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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/00AD/LSC/2011/0766

Premises: 22 Coptefield Drive, Priory Gardens, Belvedere,
Kent

Applicant: Centro Plc

Representative: N/A

Respondent: Brian Paul Farmery

Representative: N/A

**Date of paper
determination:** 16 January 2012

**Appearance for
Applicant(s):** N/A

**Appearance for
Respondent(s):** N/A

**Leasehold Valuation
Tribunal:** Mrs Sonya O'Sullivan (Solicitor)
Mr Mel Cairns MCIEH

Date of decision: 16 January 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £245.48 is payable by the Respondent in respect of the insurance premium for 2010.
- (2) The Tribunal determines that the sum of £132 is payable in respect of administration charges.
- (3) It is not clear whether the Respondent makes an application under section 20C. However for the avoidance of doubt the Tribunal does not make an order under section 20C which means that the landlord may pass its costs of the proceedings through the service charge.
- (4) Since the Tribunal has no jurisdiction over county court costs and fees, the issue of fees before the County Court fees should now be referred back to the County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges] payable by the Applicant in respect of the service charge years 2010.
2. Proceedings were originally issued in the Dartford County Court under claim no. IRH 00704. The claim was transferred to this Tribunal, by order of Deputy District Judge Edgington on 3 October 2011.
3. The relevant legal provisions are set out in the Appendix to this decision.

The determination

4. The parties agreed that this application be dealt with by way of a paper determination, that is, without a hearing. The paper determination took place on 16 January 2012. In preparation for the determination the Applicant submitted a bundle of documents in accordance with the directions.

The background

5. The property which is the subject of this application is a two bedrooomed flat knows as 22 Coptefield Drive, Priory Gardens, Belvedere, Kent DA17 5RJ (the "Flat").

6. The Tribunal did not inspect the Flat as neither party had requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues and amount in dispute.
7. The Respondent holds a long lease of the property dated 5 February 1987 and made between Galliford Sears Homes Limited (1) and Kieran James Wales (2) (the "Lease"). The Lease 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

8. The relevant issues for determination as follows:
 - (i) The payability and/or reasonableness of an insurance premium due on 24 June 2010 in the sum of £245.48.
 - (ii) The payability of two administration charges in the sum of £82.25 and £132 both said to be due on 19 November 2010 and described respectively as a legal letter cost and an arrears processing fee.
9. The Tribunal would emphasise that its jurisdiction is limited to those matters which are part of the application as transferred from the County Court in the total sum of £459.73 as set out above. As the case is transferred from the County Court the Tribunal is not able to consider those further matters raised by the parties, such as the issue of the internal redecoration, and if these matters remain in contention it may be necessary for a further application to be made to the Tribunal.
10. Having considered the evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Insurance premium £245.48

11. The Applicant claims the sum of £248.48 in respect of an insurance premium.
12. The Applicant says that at paragraph 3 of Part 1 of the Fifth Schedule of the Lease the lessee covenants to insure the Flat with an insurer designated by the lessor and in the joint names of the lessee and lessor. The clause goes on

to provide that if the lessee fails to insure the Premises the lessor may insure and the insurance premium shall then fall to be recoverable on demand.

13. The Applicant says that the Respondent has failed to insure the Flat in accordance with the provisions of the Lease and that as a result it was entitled to insure and recover the expense of that insurance from the Respondent.
14. In any event it is clear from the documentation that it had been the practice of the Applicant to take out an overall Building Policy and to charge out the premium in accordance with the service charge provisions. Each lessee was said to have accepted this on a voluntary basis. Subsequently deeds of variation have been entered into with the lessees to put the obligation to insure onto the Applicant but it is accepted that no deed of variation has been entered into by the Respondent.
15. There has been a history of correspondence between the parties on the issue of insurance. As early as August 2009 the Respondent had queried the issue of insurance. On 19 September 2009 the Respondent wrote again to confirm he had “managed to secure cover for both building and contents” and again queried who has the responsibility for insuring the building. In response to that letter the Applicant wrote on 12 October 2009 to request the policy “on offer to you in order that we can comment on the shortfalls we are sure to be found there”. A copy of any insurance policy entered into by the Respondent was requested by letter dated 9 February 2011 to which no response was received. A further letter was sent on 6 April 2011. Copies of this correspondence are contained within the bundle.
16. In response the Respondent says:
 - The insurance premium of £245.48 is excessive.
 - He refers to his current buildings insurance which he says includes contents and is cheaper than the lessor’s policy.
 - He questions whether he is obligated to contribute towards the block policy.
 - He has been unable to obtain comparable quotations as he is unaware of the extent of the building which requires insuring.

