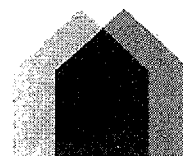


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**Residential  
Property**  
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL  
LANDLORD AND TENANT ACT 1985**

**LON/00AZ/LSC/2007/0324**

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**Premises:** 35 Rushey Green, Catford London SE6 4 AS

**Applicant:** Guaranteed Property Services Ltd

**Represented by:** Mr J McDonnell

**Respondent:** Ms F Telford

**Represented by:** In Person

**Tribunal:** Ms MWDaley LLB Hons  
Mr I Thompson FRICS  
Dr A M Fox PHD

**Date of Hearing:** 07/01/08

**Date of Decision:** 29/01/08

## **The Application**

1. This application is for a determination on the reasonableness and liability to pay service charges, for 25 March 2006 to 24 March 2007 and 25 March 2007 to 24 March 2008.
2. A pre-trial review was held on 22 October 2007. At the pre-trial review, the Tribunal gave directions for the determination of this matter; the directions stated that the applicant should prepare a statement of case which set out the issues which had not been agreed between the parties, together with copies of service charge accounts and payments, including the percentage of the service charge cost payable by the Respondent.
3. The Respondent was directed to serve a statement of case which responded to the issues that had been identified by the Applicant and identified any issues in response.
4. The issues were identified by the applicant in a letter dated 9 November 2007 and were as follows:-
  - (a) The cost of the building insurance for 2007/08 ( which was in the sum of £1,310.54
  - (b) Expenses incurred on surveyors fees of £ 300
  - (c) The yearly Interim Service charge of £ 1800
  - (d) Building work undertaken by SJ Waters at the cost of £2,150 (2006/07).
5. The Applicant further asked that the Tribunal would confirm that an interim service charge was due. And for a determination that the building insurance was reasonable.

## **The Documents received by the Tribunal**

- (a) The Tribunal were provided with a copy of a joint hearing bundle.

## **The Law**

6. Section 27A (3) Landlord and Tenant Act 1985 provides that

An application may 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 –

The person by whom it would be payable,

the person to whom it would be payable,

the amount which would be payable,

the date at or by which it would be payable, and

the manner in which it would be payable.

S. 18 of the Act defines service charge as

“(1)...service charge means an amount payable by a tenant...as part of or in addition to the rent –

which is payable, directly or indirectly, for services, repairs,

maintenance or insurance or the landlord’s costs of management, and

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 connections with matters for which the service charge is payable...”

Section 19 of the Act provides for the limitation of service charges on the grounds of reasonableness as follows:

Relevant costs shall be taken into account in determining the amount of a service charge payable for a period

only to the extent that they are reasonably incurred, and

where 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.

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.

An agreement by the tenant of a flat (other than an arbitration agreement within the meaning of section 32 of the Arbitration Act 1950) is void in so far as it purports to provide for a determination in a particular manner, or on particular evidence, of any question—

whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred

whether services or works for which costs were incurred are of a reasonable standard, or

whether an amount payable before costs are incurred is reasonable

### **The Lease**

- (a) The Applicant supplied the Tribunal with a copy of the lease between Overton Property Developers and Florence Nightingale Telford dated 15<sup>th</sup> January 1997. Where terms of the lease are referred to they are set out where referred to below.

### **Description of the Property**

7. The property is a two bedroom flat situated in a Victorian block which contains three flats.

### **The Hearing**

8. The Applicant was represented by Mr Mc Donnell of Guaranteed Property Services Ltd the managing agents. The Respondent was in person.

