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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

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/00AC/LIS/2012/0003**
Premises:	**34, 34A, 36, 36A, 38, 38A Park Road Hendon London NW4 3PS**

Applicant(s) :)	Suresh Sharma (flat 34) Bharat Patel (34A) Shabnam Khorram (36) Anisha Patel (36A) Henry Watts (38) Kin Wah Tang (38A)
Representative:	The Applicants appeared in person (save Mr Bharat Patel and Ms Khorram)
Respondent(s):	H & D Property Services Limited
Representative:	Mr Stephen Stone – Grangeview Management Ltd
Date of hearing:	11 October 2012

Leasehold Valuation Tribunal:	Ms M W Daley LLB (hons) Mr P Roberts DipArch RIBA Mr O Miller BA
Date of decision:	21 October 2012

Decisions of the Tribunal

1. The Tribunal determines that the sum of £ the Tribunal find that the sum of £3163.23 for 2009/10 and £3226.50 for 2010/11 is reasonable and payable for the insurance.

2. The Tribunal finds that the cost of emergency (home cover) insurance in the sum of £282.00 for 2011 is reasonable and payable.

3. The Tribunal noted that at the hearing, the Accountancy fees for 2009 to 2011 were conceded by the Applicants to be reasonable and payable, as this sum is agreed the Tribunal determine that the cost of the accountancy is reasonable and payable.

4. The Tribunal determines that the management fees for the period in issue are reasonable and payable.

5. The Tribunal makes no determination on whether the cost of the work commissioned by Mr Watts gives rise to a set off against service charges

6. The Tribunal finds that the repair to the guttering in the sum of £1595.00 is reasonable and payable.

7. The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

8. The Applicants sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") of the liability to pay service charges to the landlord in respect of the years 2009,2010 and 2011.

9. At the pre-trial review held on 1 May 2012, it was noted by the Tribunal that some of the tenants had not owned their premises for the whole of the periods for which service charges were in issue. Accordingly each of the leaseholder's challenge of the service charges only extended for the periods of their ownership of their premises.

10. At the pre-trial review, Mr Patel of flat 34A indicated that he would represent all the tenants and would serve and receive documents on their behalf.

11. The directions at point 5 stated that -: *If by 24 August 2012 the parties have not resolved their disputes the tenants must no later than 7 September 2012, send one copy to the landlord and four copies to the tribunal of a bundle containing all the documents required for the determination. These must include statements from any proposed witnesses of fact, the application, a*

copy of each form of lease… all the statements and witness statements from both parties, and any other documents on which either party may wish to rely at the hearing."

12. It was noted by the Tribunal, that part of the Applicant's statement of claim referred to 2012, and that there were issues concerning Japanese Knot wood which had not been included in the original application. As this issue was outside of the periods that were included in the application, no determination would be made by the Tribunal on this issue. It was however hoped that the determinations made by the Tribunal would give the parties a "steer" which would be useful to them in attempting to resolve the service charge issues for 2012.

13. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

14. At the hearing the following leaseholders were in attendance Mr S Sharma flat 34, Ms A Patel flat 36A, Mr Watts flat 38 and Mr Kin Wah Tang of flat 38A. It was unfortunate that Mr Bharat Patel, although at the pre-trial review; having indicated his willingness and intention to represent the leaseholders was now unavailable for the hearing.

15. The Respondent was represented by Mr Stephen Stone, of Grangeview Management Limited (managing agents) who attended the hearing late due to mistakenly believing the hearing was listed for the following week.

16. The start of the hearing was delayed; as it was apparent from the bundle that the Applicants had not included the Respondent's statement of case and other supporting documents. The Respondent gave copies of these documents to the Tribunal

The background

17. The property which is the subject of this application is a two storey purpose built block of eight maisonettes which was constructed during the interwar period of solid brick.

