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**HM Courts
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**Residential
Property
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Case Reference: LON/00AW/LSC/2012/0804

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT
ACT 1985**

Property: Flat 1 125-127 Earls Court Road, London SW5 9RH

Applicant: Mr Kishore Mirpuri

Respondent: Mr R E X Szumlicki aka Hills

Date of Application: 19 November 2012

Date of Hearing: 3 April 2013

Leasehold Valuation Tribunal: Mr S Carrott LLB
Miss M Krisko BSc (EstMan) BA FRICS

Date of Decision: 30 April 2013

Background

1. This is an application under section 27A of the Landlord and Tenant Act 1985 for the determination of whether service charges are reasonable and payable.
2. The Applicant is the long leaseholder of a two bedroom flat in a building containing six residential flats on upper floors and shop premises on the ground floor.
3. The Respondent is the landlord.
4. The Applicant challenges the following service charges –
2010
£108.92 drain unblocking
2011
£594.51 management Fee
£112.89 staircase cleaning (June to December)
£55.00 window cleaning
£64.40 drain unblocking
£52.63 pest control
2012
£624.12 management fee
£233.34 staircase cleaning
2013
£655.33 Management Fee
(The figures quoted above are only the Applicant's 14% that being Applicant's contribution payable under the terms of the lease.)
5. In addition the Applicant claims an order pursuant to section 20C of the Landlord and Tenant Act 1985 and the reimbursement of the fees for this application.

The Hearing

6. The Applicant appeared in person at the hearing. There was no appearance by the Respondent. The Respondent had previously applied for a postponement of the hearing on 26 March 2013. The application for a postponement was refused and the Respondent was notified of the refusal on 28 March 2013 by post and by email on the same date.

7. Mr Mirpuri sought permission to amend his application by including a challenge to the cost of cleaning for 2013. The Tribunal refused the amendment on the grounds that no notice had been given to the Respondent. The Tribunal therefore considered only those matters set out in the application and as set out by the Procedural Chairman on 9 January 2013 in the directions.

8. 2010 £108.92 Drain unblocking 2011 £64.40 Drain unblocking

The Applicant gave evidence that he had occupied his flat for some 35 years and that from 1978 until 1985 the shop premises were used for retail and from 1985 to 2010 as a hairdressers. The Applicant told the Tribunal that blockages had coincided with the use of the shop premises as grocery/butcher's shop and that a butcher's sink had been installed in the shop premises below. The Applicant did not provide the Tribunal with any reports as to the cause of the blockage. The Applicant however was of the view that the blockage was solely attributable to the use by the shop premises below. The Applicant stressed that in all of the years that he had occupied his flat there had been no blockage and that the blockage coincided with the change of use of the shop premises. Likewise the Applicant complained that he ought not to be liable for the charges for 2011 of £64.40.

9. 2011 £594.51 Management Fee, 2012 £624.12 Management Fee. 2013 £655.33 Management Fee

The Applicant complained that the management fee was excessive. He told that Tribunal that in 2005 when May & Co became the managing agents the total cost was £1674.00 for all of the units. He said that in

2010 this had increased to £2079.00 and then more than doubled to £4246.50 in 2011. In 2012 the costs increased to £4458.00 and for 2013 the figure is £4680.90.

10. The Applicant stated that this was a small development and that the managing agents sought to justify the increase by saying that there was an increase in correspondence. The Applicant said that there was no correspondence in 2011 although there had been proceedings before the Tribunal and that he thought despite the section 20C order made during the last application, the managing agents or landlord were seeking to recoup their costs under the guise of increased management fees.

11. 2011 £112.89 Staircase cleaning (June to December) and 2012 £233.34

The Applicant complained that the cleaners attended the premises for some 10 to 15 minutes and that the work carried out was substandard. The cleaners attended to the staircase only and all of the other communal areas were cleaned by him. He said that he had complained to the contractors and following complaints the contractors would then ask the cleaners to return. He said that cleaning contractor was first engaged in June 2011 and that the contractor was charging £18.66 plus VAT for a 12 – 16 minutes of rush cleaning. The Applicant stated that a reasonable figure for the work carried out would be £8.50 plus VAT.

12. 2011 £55.00 Window cleaning

The Applicant complained that this charge was excessive. He stated that the windows were cleaned on two occasions in 2011 and that the windows concerned were small sash windows. He argued that the cost should be no more than £5 plus VAT on each occasion.

13. 2011 Pest Control £52.63

The Applicant complained that the pest control was not effective and that his contribution of £52.63 was excessive in the circumstances. By way of comparison he cited the costs of Kensington and Chelsea who charged £112 plus VAT for three visits which included baiting, inspection and removal.

Decision

14. 2010 £108.92 Drain Unblocking 2011 £64.40

These costs would be allowed in full. The documentary evidence before the Tribunal and the Applicant's oral evidence did not persuade the Tribunal that the blockages were solely the fault of the shop premises below. There was no drain testing and no reports before the Tribunal that stated the cause was attributable solely to the shop premises. The Tribunal did however find the frequency of the blockages surprising and noted that should there be a further blockage it would be incumbent upon the landlord to ascertain the cause.

15. 2011 £594.51 Management Fee, 2012 £624.12 Management Fee, 2013 £655.33 Management Fee

There was no material before the Tribunal either from the Respondent or the managing agents to show how the management fee had been calculated. Bearing in mind that this was a small development, it was difficult to understand how the individual charges to the Applicant could be so high. Neither could such sums be justified solely on the basis of an increase in correspondence with the leaseholders.

16. In the circumstances a reasonable sum for each of the years concerned would be £250 plus VAT for each year making a total of £750 plus VAT.

17. 2011 £112.89 Staircase cleaning (June to December) and 2012 £233.34

The Tribunal accepted the Applicant's evidence that the cleaning had been substandard for the periods concerned and considered that in

those circumstances the sums charged were excessive. The Tribunal noted that the Applicant was not being charged in accordance with the lease. Instead of being charged at 14% he was charged at 18.667%. doing the best it could on the material before it the Tribunal concluded that the Applicant's contribution for the period concerned should be £84.67.

18. Window Cleaning £55.00

The Applicant was again charged at the wrong percentage. His percentage should have been 14% and not 18.667%. The Applicant's individual contribution would therefore be reduced to £7.70.

19. Pest Control £52.63

The Tribunal accepted the Applicant's evidence on this issue and considered therefore that a reasonable figure would be £112 for the total costs of the treating making the Applicant's contribution under the terms of the lease £15.68.

20. Section 20C of the Landlord and Tenant Act 1985 and Reimbursement of Fees

Having regard to all of the circumstances of the case the Tribunal considered that it was just to make an order under section 20C of the Landlord and Tenant Act 1985 so that the landlord's costs would not be added to the service charge.

21. Likewise the Applicant had succeeded in his application and in the circumstances was entitled to reimbursement of his application and hearing fees (total £250).

Chairman: S Carrott LLB