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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/00AY/LSC/2011/0584

Premises: Flat 1 25 Rodenhurst Road, London SW4 8AE

Applicant: Newservice Limited (S Bannon and M Cohen as administrators)

Representative: Mr K Darkwah, Property Manager of Salter Rex managing agents

Respondent: Mr Virendra Sharma

Representative: Mr A Singh, Managing agent of Trade Plan

Date of hearing: 14 February 2012

Leasehold Valuation Tribunal: Ms E Samupfonda LLB (Hons)
Mr L Jarero BSc FRICS
Mr A Ring

Date of decision 23rd February 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £2,345.87 and £258.99 for terrorism cover is reasonable in respect of the insurance and the due proportion from the Respondent is £469.17 and £51.80 respectively in respect of the service charges for the year 2009/2010.
- (2) The Tribunal determines that the sum of £1,821.79 for insurance and £201.13 for terrorism cover is reasonable and the due proportion from the Respondent is £364.36 and £40.23 respectively in respect of the service charge year 2010/2011.
- (3) The Tribunal determines that the sum of £58.75 in respect of administration fees is reasonable and payable by the Respondent.
- (4) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge

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 and administration charges payable by the Applicant in respect of the service charge years 2009/10 and 2010/11.
2. Proceedings were originally issued in the Barnet County Court. The claim was transferred to the Wandsworth County Court and then in turn transferred to this Tribunal, by an order dated 16th August 2011.
3. The claim transferred is in respect of alleged arrears of service charge totalling £1,502.50 and an administration charge in the sum of £58.75.
4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. The Applicant was represented by Mr K Darkwah, managing agent of Salter Rex managing agents since 2009 at the hearing and the Respondent was represented by Mr Singh, managing agent of Trade Plan.
6. The start of the hearing was delayed whilst Mr Darkwah attempted to clarify the Applicant's claim.

The issues

7. At the start of the hearing the Tribunal identified the relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of service charges for years 2009/10 and 2010/11 relating to insurance and terrorism cover, management fees and administration fees. There was also a claim for £205.53 client management fees inherited from the previous managing agents for the years 2008/2009.
8. 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.

Service charge item & amount claimed

9. Insurance: for the year 2009/10, the landlord claims £469.17 and £51.80 terrorism cover. For the year 2010/11 the amount claimed from the Respondent is £364.36 for insurance and £40.23 for terrorism cover.

The Tribunal's decision

10. The Tribunal determines that the total sums claimed by the Applicant are payable by the Respondent in respect of both the insurance and terrorism cover for both the service years in question.

Reasons for the Tribunal's decision

11. Mr Singh obtained a lower quote of £1,051.64 including terrorism for insuring the building for the period 2011/12. On that basis he argued that the insurance obtained by the landlord was excessive in both the service charge years in question. He challenged the terrorism cover on the basis that the lease did not entitle the landlord to recover this cost. Furthermore he argued that it was an unnecessary additional expenditure for residential premises as it was only suitable for commercial premises.
12. Mr Darkwah explained that the insurance is covered on a block policy as the Applicant owns a substantial property portfolio of approx 8,000 units. The insurance was obtained after the landlord through its broker tested the open market. He added that the Applicant found it difficult to obtain block insurance because of adverse history in terms of claims and mismanagement by the previous managing agents. He acknowledged that this may result in higher premiums for some buildings but overall the sums were deemed reasonable as the insurance was provided by a reputable company. He added that the brokers recommended that terrorism cover was necessary.

13. The Tribunal considered the relevant terms of the lease. Under clause 6.3, the landlord covenants to insure the building "against such risks as are covered by a Home Owners Comprehensive Policy and such other risks as the Lessor shall think fit with an insurance Office of repute...."
14. The Tribunal is satisfied that the sums claimed are reasonable and payable because there was insufficient evidence to support the assertion that they were excessive. It was apparent that the landlord had obtained the insurance from a company of repute after testing the market and the sums obtained did not appear to be wholly out of line with the market norm. We observed that the sum for terrorism cover the current year is £200 and that this is in line with the sums charged in the years in question.
15. We consider that clause 6.3 is sufficiently wide enough to permit the landlord to charge and recover the cost of terrorism cover and the sum claimed is reasonable.

