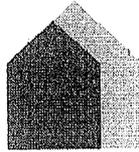


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Residential
Property
TRIBUNAL SERVICE

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTIONS 27A & 20C
OF THE LANDLORD & TENANT ACT 1985**

Ref: LON/00AN/LSC/2010/0186

Property: 44 Marville Road
London
SW6 7BD

Applicants: Mr N M Dare
Mrs C Copeland (nee Copsey)

Respondent: Knighthouse Limited by their managing
agents Acland & Lensam

Date of Application: 1 March 2010

Date of Hearing: 25 May 2010

Appearances for the Applicants: Mr N M Dare

Appearances for the Respondent: None

Leasehold Valuation Tribunal: Ms F Dickie, Barrister
Mr T Sennett
Mrs G Barratt JP

Date of Decision: 12th July 2010

Preliminary

1) The Applicants seek a determination under Section 27A and 20C of the Landlord and Tenant Act 1985 as amended of the reasonableness and/or

liability to pay service charges. The application was made on 1 March 2010 and an oral Pre-trial Review was held on 6 April 2010 at which Mr Dare and Mr Copeland (on behalf of Mrs Copeland) appeared in person. There was no appearance on behalf of the Respondent. The Tribunal issued Directions and the matter was listed for Determination at a Hearing on 25 May 2010.

2) The premises at 44 Marville Road, London SW6 7BD comprise two leasehold flats – the ground floor flat 44a and the upstairs flat 44b. The Respondent is the freeholder of the premises. Mr Dare, a chartered surveyor, is the resident leaseholder of the upstairs flat 44b and Mrs Copeland is the non-resident leaseholder of the ground floor flat 44a. Since 2006 to the present day Acland & Lensam have acted as managing agents on behalf of the freeholder.

The Leases

3) The Tribunal was provided with a copy of the lease for the ground floor flat 44a granted on 30 November 1984, which demises

1. ALL THAT ground floor flat known or intended to be known as 44a Marville Road, Fulham in the London Borough of Hammersmith & Fulham including the rear garden and the hallway more particularly delineated on the plan annexed hereto and thereon respectively edged green and yellow (herein after called "the demised premises")...

...yearly rent to be paid by equal half yearly payments in advance on the 25th day of December and 24th day of June in each year... AND ALSO YIELDING AND PAYING unto the Lessor by way of additional rent one half of all such sums as the Lessor may from time to time pay for insuring and keeping insured the Building against loss and damage in accordance with the provisions of Clause 4(ii) hereof such sum to be paid with the next half yearly payment of rent following the date of payment of any such sum by the landlord....

The Lessee covenants in Clause 2:

(1)....

(2) *To pay and discharge all rates, taxes, duties and assessments, charges and outgoings whatsoever where the parliamentary parochial or of any other description which are now or during the term hereby granted shall be imposed or charged on the demised premises or the Lessee or occupier in respect thereof.*

(3) (i) *To pay a fair proportion (to be determined by the surveyor for the time being of the Lessor) of the existing and future rates tax assessments if any payable by law in respect of the area edged blue on the attached plan and other things or parts of the Building the use of which is common to the demised premises and to other premises adjoining or neighbouring or to the first floor flat;*

(ii) *To pay one half of all such sums as the Lessor shall reasonably expend towards the repair renewal upkeep cleansing lighting or maintenance of all structural walls roofs foundations and joists of the Building and the area edged blue on the attached plan;*

(iii) *To pay one half of all such sums as the Lessor shall reasonably expend towards the repair renewal cleansing and maintenance of all gutters sewers drains cisterns pipes wires cables and other conduits which are now or may at any time hereafter during the said term be in or pass through along under over or about the demised premises and the first floor flat or any part thereof which are used in common*

The Lessor covenants in Clause 4:

(iv) *At all times during the said term... to insure and keep insured the building... and will whenever reasonably required produce to the Lessee a copy of the Policy or Policies of such insurance and the receipt for the last premium for the same....*

4) The lease for the first floor flat referred to as 44b is in similar terms and demises:

1. ALL THAT first and second floor flat... and the stairs leading thereto more particularly delineated on the plan annexed hereto and thereon edged red.

