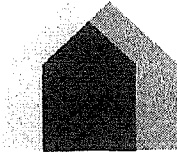


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DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

THE LANDLORD AND TENANT ACT 1985 (as amended), Section 27A

Case Reference: LON/000AH/LSC/2012/0003

Premises: 84c Sumner Road, Croydon CRO3LJ

Applicant: Michael John Parfitt

Respondent: Gateway Property Management

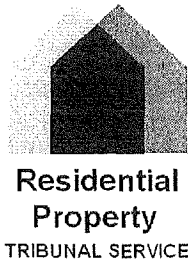
For the Applicant: Mr M J Parfitt

For the Respondent: Mr B Day Marr, Gateway Property Management
Mr Marelli, Lorica Insurance Brokers

Leasehold Valuation Tribunal:

Miss A Seifert FCI Arb
Mr H Geddes JP RIBA MTPI
Mr A D Ring

Date of decision: 26th July 2012



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Applicant: Michael John Parfitt

Respondent: Gateway Property Management

Attendances:

For the Applicant: Mr M J Parfitt, the applicant

For the Respondents: Mr B Day Marr MIRPM, Gateway Property Management
Mr Marelli DIPCI, Lorica Insurance Brokers

Preliminary

1. The applicant, Mr Michael John Parfitt, applied the Tribunal under S27A of the Landlord and Tenant Act 1985 (as amended) ("the Act"), for a determination of liability to pay and reasonableness of service charges under S27A and S19 of the Act.
2. In the application 84c Sumner Road ("84c") is described as a two storey terrace house, one of two houses (84b and 84c) which were built on the rear garden of 84 Sumner Road in 1996. It was stated that the accommodation at 84c comprised two bedrooms on the first floor and a lounge, kitchen and bathroom/w.c. on the ground floor. The landlord of the premises is Westleigh Properties Ltd, and the respondent is the managing agent of the landlord.

3. A copy of the lease of 84c was provided ("the lease"). This was dated 15th March 1996 and was for the term of 999 years. This included a plan ("the lease plan").
4. The lease contained covenants by the tenant in the fourth schedule for the payment by the tenant of a fair proportion of the reasonable and proper and necessary expense to the landlord of performing the obligations and covenants on its part and performing the services and amenities specified in the seventh schedule to the lease.
5. The obligations of the landlord included under the fifth schedule, an obligation to insure and keep insured to the full reinstatement value the Estate, including the building (84c) against various named risks and also such other risks as the landlord may deem desirable. The Estate included 84b and 84c as stated in the first schedule and as shown edged green on the lease plan.
6. The fifth schedule contained a covenant by the landlord to maintain and decorate the exterior of the building (84c) and the retained premises as defined in the second schedule.
7. The seventh schedule contained the landlord's costs, expenses and outgoings in respect of which the tenant was to make a contribution by way of the service charges (payable as additional rent). This included the reasonable cost of complying with the landlord's obligations set out in the fifth schedule.
8. The service charge years in issue are 2008/9, 2009/2010, 2010/2011. The service charge year is from 30th September to 29th September in each year. The applicant also sought a determination in respect of the current service charge year.
9. The applicant made an application under S20C of the Act in his application form.
10. A hearing was held which was attended by Mr Parfitt, who gave oral evidence and made submissions. The respondent was represented by Mr B Day Marr of Gateway Property Management who also gave oral evidence and made representations. Mr Marelli of Lorica Insurance Brokers ("Lorica") also attended and gave oral evidence on behalf of the respondent. The Tribunal was informed that Lorica acts for the freeholder and that Gateway Property Management has nothing to do with the insurance in respect of the premises.
11. The areas of dispute at the hearing were:
 - (i) Building insurance
 - (ii) Repairs and maintenance including health and safety report.
 - (iii) Reserve fund

12. Building Insurance

12.1 2008/2009 (year ending 29th September 2009)

The charge for building insurance for 84c was £342 (excluding terrorism cover).

