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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OBJ/LSC/2013/0577**
Property	:	**65 Broomwood Road, London SW11 6JN**
Applicants	:	**Mr F Pignatelli, Flat C** **Mr A Shannon, Flat B** **Mr I Kirby, Flat D** **Miss H Ross, Flat A**
Representative	:	**Mr Pignatelli**
Respondent	:	**1. 65 Broomwood Road Management Company Limited** **2. Salter Rex (managing agents)**
Representative	:	**none**
Type of Application	:	**Liability to pay service charges pursuant to Section 27A of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Mr A A Dutton -Tribunal Judge** **Mr D I Jagger MRICS** **Mrs L West MBA**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR on 16th December 2013**
Date of Decision	:	

DECISION

DECISION

(1) The Tribunal makes the decisions as set out in the findings section of this document.
(2) The Tribunal declines to make an order for costs in favour of the Applicants for the reasons set out below.
(3) The reimbursement of fees has been satisfactorily dealt with between the four leaseholders and the Tribunal declines to make any further order.

BACKGROUND

1. This was an application made by the four leaseholders of 65 Broomwood Road, a converted house divided into four flats, the freehold of which is now owned by 65 Broomwood Road Management Company Limited, a company of which the leaseholders are the equal shareholders. Mr Pignatelli is a Director having taken that post some time earlier this year.

2. The second Respondents named in the Application are Salter Rex who are in fact the managing agents appointed by 65 Broomwood Road Management Company Limited (BRMCL). It does not seem to us for the reasons that we will set out in the findings section that Salter Rex should have been a party to these proceedings. There may be repercussions for their involvement but we will comment upon that in due course.

3. There is no information before us which indicates the period of the respective ownership of each of the leaseholders. Certainly it seems that Mr Kirby did not purchase his flat until 2012. This may be of relevance insofar as there is any reimbursement due of funds but again we will deal with that element in the findings section. In addition no copy of any management agreement between the first and second Respondents was produced although Mr Pignatelli thought one did exist.

4. We were told that Salter Rex were sacked by Mr Pignatelli in July of this year and that he had tried to get answers from them in respect of the concerns which are referred to in the application. He told us that they had been dismissed because he considered that 'sharp practices' had taken place. He confirmed that he was the only director and that Salter Rex had been the Secretary for the company.

5. The issues are as set out in the application. For the years 2003/04 through to 2012/13 there is a constant challenge to the level of the insurance premiums. In the year 2009/10 Mr Pignatelli also asked for an explanation as to professional fees. In the following year in addition to the insurance claim there was a challenge to what was referred to as 'duplicate bulk secretarial fees' of £470. In the year 2011/12 the only challenge was to an alleged duplicate window cleaning charge of £44 and in the year 2012/13 four matters were challenged. They were the cleaning of the boundary wall and meter cabinets at a price of £312, the fire risk assessment fee of £300, a penalty for late filing of the returns at Companies House of £150 and a £44 duplicate window charge.

6. In the bundle produced on the morning of the hearing, in contravention of the directions made in October 2013, we were provided with a number of documents including the leases to the flats, a previous Tribunal decision which is not of any relevance to our determination, copies of the certified year end accounts and a Scott schedule with insurance documentation, including an insurance valuation.

7. Mr Pignatelli appeared to rely on his letter of 2nd August 2013 addressed to Salter Rex as setting out the basis of the claim. Insofar as the insurance for the years in dispute is concerned(and certainly for the year 2009/10) he relied on an email from Chambers and Newman the insurance brokers to Salter Rex which is dated 5th August 2011 to Marcia Finch and says as follows:

"Dear Marcia,
Help me out!
According to my records the last two annual premiums have been as follows:-
2009/10 = insurance £1,642.44 + terrorism £388.10 total £2,030.54."

The issue raised by Mr Pignatelli on this point was that in the certified accounts for that year the insurance premium for the building and terrorism cover is shown as £3,043.93. Accordingly he says there has been an overcharge. In respect of later years the common argument was that Salter Rex had failed to obtain competitive quotes. As evidence he relied upon the insurance cover that was arranged for the year ending October 2014 at £1,614.41 compared to the premium actually charged by AXA in year ending 30th October 2013 which was £2,730.63, and a like for like quote that Mr Pignatelli obtained from Liverpool and Victoria using the same brokers that Salter Rex used where a figure of £1,963,16 for the year ending October 2014 was quoted. Mr Pignatelli claimed that the insurance was in fact placed with Liverpool Victoria at the figure quoted above of £1,641.41 it is said as a result of the change in the sum assured and the reinstatement value. A copy of the surveyor's report prepared by Dunson Surveyors is within the bundle and showed an estimated rebuild cost of £825,000 against the reinstatement cost in the last AXA certificate to the year ending 30th October 2013 which was £1,893,000.

8. Mr Pignatelli attempted to revisit the insurance values for the years going back to 2003/04 by relying upon a graph which was apparently prepared by the AA and is headed *AA BIPI Home Buildings Shop Around Premium Trends*. He was not able to tell us the nature of the properties that were used to create this graph other than they were residential. He could not tell us how the data had been collated or indeed how that had been interpreted on the graph itself.

