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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985 SECTION 27A

LON/00AG/LSC/2010/0256

Premises	**54 King Henry Road, London NW3 3RP**
Applicants:	**Mrs .J .Weisman Rovina(1)** **Ms.L.Goodman (2)**
Respondent:	**Mr M Karbaron and others**
Date of Hearing:	**16 July 2010**
Tribunal:	**Ms M Daley LLB (Hons)** **Mrs J Davies FRICS** **Mr P Clabburn**
Date of decision:	25th August 2010.

Background

1. (a) The property, is a converted Victorian House containing 4 flats.

   (b) The Applicants are the lessees of the premises. The Respondent freeholder is Mr M Karbaron. The Respondent was represented by, Salter Rex, managing agents.

2. On 12th April 2010 the applicants applied to the tribunal for a determination of reasonableness of and liability to pay the service charges for 2006/07, 2007/08, 2008/09 and 2010.

3. Directions were made by the Tribunal, on 12.5.09. The Tribunal identified the sole issue to be determined as the liability to pay and reasonableness of service charges for the flats (in issue).

Matters in dispute

4. In the joint statement of case, the Applicants set out that the service charges that were in dispute between the parties were-:

   - The annual insurance charge
   - The history of the insurance claims
   - The maintenance charge/management charge
   - Building repairs
   - Legal fees (Ms Weisman Rovina only)

The law

5. *Section 18(1) of the Landlord and Tenant Act 1985 ("the Act") provides that, for the purposes of the relevant parts of the 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.

Section 19(1) provides that 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 provision 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.

Section 19(2) of the Act provides that, 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) of the Act provides that that 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.

[Section 27A(3) of the Act provides that an application may be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance 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.]

The Inspection

6. The Tribunal inspected the premises on the morning of the 16 July 2010, prior to the hearing.

7. No 54 King Henry Road is a substantial 4 storey Victorian Semi-detached house (built C1850).

8. The property is located in a generally good residential area of Primrose Hill comprising similar properties and some in fill properties built in the 1960s. Residents' parking is available in the road. This particular property backs onto a busy main railway line sited in a cutting at the rear.

9. The property has been divided into 4 flats. One flat is located in the basement with access down an external side staircase. The other 3 flats are accessed through the main front door at upper ground floor level with a small plain communal entrance hall and stairs up to the 2 upper flats. The communal hall and stairs are carpeted. Generally the Tribunal considered the property to be in good condition overall.

10. Construction is of solid brick with some smooth rendering under a slate roof. There are some sash windows and some poor quality dormer windows at second floor level.

11. The items noted or pointed out to the Tribunal during our inspection included the following-:

- Peeling paint work to front door
- Making good of asphalt to front step and under the basement area
- Damp staining on the top landing
- Defective lighting to entrance hall
- Tiles missing to external steps to basement flat
- Holes which have been filled to prevent ingress by rats
- Flank wooden fence in poor repair

- Defective section of guttering behind wisteria on the front elevation

Evidence

12. At the hearing the Applicants were represented by Ms Goodman and Ms Belot on behalf of (Mrs J Weisman Rovina). The Respondent was represented by, Mr Bird of Salter Rex. The Tribunal were informed from the outset of the hearing that Mr Bird was not the property manager for the premises. The property manager, Mr Abrahams, was on sick leave, and Mr Bird (who had joined the company relatively recently) had been given the file and asked to assist the Tribunal. He did not have any knowledge of the property. The Tribunal were of the view that his evidence at best could only be regarded as anecdotal accordingly the Tribunal could not give his evidence (such as it was) a great deal of weight.

