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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER [SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985] [&
SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002]

Case Reference: LON/00A~~J~~/LSC/2012/0412

Premises: Southall Court Lady Margaret Road UB1 2RG

Applicants: 21 of the Long Leaseholders of Southall Court
(see annex)

Representative: Mr Raghbinder Guraya lessee of Flat 4
represented the Applicants

Respondent: Southall Court (Residents) Limited

Representative: Mr P Ward Chairman and Director of the
Respondent

Date of hearing: 5th November 2012

Appearances for Applicants: Mr Raghbinder Guraya (Flat 4)
Mr Rohit Makwana (Flat 33)
Mr A Tiwari (Flats 9 & 10)
Mr J Walsh representing Mrs Walsh (flat 17)

Appearance for Respondent(s): Mr P Ward

Leasehold Valuation Tribunal: Dr Helen Carr
Mr Chris Gowman BSc MCIEH
Mr Leslie Packer

Date of decision: 20th November 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £2367.88 is payable by each of the Applicants in respect of the service charges demanded on the invoice dated 7th June 2012.
- (2) A further £3,378.12p is payable when the conditions set by the LVT decision are met.
- (3) The Tribunal makes the determinations as set out under the various headings in this Decision
- (4) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.
- (5) The Tribunal determines that the Respondent shall pay the Applicants £500 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicants.

The application

1. The Applicants seeks a determination pursuant to s.27A and s.20C of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the reasonableness and payability of the service charges demanded by the Respondent in an invoice dated 7th June 2012.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicants were represented by Mr Ragbinder Guraya at the hearing. He was accompanied by Mr Walsh, Mr Makwana and Mr Tiwari each of whom contributed to the proceedings. The Respondent was represented by Mr P Ward Director and Chairman of the Respondent company and a barrister.

The background

4. The property which is the subject of this application is a block of 48 flats, it is a three storey building constructed in 1936 and is built around three sides of a rectangular courtyard. The main entrance to the courtyard and surrounding buildings is via a gated archway, which is provided with a CCTV security camera. The external brickwork and pointing to the block are in reasonable condition, from what the tribunal could see from ground level the roof appeared to be in good condition as did the associated rainwater goods. The Tribunal viewed one of the communal entrance ways and stairwells and

observed that smoke alarms had been fitted and the general décor whilst looking tired was in a fair condition.

5. The Tribunal inspected the property after the hearing. Neither the Applicants nor the Respondent was present during the inspection.
6. The Applicants each hold a long lease within Southall Court. Each lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The issues

7. At the start of the hearing the parties clarified for the Tribunal that the issues requiring determination all arose from the invoice served by the Respondent upon the Applicants dated 7th June 2012. Following concessions by the Respondent the following issues remained outstanding:
 - (i) The contribution to the Sinking Fund for 2012/13 of £342.00 per Applicant
 - (ii) Contribution to building insurance for 2011/12 of £287.62 per Applicant
 - (iii) Maintenance charge for 2007 – 8 which was invoiced at £503.28 per Applicant but for which the Respondent is now claiming £3,378.13p per Applicant
 - (iv) Maintenance charge for 2008 – 9 of £532.48 per Applicant
 - (v) Maintenance charge for 2010 – 11 of £1,238.26 per Applicant
8. The Tribunal is aware of the history of litigation in connection with Southall Court. For the purposes of this application that history is relevant only so far as previous decisions have a direct impact upon the arguments put by the parties.
9. Having heard evidence and submissions from the parties and considered all of the documents provided, and following its inspection, the Tribunal has made determinations on the various issues as follows.

The contribution to the Sinking Fund for 2012/13 of £342.00 per Applicant

10. The Applicants argue that the contribution to the Sinking Fund for 2012/13 of £342 per Applicant is not payable for a number of reasons:
 - (i) It is not payable all at once but in two halves

- (ii) The obligation to pay the sinking fund contribution is subject to an overarching obligation within Schedule 4 of the lease to provide audited accounts
 - (iii) The calculation of £342 is based upon an incorrect interpretation of the relevant term of the lease.
11. The argument in connection with the calculation of the Sinking Fund contribution was not made in the statement within the bundles. What the Applicants argue is that the correct interpretation of the lease requires the increase in RPI to be applied annually to £300 rather than, as the Respondent reads the lease, being applied to the previous year's figure.
 12. The Respondent argues that whilst the lease allows payment in two equal instalments it does not require that the demand is made in these terms. The invoice makes it clear that a post-dated cheque can be provided for the second half of the contribution.
 13. He also argues that the obligation to contribute to the Sinking Fund is a distinct obligation within the lease and is not dependent upon the provision of audited accounts.
 14. The Applicants respond that if they do not know where their money is going they are unwilling to provide post-dated cheques.