The rent days are specified as 25th day of March and 29th day of September in each year and proportion payable in respect of the insurance and under Clauses 2(3)(i),(ii) and (iii) are all rateable proportion.

The Hearing

5) Mr Dare attended the hearing accompanied by his father Mr J Dare. There was no appearance from Mrs Copeland or on behalf of the Respondent/managing agent. Mr Dare and Mrs Copeland had each submitted bundles of documents to the Tribunal. Mr Dare presented his case and the Tribunal had regard to the submissions made by Mrs Copeland in writing although its task was made more difficult by virtue of the fact that the pages in Mrs Copeland's bundle were not indexed or numbered.

Buildings Insurance 2006 – 2010

6) Mr Dare is dissatisfied with the service provided by the managing agent in response to numerous enquiries made by the Applicants regarding the insurance for the building. He was of the view that the Landlord had sought to charge each leaseholder for the entire cost of the insurance in each of the years 2006-2008. Mrs Copeland had liaised directly with the insurer on several occasions to obtain confirmation of the insurance cover and premium.

7) Mr Dare drew the attention of the Tribunal to a letter dated 29th March 2006 from Acland and Lensam referring to an enclosed "service charge budget for the current year on the above property, together with a demand for your proportion" The budget for the period 1st January 2006 to 31st December 2006 totalled £1503.25 and contained the figure for the entire year's for insurance of £680.75, and it was not clear to the Tribunal whether the demand had been enclosed (though the copy produced separately by Mr Dare and dated 27th March 2006 requested a service contribution of £751.63 – half the total budget). That demand was subsequently amended and reissued under

cover of a letter dated 15th May 2006 to charge for 8 months insurance from the end of March 2006 (when the new agents were instructed), in place of a charge for 12 months. The Applicants did not challenge the reasonableness of the cost of this insurance and had paid respective contributions of 50%.

Building Survey – 2006

8) The estimated service charge budget for 2006 included an amount of £235 in respect of a building surveyor's fee for a report. Mr Dare was sure, however, that no such survey was actually carried out, and only the front elevation of the building could be seen without accessing the rear of the property through the common entrance. The Applicants considered it unreasonable that they should pay a contribution towards this fee.

9) The agents in their letter to the Tribunal of 24th March 2010 explained that on taking over properties to manage they try to arrange to carry out a condition survey in order to assess when works might need to be carried out. They assert they are unable to instruct a contractor to carry out such work without funds and no survey was in fact carried out on this property as payment was not forthcoming.

Interest

10) Each year since 2007 the Respondent had charged the Applicants interest on unpaid service charges demanded. Mr Dare argued this was not due since no service charges payable were outstanding and there was no provision in the lease to charge interest.

Management Charges

11) The Applicants did not challenge their liability to pay a reasonable management fee. They disputed however that the fees charged were reasonable in light of the service they had received which they perceived as poor, and Mr Dare considered in the circumstances that no management fee was merited. He disputed management fees for each service charge year from 2006 up to and including 2010 (though as at the date of the application no demand had been received for the current year, by the date of the hearing

it had been received and again demanded management charges of £500 plus VAT). Mr Dare claimed the agents did not explain their fees at the outset of their appointment, and that they often did not answer the telephone or reply to letters. He had repeatedly requested an explanation for or breakdown of the management charge and disputed that the Landlord was entitled to appoint managing agents without consultation with the tenants. Knighthouse Ltd had been very slow to react when a serious fire damaged the neighbouring property in December 2004, before Acland Lensom were instructed.

12) Mr Dare indicated as another example of poor management that the demand for service charges for the year 2007 in the sum of £724.48 was dated 1st November 2007 (though the year had started January). It was clear from Mrs Copeland's bundle of documents that she had received the service charge budget for this year, which was made up of :

Insurance £661.46

Management £500 plus VAT

Building maintenance £200

Total £1448.96

Mr Dare denied that he had received a budget or breakdown. He did not dispute the figure for insurance, which he had managed to ascertain and which he and Mrs Copeland had both paid.

