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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

CASE NUMBER: LON/00AH/LSC/2010/0144

**IN THE MATTER OF THE FIRST FLOOR FLAT 5 BURLINGTON ROAD
THORNTON HEATH SURREY CR7 8PG**

**IN THE MATTER OF THE LANDLORD & TENANT ACT 1985 (AS
AMENDED) SECTION 27A and SECTION 20C**

Parties : Mr N Kpatakpa and Miss M Kpatakpa Applicants
Croydon (Unique) Limited Respondent

**Representations : For the Applicant:-
Miss M Kpatakpa
Mrs M Kpatakpa (her mother)**
**For the Respondent:-
Mr A Legall of Countrywide Property
Management
(Managing Agents for the Respondent)**

Date of Application : 10th February 2010

Date of Directions : 23rd March 2010

Date of Hearing : 13th May 2010

**Tribunal Members : Andrew A Dutton – Chairman
Ms S Coughlin MCIEH
Ms J Dalal**

Decision Date : 24th May 2010

REASONS

A. BACKGROUND

1. Mr Nikki Kpatakpa and his sister, Miss Michelle Kpatakpa, are the owners of the First Floor Flat at 5 Burlington Road, Thornton Heath. On the 10th February 2010 they made application to the Tribunal pursuant to Section 27A of the Landlord & Tenant Act 1985 ("the Act") asking us to determine the reasonableness of payments made for service charge years 2007/2008, 2008/2009 and 2009/2010.
2. Each year was subject to the same query, namely whether the payments made by monthly instalments for the service charges were reasonable and whether the sum paid in respect of the insurance premium was appropriate given the extent of the property to be insured.
3. Directions were issued by the Tribunal on the 23rd March 2010 setting out the issues, and requiring the parties to carry out certain steps. In particular, the respondent was required to demonstrate how insurance cover had been arranged each year and the efforts made to obtain competitive quotes. The applicants were requested to obtain their own alternative insurance quotes, hopefully on a like-for-like basis. The matter came before us for hearing on the 13th May 2010.
4. Prior to the hearing we were provided with a bundle of papers which included the Lease for the subject premises, the Directions, the Application and a letter from the applicants of the 15th March 2010. In addition to the above, there was a letter from Countrywide on behalf of the landlord which is dated the 25th March 2010 in which accounts were enclosed for the three years in dispute, the insurance schedules for those years, surveyor's revaluation and insurance policy documents. There were also copies of paperwork served under Section 20 of the Act relating to some external repair works. These were in fact duplicated, the first set having been served apparently in October 2008 and further notices served in February of this year.

B. THE HEARING

5. At the hearing Miss Kpatakpa appeared, together with her mother, and Mr Andre Legall of Countrywide represented the respondent landlord.
6. It is appropriate to record at this point the terms of the Lease which relate to the upper maisonette at Burlington Road. The Lease is for a term of 99 years from the 24th June 1985 with a rising ground rent. The demise of the property is set out and indicates that in fact this Lease requires the lessees to carry out all structural internal and

11. On the question of insurance, Mr Legall told us that the insurance was effected by Countrywide using brokers who he told us he thought tested the market on an annual basis. We were told that Countrywide earned commission, but not the landlord, but there was no indication as to the level of the commission paid. He suspected that it was related to a percentage of the premium payable. He did concede that the premium for the year 2009/2010 was perhaps on the high side, but he thought the earlier years were perfectly reasonable and appeared not to be out of line with insurance premiums that were payable in respect of other properties that he managed. He did say to us that he was not aware if the insurers had been informed that the ground floor premises were let on a short term letting arrangement. There was some confusion as to whether the property was individually insured or through a block policy. The latter appeared to be the case. He did tell us, however, that if any tenant had been able to get a like-for-like cheaper quote, then that would be put to his line manager, and his recollection was that if this had ever been done, then the insurance premium was reduced. As to the survey carried out by Edgar Horn, he told us that this was done every five years or so. No such survey had been carried out whilst Countrywide were managing the property, and he felt that it was dealt with in 2009 as that was probably the year to do it.
12. Miss Kpatakpa told us that she and her brother had been making contributions to the service charge fund since they purchased the property in 2007. In the year to September 2008, they had paid £1,538.77. This was made up of monthly service charge payments of £90 and a contribution to the insurance charge of £458.77. For the year September 2008 to September 2009, we were told that they had paid £1,361.71 made up of an insurance charge of £481.71 and the balance by monthly instalments, which had started off at £90 per month, but after seven months reduced to £50 per month. For the year September 2009 to the date of the application the sum of £1,273.07 had been spent. £673.07 was the contribution to the insurance and £300 had been made by monthly contributions of £50.
13. She told us that she had tried to obtain an alternative quote for the property, but information had not been provided by the landlord which would enable her to obtain a like-for-like quotation. Some online quotes had been obtained from Virgin Money, Prudential and Privilege, but these all related to insurance in respect of a first floor flat only. It is right to note, however, that the insurance premiums varied from £90.30 to £155.52. She conceded that she was not knowledgeable about insurance and was not able therefore to say whether she thought it was reasonable. She did, however, believe that the premiums were excessive for the property in question which is a two bedroom flat. She also queried the steep increase in the premium payable from the year 2008/9 to 2009/10 which appears to

be as a result of the revaluation of the subject premises, increasing the estimated rebuilding costs to £286,000 and the building sum insured from £334,052 to £429,000.

