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HM Courts & Tribunals Service

Residential Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL Eastern Region

LANDLORD AND TENANT ACT 1985 Sections 27A and 20C ("the Act")

CAM/26UG/LSC/2011/0159

Property:	**1 – 4 Archington Court, Oswald Road, St Albans Herts AL1 3AQ**
Applicant:	**Paul Thistlethwaite (flat 1); Paul Nolan (flat 2); John Singleton (flat 3); Claire Pinney (flat 4)**
Respondent:	**Twinsectra Limited**
Representatives:	**For the Applicants - Mr Thistlethwaite For the Respondent - Mr N R Bone FRICS**
Date of Application:	**28th November 2011**
Date of Directions:	**8th December 2011**
Tribunal Members:	**Mr Andrew Dutton - chair Mrs Helen Bowers MRICS**
Date of decision:	**20th February 2012**

DECISION

The tribunal determines that the cost of terrorism cover is included in the Insurance Premium which was the subject of an agreement reached between the parties and that therefore the additional sum for terrorism cover is not recoverable for this year in dispute. The sum claimed in respect of the Health and Safety and Fire Risk Assessment report in the sum of £587.50 is not recoverable for the reasons set out below. The tribunal determines that the Respondent should reimburse Mr Thistlethwaite the application fee of £100 within 28 days. An order under section 20C is made preventing the Respondent from recovering the costs of these proceedings as a service charge. No order is made under schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002.

REASONS

BACKGROUND

1. This application was made by the Applicants seeking a determination of the service charges for the year 2011 -12. The dispute centred around the interpretation of an agreement reached in compromising a previous application to the tribunal under case reference CAM/26UG/2010/0158. After without prejudice correspondence the Respondent's managing agent Mr Nigel Bone of NRB wrote in a letter dated 19th January 2011 as follows;
   "As you are no doubt aware Paul Thistlethwaite acting on your behalf has negotiated a settlement to the Insurance Premium dispute. The agreement reached is the reduction in the premium for 2008/9, 2009/10, 2010/11 and 2011/12 to £504.00 for each year...."
2. The question as to whether the fee for the Health and Safety Assessment Report was recoverable rests, on the Applicants case, on the provisions of section 20B.
3. The parties have had the opportunity of lodging written submissions to enable us to consider this matter as a paper determination. Mr Thistlethwaite sent in submission dated 9th January 2011, which had followed a letter from him dated 12th December 2011 addressing the question of the reimbursement of fees and costs. This submission also included insurance quotes intended to stand as comparables to the actual sum charged by the Respondent. Mr Bone had lodged his client's case papers under cover of a letter dated 20th December 2011 which explained its position on the issues in dispute. We have read both sets of papers in reaching our determination in this matter and borne in mind all that has been said. We have also considered the provisions of section 18, 19, 20B and 27A of the Act, the wording for which is attached. At our invitation the parties were asked to write on the question of costs and we received letters from Mr Thistlethwaite dated 10th February 2012 and from Mr Bone dated 15th February 2012, the contents of which were noted by us.

FINDINGS

4. We have noted the terms of the agreement. It seems to us that the Applicants had intended that the sums to be paid for the Insurance Premium would not exceed £504 for the years which formed the period of compromise. The apportionment of the premium is not dealt with on a straight equal basis but this apportionment does not appear to be in dispute. The Respondent has only

charged £504 and the issue is whether the additional sum of £161.46 is due and owing for terrorism cover. We find it is not. Our reasons are that it is reasonable for the Applicants to assume that the compromise in respect of the Insurance Premium would include any claim for terrorism cover. As the party in effect accepting the lesser sum it seems to us it is for the Respondent to ensure that any additional sum it might wish to recover for insurance for these years is clearly highlighted to the Applicants. We do not accept that in using the phrase "Insurance Premium" it would exclude terrorism cover. In the without prejudice email dated 31st January 2011, which somewhat surprisingly is after the letter confirming the settlement, no mention is made of any additional sum in respect of terrorism cover. That was the time to do so and the Respondent did not. We cannot comment on the intentions of the Respondent in this regard but we accept the submissions made by Mr Thistlethwaite on behalf of the Applicants that they thought the compromise settled the insurance position for the years in dispute. The lease, at the 5th Schedule sets out the basis of the insurance cover, including the terms *"and such other risks as the Lessor may deem prudent..."*. It seems to us unreasonable to deem it "prudent" to add terrorism cover in the year when a compromise has been achieved. That is not to say that such cover cannot be added for future years.

5. The lease has little in the way of Landlord's obligations. It is a tenants' repairing lease now that the four units have been let on long leases. There is no provision for the Respondent to recover the Risk Assessment fee. It does not appear as an expense in the Landlord's covenants. The question as to whether or not section 20B applies would not seem to apply. We do note however, that, contrary to the submissions of Mr Bone that the demand was not sent until recently, the disclosed email from Mr Smith of 4site implies that the demand was sent at the time of the report and apologies for the "lack of reminders". It would seem to us that the costs had been incurred in May 2008 and if it were necessary to make a finding in respect of the section 20B issue we would have found that the section did apply as it seems the Respondent knew of the liability in May 2008 but did not demand payment until 2011. Accordingly for the reasons stated above we disallow this fee.
6. The Applicants ask for compensation in costs, that the Respondent and its managing agents should act "effectively and professionally in future" and that the costs of these proceedings should be recovered as a service charge. We have no control over the actions of the respondent or its managing agents, save for where they lie within our jurisdiction. If the Applicants are unhappy with the present managing agents there are other remedies open to them.
7. In so far as the costs of these proceedings are concerned we find as follows. It seems to us that there is some argument that Respondent has acted in a frivolous and unreasonable manner as provided for in the Commonhold and Leasehold Reform Act 2002 in these proceedings. We do consider that the Respondent should have acted appropriately in connection with the insurance issue and should have realised, from a review of the lease, that the Risk Assessment fee was not recoverable. The costs we can award are limited to £500. However, it does not seem to us that the time spent by Mr Thistlethwaite is a "cost incurred". No indication has been given of actual out of pocket expenses and in the absence of such evidence we are unable to make any award under the 2002 Act. We find that the Respondent's actions, or inactions means that they cannot recover the costs of these proceedings, firstly because we cannot see that the lease allows it and secondly because it would be inequitable and unreasonable to allow them to do so in any event. Accordingly an order under section 20C is made. On the question of reimbursement of fees, for the same reason that we have disallowed the Respondent the recovery of any costs as a service charge we find that it should reimburse the Applicants, in

particular Mr Thistlethwaite the application fee of £100, which should be done within 28 days. If it is not, he is entitled to offset that sum against any future service charge demand, which should be confined to the terms of the lease.

20th February 2012

Andrew Dutton - chair