Building maintenance – 2007

13) In correspondence from Acland and Lensom to Mrs Copeland dated 12th June 2007 explanation of a building maintenance charge of £200 was given: "We have also added this year, a small amount of building maintenance, as we have had a number of small problems on various properties, which have had to be dealt with. We cannot instruct contractors to carry out works without having funds in our Clients account. If this figure is not used during the year, then it will be put into a separate account towards either next year's work, or major building works".

14) In correspondence to the agents Mrs Copeland disputed her liability to pay this maintenance contribution. Mr Dare observed that he had no obligation under the lease to pay a sinking fund contribution.

Fire Security – 2008

15) The 2008 service charge budget included an amount of £500 in respect of Fire Security for the cost of an inspection by a Fire Risk Assessor. The agents advised that recommendations thereon might include rewiring of common parts, installation of extinguishers and notices. Mr Dare and Mrs Copeland were both of the view that there were no common parts to the premises. The entrance hall was demised to flat 44a and the stairs to flat 44b.

16) In written submissions to the Tribunal Acland and Lensam had cited the requirements of the Regulatory Reform (Fire Safety) Order 2005. No party had produced a copy of the Order and Mr Dare was not clear whether it applied to areas of the premises used in common with others, in spite of the fact that these were owned by one of the flats. He had been in person to the local fire station and spoken to someone who had told him it did not. Mr Dare confirmed that there is no smoke alarm in the hallway.

Fees and Costs

17) Mr Dare asked for an order that the Respondent should refund the application fee of £100 and a hearing fee of £150. He also applied for an order under s.20C of the Act preventing the landlord from recovering the costs of these proceedings through the service charge account. He was frustrated at having had to give up so much time to deal with this simple matter. Whilst various service charge statements attached to the Respondent's representations to the Tribunal dated 24th March 2010 referred to legal and professional fees, no demand for such sums had been made to the Applicants.

Tribunal's Determination

Buildings Insurance

18) The tenants had interpreted the charges demanded from each of them as a request for payment of the total cost of the building insurance. The Tribunal did not agree with this interpretation of the correspondence from the agents, though this issue is now historic. There is no dispute as to the Applicants' liability each to contribute 50% towards the cost of insurance incurred by the landlord, and as to the actual sums incurred and invoiced. These sums appear in any event to have been paid and the level of the premiums has not been challenged.

Building Survey

19) The Landlord is subject to repairing covenants under the lease and the Tribunal does not consider it unreasonable that it should seek to engage a professional to advise on the condition of the building and any necessary works of maintenance or repair. The leaseholders would be liable to contribute to the cost of such professional advice if incurred. However, no such expenditure was incurred in respect of this proposed building survey. The accounts for the service charge year in question (2006) are closed. Where no actual cost is incurred in a particular service charge year, under the terms of the lease no payment can now be due in respect of that item. The Tribunal rejects the inference made by the Respondent's agents that its repairing obligations are suspended pending receipt of funds from the lessees, there being no such provision in the lease.

Interest

20) The Applicants complained that the managing agent had invoiced them for interest charged on outstanding service charge contributions. The Tribunal finds that the lease contains no provision for payment of such interest which accordingly is not payable by the Applicants.

Management Charges

21) The statutory consultation requirements of s.20 of the Landlord and Tenant Act 1985 apply to Qualifying Long Term Agreements, being agreements made by the landlord for a period of more than 12 months. The Applicants did not raise the issue of the absence of consultation over the

appointment of a manager within their written application. Accordingly, the Tribunal did not issue Directions for the parties to make submissions and produce relevant evidence (such as the terms and conditions for the appointment of the agent). Within the hearing bundle is a copy of the instruction of Knighthouse Ltd. dated 11th May 2005 appointing Acland and Lensam as managing agents from 1st April 2005, but there is no evidence this is other than a rolling periodic appointment terminable on notice by either party. On the available evidence the Tribunal is not satisfied that the contract is for a period of more than 12 months and accordingly finds that statutory consultation was not required.