The cost of Insurance

13. The first issue was the insurance which for the periods at issue was as follows-:

Years	2008/09	2007/08	2006/07	Tenants Contribution
Insurance amounts	£3752.83	£4084.48	£3583.59	¼

14. The Tribunal were informed by the applicants that they considered the premium for the property to be excessive. As a result of their complaints to the managing agents the Applicants were referred directly to the insurance brokers Chaseside Insurance Brokers Limited. The Tribunal were referred to a letter from Chaseside Insurance Brokers Limited to Salter Rex dated 30 June 2010, which provided the Respondent's explanation for the cost of the insurance premium -: *" ... 2.Over the years there have been Liquidations and failures of Insurers and Mr Karbaron has always wanted the protection of an Insurer that could be categorised as an AA rated company. Aviva, of course, meets this requirement. 3. Having referred this risk to the market over the years, we have been unable to obtain realistic alternatives in view of the previous history of subsidence. 4. In March of this year, I spoke with Linda Goodman (leaseholder) and advised her of*

the problems in obtaining alternative quotations without an up to date Structural Survey, I informed her that we could do nothing without a report and heard no more. 5. I have requested a claims experience from Aviva and this will be sent to you as soon as it is received."

15. The Evidence from the Applicants was that they were unaware of any recent problems with subsidence. They presented anecdotal information that there may have been some issue with subsidence "approximately 20 years ago". The Applicants had also spoken with others who lived in the area, and noted that none of the other residents were aware of any subsidence problems.

16. Ms Goodman had arranged for Network Rail to inspect the retaining wall and they had reported that it was in sound condition.

17. Mr Bird, in response to the issues raised by the Applicants, stated that he did not know the specifics of the history of insurance of the premises. In very general terms he referred to the fact that the Landlord had the right to insure under the terms of the lease, and, as such, had no obligation to choose the cheapest policy or to shop around. The landlord was entitled to rely upon competent brokers and a reputable insurance company. Mr Bird acknowledged that this did not necessarily produce the cheapest policy.

18. Mr Bird was unable to say if any commission was received by the Landlord. He was unaware of any being paid to the managing agents. The quotation that had been obtained for 2009/10 was in the region of £3700.

19. There was no further evidence either of the claims history, or of any alternative figures for the cost of insurance presented by either party at the hearing.

20. The Applicants reiterated that there was no evidence of recent subsidence., They also stated that they had real difficulty in obtaining a comparative quotation without details of the insurance history. These were the factors that they wished the Tribunal to consider in coming to a decision.

The Decision of the Tribunal

21. The Tribunal noted that in general the Landlord in obtaining insurance need not opt for the cheapest policy. The Landlord need only use best endeavours to choose a reputable insurance broker and company and as such is not obliged to 'shop around'. This principle was established in *Berrycroft –v- Sinclair Gardens (1997) 1 EGLR 47.*

22. The Tribunal had some sympathy for the Applicants, and were aware that without full details of the insurance history it would have been difficult to obtain a quotation.

23. However, the Tribunal noted that there was no evidence of comparable insurance (even by reference to those who live in similar housing on either side). The Tribunal also noted that there was no evidence before us concerning the subsidence and as such we could not reach a sound conclusion on the matter. We consider that we would have derived much assistance from a report, such as that referred to by Cheapside Brokers in their letter dated 30 June 2010.

24. We were also of the view that the premises, does have an unusual feature which may present a challenge on obtaining insurance. The Applicants in their evidence stated that the issue was the retaining wall at the end of the garden. The Tribunal, on viewing the property (as part of our inspection) from a neighbouring road;, noted that the rear fence of the property was built on a retaining wall which was in fact a railway arch . In the Tribunal's view this may affect the availability of insurance.

25. The Tribunal confirm the position in law that it is for the Applicants to satisfy the Tribunal on a balance of probabilities of the case that they put forward. We are unable from the evidence presented to reach a firm conclusion about the insurance. Given this we find that the cost of the insurance as set in the table at paragraph 13 is reasonable and payable.

The Management Fees

26. The fees for the period in issue were as follows-:

Years	2008/09	2007/08	2006/07	Tenants Contribution

Management fees	£1105.00	£1057.50	£1057.50	¼

The management fees for 2009/10 were £1175.

27. Clause 5 of Schedule 2 of the Applicants' lease provided that the Respondent could retain the services of a managing agent and charge the cost as a service charge.

28. The Applicants complained that the property was not well managed. The common complaint by Ms Goodman and Ms Belot was that the management was not proactive. By way of example, they stated that there was no specific schedule of visits, and they had never seen anyone pay a visit from Salter Rex. The Applicants were also unhappy about the manner in which repairs were carried out. There had been a number of repairs to the roof, which, in their view, meant that the work had not been carried out adequately the first time, as, if it had been, there would have been no need for further work to the same area. The Applicants considered that proper supervision of the work would have presented some of the problems. They cited the fact that Ms Goodman had been at the property when one of the repairs had been carried out and it had not taken very long.

