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Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LANDLORD AND TENANT ACT 1985

LON/00BG/LSC/2007/0169

Premises: 32-42 Hackney Road
London E2 7PA

Applicants: Kedai Ltd, landlord
Sterling Estates Management

Represented by: Mr Ahmed

Respondent: Mr B Atapattu, Flat 13

Tribunal: Mr NK Nicol (Chair)
Mr I Thompson BSc FRICS
Mrs R Turner JP BA

Date of Hearing: 04/09/07

Date of Decision: 04/09/07

DETERMINATION

1. Sterling Estates Management were recently appointed by Kedai Ltd to manage the premises at 32-42 Hackney Road, London E2 7PA. They were concerned as to the fire safety of the building. Having checked his qualifications to do so, they appointed Mr Steve Goben of Fire Safety Ltd to inspect and advise on any work that needed to be done to comply with legislative requirements on fire safety. Mr Goben recommended certain works and quoted to do the work at a cost of £5,000 plus VAT. Sterling sent an informal notification to all the lessees about this and Mr Atapattu at Flat 13 raised a number of objections. Sterling tried to persuade him that they were legally obliged to carry out the work in accordance with the Regulatory Reform (Fire Safety) Order 2005, including by sending him a copy of the legislation and guides from the RICS and the ODPM. However, he maintained his objections and so Sterling applied to the Tribunal on 9th May 2007 for a determination as to the payability of the proposed service charges for the fire safety works.
2. A pre-trial review was held on 12th June 2007 and the subsequent directions order listed the issues in dispute. Those issues are each dealt with in turn below.
 - (i) *Was the risk assessment necessary by virtue of the Fire Regulatory Reform Order of 2005?*
3. The Order sets out a number of duties in Articles 8 to 22. Under Art.5(2), where the premises in question are not a workplace, “the responsible person” must ensure that those duties are complied with. Sterling are clearly a “responsible person” under Art.3(b)(i) as the person who has control of the premises as part of their business. Therefore, Sterling were acting reasonably in carrying out an assessment in order to see if anything needed to be done to ensure compliance.
 - (ii) *Were the requirements of the Order applicable to these premises, which were constructed in 2004?*
4. Arts.6(1)(a) and 31(10) specify that the Order applies to all domestic premises other than a single dwelling. There are no limitations on the requirements of the Order by reference to the date when the building in question was constructed or to any other dates. The Tribunal is satisfied that the Order applies to the common areas of the subject property.

(iii) *Are Sterling the “responsible person” under the Order?*

5. This question has already been answered above – the Tribunal is satisfied that Sterling is a responsible person under Art.3(b)(i).

(iv) *Was it appropriate for the risk assessment to be carried out by Mr Goben, his company being the one which tendered for the recommended works?*

6. Mr Ahmed, appearing at the hearing for Sterling, explained that they had not yet carried out the consultation procedure in accordance with s.20 of the Landlord and Tenant Act 1985 and, when they do, they will comply with the requirement to carry out a full tendering process. Therefore, Mr Goben has not been appointed to do the works at this stage. His quote was used to calculate figures for major works of £6,200 and fire safety equipment of £800 which were put in the annual service charge budget but have no other applicability. In any event, there is no absolute necessity for the assessment and the works to be carried out by two separate organisations. Therefore, in the circumstances the Tribunal cannot see any reasonable objection to Mr Goben’s role to date.

(v) *Are the costs of the work reasonable?*

7. This question is premature. The budget appears reasonable but there has yet to be any compliance with s.20 and no contractor has been appointed to do the works so the actual cost is not yet known.

Conclusion and Reimbursement of Fees

8. For the above reasons, the application is successful. The proposed service charges for the fire safety works are payable, save that this is subject to compliance with s.20 and that the Tribunal cannot yet determine the reasonableness of any particular figure.

9. Mr Ahmed asked for an order that Mr Atapattu should be required to reimburse Sterling for the application and hearing fees they were obliged to pay as part of this application. The Tribunal is satisfied that the application and the hearing were brought about entirely through Mr Atapattu’s insistence. He did not attend the final hearing but the Tribunal is satisfied that he was fully notified of it and had the opportunity to attend and to make representations. In the circumstances,

the Tribunal does so order that Mr Atapattu should reimburse Sterling for their fees.

Chairman N.K.Nicol

Date 4th September 2007