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IN THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL
LANDLORD AND TENANT ACT 1985 – SECTIONS 27A & 20C

LON/OOBK/LSC/2010/0013

Premises: 71 A Clifton Hill, London NW8 0JN

Applicant: Mrs. E A Fisher

Represented by: Mr. Fisher (Husband)

Respondent: Dr. M N Rendel

Represented by: In person

Tribunal: Ms. LM Tagliavini, LLM DipLaw, BA Hons,
Barrister & Attorney-at-law- (NY)
Mr. F Coffey, FRICS
Ms. G Barrett, J.P.

Hearing date: 17 May 2010

1. This is an application made pursuant to section 27A of the Landlord and Tenant Act 1985 ("the Act"), seeking the Tribunal's determination of the reasonableness of service charges for the service charge years 2004 to 2010 inclusive. The subject premises comprise a basement flat with its own separate entrance and situate in a converted Victorian house containing two flats and one maisonette.

2. The Applicant is the long lessee of the subject premises pursuant to a lease dated 2nd November 1959, granting a term from 24 June 1958 for a term of 99 years at a ground rent of £25 per annum. Specifically, the Applicant challenged:
 - (i) A lack of copies of insurance certificates;
 - (ii) Lack of service of a Summary of Tenant's Rights and Obligations with service charge demands;
 - (iii) Cleaning charges;
 - (iv) Overpayments of service charge made by the Applicant and not accounted for;
 - (v) Excessive postage and telephone charges;
 - (vi) Timing of service charge payments and demands.
 - (vii) Cost of surveyors report in 2008/09 in the sum of £800 plus VAT @ 15%;
 - (viii) Cost of locksmith incurred in 2009 in the sum of £221.95 inc. VAT.

3. Clause 2(2) of the lease states:

“And also will pay to the Lessor a yearly service charge of Twenty five pounds per annum payable on the same days and in the same amount as the rent reserved and will pay in addition to the said rent and by way of additional rent a sum equal to one quarter of the amount which the cost of the obligations of and the services to be provided by the Lessor in accordance with sub-clauses (3) (4) (5) and (6) of Clause 3 hereof shall in any one year exceed the sum of £100 or the fund of unexpended service charges collected from the al lessees or tenant of part of the said property which shall have accumulated at the expiration of the ye ending on the Thirty first day of December in each year the amount so payable having been certified by the Lessor’s accountant (being either a Chartered or Incorporated Accountant) to be final and binding on both the Lessor and the Lessee and to be payable on the quarter day next following the date on which the notice of such certified amount shall have been delivered to the lessee or left upon the demised premises the said notice to be accompanied by a statement in summary form specifying the relevant particulars whereon the certified amount as aforesaid is calculated.”

4. Clause 3(3) of the lease states:

“That (subject to contribution and payment as hereinbefore provided) the Lessor will unless prevented by circumstances beyond her control keep the entrance passages landing and staircases of the said building well and substantially repaired cleaned and lighted.”

5. The Tribunal had before it a bundle of documents prepared by the Applicant, which included the application, lease and copies of the certified service charge accounts, relevant documents and witness statements. At the hearing of this application it was said on behalf of the Applicant that a sum of £100 had been paid in advance contrary to the terms of the lease. This sum was then wrongly reflected on the service charge accounts as being expenditure. It was said that the Applicant always paid the service charges in accordance with the audited account rather than the provisional figures submitted by the Respondent. The Applicant also submitted that the preparation of audited accounts should be discontinued as she did not want them and did not want to pay for them.
6. The Applicant queried the postage and telephone costs as being excessive, in view of the fact that both parties lived in the building and that they had increased from £7.00 per annum to £28.00 and then £75 per annum. The Applicant stated she was quite happy to pay £10 per annum towards these charges.
7. It was submitted by the Applicant that they had not been served with a summary of the rights and obligations required by statute. Therefore, due to this failure the service charges demanded for 2007, 2008 and 2009 were not due.
8. It was said by the Applicant that the Respondent had incorrectly insured the premises on the basis that all of the premises were sub-let when this was not the case. An alternative quote from Flats Direct had produced a quote of some £600 less than was currently being charged.

9. The Applicant queried the level of cleaning provided and asserted that the passageway leading to her front door should be included in the parts cleaned. Further, that they should not be required to pay for the cleaning of common parts in the "main" building that they did not use.
10. No copy of the surveyor's report had been provided which was said to have been carried out in 2008 and to which, they were being asked to contribute. The Applicant also queried the cost of the locksmith that had carried out work to the main front entrance door in 2009.