The Tribunal's decision

15. The Tribunal determines that the amount payable in respect of contribution to the Sinking Fund for 2012/13 is £342.

Reasons for the Tribunal's decision

16. The Tribunal agrees with Mr Ward's interpretation of the lease and rejects the arguments of the Applicants in respect of the calculation and payability of the Sinking Fund Contribution and finds that the invoice provides for the payment of the sum in two equal instalments thus complying with the requirements of the lease.

Contribution to building insurance for 2011/12 of £287.62 per Applicant

17. The Applicants argue that there has been an unacceptable increase in the insurance premiums for the block. In 2008 – 9 insurance charges were only £107.81p per lessee. They understand that the increased costs are as a consequence of a very large insurance claim of £33,000 which was made during that year..

18. They also consider that the insurance is in breach of the lease. They argue that the lease provides that the policy shall be unbiased and unconditional and shall be in the joint names of the landlord and tenant and any mortgagee. They are concerned that there is an exclusion of any lettings to asylum seekers, students or benefit recipients and that the excess has been increased from £100 to £1000.
19. The Applicants were not able to produce any comparative insurance quotations. They informed the Tribunal that this was because they were not apprised of the full details of the insurance cover and would therefore not be able to provide 'like for like' quotations. The Applicants had not formally asked for copies of the policy. They considered that any such request would be ignored because of the history of disputes between the parties.
20. In response to questions from the Tribunal the Applicants said that the nature of the cover had not been raised formally by them with the Respondent company despite the number of years the more limited cover had been in place.
21. The Respondent gave evidence that he obtained the building insurance from a specialist broker who is FSA regulated and who tests the market; leading to a recent change in the insurer: therefore he argues that the premium is in line with market norms.
22. The Respondent accepts that the insurance is conditional and is in the sole name of the landlord. He points to the relevant clause in the lease to substantiate this.
23. The Tribunal referred to the note to the disputed invoice which suggests that the requirement that the insurance is to be in the names of the landlord and the lessee was still in force. The Respondent said that he had failed to update his invoice pro-forma.
24. He agrees that there was a large claim made in 2008 – 9 which related to the flooding of two flats which left them uninhabitable. The residents were housed in temporary portable cabins in the courtyard of the block whilst extremely extensive works were carried out to their flats.
25. The Applicants suggested that these arrangements were inappropriate, that the residents affected were prepared to live in hotels at their own expense whilst the work was carried out and that their own contents insurance should have covered the costs of replacement carpets and furniture.
26. The Tribunal questioned the Respondent about the value of insurance which is conditional upon there being no benefit recipients, students or asylum seekers in the block. The Respondent considered that the cover was consistent with the requirements of the lease, that tenants who were benefit recipients, students or asylum seekers who were living there prior to the changes were

still covered, that the Respondent policed lettings as far as it could, including issuing proceedings in the county court. He also argued that if the insurance was in breach of the lease, which he denied, the proper course for the Applicants was to issue proceedings in the county court for breach of the lease. He also pointed to the fact that insurance claims had been paid out since the change in policy demonstrating that it was not valueless insurance. He commented that unqualified cover would inevitably cost more.

27. In response to a request from the Tribunal, the respondent produced a quotation which showed an allowance for occupation by excluded categories not to exceed 3 out of 48 flats, which had been the situation at the time.

The Tribunal's decision

28. The Tribunal determines that the amount payable in respect of building insurance for 2011/12 is £287.62.

Reasons for the Tribunal's decision

29. The Tribunal drew upon its own expertise and evidence relating to the claims history, the market testing of the insurance by an FSA approved broker, to determine that the sum demanded is reasonable. There was no evidence from the Applicants that contradicted this conclusion.
30. The Tribunal was concerned about the limits on cover provided, but notes that the conditions are endorsed on the policy, that lessees are made fully aware of the conditions, that efforts are made by the freeholder to police sublettings and that insurance is maintained for those tenants who do not sublet to the excluded categories. The Tribunal notes that a successful claim was made despite the limitations on cover. The Tribunal agrees that the insurance is likely to be cheaper as a consequence of the limits on cover.

Maintenance charge for 2007 – 8 which was invoiced at £503.28 per Applicant but for which the Respondent is now claiming £3,378.12p per Applicant

31. The Applicants argue that this money has already been paid. A copy of a cheque paid by Mr Guraya demonstrating this was produced to the Tribunal.
32. The Respondent refers the Tribunal to the decision made by the LVT in connection with these charges which stated that £3,378.13 p was reasonable and payable once the necessary accounts had been provided in the proper format.
33. The Respondent apologised for the error on the invoice and asked the Tribunal not to make a determination on this issue as it had already been determined by a previous Tribunal.

