Reasons for the Tribunal's decision

28. The Tribunal considers that it is reasonable to follow the advice of the RICS unless there is strong evidence that to do so would be unreasonable. Moreover it accepts that fees tend to be higher in small blocks. The range of services provided by the Respondent is indicative of a mid range service charge and drawing on its own experience it considers the sums charged to be reasonable.

Health and Safety fee 2011 and 2012

29. The Respondent charged £360 for health and safety in 2011, of which the Applicant paid 5.55% totalling £19.98p. It budgeted for £175 in 2012 of which the Applicant has been charged £9.71. The Applicant accepted the Respondent's explanations of these charges provided in its statement arguments and agreed the charges.

Electricity charges for the service charge year ending December 31st 2012

30. The Respondent charged £450 for anticipated electricity consumption in the common parts for the service charge year ending December 2012. The Applicant's share is £24.98. The Respondent accepted the budgeted amount to be on the high side and suggested a substitute figure of £400. This is based upon previous usage with an appropriate margin for price increases. The Applicant agreed this figure. .

General repairs 2012

31. The Respondent charged £1500 to provide a budget for general repairs in the service charge year 2012. The Applicant's share totals £83.25.
32. The Applicant considers that the amount should be accurately calculated and it would accept an anticipated expenditure of £500. The Applicant points to the low actual expenditure during 2011 to support the argument.
33. The Respondent argues that the general repair bill for 2011 was exceptionally low. It argues that it would be failing in its duties as managing agent if it did not collect a sufficient reserve to allow repairs to be carried out as and when required. It points out that block in question is ageing and includes garages and grounds. This leads to an increased likelihood of repairs being required. A £500 balance for general repairs would allow for only the most minor jobs. If the scheme held insufficient money it would not be possible for repairs to be carried out. For the current service charge year, the running total of general repairs is already £800 due in the most part to the cost of relying paving slabs. The Respondent submits that the budgeted amounts are reasonable bearing in mind the need to collect sufficient monies to allow the building to be managed and repaired when required. The previous year's budget was £1500.

34. The Applicant responds by arguing that the figure should have been calculated on the basis of planned repair. It also points out that the previous year's budget was reduced to £1500 following representations from it.

The Tribunal's decision

35. The Tribunal determines that the amount payable by the Applicant in respect of general repairs is £83.25 for the service charge year ending December 2012.

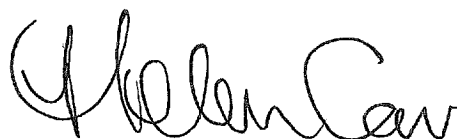
Reasons for the Tribunal's decision

36. The Tribunal accepts the Respondent's argument in connection with its estimation of the cost of repairs. It may well be that the Respondent should pay more attention to communicating its concerns to the lessees. Nonetheless £1500 is a reasonable amount to deal with repairs much of which cannot be anticipated.

Application under s.20C

37. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines not to make an order under section 20C of the 1985 Act. In particular the Tribunal is not persuaded by the Applicant's argument that the word 'proceedings' in the lease excludes proceedings at the LVT.

Chairman:



Helen Carr ~~Chairman~~

Date:

23rd October 2012

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 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
 - (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.

- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.