9. In respect of the other elements of the claims he told us that insofar as the professional fees of £460 were concerned, although he asked for evidence of this cost, none was produced to him. In 2011 there had been an insurance claim of £1,083.48 and again there was no evidence as to how this sum had accrued. Insofar as the bulk secretarial fee of £470 that year was concerned, he could see that £30 per year had been charged and he thought that this was reasonable for Salter Rex to be the Secretary for the first Respondent. However, in the years 2007 and 2011 an additional charge of £500 was made and in the last set of accounts available to him a further charge of £250 was levied.

10. In the year 2012, window cleaning was an issue. He told us that this had commenced towards the end of 2010/11 at a price of £44 per quarter. In the year 2013 he had seen invoices supporting a charge of £312 in respect of rubbish removal and clearance from the property by PJ Builders. His view was that these works could have been carried out by the cleaner that he employed to clean his property at a much lower rate. Apparently that is now what happens and Salter Rex gave him a rebate of the costs of the cleaner which he discharges from his own pocket.

11. A further challenge was made to a fire risk assessment but in fact the accounts showed this to be a health and safety report. Finally, the charge to Companies House had, according to an invoice that Mr Pignatelli had seen when visiting Salter Rex's premises to review the documentation, related to a late filing of the accounts.

12. At the conclusion of the hearing Mr Pignatelli asked that his costs of dealing with the application should be met by the Respondents at this stage, still considering that Salter Rex were liable. He had provided a letter with the application setting out the time spent to which he added a further 12 hours for preparing the bundles for the hearing and additional photocopying charges of £49.75 and £54.20. He told us that the binders had cost £46.34. He believed that he should be entitled to be paid at the rate of £13 per hour for the 58 hours that he had spent on this case.

13. After the hearing Mr Pignatelli sought to introduce further documentation. The first was an email of 16th December 2013 asserting that the fact that Salter Rex received payments by direct debit gave the Applicants a contract with them upon which they could sue. He referred to matters 'coming to his attention' which supported this line of argument but produced no such 'matter' to us. He also produced full copies of the insurance schedules which showed that the buildings sum insured was £900,000, with a declared value of £750,000.

THE LAW

14. The law applicable to this application is contained in the schedule attached.

FINDINGS

15. We will deal firstly with the insurance issues. We will start with the year ending 2010 as that this the first year shown on the Scott Schedule which was produced by Mr Pignatelli. We find his argument that the brokers have indicated a specific charge for the year in question a compelling proposition. The email of 5th August 2011 is unequivocal and says that the total for the insurance inclusive of terrorism was £2,030.54 and not the £3,043.93 shown in the accounts. We do not know how the difference has arisen. There is no response from Salter Rex to this application which is perhaps not unsurprising as they were sacked in July of this year. We do not know, therefore, whether they were receiving commission or what works may have been carried out by them if they were. On the evidence before us it seems the correct figure for the insurance for the year

2009/10 should be £2,030.54 and we therefore **disallow £1,013.39**. For the years 2011, 2012 and 2013 we have considered whether the insurance premiums charged in the accounts require adjustment. The very best comparable evidence that Mr Pignatelli produced was the quote by Alder Insurance Brokers utilising Liverpool and Victoria as the insurers for the year ending October 2014 at a total premium of £1,963.16 which included terrorism cover. The only departure from the insurance placed with AXA was the landlord's contents but we would not have thought that would have made a great difference to the premium. The actual insurance cover in place is less, as a result, we were told, of the changed insurance values. We had no ability to discuss the valuation report in respect of the insurance values but it seems to us that the difference between the sums insured would have little impact on the premium and are concerned that the difference may be accounted for in other ways, such as the Applicants being new clients. Accordingly for the years 2011, 2012 and 2013 we consider the appropriate way of dealing with those is to take the sum in the Liverpool and Victoria quote of £1,963.16 as being the insurance premium that should be applied for these limited earlier years. It is appreciated by us that in the years 2011, and perhaps the next year, premiums may have been somewhat lower but nonetheless it does seem to us that given the like for like quote obtained it is reasonable to make reductions for the years 2011 through to 2013 bringing the premium that would be payable for each of those years to the sum of £1,963.16. **The premium charged in 2011 was £2,340 and accordingly there should be a rebate of £377 for that year. In the following year the premium was £2,620 and there should therefore be a rebate of £657 for that year and finally for the year 2013 the premium was £2,731 and there should therefore be a rebate of £768. This makes a total of £1,802 to be refunded for these years together with the additional sum in respect of the year 2009/10.**

16. Turning to the other issues starting with the **professional fees**. No evidence was produced as to how this sum had arisen and accordingly **the amount of £460 is disallowed.**

