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Residential  
Property  
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/OOAH/LSC/2010/0209**

**Premises at Flat 4, 123 Central Hill, London SE19 1BY**

**AN APPLICATION UNDER SECTIONS 27A AND 20C of the  
LANDLORD AND TENANT ACT 1985 ('the Act')**

<b>Applicants</b>	Mr O Onuora (leaseholder)
<b>Representation</b>	In person
<b>Respondent</b>	Mr C Rayner (freeholder and landlord)
<b>Representation</b>	Mr C Battersby and Mr N Munns of Rayners (managing agents)
<b>Pre-trial review</b>	20 April 2010
<b>Date of Hearing</b>	5 July 2010
<b>The Tribunal</b>	James Driscoll, solicitor (Lawyer chair), Ian Thompson BSc FRICS, Jane Clark JP
<b>Date of Decision</b>	15 July 2010

<b>Decisions summarised</b>	<ol style="list-style-type: none"><li>1. For the service charge years 2004, 2005, 2006, 2007, 2008, and 2009 the costs of the insurance for the building were not unreasonable and are recoverable as service charges from the applicant.</li><li>2. The reasonable charges for management services recoverable from the applicant for 2006 was £223, for 2007 was £230, for 2008 was £237, for 2009 was £244. VAT is to be added to these figures.</li><li>3. No order is made under section 20C of the Act as those representing the respondent told the tribunal that no charges incurred in this application will be sought as a service charge</li></ol>
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the structure of the building... (and) to arrange 'comprehensive insurance cover with a reputable insurance company' in respect of the building.

- 5) Does this mean that the landlord cannot recover in full the costs of repairing and insuring the building? After a short adjournment both the landlord's representatives and the leaseholder told that it appeared that they could not. Mr Munns told us that he thinks that there is a mistake in the lease as clause 3 fails to include the landlord's costs under clause 4(iv). He added that an application might have to be made to vary the leases and he argued also that all the leaseholders and the landlord have assumed that there are no defects in the lease so far as payment of service charges is concerned.
- 6) However, we have concluded that although the wording of the lease is not entirely clear, clause 3(v) read with clause 4(iv) allows the landlord to recover the costs and the expenses in managing the building and these include the costs of repair and maintenance. In other words, the reference to clause 4(iii) is to a strip of land outside the building and it has nothing to do with the service charges payable in respect of the landlord's responsibilities for the building. It is common ground that the landlord is entitled to appoint agents under the lease.
- 7) As the hearing progressed it emerged that there are but two issues that divide the parties. These are the costs of insuring the building (the only disputed matter for the years 2004 and 2005 is the costs of the insurance) and the costs charged for managing the building. We will take these issues in turn.

### **Insurance**

- 8) Mr Battersby told us that his company arranged the insurance for the 2004 and 2005 periods and that they were paid commission at between 10 and 12% (he cannot recall the exact percentage). He claims that his firm was paid this to manage any claims under the policy and also to reflect that they had introduced the insurance company to the landlord. The leaseholder did not challenge the commission.
- 9) Under the directions the landlord was asked to supply details of any alternative quotations. Mr Munns told us that his firm has engaged the services of Weald Insurance Brokers Limited who have managed their insurance for this and other properties they manage. He adds that the lease provides for the protection of both the landlord, all the leaseholders and their mortgagees that insurance must be obtained from a reputable company. He sees no advantage in constantly changing insurance providers.

- 10) The leaseholder has made extensive enquiries and has via a firm called Alan Boswell, insurance brokers, obtained two alternative quotations for the insurance. In doing this he sent a summary of the current insurance and information on the various claims that have been made under the existing policy. Alternative quotations of £904.12 (from MMA Insurance) and £978.75 (from Intasure) have been obtained. Not surprisingly, he argues, this demonstrates that it is possible to obtain insurance at far more competitive rates.
- 11) In reply Mr Munns produced a letter from their current brokers Weald Insurance Brokers Limited. This letter is dated 2 July 2010 and the leaseholder objected to it being tendered in evidence on the grounds that it is too late and did not give him time to prepare a response. In this connection the leaseholder also complains that the landlord's managing agents were late and in breach of the directions with their statement of case. We have some considerable sympathy with the leaseholder but the contents of this letter are very relevant to the issues and clearly expressed, so we decided to allow the landlord to rely on it.
- 12) In summary, Weald make the following points in this letter:
- they took over the insurance of the premises in 2006 and renewed the policy at the existing rate with the company AXA (they had little detail at that stage of the full history of any claims and the state of the building)
  - claims were made under the policy in August 2006 by which time they became aware that the building is 'non-standard' having a flat roof covered by felt over timber which is an important factor in the insurance
  - in 2007 AXA demanded a higher premium to reflect the claim. Weald tried to get alternative quotations from other major companies including Norwich Union and the Zurich but none of the companies approached were interested in offering cover because of the non-standard construction of the building and the claims history
  - a further claim was made under the policy in 2007 and three other smaller claims in 2007 and 2008
  - this led to a higher premium from AXA and it was not possible to get alternative quotes because of the claims history and the non-standard structure of the building
  - turning to the two quotations obtained by the leaseholder, Weald state that Intrasure is a holiday home insurer and they have not come across them as flats insurers before; he was surprised that

MMA should offer such a low premium given the claims history. Weald do not consider MMA to be a specialists in this type of insurance

- In 2009 Weald negotiated insurance with Liverpool Victoria and as part of moving a large portfolio they agreed to accept 'sub'standard' properties such as this one. This has led to insurance at the lower rate of £3,494.

