HM Courts & Tribunals Service

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Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00AJ/LSC/2012/0039
Premises:	First Floor Flat, 18A The Approach, Acton, London W3 7PS
Applicants (Tenants):	Mr and Mrs M Kapoor
Respondent (Landlord):	Mussola Ltd.
Date of hearing:	8 May 2012
Appearance for Applicant(s):	Mrs M Kapoor in person
Appearance for Respondent(s):	Mr P Sherreard, Property and Systems Manager, Sterling Estate Management Ltd. (the managing agent)
Leasehold Valuation Tribunal:	Ms F Dickie, Barrister Mrs J Davies, FRICS
Date of decision:	15 June 2012

Decisions of the Tribunal

(i) A management fee of £160 plus VAT is payable for each of the year 2010/11, with a 5% increase in each of the two subsequent years.

(ii) No service charges are payable in respect of the fire safety report / review.

(iii) A reserve fund contribution of £150.00 per annum per flat is reasonable.

(iv) £225 in estimated service charges for minor repairs is reasonable.

(v) £25 in accountancy charges are not payable.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable. The relevant legal provisions are set out in the Appendix to this decision. The tribunal issued directions at an oral pre trial review that took place on 14 February 2012. The subject premises are a first floor flat within a mid war semi detached house comprising two flats in total. There are gardens to the front and rear of the building, and a communal entrance lobby to the flats.

2. The following service charges were in dispute:

2010/11

Management Fee £293.76
Fire Safety £180.00
Reserve Fund Contribution £150.00

2011/12

Management Fee £312.00
Fire Safety £180.00
Reserve Fund Contribution £150.00
Minor Repairs £225.00
Accountancy £25.00

Future Years

3. The Applicants also sought a determination in respect of future years though no service charge demands had been issued for the year 2012/13 as at the date of the application.

The Landlord's Lease Covenants

4. At the direction of the tribunal, the managing agent produced at the hearing a copy of the lease for the ground floor flat. The premises demised in that lease are defined in the First Schedule to it as *"the accommodation on the ground floor of the Building including the front and rear gardens and the common entrance lobby as shown edged red on the attached plan and includes:-*

(a)	*All ceilings lath plaster cornices and decorations*
(b)	*All floor boards surfaces and coverings*
(c)	*All internal partition walls*
(d)	*The plaster skirting boards picture rails and other surfaces of all internal load-bearing walls and on the interior of all external walls*
(e)	*All doors and windows both internal and external including glass, furniture and architraves*

(f) *All conducting media within and serving exclusively the Flat and*
(g) *All landlords fixtures and fittings situated within the Flat."*

5. The Lessee of the ground floor flat covenants to repair "*the common path and bin store in the front garden and the common entrance lobby*". The Applicants covenant in Clause 2(3)(b) of their lease to pay on demand "*one-half of the expense to the lessee of the other flat in the Building of maintaining and repairing the common path and bin store in the front garden and the common entrance lobby*".

6. Under the Applicants' lease the landlord has only two covenants in respect of which a service charge is payable. The lease provides at Clause 2(3)(c) that the Lessee will from time to time on demand pay "*one-half of the expense to the Lessor in complying with the Lessor's covenants contained in Clauses 3(d) and 3(e) herein*". Under Clause 3(d) the Lessor covenants:

> *To keep in good and substantial repair the structure of the Building including in particular the roofs chimneys structural walls foundations floor and ceiling joists rainwater goods and conducting media and to paint or otherwise decorate in a good and workmanlike manner all exterior parts of the Building which have been or should be decorated in each third year of the term*

7. The Lessor covenants in Clause 3(e) to keep the Building insured against loss or damage in respect of specified risks and contains covenants and to apply the proceeds of any claim to the reinstatement of the property.

Fire Safety

8. This cost in 2010/11 referred to the fire safety inspection carried out by the landlord in respect of duties owed under the Regulatory Reform (Fire Safety) Order 2005. A copy of the report was produced to the tribunal. The landlord had paid a fee of £300 plus VAT for its production and an estimate for its review was included in the budget for the year 2011/12. The managing agent had to date acted on the assumption that the landlord retains the common parts – namely the communal entrance hall and entrance path. Inspection of those areas formed part of the fire risk assessment.

9. The tribunal finds however that no such expenditure is payable. In fact, as was acknowledged by the tribunal and the parties at the hearing, and contrary to the assumption of the managing agent, there are no common parts retained by the landlord, who is responsible only for some structural repairs and maintenance, as well as insurance. The communal entrance hall, as well as the front and rear gardens, is within the demise of the ground floor flat. Furthermore, by virtue of the First Schedule of the lease, "all external walls which are co-extensive with the Flat, internal load bearing walls, floor and ceiling joists and conducting media serving the flat" are demised.