The service charge expenditure for the year ended 29th September 2009 (page 32 of the hearing bundle) showed insurance charges of £684.00 for 34b and 34c which equated to £342 in respect of 84c.

A document on page 36 of the hearing bundle showed the building insurance as £683.70 for both properties which equated to approximately £342 for 84c.

The property owner's insurance certificate for the period 28th September 2009 to 27th September 2010 (page 43 of the hearing bundle) showed the premium as £683.69 for 84b and 84c. There was no terrorism cover and no home assistance cover.

Mr Parfitt said that the sum initially claimed for insurance for 2008/2009 was £367.00, but that this was reduced to £341.85 after adjustment by the removal of terrorism and home assistance for that year. It was noted that the property owner's insurance certificate showed that there had been a premium adjustment.

Mr Marelli submitted that this insurance had been arranged by the landlord's previous broker.

12.2 2009/2010 (year ending 29th September 2010)

The charge for building insurance for 84c was £367 (including terrorism cover).

The service charge expenditure for 84 Sumner Road for the year ended 29th September 2010 (page 69 of the hearing bundle) showed insurance charges of £734.00 for 34b and 34c, which equated to £367.03 in respect of 84c.

An insurance certificate for the period 28th September 2010 to 27th September 2011 (page 51 of the hearing bundle) showed the total premium payable for 84b and 84c as £734.06. The premium breakdown showed the premium as £683.69 and terrorism premium as £50.38.

12.3 2010/2011 (year ending 29th September 2011)

The charge for building insurance was £381.50 (incurring terrorism cover).

The service charge expenditure for the year ended 29th September 2011 (page 78 of the hearing bundle) showed insurance charges of £763.00 for 34b and 34c, which equated to £381.50 in respect of 84c.

The Service charge accounts for 84 Sumner Road for the year ended 29th December 2011 included service charge expenditure for buildings insurance as £763.00 (page 78 of the hearing bundle).

The property owner's insurance certificate for the period 28th September 2011 to 27th September 2012 for 84B and 84C Sumner Road showed a total premium payable of £763.29. In the premium breakdown the premium figure was £701.91 and terrorism premium was £52.38.

12.4 2011/2012 (year ending 29th September 2012)

The charge for 2011/2012 was based on a Statement of Anticipated Service Charge Expenditure on page 89 of the hearing bundle. The estimated charge for buildings insurance was £684.00 in total for 84b and 84c. This equated to a charge for 84c of £342.00.

13. The Tribunal's findings and conclusions – Building insurance

- 13.1 Mr Marelli considered that terrorism cover was 'essential' throughout the UK and that this amounted to only about £50 per year. Mr Parfitt said that the cover for terrorism had been removed for the service charge year 2009/2010, but was reinstated in 2010/2011. He submitted that the inclusion of terrorism cover was inappropriate.
- 13.2 Having considered the evidence and submissions, and having regard to the terms of the landlord's obligation to insure in the lease, the Tribunal has come to the conclusion that the landlord was justified in insuring against terrorism.
- 13.3 Mr Parfitt also considered that the commission of 25% payable to the insurance brokers was excessive. Mr Marelli confirmed that this was the percentage of commission payable. The Tribunal considers that the insurance commission of 25% is within the reasonable bracket.
- 13.4 Mr Marelli said that the landlord owns 1600 properties. There is a block policy for all of the landlord's property. In respect of the cover for the contents of the common parts, he said that all the policies include this and this was not charged for separately. Mr Marelli said that there was a separate insurance certificate for 84b and 84c.
- 13.5 Mr Parfitt submitted that the insurance policies entered into may be suitable for a block of flats but are not suitable for the premises, a two storey house.