- 13) It is, we think, settled law and practice, that a landlord is not required to seek the cheapest insurance available. Nevertheless, the costs must be reasonable. In answer to our question, the leaseholder told us that the cost of insuring the block which contains the flat he lives in is £2,400 for premises which contains 7 flats. He argues that the costs for that flat might be expected to be higher as it is in a more desirable and expensive part of London. However, on the basis of our experience, the market value of a property is not the overriding factor when insurers consider the cost of insurance: rather, the primary consideration is the risk attached to one property or another having regard to its location, construction, history and the sum to be insured, the latter reflecting the cost of rebuilding the property. Mr Munns told us, rightly in our experience, that the subject premises are considered to be located in a high risk area.
- 14) Having considered all of these points, we have concluded that whilst the current premium and the premiums for previous years are very much at the high end, they are not so high as to make them unreasonable. With the non-standard building construction and claims history these costs are likely to remain high for the time being. The alternative quotations the leaseholder did so well to find are not from the major companies with experience in the business of underwriting the insurance of blocks of flats. As Mr Munns suggested, they are from firms with as yet little experience in flat block insurance. No doubt those advising the landlord will continue through their brokers to monitor this part of the insurance market to ensure that they are receiving the most competitive premiums consistent with their obligations to ensure that the building is insured with a reputable company.

### **Management costs**

- 15) The other disputed costs are the costs of managing the premises. At the heart of this particular dispute are the leaseholder's twin concerns that he has been overcharged. We asked those advising the landlords for a copy of their contract with the landlord. They told us that they have one contract to manage a portfolio of properties. They were unable to produce a copy which they told us was signed in 2000. Their management company looks after some 300 blocks of flats. In the

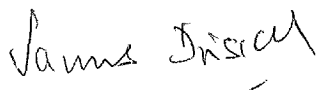
addition to Mr Battersby and Mr Munns they employ fifteen staff including Mr Robert Sawyer who has a BSc in building surveying and who deals with a variety of routine repairs and other matters. Mr Sawyer is not a chartered surveyor.

- 16) Mr Munns explained his company charges management fees at the rate of £164 per flat in 2006 rising to £190 per flat in 2009 to which VAT is added. In addition they charge for the time spent by Mr Sawyer at an hourly rate of £75 and clerical work at £30 - 40 per hour. The bundle includes numerous internal records of how Mr Sawyer and other staff spend their time. In some cases a secretary or an administrator's time was charged at a lower hourly rate. There were also examples of work undertaken by Mr Sawyer which seemed to us to be routine property management rather than specialist work by a surveyor. Both Mr Munns and Mr Battersby told us that should major works be needed they would engage the services of specialists and where necessary enter into the statutory consultation procedures. We noticed work sheets for tasks that are for routine property management matters not requiring a building surveyor.
- 17) Those advising the landlord agreed that leaseholders are being charged in two ways: through the standard management charge and through being billed for 'surveyors' charges separately. They had a copy of the second edition of the Service Charge Residential Management Code (2nd edition, 2009) by the RICS (and approved by the Secretary of State under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993). They refer to the list of responsibilities the Code recommends in paragraph 2.4 for leasehold management. We pointed out to them that the opening words in paragraph 2 states that a management contract should be in writing and should state the basis on which the charges are made. The Tribunal notes that the 2009 RICS Code became effective on 6<sup>th</sup> April 2009 and therefore with the exception of the disputed charges in 2009 is not relevant for the previous years. However, the 1997 1<sup>st</sup> Edition of the Code was effective for the remaining relevant periods and the Tribunal notes that paragraphs 2.5 (duties included within the basic management fee) and 2.6 ("menu of charges outside the scope of the basic fee") mirror the distinctions made in the current Code.
- 18) In the leaseholder's opinion there should be a standard charge of £140 per flat with an additional £500 per annum for the surveying charges. He does not think that these figures should be revised each year to take account of inflation.
- 19) We have concluded that the current method of charging is unsatisfactory. In effect leaseholders are being charge twice for

property management. Establishing charges with reference to the number of flats and units in the building is a widely used method in the residential leasehold management sector as a way of charging for such routine matters as attending to particular problems and dealing with service charges and so on. The list of potential responsibilities is very well described in the RICS guide at paragraph 2.4. The majority of the duties, if not all of them, undertaken by Mr Sawyer and his staff fall, in our opinion, under the regime of the normal management duties defined within paragraph 2.4 of the Code. Managing agents are also entitled to charge for additional matters provided this is allowed under the terms of their contract. Typical duties that may be the subject of additional charges are set out at paragraph 2.5 of the RICS guide. None of the duties undertaken by Mr Sawyer or his staff fall into this category and are matters, it seems to us, that a reasonably competent property manager could and should have undertaken.

- 20) At the close of the hearing we asked those representing the landlord for a copy of the management agreement under which they manage various properties. They sent the tribunal a copy of the licence agreement with the London Borough of Croydon referred to in paragraph 4 above. No management agreement has been sent to us.
- 21) This leads us to the conclusion that a charge based on a unit charge £140 per flat as proposed by the leaseholder is a sound way to start. This produces the figure of £840 per annum to which is be added £500 for the other costs. For 2006 this produces the figure of £223 per flat which we consider on the basis of our knowledge of management charges to be a reasonable figure. Unlike the leaseholder we consider it reasonable to revise these figures to take account of inflation of 3% per annum. On this basis the reasonable costs of managing for 2007 is £230 per flat; for 2008 the corresponding figure should be £237; for £2009 it should be £244.<sup>8</sup>
- 22) Mr Battersby and Mr Munns told us that they will not include charges for their time preparing for this hearing and for attending the hearing. In these circumstances it is unnecessary for us to consider making an order relating to such costs under section 20C of the 1985 Act.

Chair



**James Driscoll, solicitor (Lawyer Chair)**

15 July 2010