- (a) *The cost of the building insurance for 2007/08 ( which was in the sum of) £1,310.54*

9. The following facts were agreed between the parties in the course of the evidence. It was accepted in 2002 there had been a claim due to cracks in the walls of the respondent's premises. This had resulted in an investigation by a Loss Adjuster Crawford (Claims Management Services National Subsidence Unit). The Loss adjuster in his report dated 14.11.03, had concluded that:- "*the property is stable and is not suffering from active subsidence movement...*"
10. It was also accepted that the investigation had a detrimental effect on the type of building insurance cover that was subsequently offered. At page 31 of the bundle a copy of the insurance certificate was included. This certificate which was from NIG Corporation excluded Subsidence Cover. The brokers, who acted on behalf of the Applicant, stated that Subsidence Cover could be reinstated, however this would involve agreeing a £10,000 excess.
11. Mr McDonnell gave evidence that this was not considered satisfactory by either the Applicant or the tenants. He had however managed to have subsidence cover included, by taking the broker's advice and obtaining a surveyor's report that the property did not suffer from subsidence.
12. Mr McDonnell gave evidence that the managing agents had acted reasonably in using the services of a broker to obtain insurance, and that the insurance obtained represented value for money, once the claims history of the property had been taken into account. This was not accepted by Ms Telford, she considered that the insurance for the building could have been obtained at a lower premium. Ms Telford had made her own enquires, and had received quotations for cover in the sum of £827.00. It was not accepted by Mr McDonnell that these quotes adequately took the claims history into account as there was nothing on the quote which indicated that the investigation into subsidence or the break ins at the building had been considered by the insurance company. Mr McDonnell was of the view that once the Respondent applied for insurance and supplied all of the necessary information, the premium might be revised.

*(b) Expenses incurred on surveyors fees of £ 300*

13. Mr McDonnell stated that the fees had been included to obtain a report concerning the subsidence, as stated above this had been at the suggestion of the broker, as a result of this report the subsidence cover was reinstated. Ms Telford did not query the amount spent. The Respondent stated that she considered that the report produced by Crawford should have been sufficient, and that she had no proof that this had been shown to the brokers or the insurance companies. In reply Mr McDonnell stated that he would have been happy of Ms Telford to come in to the office to see the correspondence and that he had supplied the report. The Tribunal noted that curiously it had been considered insufficient to obtain subsidence cover. Mr McDonnell submitted that the sum of £300 spent on the surveyor's fees had been reasonable incurred.
14. Mr McDonnell informed the Tribunal that lessee who had been selling his flat had been concerned about the £10,000 excess on the insurance policy, and the impact that this had on the sale. There was also the fact that the insurance policy would not provide insurance against the risk of subsidence. He cited that as a result of the £300 spent on a surveyor's report had enabled the Applicant to obtain better cover. He referred the tribunal to page 41 of the bundle which was an insurance certificate DG Bunce with a £2500 excess.

*(c) The yearly Interim Service charge of £ 1800*

15. The Tribunal referred Mr McDonnell to the decision of the Tribunal dated 22.6.07 (Claim No Lon/00AZ/LSC/2006/0417) This claim had stated that the interim service charge could only be demanded in accordance with the fourth Schedule paragraph 1 of the lease. Mr McDonnell stated that they had used the previous years audited accounts as the basis for the interim service charge. However they had served a copy too late for the previous hearing. The interim charge demanded was £315. The Tribunal queried why the interim charge was not 50% of the previous audited service charge (which was £ 773.41).
16. Mr McDonnell stated that as the previous years charges had included the cost of re-decoration, this figure had been excluded from the calculation as to include it

would result in a demand for excess service charges. Ms Telford was asked about her objection to the charge. The Respondent stated that the tenants were taking over the management of the property on the 17/3/08, for this reason she had not considered the charges to be appropriate. She did not challenge any of the items that made up the interim charge.( The cost of the building insurance had been separately demanded)