C. THE LAW

14. The Law applicable to the assessment of service charges is to be found at Section 27A of the Landlord & Tenant Act 1985. This requires us to firstly determine whether a service charge is payable and, if it is, the person by whom it is payable, to whom it is payable, the amount, the date by which it should be paid and the manner in which it should be paid.

D. DECISION

15. This is a somewhat unusual case in that the Lease which governs the ownership of the subject premises in our findings clearly does not enable the landlord to make the demands which have been put forward on its behalf from September 2006 onwards. In the service charge accounts for the year ending March 2007 it reveals administrative expenses for the building of £897 for the insurance, management fees of £458 and an accountancy charge of £176. At the end of that year, there was an operating surplus of £1,527 which added to the previous capital gave an amount of £1,697 as representing the sinking fund at that time.
16. For the following year, that is to say, ending the 31st March 2008, the insurance premium charge is £918; there are legal and professional fees of £176, management fees of £459 and accountancy charges of £182. The surplus for the year of £1,349 is carried forward and gives rise to a reserve fund at that time of £3,046.
17. In the year ending the 31st March 2009, the insurance premium recorded is £963, legal and professional fees are £250, management fees £582 and accountancy charges £188. A reserve fund with the surplus from that year had risen to £4,227.
18. As we have indicated above, a number of expenses had been incurred in the year ending March 2010 and, in particular, the insurance premium, according to the schedule, stands at £1,292.80.
19. We find that the landlord, through its managing agents, is only entitled to recover the insurance premium that it expends in connection with this property. Accordingly, the charges made for legal and professional fees from the years ending March 2007 to the year ending March 2009, as well as the management fees and accountancy charges for those periods are not recoverable and should not have been paid by the lessees.

20. For the year ending March 2010, we disallow the costs which have already been incurred, namely the survey fee by Edgar Horn of £322, the Health & Safety fee from Watson Wild & Baker Limited of £258, the management charge of £450, a disbursement unspecified of £50 and an accountancy charge of £250. Any other expenses that were not disclosed to us at the hearing which represent items of expenditure in the year ending March 2010 are not recoverable under the terms of the Lease and cannot be demanded from the tenant.
21. As we indicated above, the insurance premiums are recoverable. In this case we have borne in mind various authorities which confirm that the landlord is not obliged to obtain the cheapest premium available to him. It appears that this property forms part of a block policy which in some ways has the benefit in that least one can be fairly certain that the insurance will be effected on a regular basis. The terms of the policy seem extensive, although we were unclear whether the policy document we had actually been provided with was the correct one. Miss Kpatakpa had not been able to obtain quotes on a like-for-like basis. Whilst we have our concerns as to the level of the premium payable for what is in effect a converted two storey property, we have no compelling evidence before us to suggest that the premiums which have clearly been paid to the Norwich Union or AVIVA are so unreasonable as to be disturbed. We do, however, order that the insurance premium for the year 2009/10 should be limited to £1,292.80, the amount shown on the schedule of insurance, and not as was suggested to us by Mr Legall, the sum of £1,491.68, which apparently included terrorism cover. The insurance schedule for the year in question indicates that terrorism cover is included and accordingly we find that the sum of £1,292.80 is the maximum sum that can be recovered for this year.
22. If the applicants intend to challenge later insurance figures, they will need to obtain from the landlords details of the claims history of the property, confirmation as to the steps taken to test the market on an annual basis, the commission received, if any, by the landlord, and full details of the policy so that they can obtain a like-for-like quote. We are concerned also to ensure that the present insurance policy does reflect the fact that the lower maisonette is let on an assured shorthold basis.
23. By reason of our findings above we order that the respondent landlord shall reimburse, within 28 days, all monies that it has demanded and received from the applicants for the years ending March 2007, 2008, 2009 and 2010 save as provided for at paragraph 24 below.
24. The respondent landlord may retain from those monies the following:-
- The insurance for the year ending March 2007 of £448.50.

- The insurance for the year ending 31st March 2008 of £459.
- The insurance for the year ending March 2009 of £481.50.
- The insurance for the year ending September 2010 of £646.50.

25. Any interest that has accrued to the monies held on behalf of the applicants shall be reimbursed and henceforth the respondent shall confine the demands for contributions under the Lease to a proportion of the insurance premium expended in respect of the property. Such insurance must however be on the basis that it is reasonably incurred and provides cover commensurate with the terms of the Lease, if not beyond, in respect of the landlord's reasonable ability to do so. The question of terrorism cover is one for the landlord to decide.
26. At the conclusion of the hearing Mr Legall confirmed that no claim for costs would be made in respect of his attendance. This seems to us to be wholly appropriate as we can see no provision in the Lease enabling costs to be recovered in any event.
27. Miss Kpatakpa asked us to reimburse the application fee of £100 and the hearing fee of £150. It seems to us that the landlord's actions in this case are wholly unreasonable and have been conducted without any reference to the terms of the Lease. Monies have been demanded of the tenant without justification and reserve funds have been set up which the landlord was not entitled to do. In those circumstances we have no hesitation in ordering that the landlord must also, within 28 days, reimburse to the applicants the application fee of £100 and the hearing fee of £150.



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ANDREW A DUTTON

Dated 24th May 2010