18. The Applicants hold long leases of the property (it was noted that not all of the leases were in the same format) 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

19. At the start of the hearing the parties identified the relevant issues for determination as follows:

    i. The cost of the guttering repair

    ii. The building insurance for the periods 2009, 2010, 2011

    iii. The cost of the emergency insurance

    iv. The accountancy fees for 2009, 2010 and 2011.

    v. The management fees

    vi. Cost of the repairs to the exterior of the premises

20. 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

Building insurance

21. The cost of the building insurance for 2009/10 service charge year was £3954.04, the cost of which was shared equally between the six flats. The premium for 2010/11 was £4033.12.

22. The leaseholders had each provided a statement setting out their concern about the increase in the cost of the insurance. This is summed up by the statement produced by Mr Kin Wah Tang in which he stated -: *For the year 2009-2011. The premium is very high. GML charged me (£659.01+£659.01=£1318.02. We got an independent quote from a company called CIA insurance which was total£1500 for the year of 2010 to 2011. If divided by 6 leaseholders. Each to pay £250 per years. I can accept the four years building insurance total payment is £1000. "*

23. The Tribunal noted that some of the leaseholders had reduced their payments and had only paid the sum that they considered to be reasonable, which was in the range of £250.00-£300.00 per annum.

24. Mr Stone informed the Tribunal that he had started managing the property in 2008, when the managing agent's took over the insurance was with Axa arranged by the freeholder. Grangeview Management Ltd had introduced the freeholder to the broker, Reich Insurance Brokers who were located in

Manchester. As managing agents they had had a positive experience of using these brokers prior to taking over the management of the premises. In answer to the Tribunal's question, Mr Stone confirmed that the managing agents did not receive any commission. The policy, which was not a block policy, was placed directly by the landlord.

25. Mr Stone did not know what the arrangements were for market testing, although he was aware that when the brokers first arranged the insurance, the broker had obtained a number of comparable quotes before recommending an insurance policy.

26. In his emailed reply to the statement of case, (sent by Mr Stone to Bharat Patel) Mr Stone set out a lengthy explanation of why the comparable quote was insufficient. Mr Stone stated -: *"... The quotation provided by the lessees is for cover of £900,000 against the existing cover of £1.194 million, a difference of almost 25%. The lessees have neither requested a reduction in the sum insured nor have they provided any evidence to justify such a reduction. We are happy to arrange for an insurance valuation at the lessees expense once they have paid their service charges and we have sufficient funds to pay for the valuation. Alternatively the lessees are welcome to obtain their own valuation..."*

27. There was also an issue with the claim's history, In his statement Mr Patel referred to two insurance claims which he stated were outstanding. These claims related to alleged water damage going back to August 2010, and a claim made by a "previous owner" in relation to subsidence. Although the tribunal accept that this would affect the premium there was no evidence of the subsidence claim. In respect of the water damage claim there were a number of emails which referred to the matter being dealt with by loss adjusters, there was however nothing to show that this matter had been concluded by the loss adjusters.

28. The Tribunal noted that although clause 5(4) (c) and the Fifth Schedule of the lease provided for the collection of insurance premiums as a service charge, there was no mirror clause in the older leases. Include in the Tribunal bundle were the leases for flats 34 and 38A . Clause 1 of the lease for flat 38A, states (towards the end of the clause) -: " *....And also paying by way of further additional rent from time to time sums or sums of money representing a reasonable proportionate amount of the total sum expended by the Lessor in effecting and maintaining the insurance of the building against loss or damage by fire and such other risks as the Lessor may deem necessary .."*

29. Clause 5(4) (c) states -: *" To insure and keep insured the Building and other structures and facilities comprised in the Building... against loss or damage by fire explosion storm tempest subsidence landslip earthquake etc..."*

30. The Tribunal noted that the managing agent did not have any information on whether commission was paid. At the hearing Mr Stone was asked to obtain a

letter from the landlord setting out whether any commission was paid to the broker or freeholder and if so what work/service was provided in respect of this commission.

