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Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/OOAZ/LSC/2009/0777

Premises:16 Manor Park Parade London SE13 5BP

FINAL DECISIONS OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A and SECTION 20C of the LANDLORD AND TENANT ACT 1985 ('the Act')

Applicants	Ms U Akalawu and Ms J Lusted (leaseholders)
Representation	In person
Respondent	Fairhold Huddersfield Limited
Representation	Ms M Khan (solicitor) employed by Peverel (managing agents) with Ms L Fox (property manager) (Mr Scott, Mr Doherty and Ms Beadle also of Peverel attended the hearing).
Pre-trial review	N/A

Hearing date	Decisions were taken on the papers provided and on the submissions and the evidence given at the hearing held on 7 July 2010. These final decisions were taken without an oral hearing on 5 October 2010.
The Tribunal	James Driscoll, Solicitor (Lawyer chair), Marina Krisko BSc BA FRICS and Leslie Packer
The Decisions Summarised	No charges are recoverable for 2004 from either leaseholder. For 2005 a total of £354.47 is recoverable as service charges from each leaseholder. For 2006 a total of £574.93 is recoverable as service charges from each leaseholder. For 2007 a total of £609.40 is recoverable as service charges from each leaseholder. For 2008 a total of £636.38 is recoverable as service charges from each leaseholder. For 2009 a total of £607.25 is recoverable as service charges from each leaseholder. No order is made under section 20C of the Act in relation to the respondent's costs in relation to these applications. The respondents are to reimburse the applicants in the sum of £350 for the application and hearing fees.
Date of the final decisions	25 October 2010

INTRODUCTION

1. These are applications by the leaseholders of flats A and B in the subject premises for determinations of service charge for the years 2004, 2005, 2006, 2007, 2008 and 2009. The tribunal heard the applications on 7 July 2010 but the hearing had to be adjourned part-heard as those advising the respondents were unable to provide full information in response to the challenges to the charges. Those representing the respondents sought the adjournment.

2. These are applications for the determination of service charges for the years 2004, 2005, 2006, 2007, 2008 and 2009. As noted in paragraph 1, the applicants are the leaseholders of flats A and B in the subject premises which is a converted terraced house with commercial premises on the ground floor, and flats on the ground, first and second floors of the building. There is a garden at the rear of the building which forms part of the demise of flat A. Under their leases the applicants each pay 25% of the costs of managing the building.

3. In granting the adjournment we made additional directions. Ms Khan a solicitor employed by Peverels attended the hearing (with three of her colleagues) on 7 July 2010. She explained to us that her company, the landlords, the previous agents (Country Estates) and the new agents with the day-to-day management of the premises, Marlborough House Management Group, are all part of a larger corporate structure called Consensus Business Group. She is of the view that the statutory requirements under section 20 of the Act (and in the regulations made under that provision) on long-term qualifying agreements do not apply where companies are associated as they are here. Ms Khan relied on paragraph 3(1) of the Service Charge (Consultation Requirements) (England) Regulations 2003.

4. An additional bundle of documents was prepared by Peverels and sent to the tribunal on 30 September 2010. This bundle contained a Scott schedule, a witness statement relating to the insurance, a copy of the insurance policy and a letter from the applicants. Unfortunately, the bundle (as the applicants point out in their letter) does not comply with the additional directions we gave on 7 July 2010. In particular, it does not contain (as was directed):
   - A statement prepared on behalf of the managing agents dealing with (a) the circumstances in which the management agreement was

entered into in 2004, (b) a copy of any management agreement, (c) a full statement why they consider the consultation requirements in section 20 of the Act do not apply, (d) if they seek a dispensation from these consultation requirements, a statement setting our in full their case for such a dispensation

5. The tribunal reconvened to consider the applications further on 5 October. We conducted this without a hearing (neither party having sought such a hearing) by considering the documents, submissions and other evidence given on 7 July 2010, the additional bundle including the observations on this by the leaseholders.