29. The Applicants were also unhappy about the standard of cleanliness of the common parts, and that no work had been carried out to the front wall, which had subsequently been rebuilt by their neighbour.

30. In accordance with the directions, the Respondents managing agents had provided details of their terms of management. This was in the form of a blank pro forma letter of appointment. This letter set out the general duties of the managing agents. The fee quoted in the "*letter of appointment*" was £250 per property.

31. By way of evidence, Mr Bird was unable to confirm whether the fee was £250 per property and was also unable to set out the specific schedule of visits that applied to this property. Regarding the management charge, Mr Bird's evidence was that the managing partner for Salter Rex re-calculated the budget and the operational cost of managing the property on an annual basis. He also confirmed that the managing agents made additional charges

for supervising work. There were invoices from the managing agents for *"... fees in respect of an insurance reinstatement valuation of the above property"* at a cost of £460. and for *"...repair and redecoration"* in the sum of £272.40.

32. There was no evidence presented by the Applicant of alternative costs for managing agents. The Applicants were also unable to put forward what they considered to be a reasonable charge for the work that was carried out.

The Tribunal's Decision

33. The Tribunal agreed with the Applicants, that there was a lack of pro-activity on behalf of the managing agents. The Tribunal noted that there was no schedule of inspections nor, indeed, any evidence that inspections had taken place.

34. The Tribunal noted that in response to the directions, the terms of management produced by the Respondent were inadequate. The pro-forma was incomplete. There was no evidence of service charge accounts, normally a feature of management, having been produced at any stage in the years in question.

35. The Applicants complained that the property was not well maintained inside. The Tribunal noted that the Respondent did not engage a cleaner on the tenants' behalf and, given this, the lack of cleanliness of the common parts was down to the tenants.

36. The Tribunal, taking into account the *Service Charge Residential Management Code (Code of Practice)* and the duties set out in part 3 of The Code, considered that the managing agents were not discharging all of their responsibilities concerning inspections of the property, and communication with leaseholders. In considering this; **The Tribunal find on a balance of probabilities that that the cost of the managing agents fees were not reasonable and that they ought to be reduced by 20%.**

37. In respect of the additional professional fees charged, the Tribunal noted the additional cost for managing repairs, which was described as professional fees. The pro-forma letter states *" Excluded from the management fee would be major building works which require a Specification of Works being prepared, tenders submitted and the works*

supervised... This would be dealt with by a separate fee based on normal building contract work and dealt with by our Building Surveying Division..."

38. Although the Tribunal accept in principle, that the managing agents may charge more for the supervision of major work where this is spelt out in their management agreement, this should not be accepted as routine. The Tribunal were not satisfied that supervision had taken place, as there were no reports, for example, for the re-insurance inspection, and no evidence of supervision of the work. **Accordingly the Tribunal reject these charges as reasonable and payable**. For the avoidance of doubt it is the Tribunal's view that such cost should be payable on proof that the work has been supervised.

The Cost of the Repairs

39. There were two main types of repairs, repairs to the roof and the lower ground floor. The main roof repairs were as follows-:

- 29/04/09- £454.25
- 28/10/09-£460
- 15/12/09-£920

In the statement of case, the tenant stated that the total cost of the work was £1834.25.

There were also works to the lower ground floor, which at ground floor level was covered by asphalt. The cost of repairs to the asphalt had been as follows-:

- 25/11/07 -£310
- 11/11/08-£346.62
- 18/11/09-£333.50

40. The tenants considered that it was not reasonable for the roof and the asphalt to have been "repaired repeatedly" and that this indicated that the first repairs had been inadequate. The leaseholders stated that they had been present when one set of repairs were carried out to the asphalt, and this had not taken very long and had cost £333.50. Mr Bird stated that based on his knowledge of managing such properties, it was often the case that smaller patch repairs were undertaken instead

of larger more costly major works and that this needed to be balanced, as in general tenants did not want to pay for more expensive repairs.

