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LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER Sections 27A and 20C LANDLORD AND TENANT ACT 1985 as amended

Applicant:	Miss C Ndekwe
First Respondents:	Mr S Kowalczyk and Mr A Kolodziejski
Second Respondents:	Mr C Bedeux and Mr C Bedeux
Respondents:	collectively the First Respondents and the Second Respondents
Premises:	Flat 1 and Flat 2 Birchanger Road, South Norwood, London SE25 5BG ("the Premises")
Date of Application:	As to Flat 1 an Order by Deputy District Judge Gamwell Order from Croydon County Court dated 4 December 2009 As to Flat 2 an Order by Deputy District Judge Freeborough Order from Croydon County Court dated 26 January 2010
Date of Hearing:	27 April 2010
Leasehold Valuation Tribunal:	Mrs J Pittaway LL.B Mr F Coffey FRICS Mrs G Barrett
Date of Tribunal's Decision:	12 May 2010

INTRODUCTION

The Determination of the Tribunal is as to liability of the tenants to pay, and reasonableness if liable to pay, of the following constituent elements of the service charge for the Premises for the service charge year to 31 December 2010;

(a) the charge for communal electricity
(b) the repair costs to the roof
(c) the administration/management fee; and
(e) in respect of Flat 2 only, the gardening maintenance charge.

DETERMINATION

1. The Tribunal **determine** that

1.1. The charge for communal electricity of £32.96 per flat is reasonable.

1.2. The liability of each of Flat 1 and Flat 2 to contribute to the repair costs of the roof is limited to £250 per flat.

1.3. Under the terms of the leases the Applicant is not able to recover her own costs by way of an administration charge so that the charge of £100 per flat is irrecoverable.

1.4. The Second Respondents were liable to contribute to the cost of maintaining the garden. The liability of Flat 2 to contribute to garden maintenance is limited to one third of the cost, being £190, which is reasonable.

2. The Tribunal determine that the landlord's costs in connection with the proceedings before Tribunal are not to be regarded as relevant costs in determining the amount of service charge payable by the Respondents

3. The Tribunal stated at the Hearing, and would reiterate, that their jurisdiction is limited to the reasonableness of the service charge. They do not have the jurisdiction to consider any issue arising out of the counter-claim which has been made by the Respondents in the County Court.

4. The Tribunal would invite the Applicant to consider appointing managing agents to assist in the management of the property, noting that the Respondents would be prepared to contribute to a sinking fund for identified and programmed works to the property.

BACKGROUND

1. The Applications as to liability to pay and reasonableness of service charge for the service charge years from 1 January 2007 to 31 December 2008 were referred to the Tribunal by Orders from Croydon County Court dated 4 December 2009 in respect of Flat 1 and 26 January 2010 in respect of Flat 2.

2. The First Respondents are the tenants of Flat 1 under a lease dated 31 March 1988 for a term of 99 years from 24 June 1987 ("the Flat 1 Lease") and the Second Respondents are the tenants of Flat 2 under a lease dated 22 January 1988 for a term of 99 years from 24 June 1987 ("the Flat 2 Lease")

3. The Tribunal issued Directions in respect of the Application for Flat 1 on 27 January 2010. Following a request from the First Applicants the Tribunal determined on 11 March 2010 that the Applications for both Flat 1 and Flat 2 be consolidated, with the Directions of 27 January 2010 applying to both Applications but with the additional requirement that the Second Respondents prepare a witness statement.

4. The Tribunal had before it bundles prepared by the Applicant in respect of each Flat. On the date of the Hearing the First Respondents provided a further bundle of documents that they wished to put before the Tribunal but which had been omitted from the bundles provided by the Applicant. At the request of the Tribunal the Applicant additionally provided, at the Hearing, a copy of the lease of Flat 3.

AGREED ISSUES

1. The Respondents did not dispute the liability to pay nor reasonableness of the service charge for the service charge year to 31 December 2007.