31. Further information was provided by Mr Stone by letter dated 31 October 2012 which included various items relating to the buildings insurance. However this did not include any details of commission paid, he stated *"....as far as I am aware of the only remaining item is a letter from the landlord's insurance broker confirming what they did when placing the insurance and giving details of the commission but we have not yet received this."*

32. *The Tribunal's decision and reason for the decision*

33. The Tribunal noted that the Applicants had attempted to provide an alternative quotation for the cost of the insurance premium. An email from Steve Short of CIA provided a quotation with a re-build value of £1,190,000 with the insurance being provided by Aviva. The cost of the premium was £1900.00. However this was on the basis of no claims having been made in the last three years. On the evidence before the Tribunal this did not correctly deal with the insurance history at the building.

34. The Tribunal was unable to rely upon this evidence, and accordingly the Tribunal had to rely on its own knowledge and experience. In so doing the tribunal considered that the sums of £3945.04 and £4033.12 were higher than might be obtainable by individual leaseholders and was also more expensive than was usually the case, when the premium was not part of a block policy. This in itself did not mean that the cost was unreasonable. Section 19 of the Landlord and Tenant Act 1985, provided that the Tribunal should consider whether the cost was reasonably incurred. Subsequent case law had given some guidance on this, that this did not oblige the landlord to shop around until he had found the cheapest insurance.

35. The Tribunal were however concerned that there was no information on the level of commission paid if any to the broker or landlord, and this is set against a background were the cost of insurance was higher than the Tribunal might have expected (if no commission is paid) for the property type. The Tribunal were also troubled by the failure to respond to the information requested on the issue of commission. This was in the context where given the complaint that insurance issues took overly long to deal with, it did not appear that the landlord or the managing agents acted as claims handlers (for a fee).

36. Given this we consider that the cost of insurance ought to be reduced by 20 % for each of the years in question, to reflect the fact that the insurance is higher than the Tribunal would expect for the property type and the fact that claims were not processed on a timely basis. **Accordingly the Tribunal find that the sum of £3163.23 for 2009/10 service charge year and £3226.50 for 2010/11 is reasonable and payable for the insurance policy.**

Emergency Insurance

37. In the statement provided by Suresh Sharma dated 12 May 2012, the objection to this cost was set out as follows-: *" GML is demanding £282.00 for this policy but this has no relevance use as when we tried to use it last year for a bust mains pipe in my front garden which was feeding several flats GML were again not able to assist and Mr Patel from 34a and Mr Sharma from 34 had this fixed at their own cost."*

38. The Tribunal noted that all of the affected Applicants objected to this cost in similar terms to those set out by Mr Sharma.

39. Mr Stone in his reply stated that the managing agents had obtained insurance cover,from Homeserve, a multi-national emergency insurance company. He defended this on two bases, firstly the cost was not excessive, and secondly, he stated that the Royal Institute of Chartered Surveyors in their Service Charge Residential Management Code recommended some provision of emergency cover.

40. Mr Stone noted that the charge was no longer collected having been stopped by the managing agents in March 2011. Mr Stone also stated that the leaseholders had not reported the leak, or provided details that they had incurred cost, or asked for those cost to me paid through the service charges. In any event the insurance provided only covered repairs within flats and the building and excluded gardens etc.

41. The Tribunal noted that no evidence had been provided by the Applicant concerning the mains water leak or to confirm that they had asked the managing agents to deal with this matter.

The Decision of the Tribunal and the Reasons for the Tribunal's decision

42. The Tribunal noted that clause 5(4) (c) of the lease placed an obligation on the landlord to insure and keep insured the building, the terms of the lease were wide enough to cover emergency cover. Although this clause is not set out word for word, it does provide that the landlord may insure against -: *" such other risks (if any) as the Lessors think fit".*

43. This wording was also included in the older leases which at clause 1 provided *" ... such other risks as the lessor may deem necessary ..."*

44. **Accordingly the Tribunal find that the sum of £282.00 for the cost of emergency insurance for the service charge year 2009/10 is reasonable and payable.**

Accountancy fees and the Tribunals decision

45. The Applicants conceded that the sums for accountancy were not now in dispute between the parties accordingly the Tribunal finds the sums of £252.00 payable to Martin & Heller) 2009/10 and £264 for 2010/11 are reasonable and payable.

