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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] [& SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002]

Case Reference:

LON/00AL/LSC/2011/0785

**Premises: 42 Sewell
Road , Abbey Wood,
London SE2 9XW**

Applicant(s): London Borough of Greenwich

Representative: Mr Darryn Harris –Solicitor for the Applicant

Respondent(s): Mrs A.M Ajayi

Representative: Mrs Ajayi did not appear and was not represented

Date of hearing: 29 February 2012

Appearance for Applicant(s): Mr Steven Reed- Service Charges Manager

Appearance for Respondent(s):

Leasehold Valuation Tribunal: Ms M W Daley LLB (hons)
Mr F Coffey FRICS
Ms Dalal

Date of decision: 29/02/12

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £2323.96 is payable by the Respondent in respect of the service charges for the years 2009/10, 2010/11 and the estimated charges for 2011/12
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985. The Tribunal note that the Applicant does not intend to make a claim under the service charges in respect of the cost of the Tribunal hearing.
- (3) The Tribunal determines that the Respondent shall pay the Applicant £150.00 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.
- (4) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Woolwich County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") [and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act")] as to the amount of service charges payable by the Applicant in respect of the service charge years 2009/10, 2010/11, and the estimated charges for 2011/12.
2. Proceedings were originally issued in the Woolwich County Court under claim no 1UD24401. The claim was transferred to this Tribunal, by order of Deputy District Judge Mackenzie on 8 November 2011.
3. The Tribunal gave directions on 6 December 2011. Ms Rewane, a legal officer, represented the Applicant. The Respondent was not represented and did not appear
4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. Mr Harris, solicitor for the Applicant, represented the Applicant. The Respondent did not appear and was not represented.
6. During the course of the hearing the Applicant handed in further documents, namely a letter sent by the Applicant to The Respondent on 30.12.09, regarding the Insurance, computer printouts recording movement/information concerning the Respondent's service charge account and two schedules of actual service charges for year ending 31.03.10 and 31.03.11. The hearing

was delayed at the request of the Tribunal for these documents to be provided.

The background

7. The property which is the subject of this application is a 3 bedroom maisonette, on the ground and first floor, in a purpose built property, comprising two maisonettes set in an estate with similarly constructed properties. (Numbering 37-54)
8. The Respondent holds a long lease of the property, pursuant to an agreement entered into on 22 August 2005, for a period of 125 years. The lease 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

9. At the start of the hearing the Tribunal noted that the Respondent had not complied with the directions, given this, there was no statement identifying the issues that the Respondent had with the service charges, save for the defence, which had been filed in the county court. The Tribunal determined that the relevant issue was the reasonableness and payability of the service charges for the years in question.
10. The Tribunal also noted that the Respondent in her Defence had, by implication queried the reasonableness of the insurance premium. The Respondent had stated "... *The building insurance Council provided for me, my mortgage provider did not accept it because my name is not on it, which I phoned their office and explained to them and one of the staff, will get in touch with my mortgage provider. Due to this my mortgage provider is charging me extra money added to my mortgage payment for the building insurance*¹"
11. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The Tribunal's decision

¹ This quotation was taken from the Applicant's statement of case, rather than the original documents.

12. The Tribunal determines that the amounts payable in respect of the service charge set out below are reasonable and payable.

Years	2009/10	2010/11	2011/12
Cleaning and Environment	£440.81	£418.98	£467.00
Energy	-	£20.64	-
Insurance	£170.26	£170.66	£162.00
Mechanical Servicing	£17.07	£12.48	£11.00
Repairs & Maintenance	£93.30	£16.88	£76.00
Management fee	£144.29	£127.93	£144.00

13. The Tribunal were informed that in respect of the cleaning and Environment this included care taking to the block and estate, grounds maintenance and refuse storage. The charge was based on the time spent on the estate, and was then divided based on the historic ratable value for the block and the individual property. Mr Reed stated that the estate was a relatively low maintenance estate, and this was reflected in the charges.
14. The Tribunal noted that there was no specific objection to any of these charges made by the Respondent. The Tribunal in determining the reasonableness and payability of this charge, in the absence of any challenge from the Respondent used its knowledge and experience of similar estates, and found that the charges for 2009/10, 2010/11 and the estimated charges for 2011/12 were reasonable and payable.
15. In respect of the energy charge, the Tribunal were informed that in 2009/10 there was no mechanism for giving a credit for over payment and as a result the Applicant adjusted the charges by not charging in relation to a specific area for example energy. The leaseholders had not previously queried this practice and information was provided to them about the actual charges and any adjustments. The Tribunal noted that this explained the lack of charges for 2009/10 and 2011/12. Although noted this explanation, the Tribunal did not consider this to be good practice, and in future years surpluses should be shown and should be dealt with in accordance to the lease. Notwithstanding

this, the Tribunal find that the charge for energy for 2010/11 is reasonable and payable.

16. The Tribunal noted that the Applicant had treated the insurance as subject to consultation as a qualifying long term agreement pursuant to section 20 of the Landlord and Tenant Act 1985. The statutory notices and responses to the consultation document were provided. The Tribunal noted that during the period in issue the insurance and brokerage services had been provided firstly by Ocaso S A and then Zurich Municipal and then by Ocaso, who had made a tender, which had been successful.
17. The Applicant's were unable to add individual leaseholders to the block policy and a letter to this effect had been sent to the Respondent on 30.12.2009, as well as a copy of the insurance schedule. In the experience of the Tribunal this should have been sufficient for the building society. However notwithstanding that, having considered the policy in detail. The Tribunal find that the cost of insurance is reasonable and payable, and that the property has been insured within the terms of the covenant set out at clause 6.5.1 of the lease.
18. The Tribunal accept the charges for both the Mechanical servicing and the Repairs and Maintenance cost. The Tribunal having noted that no objections were made to these charges, and that based on our knowledge and experience the charges are well within the range of reasonable charges for a property of this type.
19. The Tribunal noted that the management charges were on a percentage basis, and that although the lease did not provide for this, clause 1.5 of the lease enabled the Landlord to make a reasonable charge for management of the estate and building. The Tribunal note that the Residential Management code produced by RICS, generally approves a **fixed** rather than percent charge, however, in considering the charge, the Tribunal noted that the actual charge was lower than most fixed per unit charges. Given this the Tribunal finds that these charges are reasonable and payable.
20. The Tribunal determines that the amount payable in respect of service charge item is £2323.96, including an estimated charge for the year to 31 March 2012

Application under s.20C and refund of fees

21. At the end of the hearing, the Applicant made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that he had paid in respect of the hearing. Having heard the submissions from the Applicant taking into account the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicant [within 28 days of the date of this decision].

[The next steps]

22. The Tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Woolwich County Court.

Chairman: *B. O'Leary*
[name]

Date: *29. 2 - 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.

- (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).