2. The Respondents did not dispute the liability to pay for communal electricity.

3. The Respondents did not dispute the liability to pay the insurance premium. Nor did they dispute the reasonableness of the premium once it had been clarified that reference to "Landlords Contents" on the insurance schedule was a reference to fixtures and fittings in the communal areas; not to the contents of Flat 3.

4. The Respondents did not dispute the liability to pay to a sinking fund for identified works, provided that the Applicant provided an identified and cost estimated program of works in respect of which the contribution to the sinking fund was directed the Respondents agreed that a monthly contribution by

each of the First Respondents and the Second Respondents of £60 per month to a sinking fund was reasonable.

THE HEARING

1. The Hearing took place on 27 April 2010

2. The Applicant appeared in person. Mr Stephan Kowalczyk presented the Respondents' case on their behalf.

INSPECTION

The Tribunal inspected the exterior of the building of which the premises forms part, the common parts and the garden on the morning of the Hearing. Generally the building is not in a good state of repair. The Tribunal attention was drawn to several large cracks in one of the exterior walls. It noted missing roof tiles, the poor repair of the stucco. The garden consisted of broken paving with grass growing through it. The Tribunal's attention was drawn to the location of the rear fencing in from the boundary of the property. The common parts were lit by lights on time switches. It was not possible to open two of the three meter boxes to confirm whether there were in fact two meters in one of the boxes.

EVIDENCE

1. Communal electricity

The Respondents objected to the reasonableness of the charge for the communal electricity asserting that it had not been available from February 2008 until August 2009. The Applicant disagreed with the length of time for which electricity had not been available but accepted that it had not been working in the summer of 2009. Neither party had any evidence to substantiate their assertion.

The Tribunal had before it an electricity invoice from EDF in the sum of £98.87 of which £53.91 related to the period from 8 May 2008 to 6 November 2009. The sum of £44.12 had been carried forward from the previous bill. While addressed to the Applicant at Flat 3 the invoice referred to "L/Lords Lighting". The Respondents did not dispute the genuineness of the bill but queried whether it related to Flat 3 rather than the common parts. The Applicant asserted that she received two invoices; one for Flat 3 and one for the common parts.

2. The repair costs to the roof

The Tribunal heard submissions from the Respondents and the Applicant as to what works the two invoices for a total of £1988.34 related.

When questioned by the Tribunal as to whether she had complied with the consultation requirements of s20 Landlord and Tenant Act 1985 the Applicant stated that she had obtained two estimates and had then undertaken the works as she considered them to be an emergency. She said that she had notified the Respondents of her intention to carry out the works but she accepted that there had been no formal s20 consultation. The Applicant confirmed that she had not taken legal advice as to the need to consult with the Respondents before carrying out the work.

The evidence before the Tribunal showed that the two estimates had been obtained for the roof works in July and August 2007, from N.K.Brunwin Ltd and Garhigh (Southern) LImited respectively. The work had been invoiced by Garhigh (Southern) Limited in March 2008. Their main invoice referred to their estimate having been accepted on 11 March 2008. Their supplemental invoice for £213.85 was submitted under the same reference as their original estimate and was expressed as "extra dated 25th March 2008", accepted on 26th March 2008.

3. The administration/management fee

As evidence of lack of management the Respondents gave evidence to the Tribunal of work which they had done which should properly be the responsibility of the Landlord; in particular replacing light bulbs in the common parts and replacing the rear boundary fence. They also submitted that the number of letters that they had sent the Applicant which remained unanswered evidenced a lack of management.

The Applicant submitted that the number of estimates that she had obtained for work to be carried out to the property was evidence of her managing the property.

The Tribunal referred the parties to the relevant provision in the leases of the Premises in relation to management fees; that they should be *"Costs and expenses reasonably incurred by the Lessor in connection with the management of the Building including management fees provided that in each case full details of the sums expended by the Lessor together with such evidence as the Lessee may reasonably require shall have been furnished to the Lessee on request."*

4. Flat 2's contribution to gardening maintenance.

The Applicant explained that the charge for garden maintenance of £285 was one half of the cost which she incurred in 2008.