Management fees

46. The common theme in the statements prepared by the leaseholders and in the oral submissions that were heard at the hearing was that the management fee was not reasonable given the limited amount of management undertaken and the condition of the premises, and that work that needed to be undertaken at the property had not been carried out. This was summed up in the statement of Anisha Patel who stated -: *"In regards to Management Fees, there has been no evidence of maintenance and therefore other leaseholders have been maintaining their grounds and properties, therefore I cannot justify payment towards these fees."*

47. In reply Mr Stone in his statement stated " (a) *The lessees claim that we have 'never provided any service' is totally untrue and without foundation....(c) The fact that some lessees have maintained the garden areas in front of their flats is irrelevant as not only have the lessees never requested communal garden maintenance, there has never been a provision for this item in the service charge budget..."*

48. The Tribunal asked whether there was any management agreement. Mr Stone stated that there was no formal agreement, and that this was not uncommon in dealing with a property this size. However it was agreed between the managing agents and the landlord that the managers would prepare a budget for interim demands, commission repairs at the building, collect insurance and ground rent, prepare accounts for the end of year accounts and prepare the invoices for auditing.

49. Mr Stone rejected the written and oral evidence that the standard of management was poor. He stated that where there were repairs and the Respondents were notified, they usually had someone there straight away. There was a problem with repairs in that some of the leaseholders paid straight away whilst others did not and the landlord had to advance the monies for normal maintenance to be carried out. Mr Stone accepted that the leaseholders did not have a gardener, and that it was common practice in small premises that leaseholders looked after the garden themselves.

50. Although it was alleged that Mr Sharma had an outstanding insurance claim, and that this was evidence of poor management, the managing agents had acted perfectly reasonably and the claim was with a loss adjuster, and this was "heavily documented" Although Mr Sharma was critical of the length of time it had taken, Mr Stone understood that the claim had now been agreed.

51. Mr Stone accepted that there were problems, for example some leaseholders did not cooperate with the managing agents. Mr Stone stated that he had tried to arrange meetings with leaseholders and had arranged for a meeting at which no one turned up.

52. The Tribunal asked for details of how often the premises were inspected? Mr Stone stated that he had inspected in 2009 and 2011 and that inspections were usually done by asking the contractor to inspect the premises, when they were on site and report on anything which needed doing.

53. The management charge was £150.00 to £160.00 per unit per year. (The sum set out in the statement of account for December 2009 to June 2010 was £528.75 and June 2010 to December was £705.00 in total. For 2011 the total figure was £1080.) Mr Stone stated that this contrasted with the fee charged by most property managers which was in the range of £300-£350.00 per unit. The Tribunal lacked details to confirm the unit charges for each of the periods in issue. The Tribunal noted however that the Applicants did not have any comparable figures which they relied upon in support of their submission that the management fee was not reasonable. It was accepted by the leaseholders that they had no knowledge of what should be done or what figure to put on the management fees.

The Tribunal's decision

54. The Tribunal noted the management fee charged by the managing agents and the duties that were included for the fees; these were within the normal duties undertaken for a property this size. The Tribunal were concerned to note that the premises did not have a regular schedule of inspections. This should be put in place.

55. Although the Tribunal noted that the current arrangements were not ideal, the Tribunal in the absence of alternative figures put forward by the Applicants had to make an assessment of the range of duties undertaken and whether given this, the fee charged was within a reasonable range.

56. In order to make this assessment in the absence of alternative figures, the Tribunal had to use its knowledge and experience of management fees charged. Having done so the Tribunal determined that a fee of no more than £200.00 per unit per year was reasonable and payable by each leaseholder. Where less has been charged, this lower figure would be payable by the applicants.