22) The Tribunal was not asked to determine the landlord's entitlement under the lease to charge the fees of a managing agent as a service charge. The managing agents have made little contribution to these proceedings. The service provided to the tenants falls far short of what would be expected by professional managing agents in that they have:

- i. not been making charges in accordance with the lease (half yearly demands in advance).
- ii. provided no budget or explanation as to the service charge for 2007.
- iii. engaged in no maintenance or repair of the building.
- iv. Sought to charge interest which is not recoverable under the lease.
- v. Written for many years to Mr Dare at the wrong address (his parents' address in Somerset).

23) Furthermore, the Tribunal is satisfied on the uncontested oral evidence of Mr Dare that correspondence and numerous telephone calls went unanswered. The agents were not helpful in response to the Tenants ongoing enquiries regarding insurance cover and made no attempt to introduce themselves to the tenants upon being instructed or to explain their charges. Indeed, one invoice for such charges dated 12th June 2007 is incorrectly made out to the lessees for their professional fees and not to the landlord. The

notes on expenditure provided to the Tribunal under cover of its letter dated 24th March 2010 contain a number of contradictions. For example, in more than 1 service charge year sums claimed as interest are referred to as legal and professional fees.

24) Bearing these and all the relevant circumstances in mind, the Tribunal is satisfied that the management charge of £250 per annum plus VAT per property is unreasonable. Considering the shortcomings in the actual level of management provided in respect of this property the Tribunal finds that a reasonable fee for management would be £150 plus VAT per annum for each of the years in dispute and in respect of the entire property.

Building Maintenance

25) It appears from the agent's explanation in the letter of 12th June 2007 to Ms Copeland that the intention was to create a maintenance fund for the Landlord's portfolio. This is not a permissible approach to the management of service charge accounts, and is contrary to the RICS code. If the intention of this demand was to create a sinking fund in respect of these particular premises, then the Tribunal notes that the lease contains no provision obliging the leaseholders to make contributions to a sinking fund. No specific works were proposed or carried out in respect of the subject premises. Accordingly, the Tribunal finds that this sum is not reasonable or payable.

Fire Security

26) The parties are unclear as to whether the entrance hall is indeed covered by the requirements of the Regulatory Reform (Fire Safety) Order 2005 and none has made adequate enquiries. Mr Dare made enquiries in person at a fire station and the Respondent's agent has referred to an intention to seek the advice of counsel but there is no indication this had been obtained. Domestic premises are exempt from the requirements of the Order. "Domestic Premises" means premises occupied as a private dwelling (including any garden, yard, garage, outhouse, or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling). Since the entrance hall and stairs are used in common by the

occupants of more than one dwelling, they do not appear to fall within the definition of domestic premises, regardless of the fact that they are demised to the tenants. Given that the Order places obligations on the "responsible person", the definition referring to persons who have a degree of control over premises, the Tribunal considers that the tenants would be well advised to make written enquiries of the London Fire and Rescue Service or other appropriate body as to the applicability of the Order to these premises and the duties upon the parties.

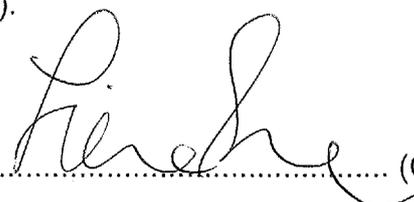
27) As far as liability for the sum charged in year 2008 is concerned, the inspection or work in question was not carried out in that service charge year. Accordingly no contribution is payable in respect of this item.

Fees and Costs

28) It does not seem likely that the Landlord has incurred any costs in these proceedings. The Applicants having succeeded in respect of their application, and bearing in mind the agent's relative lack of participation in these proceedings, which could in the Tribunal's view have been settled by active engagement by the agent with the leaseholders, the following orders are made:

a. The application fee of £100 and the hearing fee of £150 are refunded by the Respondent to the Applicants

b. The lease does not appear to permit the landlord to recover the costs of these proceedings as a service charge. However, to the extent that it does, the Tribunal orders that none of the Landlord's costs in these proceedings may be treated as a relevant cost for the purposes of section 20C (and may not therefore be recovered through the service charge account).

Signed.......... (Chairman)

Dated 12th July 2010