The Tribunal's decision

17. The Tribunal determines that the amount payable in the sum of £245.48 in respect of the insurance premium is payable and reasonable.

Reasons for the Tribunal's decision

18. The Tribunal accepts that it is primarily the lessee's obligation to insure in accordance with the provisions of the Lease referred to above. However that clause also provides that such policy is to be in the joint names of the lessor and lessee, must be taken with Sun Alliance Insurance Group or "such other office as the Lessor shall from time to time determine" and the lessee covenants to "produce to the Lessor or its agents on demand the policy....provided always that if the Lessee shall at any time fail to keep the Demised Premises insured as aforesaid he Lessor may do all things necessary to effect or maintain such insurance..".
19. The Respondent appears to have taken out his own policy in 2010. However he has failed to include a copy of that policy in the bundle and has not provided a copy of any policy which he has taken out on demand as provided by the Lease when requested by the Applicant's letters of 9 February 2011 and 6 April 2011. Although the Applicant does request a copy of the policy in its letter of 12 October 2010 it does not appear to be clear as to whether the Respondent had in fact taken out his policy or obtained a quotation.
20. The Respondent had contributed to the block policy in 2009 but raised an issue, apparently after he received the demand for the insurance premium in June 2010. It had clearly been the practice that the Respondent had contributed to the block policy. In the absence of any correspondence from the Respondent to the Applicant to notify it that he was intending to take out his own insurance for 2010/2011 the Tribunal considers it reasonable for the Applicant to have taken out a block policy.
21. However the Tribunal would mention that it is primarily the Respondent's obligation to insure in accordance with the provisions of the Lease. Should he wish to obtain his own insurance which complies with the provisions of the Lease he will not be obliged to contribute to the cost of the block policy.
22. The Tribunal went on to consider the reasonableness of the insurance premium.
23. The Applicant says that it arranged the insurance through Lark Insurance. The Applicant simply says that in the absence of any evidence to the contrary the Tribunal is invited to determine the policy is reasonable. The Respondent says the sum is excessive and submits that he has obtained both buildings and contents for the same amount although the Tribunal has not been provided with copies of any policies taken out by the Respondent. He also submits that

he will be contributing towards the cost of a policy which is increased by the claims of other tenants.

24. The Tribunal notes that it has not been provided with the detail of any commission paid or whether the Applicant has attempted to compare the fees with a range of brokers. However on the evidence before the Tribunal and the lack of any comparable quotations the Tribunal considers that the insurance premium falls within a reasonable range for a property of this type.

Administration charges £82.25 and £132

25. The Applicant relies on paragraph 11 of Part 1 of the Fifth Schedule to claim administration charges which provides;

“To pay to the Lessor all costs charges and expenses (including legal costs and fees payable to a surveyor which may be incurred by the Lessor (a) in contemplation of or incidental to any proceedings under this Lease and the preparation and service of a Notice under section 146 and 147 of the Law of Property Act 1925..”

26. The Tribunal has little evidence as to what the administration charges relate but it appears that they represent an arrears processing fee to cover the cost of referring the matter to external solicitors and an administration charge to meet the cost of the first formal written approach representing external solicitor's costs.

The Tribunal's decision

27. The Tribunal determines that the amount payable in respect of the administration charges is £132.

Reasons for the Tribunal's decision

28. The Tribunal considers that administration charges are recoverable in principle under the terms of the Lease.
29. The Tribunal has limited evidence as to what these charges relate. However insofar as they both appear to relate to the cost of referring the arrears to external solicitors it is considered that there may well be an element of duplication. The Tribunal considers that there is some duplication in these charges and allows the first charge of £132 as reasonable, it disallows the further charge of £82.25.

Application under s.20C

30. It is unclear if the Respondent applied for an order under section 20C of the 1985. However for the avoidance of doubt and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for no order to be made under section 20C of the 1985 Act, so that the Applicant may pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.
31. The Tribunal has no jurisdiction over county court costs and this issue should now returned to the Dartford County Court.

Chairman: Sonya O'Sullivan

[name]



Date: 16 January 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 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) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
 - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
 - (a) in a particular manner, or
 - (b) on particular evidence,of any question which may be the subject matter of an application under sub-paragraph (1).