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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/00AM/LSC/2009/0611

Premises: 227 Amhurst Road, London E8 2BS

Applicants / Tenants: Mr Simon Cook - leaseholder of flat A
Ms Clare Joof - leaseholder of flat B
Ms Jemma Wisdom - leaseholder of flat C
Ms Cliff Dymond - leaseholder of flat D

Respondent / Landlord: Regisport Ltd.

Represented by: Ms S Moon, Account Manager
Ms E Cairn, Property Manager
both from Countrywide - the Managing Agents

Tribunal: Ms F Dickie, barrister
Mr J Avery, FRICS
Mr A Ring

Date of Hearing: 18/01/10

Date of Decision: 08/03/10

Preliminary

1. The Applicants are each the current leaseholder of one of the 4 flats in this end of terrace Victorian house ("the property"). The Respondent is the freeholder. The application was for a determination of the reasonableness of service charges arising in the years 2003 to 2010, namely:

2003 – 2005	Management charge
2006	Insurance premium, accountancy charge, management charge
2007	Management charge, Bin store repairs, drain clearance and insurance premium
2008	The annual accounts now being available, the parties agreed at the hearing to the amendment of the application to include a challenge to the management charge and insurance premium
2009	Insurance premium, management charge, accountancy charge, out of hours emergency service
2010	Insurance premium and revaluation, accountancy charge, health and safety report

2. The Applicants also sought a determination under s.20C of the Act restricting the landlord's right to recover the costs of these proceedings through the service charge. Directions were issued on 21st October 2009. The hearing took place on 18th January 2009 at which Mr Cook was present on behalf of the leaseholders, Ms Moon and Ms Cairn from Countrywide, the new managing agents, on behalf of the landlord. The Tribunal did not carry out an inspection.

The Leases

3. Copies of all the leases were provided to the Tribunal. Schedule 5 made provision for the items recoverable by way of the service charge, the tenants covenanting under Clause 3 to:

Pay to the Landlord without any deduction by way of further and additional rent a sum equal to twenty five per centum (25%) of the aggregate of the expenses and

outgoings incurred by the Landlord in the repair maintenance and renewal and insurance of the Property and the other heads of expenditure as the same are set out in the Fifth Schedule hereto such further and additional rent (hereinafter called "the service charge") being subject to the following terms and provisions....

4. Paragraphs 1-5 of Schedule 5 of all four leases were identical:

THE FIFTH SCHEDULE

Landlord's expenses and outgoings and other heads of expenditure of which the Tenant is to pay a proportionate part by way of service charge

- (1) The expense of maintaining repairing redecorating and renewing amending cleaning repointing and painting graining varnishing whitening or colouring the Property and all parts thereof and all the appurtenances apparatus and other things thereto belonging and more particularly described in clause 4(vi) hereof*
- (2) The cost of insuring and keeping insured throughout the term hereby granted the Property and all parts thereof and the Landlord's fixtures and fittings therein and all the appurtenances and apparatus and other things thereto belonging as more particularly described in clause 4(ii) hereof and also against third party risks and such other risks (if any) by way of comprehensive insurance as the Landlord shall determine including two years loss of rent and architects and surveyors fees.*
- (3) The cost of:-*
 - (i) decorating the exterior of the Property*
 - (ii) cleaning decorating and lighting the main entrance hall passages landings and staircases in the Property and*
 - (iii) keeping the front and back and side paths in a clean and tidy condition in accordance with sub-clauses (vii) (viii) and (ix) of clause 4 hereof*
- (4) All charges assessments and other outgoings (if any) payable by the Landlord in respect of all parts of the Property (other than income tax)*
- (5) The cost of keeping any parts of the Property not specifically referred to in this Schedule in good repair and condition*

The lease for flats A thereafter provides:

(6) The proper fees of the Landlord's Managing Agents for the collection of the rents of the Flats in the Property and for the supervision of the provision of services and repairs to the Property and generally for the management thereof such fees to be assessed at Fifty Pounds (£50.00) per annum or Twenty per cent (20%) of the total expenditure under this Schedule whichever is the greater but not including fees charges expenses or commissions on or in connection with the letting or sales of any other flat in the building

The equivalent paragraph in the lease for flat C is:

(6) The fees of the Landlord's Managing Agents for the collection of the rents of the Flats in the Property and for the supervision of the provision of services and repairs to the Property and generally for the management thereof such fees to be assessed at Fifty Pounds (£50.00) per annum or Twenty per cent (20%) of the total expenditure under this Schedule whichever is the greater