- 13.6 He submitted that the level of cover and charges for insurance were excessive. Mr Parfitt considered that he has been charged an excessive amount for insurance. Mr Parfitt contended that the insurance covers items which were not relevant to a single house. He referred to the insurance documents contained in the hearing bundle. For example, he submitted that the definition of 'Contents of Common Areas' (page 95 of the hearing bundle) was not appropriate for the insurance of the premises. This included contents belonging to the 'insured' for which the 'insured' is legally responsible comprising furniture, furnishings, carpets and other Property in the common hall, stairways and other common parts (including storage rooms and compartments) of the Premises (subject to exclusions). The inclusion of this type of provision indicated that the policy is excessive for a residential house.
- 13.7 Mr Marelli disputed that this was the wrong sort of insurance policy for 84c, and said that this is a bespoke policy to cover flats and houses. However, he did accept that there were some differences between the requirements for different categories of property, for example there was a greater risk of leakages from flats than houses.
- 13.8 When asked by the Tribunal whether he agreed that there were extra risks in respect of a block of flats which are more extensive than those which applied to a terrace house, and that cover could be obtained in the open market for less for a terrace house, Mr Marelli agreed that this was correct. Also, when asked by the Tribunal whether he agreed that there are different types of risk in respect of a block of flats than a terrace house, and that it was possible that Mr Parfitt could have obtained cover from Lloyds or another reputable provider for less cost for insurance which suited the subject property better, Mr Marelli agreed. However, he stated that there were items 'thrown in for free' with the type of policy which had been entered into.
- 13.9 Mr Parfitt produced no specific comparable evidence of the cost of insurance had the premises been insured separately as a two storey terrace house. Mr Parfitt said he has a contents policy at about £350 per annum. He said that he had checked with his insurance broker and considered that for an extra £150 he could insure the fabric of the premises.
- 13.10 Mr Marelli considered that this sounded 'cheap', but said that he was unable to check this. He was unable to provide an assessment of the cost of insuring the premises separately, rather than as part of a block policy. However, his 'guestimate' was between £250 and £1000 for a combined fabric and contents policy.
- 13.11 The Tribunal considers, having regard to the evidence of Mr Marelli, that the charges for insurance contained elements which were not appropriate to the insurance of one or two dwelling houses. The Tribunal noted that the insurance covered such matters as landlord's

contents, although there was no evidence of any landlord's contents. It was considered that the general risk assessment for a block of flats was more than for a house. Mr Marelli accepted that there was a lower risk in respect of a house or houses. The Tribunal has taken into account the benefits perceived by Mr Marelli as a result of the purchasing power of a block policy. However the Tribunal considers that the disadvantages of the insurance being part of a block policy outweigh the advantages he described in the circumstances of this case.

13.12 To reflect the evidence and using its knowledge and experience, the Tribunal considers that the charges for insurance in the service charge years in issue are unreasonable. The Tribunal considers that the reasonable charge would be achieved by reducing the charge for insurance in respect of 84c by £100 for each of the service charge years in issue. The Tribunal considers that insurance for fabric only in the region of £250 was within the general range referred to by Mr Marelli.

13.13 Accordingly, the Tribunal finds that following sums are payable (unless already paid) by Mr Parfitt to the landlord in respect of building insurance.

Service charge year	£
2009/2009	242.00
2009/2010	267.00
20010/2011	281.50
2011/2012 (estimated service charge)	242.00

14. Repairs and Maintenance, Health and Safety and transfers to the reserve fund

14.1 2008/2009

The service charge expenditure document in respect of year ending 29th September 2009 (page 34 of the hearing bundle) showed that no costs were incurred or charged in respect of repairs and maintenance and health and safety in that service charge year.

The service charge account showed there was a transfer to the maintenance reserve fund of £783 in respect of 84b and 84c (page 33 of the hearing bundle). The sum referable to 84c was therefore £391.50.

14.2 2009/2010

The service charge expenditure document in respect of the year ending 29th September 2010 (page 69 of the hearing bundle) showed no costs

were incurred or charged in respect of repairs and maintenance or health and safety in that service charge year.

The service charge account showed there was a transfer to the maintenance reserve fund of £1,640 in respect of 84b and 84c (page 68 of the hearing bundle). The sum referable to 84c was therefore £820.00.