Cost of the repairs to the exterior of the premises

57. This work was allegedly undertaken by Mr Watts and one of the other leaseholders, and involved re-rendering of exterior walls. Mr Watts stated that this work had been undertaken at the leaseholders own expense because it have been left in an appalling condition

58. It was not clear to the Tribunal whether this was being presented as a claim for a set off, and in reply Mr Stone stated that he had not been informed of this work and no invoices had been presented to the managing agents for reimbursement.

59. The Tribunal did not have any of the invoices or any evidence such as before and after photographs upon which we could make an assessment.

60. Accordingly the Tribunal have determined that no proper claim for set off has been presented to the Tribunal and the Tribunal make no finding on this issue.

61. *The repairs to the guttering and roof works*

62. This was for work undertaken to the roof and guttering and the survey fee in the sum of £1645 in the service charge year 2009/10. Although several of the leaseholders stated that the sum demanded was "excessive" and that accordingly, they would only pay £700.00 in total for this work. No real explanation was given as to why the cost of the work was considered to be excessive.

63. In reply, Mr Stone stated that the landlord had served a section 20 notice concerning the repair works, and that there had been no response from the leaseholders. Mr Stone stated that two quotations had been received one from Cowen Builders Limited in the sum of £1833 inclusive of Vat and a quotation from Grangeview Homecare Ltd in the sum of £1595.00. and a final invoice in the sum of £1645.00. Mr Stone stated that although he could not explain the difference in the quotation and the invoice figure, he did not accept that the leaseholders could put forward an alternative figure, which was in his view an arbitrary figure, which did not reflect the work undertaken.

64. The Tribunal asked for details of the work which had been carried out, The Tribunal were informed that 30 missing clay tiles were replaced and the gutter and down pipes and fascia boards were repaired. This followed a number of small minor repairs which had been carried out to the roof and guttering over the years.

The Decision of the Tribunal

65. The Tribunal noted that although the sum of £1645 was considered to be excessive by the leaseholders, they had not actually put forward a reasonable explanation as to why the sum of £700.00 was considered by them to be a reasonable sum payable for the work.

66. The Tribunal noted that there were no allegations that the work had not been undertaken, there was no evidence that the work had failed, and no one contradicted the account put forward by Mr Stone in respect of the section 20 notice being served and two estimates being provided.

67. The Tribunal also noted that the Applicants had in accordance with the procedure also had a reasonable opportunity to put forward contractors who could provide alternative estimates for the work, this had not occurred.

68. The Tribunal noted that no assessment or independent inspection of the work had been undertaken, in addition none of the leaseholders had come forward as an expert in respect of building works and the reasonable cost of the work .Accordingly the Tribunal must consider whether the Applicants had put forward evidence which could satisfy the Tribunal that the work had not been carried out or alternatively had not been carried out at a reasonable cost or to a reasonable standard. This had not happened at the hearing or in the documents provided to the Tribunal. As a result the Tribunal finds that the cost claimed in the sum of £1595 is reasonable and payable. No explanation has been put forward for the slight increase in the price, but given the fact that the contractors were connected with the managing agents company it is right that the sum tendered and the cost should be the same unless a reasonable explanation is put forward.

69. **We have not received such an explanation and accordingly we find that the sum of £1595.00 is reasonable and payable for the gutter repairs and roof works**.

Application under s.20C and refund of fees

70. 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 had been paid in respect of the application/ hearing to be reimbursed. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal does not order the Respondent to refund any fees paid by the Applicants.

71. In the application form/ in the statement of case/ at the hearing, 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 that, although in the opinion of the Tribunal; the lease does not provide for the cost of the hearing to be claimed as a service charge, the Tribunal were not minded, given its findings to make an order under section 20 C of the Landlord and Tenant Act 1985.

Ms M W Daley LLB
Chairman: Hons
Date: 21 December 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.

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).