10. Mr Shearrard suggested that some of the cost of the inspection related to the structure of the property, but produced no evidence that would enable the tribunal to quantify any such expenditure. Though the tribunal notes that the roof is not demised, Mr Shearrard did not identify the totality of the parts of the property the landlord is responsible for, or produce argument as to the extent of any relevant duty with reference to the Regulatory Reform Order. Furthermore, there was no expert evidence as to the cost of such inspection or required frequency of reinspection owing to the particular terms of this lease as the parties now understand them. In any event, the lease of the premises does not allow for the recovery of sums expended in compliance with any statutory duties on the landlord – the service charge clause cannot be construed to include this item of expenditure. The tribunal accordingly finds no service charges are payable by the tenant for the fire safety reports.

Minor Repairs

11. No minor repairs were charged in 2010/11 and estimated charges for the year 2011/12 were £225 per flat. The Applicants did not dispute the principle of demands for estimated expenditure. Mrw Kapoor was concerned that the landlord's demand should be reasonable. Mr Shearrard said that £450 for the building was intended to be a reasonable estimate of expected expenditure based on experience of managing similar properties.

12. The tribunal finds the landlord's estimate for the year 2011/12 reasonable and payable, and that is a reasonable projection also for the current year 2012/13 now that a budget exists for that year. If it is not expended it will, of course, be credited to the Applicants on finalisation of the annual service charge accounts for each year.

Reserve Fund

13. The right of the landlord to create a reserve fund was not challenged. However, Ms Kapoor said she was not clear how the sum of £150 per flat per year had been reached. The tribunal accepts Mr Sherreard's explanation that the reserve fund contribution of £150 per flat per year over 3 years, totalling £900, is a reasonable contribution to offset periodic external redecoration charges, the lease requiring such redecoration every 3 years.

Management Fee

14. The Applicants disputed that management fees were recoverable under the terms of their lease, and that in any event the managing agent's fees were reasonable for this building. Mr Shearrard argued that management fees were recoverable under Clause 2(3)(c). He explained that the managing agent provides an out of

hours repairs service, prepares the service charge budget and account, and carries out duties in respect of insurance. However he confirmed that the agent is FSA registered and retains a commission on the insurance.

15. The tribunal brought to the attention of the parties decisions of the Court of Appeal in *Lloyds Bank Plc v Bowker Orford* [1992] 31 EG 68 and of the Lands Tribunal in *London Borough of Brent v Hamilton* LRX/51/2005. It determines that Clause 2(3)(c) does entitle the landlord to recover the expense to him of arranging for management to discharge his obligations under Clauses 3(d) and (e). Such management charges are an "*expense to the Lessor in complying with the Lessor's covenants*". It is not entitled to a management fee for providing other services (e.g. the collection of ground rent), since this is not provided for in the lease.

16. At £292 - £312 per annum including VAT the tribunal finds that the management fees charged are unreasonably high given the very limited nature of the landlord's obligations under the lease. This fee was clearly fixed on the managing agent's assumption that the landlord retained common parts, in respect of which duties under the lease arose. However, having acknowledged only as late as at the hearing itself the true extent of the landlord's lease obligations, the tribunal invited Mr Shearrard to advise the lowest annual fee charged by his agency. He believed this was £150 - £160 per annum.

17. The tribunal, using its own expert knowledge and experience, determines that £160 per annum plus VAT is the maximum reasonable management charge per property chargeable under the lease for managing the performance of the obligations under Clause 3(d) and (e) in the year 2010/11, noting that this includes providing a 24 hour repairs response service, and preparing the service charge budget and account.

18. The landlord retains a commission on insurance, which it is entitled to do if reasonable, but cannot obtain double recovery for services provided in return for that commission. The amount of any commission should (pursuant to the RICS Code) be disclosed to the tenant.

Accountancy

19. Accountancy charges of £25 per flat were disputed. The Applicants argued that their lease did not provide for their payment. Mr Shearrard said the landlord pays a chartered accountant to certify the annual accounts. This fee is nominal and the tenants would to their advantage pay it to ensure independent and qualified verification of the landlord's accounts. However, formal certification of those accounts is not required under the terms of the lease and cannot therefore be recovered under its terms.

Costs and fees

20. The leaseholder made an application under s.20C of the Act in respect of the landlord's costs of the proceedings. No such costs are recoverable under the service charge provisions of the lease, but for the avoidance of doubt and in light of the relative success of the Applicant, the tribunal makes the order sought under section 20C.

21. Under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 the tribunal has the power to refund the fees paid. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund the fees paid by the Applicant within 28 days of the date of this decision.

Signed .....

Chairman

15 June 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.