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Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/OOAZ/LSC/2010/0448

Premises: 32 and 32A Stondon Park, LONDON SE23 1LA

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
AN APPLICATION UNDER SECTION 27A and SECTION 20C of
the LANDLORD AND TENANT ACT 1985 ('the Act')**

Applicants	Ms I Jasiewicz, Mr S Dumughn and Mr S Adkins (leaseholders)
Representation	Mr Dumughn and Mr Adkins in person
Respondent	Ground Rents (Regisport) Limited (landlords)
Representation	Mr D Bland, Pier Management Limited
Pre-trial review	This was held on 3 August 2010
Hearing date	25 October 2010
The Tribunal	Professor James Driscoll, Solicitor (Lawyer chair), Mr John Barlow FRICS and Ms Jayam Dalal

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<p>The Decisions Summarised</p>	<p>No service charges are payable for the years 2006, 2007, 2008 and 2009.</p> <p>Accordingly the respondent landlords are to reimburse the leaseholders for the monies they have been paid on account of service charges.</p> <p>The respondent landlords must also reimburse the applicants for the fees which were paid in bringing this application.</p> <p>The total sums which are payable to the leaseholders are set out in paragraphs 17 and 18 below.</p> <p>The landlord owes Mr Dumughn and Ms Jasiewicz the total sum of £675.</p> <p>The landlord owes Mr Adkins the total sum of £968.50.</p> <p>The total repayments and the reimbursement of the fees must be paid by the landlords to the leaseholders by 2 December 2010.</p>
<p>Date of the final decisions</p>	<p>12 November 2010</p>

INTRODUCTION

1. These are applications by the leaseholders of flats 32 and 32A in the subject premises for determinations of service charges for the years 2006, 2007, 2008 and 2009. The applicants are Ms I Jasiewicz and Mr S Dumughn, the joint owners of the lease of Flat 32A, and Mr S Adkins the leaseholder of Flat 32. We will refer to them as the 'leaseholders'. The respondents are Ground Rents (Regisport) Limited who own the freehold of the building and who are the landlords under the leases. We will refer to them as the 'landlords'. At the hearing of the applications the landlords were represented by Mr D Bland, a lawyer who works for Pier Management Limited, a company which collects ground rents and arranges the insurance for the portfolio of properties which the landlords owned. We will refer to them as the 'agents'.
2. The flats (or maisonettes) are situated in a building that was originally a house later converted into two maisonettes on the ground and first floors respectively. Under each lease there is also demised separate rear gardens. There is a small front garden and a footpath leading to the building. Each flat has its own front door. There are no common areas in the building. Under the leases the service charges are calculated from the 1 January to the following December each year.

THE APPLICATIONS

3. These applications were made on 25 June 2010. A pre-trial review was held on 3 August 2010. Following these directions bundles of documents were prepared.
4. The leaseholders have exercised the statutory right to manage ('RTM') under the provisions in Part 2 of the Commonhold and Leasehold Reform Act 2002. A company called '32 and 32A Stondon Park RTM Company Limited' (the 'company') was incorporated to make the RTM claim and the RTM was acquired in July 2009. The leaseholders are the members of the company. Before they acquired the RTM the landlords had appointed managing agents. For the service charge periods in issue, the firms of Johnson Cooper Property Management and Countrywide had been appointed respectively. We will refer to them collectively as the 'managing agents'. Countrywide are the current managing agents.
5. It follows that since July 2009 the management of the building has been in the hands of the leaseholders. The agents continue to collect the ground rents and arrange the insurance (though the latter is a management function that would normally pass to the company (under section 96 of the 2002 Act)).

THE HEARING

6. In summary, the leaseholders challenge the recoverability of service charges for the years 2006 to July 2009 when they between them acquired the RTM. They complain that the managing agents failed to manage the property. Particular concerns are expressed at the failure to attend to repairs including repairs to the foot path at the front of the premises which they told us became dangerous to use. As the ground rents are recovered by the agents who also arrange the insurance, the leaseholders question whether the managing agents have done anything to justify their fees. They also question certain charge for roof repairs and the costs of Health and Safety report.
7. The leaseholders told us that they had made certain payments in advance to the managing agents. In 2007 payments of £200 per flat were paid ; in 2008, £300 per flat was paid to the then managing agents Johnson Cooper; in 2009 £393.50 was paid for Flat 32 to Countrywide. In all Flat 32 has paid £893.50 and Flat 32A has paid £500. (Their contribution to the costs of insurance is paid to the agents and is not in issue in these applications).
8. Mr Bland told us that he has not personally been involved with this property and that his company simply collects ground rents and arranges the insurance for the building. He has not seen the property. Mr Bland added that it was not possible for anyone from Countrywide to attend the hearing. Apparently the person who has the management of this property is ill and there was no-one else available to attend the hearing. As a result Mr Bland has had to try and defend charges that he has not personally been involved with. He was unable to respond to the various challenges made by the leaseholders. We are grateful to Mr Bland who was candid in his submissions to the tribunal that he was not in a position to respond to the various complaints made by the leaseholders.
9. For 2006 service charges of £150 per flat were claimed. For 2007 service charges of £200 per flat were claimed. For 2008 service charges of £693.50 per flat were claimed.
10. In late 2008 the landlords claim to have spent the sum of £450 for roof repairs carried out by a company called K Pearsons. In the respondent's statement (page 5) they claimed that this figure was agreed by the parties. However, at the hearing the leaseholders told us that no builder or roofer has ever visited their property. No scaffolding, ladders or building materials have been seen. They deny that any such work was done. Mr Bland was unable to contradict this. There is no receipt for any payments for this work. In these circumstances we have no alternative but to disallow any service charges in respect of this item.