The Respondent's Case:

11. The Respondent told the Tribunal that she was not entirely clear about the requirements of the lease and was seeking some clarity from the Tribunal. All original invoices were sent to the auditors for the purposes of audited accounts being prepared in accordance with the terms of the lease.
12. The Respondent accepted that she had not provided a Statement of Tenant's Rights as required by section 21 of the Act (as amended), although Mrs. Fisher had not complained before 2009. The Respondent conceded she should serve such a statement and comply with all statutory requirements.
13. The Respondent told the Tribunal that because the lease provides for payment of service charges in excess of £100 per annum in arrear, this caused her some difficulties. The

Respondent had been unaware that the insurance was based on the flats being sub-let. When this was made known to her in 2006 she rectified this and put the refund of £275.59 into the "house" service charge account and credited in that way in the necessary percentage to the Applicant.

14. The Respondent told the Tribunal that since 2004 she had used the services of a broker in order to obtain the best competitive quote. For this service a small administration fee was charged but the broker did not receive any commission. A claim had been made when the small side roof had leaked and had to be completely repaired and the carpet replaced
15. Cleaning costs amounted to £7.00 per week or £1.75 due from the Applicant. For this, the cleaner cleans the internal entrance hall, stairs and landings. As there is no power point in the hall the Respondent allows the cleaner to use her electricity, which equates to £5.00 per annum for use of the vacuum. The Respondent stated that bins for the flats were provided, but she did not believe she had any obligation to have these cleaned as claimed by the Applicant.
16. The Respondent also told the Tribunal that she had commissioned a surveyor recommended to her with a view to carrying out exterior works of repair and redecoration. As it is a big house with additions made to it, and in a conservation area a qualified surveyor's report was needed. In this instance he had been at the premises over 1^{1/2} hours and had also inspected the roof.

17. The main front entrance door had been repaired because it was not staying shut. The Respondent had rung a locksmith as a matter of urgency who had replaced only the internal part of the lock so that the original keys continued to work.
18. Increased postage and telephone costs had arisen because of the increased correspondence over the issues of insurance, surveyor and building works. The Respondent stated she charged for the cost of printer's ink, stationery and electricity used for producing the correspondence. The large increase in these costs had been occasioned some years ago when external works of redecoration were carried out.

The Tribunal's Findings:

19. The Tribunal finds the following:
 - (i) The cleaning charges are reasonable and allows the sums claimed in full. The Tribunal is not persuaded that either the passageway leading to the Applicant's flat or the bins are the (cleaning) responsibility of the Respondent. The Tribunal finds however, that communal cleaning costs are provided for in the lease to which the Applicant is required to contribute even where they may not directly utilise that part e.g. Front entrance door, hall and stairs.
 - (ii) The costs for postage and telephone are excessive and not provided for under the terms of the lease.
 - (iii) Insurance premiums are reasonable and the Tribunal is satisfied that any refund made has been properly

accounted for to the benefit of all lessees. The use of the services of a broker indicates to the Tribunal that the Respondent recognises the need to obtain comparative quotes and achieve cost effectiveness.

- (iv) The costs of the surveyor's report are part and parcel of the landlord's repairing covenants. Costs are allowed in full as the Tribunal is satisfied from the draft specification produced that these costs have been reasonably incurred and are within the bounds of what can be considered reasonable.
- (v) The Tribunal finds that the cost of the repair to the lock to be reasonable and payable in full.
- (vi) The Tribunal finds that the service charge accounts have been poorly prepared which leaves parties unnecessarily confused. The Tribunal allows only 50% of these costs for the relevant years 2004-2010 (inc). The issue of the £100 being added then subtracted from the accounts should be rectified in the future. This sum cannot be added then subtracted, as it is not properly a service charge but a sum payable in respect of itemised service charges.
- (vii) It was conceded by the Respondent that service charge demands had not been accompanied by the notices required since 2007. However, the Tribunal finds that as the Applicant has been made aware of these charges in the relevant years, the re-serving of demands accompanied by the relevant notice makes all sums properly demanded (subject to the Tribunal's findings) due and payable. On service of the proper notices the Applicant may not continue to withhold the amounts demanded.

Section 20c & reimbursement of fees

20. The Tribunal finds that the lease does not allow for the recovery of costs, and therefore the costs of this litigation before the LVT cannot be added to the service charge accounts. In light of the findings above the Tribunal does not consider it either reasonable or appropriate to direct that the Respondent be required to reimburse either application or hearing fee to the Applicant or make any other order for costs.

Chairman: LM Tagliavini

Dated: 23/6/10