14.3 2010/2011

The service charge expenditure document in respect of the year ending 29th September 2011 (page 78 of the hearing bundle) showed no costs were incurred or charged in respect of repairs and maintenance or health and safety in that service charge year.

The service charge accounts showed that was a transfer to the maintenance reserve fund of £622.00 in respect of 84b and 84c (page 77 of the hearing bundle). The sum referable to 84c was therefore £311.00.

14.4 2011/2012

The Statement of Anticipated Service Charge Expenditure (page 89 of the hearing bundle) showed an estimated figure of £714.00 for repairs and renewals. The sum referable to 84c was therefore £357.00.

15. The Tribunal's findings and conclusions – repairs and maintenance, Health and Safety and transfers to the reserve fund

15.1 It was common ground that no repairs or maintenance works had been carried out in the service charge years in issue. There was no expenditure by the landlord on health and safety.

15.2 Under the fifth schedule to the lease of 84c (covenants by the landlord with the tenant), the landlord covenanted in paragraph 7 "To provide a reserve fund for future expenditure in accordance with Clause 4(ii) hereof if reasonably required in accordance with advice tendered by the Landlords Managing Agents or Surveyor."

15.3 Clause 4(ii) includes detailed provisions for the creation of a reserve fund by the landlord in its reasonable discretion for specified purposes (in order to provide for the renewal of equipment and materials required for the provision of the services and amenities provided for by the lease and carrying out works other than those of an annual recurring nature). This provides that this sum should be set aside by the landlord and utilised only for the purpose for which it was so allocated. The clause also provided that the amount payable be included in the estimated service charge under paragraph 2 of the fourth schedule.

- 15.4. Mr Day Marr said that there had been no expenditure on health and safety or on repairs and maintenance. At the end of each of the service charge years, instead of crediting the balance paid by Mr Parfitt in respect of estimated charges for repairs and renewals etc., these amounts were transferred to the reserve fund.
- 15.5 Mr Day Marr said that on behalf the landlord, he had agreed with Mr Parfitt to refund his proportion of the sums in the reserve fund referable to 84c which are in excess of £500. He also agreed on behalf of the landlord to maintain the reserve fund at a limit of £500 in total for 84b and 84c.
- 15.6 Mr Parfitt agreed to the proposal that the reserve fund would be reduced to £500 and that he would be credited with his proportion of the sums in excess of this figure in the reserve fund.
- 15.7 The Tribunal considers that the anticipated charges for repairs and maintenance were excessive and unjustified on the evidence, as no repairs and maintenance or health and safety expenditure has been incurred in the relevant service charge years. There has been no balancing credit to Mr Parfitt at the end of the service charge year.
- 15.8 The Tribunal acknowledges the concession by Mr Day Marr and determines that:
- (i) For the service charge year 2011/2012 the credit balance in the reserve fund will be limited to £500 in total for 84b and 84c.
 - (ii) Any balances currently in the reserve fund in excess of £500 will be shown as credited to the service charge account in the proportions charged.
- 15.9 Clause 4(ii) of the lease governs the reserve fund. However it is noted that Mr Day Marr has indicated that it is anticipated that for the foreseeable future the reserve fund balance will be limited to £500 in total.
16. Section 20C application
- 16.1 Mr Parfitt applied under S20C of the Landlord and Tenant Act 1985 (as amended) for an order that all of the costs incurred by the landlord in connection with the proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by him.
- 16.2 Mr Day Marr said that it was not the landlord's intention to claim such costs.
- 16.3 The Tribunal acknowledges Mr Day Marr's concession. However, the Tribunal, for the avoidance of doubt, makes an order under S20C, if and in so far as such costs are recoverable under the lease. The

Tribunal considers that Mr Parfitt was justified in making the application and that it is reasonable to make a S20C determination in this case.

Anne Seifert

Chairman: A Seifert

Date: 26th July 2012

Leasehold Valuation Tribunal:

Miss A Seifert FCI Arb
Mr H Geddes JP RIBA MRTPI
Mr A D Ring