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LON/00AP/LIS/2005/0084

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
FOR THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
ON APPLICATION UNDER SECTION 27A OF THE LANDLORD
AND TENANT ACT 1985, AS AMENDED**

Applicant: Mr Lubomir Miltchin

Respondent: Duncan Phillips Limited

Property: 3A Northumberland Park
London
N17 0TA

Hearing dates: 14 December 2005 and 30 March 2006

Appearances: Mr Lubomir Miltchin
Ms Mirela Fetcher, interpreter

For the Applicant

Mr Howard Green
Mr Michael Tuohy

For the Respondent

Members of the Residential Property Tribunal Service:

Mrs B M Hindley LLB
Mr C Kane FRICS
Mrs L Walter MA(Hons)

1. This is an application under Section 27A to determine the reasonableness and, therefore, the payability of service charges for the year ending 23 June 2005 and the budget for the year ending 23 June 2006.
2. On the morning of 14 December 2005 the Tribunal inspected the subject property. They found it to be a three storey, end of terrace, building constructed in 1990 and comprising commercial and residential premises. The ground floor was currently used as solicitors' offices and there was one flat on each of the two upper floors.
3. The entrance doorway to the flats opened directly onto the pavement. Adjoining the building was a gated car park used in common with the adjoining building - 816 - 818 High Road. At the time of the inspection the gate was permanently open.
4. At the rear of the car park was a raised bed containing various unpruned shrubs. The car park also contained within it a dustbin area and there was evidence of fly tipping.
5. The hearing, in the afternoon of 14 December 2005, was adjourned because the applicant requested the services of a Bulgarian interpreter.
6. The hearing recommenced on 30 March 2006 with a Bulgarian interpreter provided for the applicant.
7. The applicant identified the service charge costs which he sought to challenge.
8. At the Tribunal's request Mr Green identified the service charge provisions in the lease of the subject flat, dated 9 January 1991. These were, (at Clause 5.01) to pay the reasonable costs and expenses in connection with the landlords' obligations set out at Clauses 6.04 and 7, which were defined as insuring the building and keeping it in good and substantial repair.
9. The 'building' was defined as 3 Northumberland Park
10. The lease allowed for the provision of a sinking fund and for the service charges to be paid in advance by two equal instalments on 24 June and 25 December.
11. The applicant's proportion was defined in the particulars as 33.333%.
12. Mr Green explained that each year the respondents sent out an itemized budget of expenditure which included the total costs of both 3 Northumberland Park and the adjoining building 816 - 818 High Road. This was followed, a few weeks later, by a demand for payment which included a breakdown of the services for each of the individual properties.
13. In an effort to achieve a degree of fairness, although not, Mr Green conceded in accordance with the lease, the proportion payable by the applicant was varied to 12.5% of the total costs, excluding insurance.
14. The Tribunal then considered the items of expenditure challenged by the applicant:-

Insurance

15. The applicant said that because he had been uncertain whether the property was insured or not, he had taken out his own policy with the Halifax - his mortgagee. He said that the premium he was paying was less than half that demanded by the managing agents.
16. After the hearing, with the leave of the Tribunal, the applicant faxed copies of a letter dated 19 November 2005 with an attached insurance schedule.

However, the document did not specify the sum for which the building was insured

17. Mr Green said that the subject property was insured, as part of a block policy, with Norwich Union. He had valued the property when it had been built and he updated it on an annual basis. Every year his brokers tested the market with four major insurers to ensure that the terms offered were competitive. He was satisfied that the premium charged for 3 Northumberland Park in 2005 (£690.66p) and 2006 (£759.45p) was reasonable.
18. The Tribunal was satisfied that the lease required the landlords to insure the building and that for the years in question insurance was in place. They were also satisfied that the costs were reasonable and, therefore, payable by the applicant in respect of both years.

Gardening

19. During the course of the hearing it was established and then conceded by the respondents that, under terms of the lease, the car park was not included in the demise of the building to the applicant.
20. Accordingly, the Tribunal determined that no costs under this heading were recoverable from the applicant.

Bins

21. It was also established at the hearing that the lease contained no obligation on the landlords to provide bins.
22. Accordingly, the Tribunal determined that no costs under this heading were recoverable from the applicant.

Repairs and Maintenance 2005

23. The accounts certified for 2005 included the sum of £1333 under this heading. Mr Green said that these costs were made up of two accounts of £352.21p for cleaning blocked drains and £981.13p for repairs to the security gate of the car park. He explained that the blocked drains served both the subject property and 816 – 818 High Road and that the applicant had been invoiced for only 12.5% of this cost.
24. The Tribunal determined that, since the applicant had, under the terms of his lease, no obligations in respect of the car park, no part of the costs of £981.13p was recoverable from him. However, they accepted that the applicant should pay his proportionate part (33.333%) of half of the cost of the drain repair.
25. Accordingly, they determined as reasonable and payable £58.70p.

Repairs and Maintenance 2006

26. A figure of £1400 was included in the budget. Mr Green explained that this was because of the high expenditure on the security gate to the car park the previous year. He conceded that without this a provision of £500 would be appropriate.
27. The Tribunal determined £500 to be an appropriate sum to include and therefore determined £166.66p to be reasonable and payable by the applicant.

Legal and Professional Fees

28. Mr Tuohy, on behalf of Duncan Phillips Ltd, explained that the costs of £50 shown in the accounts for 2005 and the budget figure of £250 for 2006, related to the costs incurred by the managing agents in preparing the accounts and sending out invoices.
29. The Tribunal was not satisfied that such a charge was appropriate since the duties outlined were those of a managing agent. The duties of the managing agent were set out at Clause 7.05(a) of the lease.
30. Further, the Tribunal considered that the accounts were not prepared in accordance with the lease and, indeed, were so confusing as to be almost unintelligible to both the applicant and to the Tribunal.
31. Accordingly, the Tribunal determined the costs in respect of both years to be not reasonable and, therefore, not payable.

Application under Section 20C

32. Mr Green said that it was not the intention of the respondents to include on the service charge account any costs in connection with these proceedings.
33. Accordingly, it was unnecessary for the Tribunal to determine this application.

Costs

34. The applicant said that he did not wish to pursue any claim for the reimbursement of his fees from the respondents.

Conclusion

35. Attached at Annex 1 is a schedule showing the Tribunal's determination in respect of all the costs disputed by the applicant. All other costs for 2005 and the budget for 2006 were not challenged by the applicant.

Chairman

B. D. Hendley

Date

7/4/06

Annex 1

3A Northumberland Park, London N17 0TA

Schedule of disputed costs

	<u>Item</u>	<u>total 2004/5</u>	<u>payable</u>	<u>total 2005/6</u>	<u>payable</u>
1.	Insurance	£690.66	£230.22	£759.45	£253.15
2.	Gardening	£729	nil	£750	nil
3.	Bins	£341	nil	£350	nil
4.	Repairs: gate	£981.13	nil		
	drains	£352.21	£58.70		
	general provision			£500.00	£166.66
5.	Legal and professional	£50	nil	£250	nil

02.04.06