11. The other part of this claim are fees claimed by for carrying out an inspection and advising on the roof works, which do not appear to have taken place, and it is very difficult to see why the leaseholders should be landed with these costs. As it appears that no roof works were ever undertaken we must also disallow these costs as well (that is the costs claimed for appointing Keegans).
12. The leaseholders other complaint is about the costs of commissioning a health and safety report. They suggest that the report was commissioned at a time when the landlords were aware that they intended to take over the management of their block and that it was a needless expense. The leaseholders were also adamant in their evidence to the tribunal that no-one had visited either of the maisonettes. So, there was no internal inspection and the leaseholders find it difficult to understand how the report came to be written at all. Mr Bland suggested that the report must have been compiled after an external inspection. Again we can see no justification for this report which was commissioned when the landlords were aware that the leaseholders were seeking to take over management of the block through their RTM application under the 2002 Act.
13. There is provision for the appointment of managing agents in their leases. These are clauses 4 and 9 of the fourth schedule to the leases. Under clause 4.7.3 the landlord is entitled to make a charge if no managing agent has been appointed. This implies a power to appoint such an agent. Clause 9 is more explicit and allows for the appointment of various professional advisors. We have concluded that there is the power in the leases to appoint managing agents and to recover the costs of doing this.
14. Whether it is reasonable to appoint such an agent and charge their fees as service charges is a different matter altogether. In this case, a building with just two flats and no internal common parts, where the insurance is arranged by a different company which also collects the ground rents (and makes no charges to the leaseholders for the insurance arrangements) it is hard to see what management services need to be provided. In addition to these points is the evidence of the leaseholders that when they have tried to have works carried out the managing agents failed to deliver. Again Mr Bland was unable to contradict the leaseholders complaints of lack of management services. The leaseholders make the point that it was these factors that led them to exercising the RTM. These factors have led us to the conclusion that no costs for employing managing agents are recoverable.
15. Finally, the current managing agents budget for the year ending 31 December 2009 was disputed by the leaseholders. This is largely because it has become 'academic' following the successful RTM application as the leaseholders now manage the premises themselves. Many of the budget items are clearly irrecoverable, such as the projected electricity costs, as there are no

internal common parts. Mr Bland accepted that these are estimates and that no charges are recoverable for 2009.

SUMMARY

16. It is common ground that the leaseholders have paid their contributions to the costs of insuring the building. These contributions (and payment ground rent) have been paid to the agents. What has been in issue in these applications was - for the most part - the reasonableness of the landlord's costs of employing managing agents. The leaseholders complaints of a lack of services and a poor response to matters such as the damaged front path to the building are in our view substantiated. We have also concluded that as the insurance is arranged by the other agents (who make no management charges for this or for recovery of the ground rents) there is no need to employ managing agents for a building which consists of two maisonettes and no internal common parts. As to the claims for works, we accept the leaseholders complaints that no roof works were carried out. We also conclude that the costs of commissioning a survey of the premises was not reasonably incurred. The latest demands for charges for 2009 were based, as Mr Bland accepts, on estimates are not recoverable as the leaseholders now manage the premises themselves.

COSTS

17. On the question of costs we have concluded that the leaseholders should be reimbursed for the fees they paid in making this application. We reach this conclusion as they have been successful in their challenges and the landlords could have avoided the necessity of making the applications to this tribunal if they had been willing to pay over the service charges to the leaseholders. Under regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003, we direct that the landlord reimburses the leaseholders in the following way: the application fee of £100 was paid by Mr Dumughn and the hearing fee of £150 was paid by Mr Adkins and Mr Dumughn (£75 each).

CONCLUSIONS

18. As Mr Dumughn and Ms Jasiewicz are owed £500 for their advance payments and a total of £175 in respect of the tribunal fees the landlord is to reimburse them in the sum of £675. The landlord must also reimburse Mr Adkins in the sum of £893.50 for the advance payments and £75 in respect of the tribunal fees. This makes a total of £968.50. These sums are to be paid by 2 December 2010. As the management of the premises is now in the hands of

the leaseholders under the RTM it is not necessary to make an order under section 20C of the 1985 Act.

Signed:

James Driscoll LLM, LLB Solicitor (Lawyer Chair)

12 November 2010