The leases for flats B and D contain no equivalent provision at all. The Fifth Schedule of all of the leases thereafter continues (though with different numbering appearing in brackets below for the paragraphs in those for flats B and D owing to the absence of the provision for the recovery of a managing agent's fee at paragraph (6)):

7(6) All fees and costs incurred in respect of the annual certificate and of accounts kept and of audits made for the purpose thereof

8(7) The cost of taking all reasonable steps deemed desirable or expedient by the Landlord for complying with or making representations against or otherwise contesting the incidence or provisions of any legislation or orders or statutory requirements thereunder concerning Town Planning Public Health highways streets drainage or other matters relating to or alleged to relate to the Property for which the Tenant is not directly liable hereunder.

According to the evidence Mr Cooke became the leaseholder of Flat A in April 2005 and Ms Joof moved into Flat B in October 2006. Ownership of Flats C and D had not changed throughout the years that are the subject of this application.

The Applicants' Case

Insurance Premiums

5. Insurance premiums had almost doubled in 7 years and the Applicants considered the management company had not been obtaining competitive rates. The premiums charged had been:

(a) 07/02 – 06/03	£727.05
(b) 07/03 – 06/04	£915.48
(c) 07/04 – 06/05	£952.09
(d) 07/05 – 06/06	£1028.33
(e) 07/06 – 06/07	£1110.60
(f) 07/07 – 06/08	£1177.24
(g) 07/08 – 06/09	£1226.68
(h) 07/09 – 06/10	£1359.72

Terrorism cover was only known to have been included since the year 07/06 – 06/07. The first 3 years (up to and including 04/05) were not challenged. Mr Cook had researched the directorships and parent companies of Regisport Limited, Pier Management Limited, RMG Group Limited and Barbon Insurance Group Limited (insurance broker). He queried whether the relationships between the brokers used and the then management company presented a conflict of interest.

6. Mr Cook produced alternative quotations: two dated 18th August 2008 for a declared value £504,167 for the house as converted into 4 flats from (1) Lansdown Insurance Brokers for £562.51 plus £247.25 optional terrorism cover and (2) Assetsure Limited £571.70. He also produced a quote from Lansdown dated 2nd July 2009 for the year 2009/10 in the sum of £579.39 plus terrorism

cover of £247 year 2009/10 and quotations of between £717.09 (without terrorism cover) and £1145.86 (with terrorism cover) for the calendar year 2010.

Year ending March 2003

7. The tenants challenged the amount of the landlord's management charges in this and subsequent years (except the current one) as unreasonable. The Applicants asserted that the landlord's management fees should be limited to 20% of the total expenditure. Such agreed expenditure in this year was £797.23 and management charges were levied in the sum of £470.

Year Ending March 2004

8. The tenants challenged the landlord's management charges on the same grounds. Total expenditure that year was agreed as £987.63 and management charges were applied in the sum of £470.

Year Ending March 2005

9. Agreed expenditure was £971.21 and management charges of £470 were similarly challenged.

Year Ending March 2006

10. Expenditure was £1363.15, but the following service charges were challenged:

- (a) Insurance premium
- (b) Reporting accountant's charge since there was no evidence of any certified accounts having been prepared for that year. The Respondent's service charge statement for this year showed this charge as merely an accrual
- (c) Management charges were £587.50

Year Ending March 2007

11. Expenditure was £2311.22, but the following service charges were challenged:

- (a) Insurance premium
- (b) £345 for bin store repairs because:
 - (i) The work was badly carried out as the lid on the bin store is lower than the height of the bins and prevents them from being stored there.
 - (ii) The cost was claimed more than 18 months after it was incurred and cannot be recovered because of the operation of s.20B.

(c) £238 for drain clearance (invoiced by Scott's on 18th November 2006)

because:

- (i) The drain in question is situated behind a locked gate on the property of flat A (that of Mr. Cook) and he was certain no such clearance had been done at the landlord's instigation. He gave evidence he had himself paid for the drain to be cleared a number of weeks prior to the date of the invoice.
- (ii) The cost was claimed more than 18 months after it was incurred and cannot be recovered because of the operation of s.20B.

(d) Management charge.

Year Ending March 2008

12. The application was amended to bring the following challenges:

- (a) Insurance premium
- (b) Management charge claimed at £705.

Year Ending March 2009

13. The following service charges were disputed:

- (a) Insurance premium
- (b) Out of Hours emergency service of £55.20 since this service was not activated until 20th March 2009.
- (c) Reporting accountant's charge of £130.64 since this is more than a 100% increase on the figure charged 2 years previously, and no receipt is provided for it.
- (d) Management charge.