The Second Respondents queried why they should make any contribution as they did not use the garden. The Tribunal drew the Second Respondents' attention to the right set out in their lease to use the garden for so long as the Lessor shall permit.

The Tribunal also drew the Applicant's attention to the provision in the Flat 2 lease which provides for the tenant of Flat 2 to pay one-third, and not one half of the cost of maintaining anything used in common by the Lessee and the owners and occupiers of the remainder of the property. This is notwithstanding that only Flats 2 and 3 contribute to the maintenance of the garden.

REASONING FOR THE TRIBUNAL'S DETERMINATION

1. While it was unfortunate that the Tribunal were not able to confirm the existence of four meters, which would have indicated a separate meter for the common parts, nor provided with a separate invoice for Flat 3 they considered that it was probable, in the absence of any evidence to the contrary, that the invoice did relate to the common parts only and that the sum charged was reasonable.

2. Work had clearly been undertaken to the roof and in the absence of any evidence to the contrary the Tribunal had no reason to determine that the cost incurred was unreasonable. However, the Applicant's failure to consult the Respondents in accordance with s20 Landlord and Tenant Act 1985 meant that the Tribunal had no alternative but to limit recoverability under this head of expenditure to £250 per flat. No application had been made by the Applicant under s20ZA to dispense with the consultation requirements. Even if it had been the Tribunal would have been unlikely to grant dispensation given the length of time that elapsed between the Applicant obtaining the estimates and authorising the work; there had been no sense of urgency on the Applicant's part.

The Tribunal would recommend that the Applicant consider appointing a managing agent to avoid a repetition of the Applicant being unable to recover costs incurred by reason of failure to comply with the relevant statutory requirements.

3. The Leases of the Premises do not entitle the Applicant Landlord to charge a sum by way of remuneration to herself for time spent managing the

Premises. The Landlord may only charge for costs and expenses "incurred", which may include appropriately detailed management fees.

This is another reason for the Tribunal to recommend to the Applicant that she appoint managing agents. The proper cost (in accordance with the leases) of employing them would be recoverable, as to one-third each from the tenants of flats 1 and 2.

4. Even if the Second Respondents did not use the garden their lease provided for them to contribute to its maintenance for so long as their right to use it subsisted.

The Second Respondents did not challenge the reasonableness of the charge of £570 for garden maintenance or provide any evidence of what would have been a reasonable charge. In the absence of any evidence to the contrary the Tribunal considered the cost of £570 for garden maintenance to be reasonable. However under the provisions of the Flat 2 lease the Second Respondents are only liable to contribute one-third of the total cost, £190, not £285 which was one half of the total cost.

5. The Tribunal noted that neither lease contemplates that the Landlord may recover costs incurred in connection with proceedings before a leasehold valuation tribunal.

THE LAW

Section 27A Landlord and Tenant Act 1985 as amended by Commonhold and Leasehold Reform Act 2002 provides

(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 by which it is payable; and
(e) the manner in which it is payable

(2) Subsection (1) applies whether or not payment has been made

Section 18 Landlord and Tenant Act 1985 provides

(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

Section 19 Landlord and Tenant Act 1985 provides

(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) when 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

(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 20 Landlord and Tenant Act 1985 provides

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of the tenants are limited.....unless the consultation requirements have been either-

(a) complied with in relation to the works or the agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

20ZA Landlord and Tenant Act 1985 provides

(1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

Section 20C Landlord and Tenant Act 1985 provides

(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..... leasehold valuation tribunal.....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.

Part 1 of Schedule 11 of Commonhold and Leasehold Reform Act 2002 provides

1 (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

2. A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Chairman: **Mrs J S Pittaway LL.B**

Date: **12 May 2010**