CHARGES FOR 2004

6. As we suggested at the July hearing, the landlords and their managing agents, having failed to comply with section 20B of the Act by omitting to advise them of the charges within 18 months any charges for 2004, are not recoverable(section 20B(1)).

COSTS OF EMPLOYING MANAGING AGENTS

7. In the absence of the statement or documents referred to in paragraph 1 above we have no alternative but to cap the fees charged by the then managing agents to £100 per leaseholder for each year. The landlords have failed to explain why they either consider that their management agreements are not qualifying long-term agreements or, if they are not, why the consultation requirements should be dispensed with. In the absence of this in accordance with section 20(1) of the Act the recoverable costs are capped.

8. The applicants made several complaints about the poor quality as they saw it of the services provided by the previous managing agents. We noted several errors in the documentation provided at both the July hearing. This coupled with the fact there is little evidence of the premises being managed and the applicant's complaints (which were not contradicted by the landlords) means that in any event we would have determined the maximum recoverable management costs at £100 pa per leaseholder.

COSTS OF INSURING THE BUILDING

9. We have considered the reasonableness of the insurance charges and we took into account the statement made by Mr C Bettinson who is head

of insurance for Estates and Management for the respondents. He states that he considers the costs of the current insurance to be competitive, that there are no claims under the insurance policy for these premises, that the insurance is arranged under a block policy for the portfolio of properties owned by the respondent and that they have approached other insurers whose quotations were not competitive. He also states that no insurance commissions were received for these premises for the service charge years in dispute. Mr Bettinson also submits that landlords are not required to seek to obtain the cheapest quotation and that the applicants have not obtained their own quotations.

10. We accept these submissions and we determine that although the cost of insurance is on the high side the costs are not unreasonable.

OTHER COSTS

11. On the other matters we accept that the cost of electricity (which is supported by receipts) is reasonable for each of the service charges years.

12. We also determine that the cost of having the accounts certified by an accountant is reasonable for the year 2005 to allow the new managing agents to examine the accounts. However, there was no need for subsequent audits and the costs claimed for the other years are not recoverable.

13. On other sundry items of expenditure claimed, we determine that the costs of providing a no smoking sign in the building (as required by statute) of £7 is reasonable. We note that the landlords have conceded that as there is no provision in the leases for recovering interest on late payments, the interest claimed for each service charge year is irrecoverable. However, we do not consider the repairs item claimed for 2009 of providing an out of hours service is recoverable as it is not a repair.

SUMMARY

14. To summarise, for 2004 no charges are recoverable; for 2005 the following charges are recoverable: the costs of insurance of £835.38; electricity charges of £136.54; an audit fee of £182.50 and a management fee of £100. For 2006 the following charges are recoverable insurance charges of £1,763.18, electricity costs of £136.54, (no audit fee is allowed for this year) and a management fee of £100. For 2007, insurance is allowed at £1,901.06, electricity at £136.54, and a management fee of £100 but no audit fee; for 2008 insurance costs of £2,002 are recoverable, repairs at £7 and electricity at £136.54 and a management fee of £100. Again no audit fee is allowable. For 2009, insurance is recoverable at £1,878.66, and electricity at £136.54, repairs at £13.80 are not allowed. A management fee of £100 is also payable.

15. As noted above, the fees of the managing agents are capped at £100 pa for each leaseholder. Even if they were not capped we would have determined them at £100 pa.

COSTS OF THE APPLICATIONS

16. As Ms Khan told us at the July hearing that the respondents will not include their legal costs occasioned by these applications in future service charges we do not need to exercise our discretion to make an order under section 20C of the Act. As we have found substantially in the applicant's favour, and as they had to make these applications we have decided that the respondents should reimburse them for the costs of the application and the hearing fee which comes to a total of £350. This should be paid to the applicants by 30 November 2010. This order is made under regulation 6 of the Residential Property Tribunal (Fees) Regulations 2006.

Chair

James Driscoll LLM, LLB Solicitor (Lawyer Chair)

25 October 2010