Year Ending March 2010

14. The following service charges were disputed:

- (a) Insurance premium
- (b) Insurance revaluation fee of £600 which was said to be excessive and unreasonable
- (c) Health and safety fee £150, since this service should be part and parcel of the overall management service.

- (d) Reporting accountant's charge estimated at £200 was said to be an unreasonable increase on previous charges.

The Respondent's Case

Insurance

15. A policy schedule was produced for each year from 2007. It was the Respondent's case that the property in question has been insured through an independent broker as part of a large portfolio of properties it owns and that cover for risks (such as terrorism) was properly taken out on the entire portfolio.

Management Charges

16. The Respondent, through its new managing agent Countrywide, sought to apply management charges of 20% to all the properties for the current year, acknowledging that no more could be recovered under the terms of the leases. Ms Moon said that if not constrained by the terms of the leases, the current management charge for each of the four flats would be £175 plus VAT. However, in respect of previous years the Respondent's representatives made clear that no concessions were made (regarding fees of the previous managing agent), and that the charges in respect of which they sought a determination from the Tribunal were as had been levied to the tenants.
17. It was observed by Ms Moon, in arguing for the liability of the leaseholders of Flats B and D to pay management charges, that the landlord's use of a managing agent was contemplated in Clauses 3(a) and (e) of the leases as follows:
- (a) the amount of the service charge shall be ascertained and certified by a certificate (hereinafter called "the Certificate") signed by the Landlord's Managing Agents acting as experts and not as arbitrators annually.....*
- (a) The Tenant shall if required by the Landlord on the 30th September and the 31st March in each year pay to the Landlord such sum in advance and on account of the service charge as the Landlord or his Managing Agents shall specify at their absolute discretion to be a fair and reasonable interim payment.*

She also submitted that management charges were recoverable under Paragraph 4 of the Fifth Schedule.

s.20C

18. The Respondent was not intending to recover the costs of these proceedings through the service charge account.

Bin Store Repairs and Drain Clearance

19. The representatives for Countrywide made no specific representations regarding the dispute over the bin store repairs and drain clearance other than directing the Tribunal's attention to the Respondent's financial records relating to these matters.

Accountancy Charges

20. The figure charged for 2008/09 was £139.64 and Ms Moon said that the budgeted amount for the year ending March 2010 had not yet been expended.

Health and safety

21. It was submitted for the Respondent that a budgeted fee of £150 for a report on compliance with health, safety and fire regulations was reasonable.

Out of Hours Emergency Service

22. That a charge under this head was not recoverable for this year was conceded by the Respondent who said it would be included for the following year.

Insurance Revaluation Fee

23. Ms Moon explained that Morgan Stanley was proposing to charge a fixed fee of £600 for insurance revaluation, though this work had not yet been carried out.

Determination

S.20C

24. This application was formally withdrawn by Mr Cook in the circumstances.

Insurance

25. None of the documentation produced by Mr Cook succeeded in establishing a legal relationship between the insurance brokers and the landlord and the

Tribunal was not persuaded as to any conflict of interest. It accepts that the insurance arrangements for the property were made on the open market and at arms length. The comparative quotations obtained by Mr Cook were not of assistance because they could not compare with the cover obtained by Respondent in respect of its block policy.

26. It is not necessary for a lessor to obtain the cheapest insurance quotation. The leading case is *Berrycroft Management Limited –v- Sinclair Gardens Investments Limited* [1997] 1 EGLR 47. The Court of Appeal held that there was no implied covenant that the sum charged by the insurers should be reasonable or that a tenant should not be required to pay a substantially higher sum than he could himself arrange. The Tribunal is satisfied that as a matter of law the Respondent is entitled to seek insurance for this property as part of a large portfolio of properties of varying degrees of risk, and that there are sound business reasons for doing so. The Respondent did not demonstrate that the level of cover provided for in his quotations was comparable to that required by the lease. In any event, that cheaper cover may be available elsewhere is not sufficient to demonstrate that the insurance premium charged by the landlord is unreasonable. There was insufficient evidence that the premium was unreasonable or excessive and the Tribunal finds the premiums are recoverable as service charges in their entirety.

Out of Hours emergency service

27. The Tribunal is satisfied in principle that a charge incurred for the provision of such a service is recoverable and reasonable, but not in the year ending 2009 when no such service had been provided.