The decision of the Tribunal

41. The Tribunal on inspection of the property were able to consider the repairs to the asphalting. The Tribunal noted that they had been carried out to a reasonable standard. The Tribunal noted that the repair work referred to on page 48 of the bundle included burning out of splits and cracks in the stairs. This would have needed the use of equipment and to this the cost of transporting and use of the materials would need to be considered as an integral part of the overall cost. The Tribunal noted that the evidential burden rested with the Applicants have not been given any alternative quotations for the cost of the repairs. Neither have the tenants put forward wholesale replacement as an alternative.
42. **The Tribunal accept that on balance and given the age and condition of the premises, the cost of repairs to the roof and asphalt, in the absence of more wholesale repairs, was reasonable and payable.**

The outstanding legal fees

43. The complaint concerning the legal fees was raised solely by Ms Belot on behalf of Mrs Rovina. In her statement of case Ms Belot set out the chronology leading to the legal cost being incurred. On 4 April 2008, she was appointed to represent Mrs Rovina, due to on-going medical treatment of the latter. Between 22 April and 14 May 2008, Ms Belot tried to find out how much service charges were outstanding.
44. Ms Belot did not receive this information until mid May when Mr Abrahams began his employment. Ms Belot was able to establish that £313.66 was outstanding.
45. A payment of £313.66 was made on 28 May 2008. Prior to this, on 13 May, the Respondent issued proceedings for non-payment of arrears. In June 2008, there was an adjustment to the account a credit of £1452.26. The Tribunal noted that on 24 June 2008, the solicitors were instructed to issue judgment.
46. The total cost of the legal action was £609.88.
47. The Third schedule of the lease provided that the leaseholder was obliged to pay " ... *all costs charges and expenses including legal costs and fees payable*

to a Surveyor which may be incurred by the Lessor in or in contemplation of any proceedings under Section 146 and 147 of the Law of Property Act 1925 or any statutory modification thereof..."

48. Mr Bird did not have any information to add on the Respondent's behalf concerning the outstanding cost and was therefore unable to assist the Tribunal.

The Decision of the Tribunal

49. The Tribunal in considering these cost need to consider whether-(i) they were administrative charges that are payable in accordance with the terms of the lease. (ii) Whether the cost were reasonable and payable in accordance with Schedule 11 part I of the Commonhold and Leasehold Reform Act 2002.

50. Schedule 11 part 1 requires a summary to be given to the leaseholder of their rights and obligation. We note that although we have heard no evidence of this, no complaint has been made by the leaseholder's representative that this did not occur.

51. The Tribunal consider that on our interpretation of the lease, the lease does not make provision for the payment of administration charges. In any event, we consider that the Leaseholder's representative was actively engaged in trying to establish what charges were outstanding. Once these were established, Ms Belot acted promptly in ensuring that they were paid.

52. The Tribunal noted that there was nothing to confirm that the Respondents answered Ms Belot's queries, or that there was a delay in making payment once the charges were established. Given this we find –**That issuing proceedings were premature, and accordingly the legal charges sought by the Respondent are not reasonable and payable.**

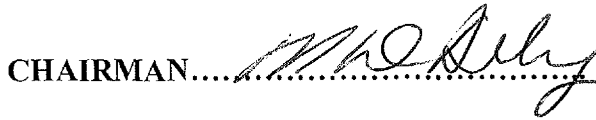
The Applicants' Application under Section 20 C of the Landlord and Tenant Act 1985 and application for reimbursement of fees

53. The Tribunal, having considered all of the circumstances, do not consider that the Respondent's representatives made effective and proper representation. The Tribunal also noted that the Applicants had partially succeeded on their

claim. **Given this, we consider that in all the circumstances of the case it is just and equitable to grant the section 20 C application sought.**

54. However we consider that the Applicants have only partially succeeded, and on issues such as the insurance and repairs failed to provide the necessary evidence. **Given this the Tribunal is not persuaded that an order for reimbursement of fees ought to be granted.**

The Tribunal determine that the Respondent should within 42 days serve a revised service charge demand based on our findings.

CHAIRMAN....

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