*(d)Building work undertaken by SJ Waters at the cost of £2,150 (2006/07).*

17. It was accepted by the Respondent that the Applicant had complied with the Section 20 Notice which was served on 18/4/06. Mr McDonnell stated that he had sent a letter asking the tenants for feedback on the work that had been undertaken and inviting them to inform him, if they were dissatisfied with the work( at page 122 of the bundle) . He stated that he had not had any complaints from the respondent or the other tenants. Ms Telford had set out complaints in her written response to the tribunal however; she stated that she had not complained at the time because of personal problems (in particular, problems with her mother's health). The Respondent stated that one of the other tenants had had problems with her mother's health and the other had rented his flat and was less interested in the day to day maintenance.
18. The Respondent informed the Tribunal that she was unhappy with the external work. The Respondent cited the cost, and the fact that her property was double glazed, so no painting work had been undertaken to her windows. The Respondent was unhappy about the standard of work as there had been no rubbing down of the stone work, and the work had in her view not been carried out to a satisfactory standard. The Respondent cited that the front door had peeling paint. And there was damp caused by block gutters. Ms Telford was asked about the decoration of the common parts. In answer Ms Telford was not able to provide details of any specific issues.
19. The Respondent was asked about whether she had obtained any comparative estimates of this work for the purpose of the Tribunal. Ms Telford stated that she had not, and stated that this in her view was the manager's role. Ms Telford stated that she had work carried out in her property in 2005. The property had been redecorated and wooden floors had been laid for £2000. The Respondent

considered that given this, the painting of the wood of the exterior and the common parts should have cost less.

20. In the course of the hearing the Respondent made complaints that the managing agents had not been responsive to problems. The Tribunal noted that the Respondent had not in her response identified the reasonableness of management cost as an issue. As this was note in issue, the Tribunal directed that as the Applicant had not been put on notice that the Respondent would be raising this as an issue, therefore the Tribunal would not consider this issue at the hearing.
21. The Applicant informed the Tribunal that he was seeking to recover the cost associated with the hearing. The Tribunal asked whether recovery was provided for under the lease. The Applicant was not able to confirm that recovery of cost was provided for. He was also seeking to recover the cost of the application and hearing fees. This application was resisted by the Respondent as she did not consider it to be reasonable.

#### **The Decision of the Tribunal**

22. -The Tribunal considered the evidence put forward by both parties, although the Tribunal considered that the report prepared by Crawford (Claims Management Services National Subsidence Unit) should have meant that the cost of insuring the building was unaffected by the investigation into subsidence. However there was evidence set out in correspondence before the Tribunal that the cost of insuring had been affected. The Tribunal did not find that the quotes given by the Respondent could be relied on. There was nothing in the quotes that indicated that the insurance agents had full knowledge of the claims history. Accordingly the Tribunal find that the sum of £1289.23 was reasonable incurred for the insurance of the building.
23. The Tribunal also find that it was reasonable for a surveyors report to be prepared concerning the subsidence, given the recommendations of the insurance brokers. The Tribunal also find that the cost of the report, £300 was reasonably incurred, and is recoverable as a service charge.
24. The Tribunal find that the Applicant was under the terms of the lease entitled to demand an interim service charge. The Applicant had acted reasonable in



reducing the charge, given the fact that the certified service charge account for 2006/07 included the cost of major work. The Tribunal also find that the Respondent argument that she was entitled to withhold her service charges, on the grounds that she was along with other tenants, taking over the management of the building was misconceived. The obligations of the lease continue to run, whether the building was managed by the Applicant's appointed manager, or by a tenant's management company. The Tribunal find that the amount of £315 was reasonable due in accordance with the terms of the lease.

25. The Tribunal find that the work carried out within the premises and to the exterior, had been carried out to a reasonable standard and the cost had been reasonable incurred. The Respondent had been invited to set out any concerns about the work before the invoice was paid. The Respondent had not set out any concerns. At the hearing the Respondent did not set out concerns about the interior. The Respondent's major concern was about the lack of rubbing down the paintwork. Mr McDonnell had inspected the premises at the time. He was satisfied that the work had been carried out to a reasonable standard. The Tribunal prefer his evidence to that of the Respondent.
26. The Tribunal having considered the lease do not consider that there is provision made for the recovery of the cost of this tribunal. hearing. The Tribunal made no finding on section 20 C of the Landlord and Tenant Act 1985 as no application was made by the Applicant or the Respondent.

27. The Applicant's representative, made an application for the reimbursement of the application fees in the sum of £150. Giving its findings, the Tribunal have decided to grant this application.

Signed.....*M. Deby*.....

Dated.....*30-1-08*.....