17. Insofar as the **insurance claim in 2010/11** was concerned of £1,483 we did not have sufficient evidence from Mr Pignatelli to explain this amount. It was unclear whether this reflected a number of insurance claims during the period or exactly what it was intended to represent. There is no doubt from the documentation that we have been provided with that there were a number of insurance claims since May of 2009 through to March 2010 and indeed there may have been others. If the policy excess is, as we were told, £500 it is possible that it was considered appropriate not to make an insurance claim but to satisfy those costs from the service charge account thus limiting the impact on the insurance premium. **Accordingly we make no reduction.**

18. In respect of the **bulk secretarial charge** of £470 that is challenged, it seems to us the correct charge is **£30 per year and accordingly any sum over and above that is disallowed.**

19. Insofar as the **window cleaning** is concerned, the figures shown in the accounts do not seem to tally with what we were advised were the cleaning costs and the frequency. There appear to have been nine visits by the cleaners at £44

each giving **a figure of £396. Accordingly any sum above that amount is not justified and is disallowed.**

20. Insofar as the **rubbish removal** is concerned, there is no suggestion that the invoices produced were fraudulent and Mr Pignatelli could shed no light on what may or may not have been done. He had had the opportunity of inspecting the documentation of Salter Rex and had seen the invoices and in those circumstances **those are allowed as claimed**.

21. The challenge to the fire risk assessment was misconceived. The report in fact was a health and safety report and in our view a reasonable charge for a landlord to make and **the sum claimed of £300 is allowed**.

22. Insofar as the **late filing at Companies House** is concerned and the penalty of £150, we find that this should not be charged as a service charge. If Salter Rex were appointed as a Secretary they should have filed the returns on time and **accordingly this sum is not recoverable from the leaseholders**. The challenge made in the year 2011/12 in respect of the £44 for duplicate window cleaning falls away in respect of the findings we have made limiting the window charges to the sum of £396.

23. We have attached a schedule to the decision setting out the years in question and the amounts that we have allowed. We should, however, comment on the earlier insurance claims which Mr Pignatelli has attempted to revisit from 2003/04 onwards. We have been prepared to make allowances for the years 2009/10 onwards, the earlier years we have no evidence which we find compelling and which would persuade us to change the premiums. We accept that they do seem to be on the high side when compared to the premiums charged in the years 2011 onwards. However, the AA graph is of no use to us. There is no information given as to the data which has given rise to the graph itself. We are, therefore, most reluctant to rely on that and are uncomfortable in taking the figure of £1,963.16 back any earlier than the 2011 year. **Accordingly as a result of the lack of evidence produced to us, we do not propose to disturb the insurance premiums for these earlier years.**

24. Mr Pignatelli made an application for the costs associated with these proceedings to be paid by the Respondents, which we must disallow. It does not seem to us that Salter Rex should have been parties to these proceedings. They are the managing agents. Their contract is with the first Respondent, the management company, of which each of the leaseholders is a shareholder. The suggestion that in receiving direct debits on behalf of BRMCL this somehow creates a contractual relationship in respect of the matters before us is not accepted. Salter Rex were agents for a disclosed principal, BRMCL, the first respondent and this is the correct party to be challenged by the Applicants. Mr Pignatelli is the Director and was the Director at the time that the proceedings before us were commenced which was in August of this year. He said that he obtained independent legal advice but we have no idea what that advice might have been. The basis upon which he could recover costs from either Salter Rex or BRMCL would be that they had acted unreasonably in these proceedings. It is difficult to see how that can be the case when it is Mr Pignatelli, a director of BRMCL, who has brought the proceedings. We were prepared to consider the

case on the basis that Mr Pignatelli and the others as leaseholders, were entitled to challenge the service charges which were the responsibility of BRMCL. However, we fear he has achieved nothing other than a pyrrhic victory. All applicants are, we are told, members of BRMCL. We have no information as to what date each leaseholder acquired ownership of their flat and accordingly any repayment by the first respondent BRMCL will be problematic to resolve. We certainly would not be minded to award any costs in his favour in respect of this application. Whether BRMCL decides to use our findings in an action against Salter Rex is a matter for them to consider.

25. We were told by Mr Pignatelli that his co-leaseholders had contributed towards the fees payable for this application and given our findings as to responsibilities and our comments on costs, we do not propose to make any further findings in respect of the reimbursement of fees.

Judge: *Andrew Dutton*

A A Dutton

Date: 14th January 2014

65 Broomwood Road, London SW11 6JN

Year Ended		Amount Allowed
March 2010	Insurance premium £3,044	£2,030.54
	Professional fees £460	nil
March 2011	Building insurance costs £2,340	£1,963
	Insurance claims £1,483	£1,483
	Bulk secretary fees £470	nil
March 2012	Building insurance premium £2,620	£1,963
	Window cleaning duplicate charge £44	£396 for 9 cleans from 2010/11 – 2012/13 giving a reduction of £146
March 2013	Building insurance premium £2,731	£1,963
	Rubbish removal claim £312	£312
	Fire risk assessment fee £300	£300
	Companies House late filing penalties £150	nil
	Window cleaning duplicate charge £44	Nil See previous year when £146 was disallowed

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.