Accountancy Charges

28. The Tribunal is satisfied that the tenants have been charged £235 for accountancy charges for the year 2005/06. The service charge statement of account for that year was produced but not signed, and the Tribunal and tenant have not seen accounts for that year. The Tribunal finds this sum unreasonable in the circumstances and disallows it in full. The figure charged for 2008/09 of £130.64 the Tribunal finds to be reasonable, but there was insufficient explanation for the increase in that figure to an estimate of £200 in the 2009/10 budget. The Tribunal

considers a modest increase on the previous year's figure to be reasonable and allows a figure of £150 for estimated accountancy charges in the year 2009/10.

Bin Store Repairs

29. The Tribunal has no difficulty in determining that this cost was not reasonably incurred. The new covers render the bin stores useless as the bins cannot be placed within them. The work was badly planned.

Drain Clearance

30. In the absence of more cogent evidence from the Respondent, the Tribunal accepts Mr Cook's account that no access was gained to his property to effect the alleged cleaning. On the balance of probabilities it finds that the work did not take place and that the cost sought by the Respondent is not recoverable as a service charge from the Applicants.

Insurance Revaluation and Health & Safety Fees

31. After a history of ineffective management Countrywide has latterly been appointed managing agent. It is not unreasonable in the Tribunal's view that it should address the need for an overdue insurance revaluation and ensure compliance with health and safety requirements. The associated costs are recoverable under paragraphs 4 and 8 (or (9) in leases for flats B and D). The cost of £150 for a health and safety survey is modest and reasonable, and is allowed. However, the Tribunal was persuaded that a fixed fee of £600 was not reasonable in the circumstances for the insurance revaluation. A sum of £300 should be quite sufficient to secure such services in respect of this type of property and the Tribunal allows this amount only.

Management Charges

32. Such charges for the current year ending March 2010 were not in dispute by the Applicants and the Tribunal has no jurisdiction in respect of them. In respect of previous years the Tribunal is satisfied that the evidence does not demonstrate there having been an agreement or admission by the tenants on the matter of the management charges, and accordingly it has jurisdiction to determine them under s.27A.
33. The Tribunal is satisfied that according to the proper construction of the lease for flats A and C management charges are limited to 20% of the total service charge

expenditure, and finds that management charges in the following table were payable (and any sum overpaid is recoverable in respect of years in which the party in question had an interest as leaseholder):

Year ending	Expenditure	20%	Flats A and C
March 2003	797.23	159.45	39.86
March 2004	987.63	197.53	49.38
March 2005	971.21	194.24	48.56
March 2006	1128.15	225.63	56.41
March 2007	1728.22	345.64	86.41
March 2008	1434.33	286.87	71.72
March 2009 and 2010	20% of expenditure		25% of entire fee

34. The position regarding flats B and D is somewhat different. The starting point for determining whether the managing agent's fees are recoverable is the terms of the lease.

"... it is perfectly clear that if an individual landlord wants to [employ managing agents] and to recover the costs from the lessee, he must include explicit provision in his lease."

Embassy Court Residents' Association Ltd v Lipman [1984] 2 EGLR 60

No such provision appears in these 2 leases (presumably as the result of an omission). The proper construction of Paragraph 4 of the Fifth Schedule (which would apply to external charges levied upon the landlord in respect of the property) is not sufficiently broad to allow the recovery of the fees of the managing agent it chooses to appoint. The Tribunal finds it is unable to construe management charges as recoverable under the leases for Flats B and D as drafted.

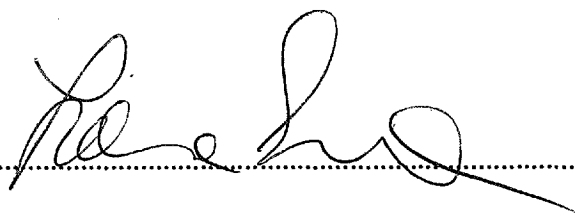
35. The Tribunal notes, however, that in practice the tenants in question have not sought to recover in excess of 20% management charges overpaid. Professional

management of the property comes at a cost. It is of course possible for the parties to a lease to vary it by agreement, and indeed seemingly desirable in this case since it is in the interests of the tenants of flats B and D that the property is properly managed. The Leasehold Valuation Tribunal has the power on an application under s.35 of the Landlord and Tenant Act 1987 to vary the terms of a lease of a flat where it fails to make satisfactory provision with respect to certain matters including

- (e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party.
- (f) the computation of a service charge payable under the lease.

At the present time, however, no such application has been made.

Chairman.....



Date 8th March 2010