Service charge item & amount claimed

- 16 Management fees: for the years 2009/10 the amount claimed is £220.30 and for 2010/11 it is £300. The landlord also claims £205. 63 for the year 2008/9 for client management fees

The Tribunal's decision

- 17 The Tribunal determines that the reasonable sum and therefore the amount payable in respect of management fees is £175 in respect of each year in question and that the sum of £205.63 is not reasonable and is therefore not payable.

Reasons for the Tribunal's decision

18. The Tribunal was not satisfied on the evidence that the Applicant provided full management functions to justify the sums claimed. For the year 2008/9, the Tribunal only had before it a document prepared by Salter Rex with the amount of £205.63 in it. By way of explanation, Mr Darkwah could only say that this figure was inherited from Chatsfield Properties the previous managing agent. Mr Singh said that there were no demands for payment issued and the Respondent has no idea what this figure represents. Furthermore because there was no management in place, the lessees insured their flats individually and took on the responsibility for the cleaning and lighting of the common parts. In those circumstances the Tribunal was not satisfied that the costs was reasonably incurred.
19. For the 2 years applicable to management by Salter Rex, Mr Darkwah said that he had visited the property 4 times a year, placed insurance, prepared and reconciled the budgets, arranged 1 visit by a gardener, pursued service

charge arrears and issued service charge demands. He added that it had taken 3 years to obtain a health and safety report because there is no money in the service charge account. He also gave this as the reason for failing to do any property maintenance. Mr Singh produced comparable management charges for two blocks of flats with 12 and 34 flats in each block charging £115.44 and £123.00 per flat per annum. He said that given the size of this property and the common parts compounded by the poor management the sums claimed are excessive by comparison. He doubted Mr Darkwah's claim to visiting the property because he had requested a key to the common parts in January 2011.

20. Although there was evidence to show that some management functions had been carried out, the Tribunal did not consider that the extent of functions undertaken justify the sums claimed. There was no evidence by way of inspection reports to verify Mr Darkwah's assertion that he visited 4 times per year and the Tribunal was not given any information as to what benefits the lessees received from his visits. It has taken Salter Rex 3 years to obtain a health and safety report. Although we were told about proposed major works no evidence of this was produced. Mr Darkwah did not need a key to inspect the property externally, draw up maintenance plans or to get a gardener in on a regular basis. There was no evidence to show that upon taking over management he had visited and taken a history of the building from the lessees as despite his repeated assertions that the property was in a mess he could not really substantiate this.
21. In our view the sums claimed for management fees were in line with the market norm for similar properties. However, in the circumstances of this case we considered that the sum of £175 was reasonable and therefore payable in respect of both years.

Service Charge item and amount claimed

Administration fee of £58.78.

The Tribunal's decision and reasons

22. The Tribunal determined that the sum claimed is reasonable and payable by the Respondent. Whilst the Respondent is entitled to challenge the reasonableness of service charge, in our view it is not reasonable for him to refuse to pay at all given his contractual obligation under the terms of the lease. The Applicant had no option but to pursue legal action due to the Respondent's refusal to pay. Paragraph 6.5 of the lease entitles the Applicant to recover such costs.

Application for costs

23. At the end of the hearing Mr Darkwah made an application costs on the basis that the Respondent had failed to comply with Directions. Mr Singh opposed the application and countered that the Applicant had also failed to comply with Directions.
24. The Tribunal has limited power to award costs under Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002. Given that both parties had failed to comply with Directions, the Tribunal is not satisfied that the circumstances under which it can make the order have been made.
25. The Tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Wandsworth County Court.

Chairman: Evis Samupfonda

Date: 23rd February 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 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.

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.