The Tribunal's decision

34. The Tribunal determines that the amount payable in respect of the maintenance charge has already been determined by another Tribunal (case reference LON/AJ/LSC/2008/0591) dated 2nd July 2009.

Reasons for the Tribunal's decision

35. The previous Tribunal decided that a contribution in respect of the maintenance charge for 2007 – 8 of £3378.12 was payable by the lessees following service of a certificate and audited accounts which comply with the requirements of the lease. The Tribunal notes that to date these requirements have not been complied with and therefore the monies are not yet payable.
36. It is not appropriate for this Tribunal to make an additional determination in connection with this sum.

Maintenance charge for 2008 – 9 of £532.48 per Applicant

37. The Applicants argue that this money has already been paid. A copy of a note signed by Mr Ward stating that a cheque had been received that covered this Maintenance charge is in the Applicants' bundle at page 9.
38. The Tribunal notes that this relates solely to Mr Guraya's account. There is no evidence relating to whether or not other Applicants have paid.
39. The Respondent informed the Tribunal that this charge should only be £500 as a result of the LVT decision referred to above ref. LON/00AJ/LSC/2008/059. He agreed that any monies paid by any of the Applicants would be credited to their accounts.

The Tribunal's decision

40. The Tribunal determines that the amount payable in respect of the maintenance charge for 2008 – 9 is £500. Any sums paid by Applicants in connection with this charge must be credited to their accounts.

Reasons for the Tribunal's decision

41. This matter has already been adjudicated by a previous LVT.

Maintenance charge for 2010 – 11 of £1,238.26 per Applicant

42. The Applicants argue that this charge is time barred as a consequence of s.20B of the Landlord and Tenant Act 1985.

43. The Respondent states that notice of these charges was given to the lessees by a notice dated 20th December 2010 which is copied at page 347 of the Respondent's bundle. He notes that £500 of the sum is the advance contribution for 2011/12. What was required was that the lessees were given notice of at least £738.26 of expenditure.
44. The Applicants argue that this is still time barred. They say they should have received notice by 24th December 2010 if one allows the legal notice period of five days that they argue is required then the notice is out of time.
45. The Respondent stated that the notices were hand-delivered on 20th December 2010. Hand delivery to the premises is sufficient notice for the purpose of the legislation.

The Tribunal's decision

46. The Tribunal determines that the amount payable in respect of maintenance charge for 2010 – 11 of £1,238.26 per Applicant.

Reasons for the Tribunal's decision

47. The Tribunal accepts Mr Ward's evidence that the notices were hand delivered and the notices cover slightly more than the amount now sought.


Application under s.20C and refund of fees

48. At the end of the hearing, the Applicants made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that they had paid in respect of the application and hearing. Having heard the submissions from the parties and taking into account the scale of concessions made by the Respondent and the considerable number of inaccuracies in the invoice which is the subject of the application, the Tribunal orders the Respondent to refund any fees paid by the Applicants within 28 days of the date of this decision.
49. The Applicants made an application to have their costs of copying their bundle reimbursed. The Tribunal rejects this application. It considers that it is

appropriate for the parties to bear their own costs for preparing for the proceedings.

50. In the application form the Applicants applied for an order under section 20C of the 1985. Although the landlord indicated that no costs would be passed through the service charge, for the avoidance of doubt, the Tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Chairman:



[name]

Date:

20 November 2012

Premises: Southall Court, Lady Margaret Road, Southall, Middlesex, UB1 2RG

List of Applicants case ref no: LON/00AJ/LSC/2012/0412

Sanjay Kotecha_	Flat 1 Southall Court
Jagdesb Singh Kambo	Flat 2 Southall Court
Rghbinder Guraya	Flat 4 Southall Court
Sunkjot Kaur	Flat 5 Southall Court
Mr& Mrs Tiwari	Flats 9 & 10 Southall Court
Amarjit Singh Dhillon	Flat 11A Southall Court
Muhammad Nadeem Raza	Flat 12 Southall Court
Mohammed Maqsood	Flat 14 Southall Court
Mohindarpal Singh	Flat 15 Southall Court
Mrs P Walsh	Flat 17 Southall Court
Bavinder Singh Ryatt	Flat 19 Southall Court
Gautam Chadha	Flat 23 Southall Court
Manzill Patel	Flat 24 Southall Court
Kuldip Singh Raino	Flat 25 Southall Court
Santhiraegarm Jagatheesan	Flat 28 Southall Court
Bishoy Obaid	Flat 29 Southall Court
Paramjit Singh Goneya	Flat 31 Southall Court
Rohit Makwana	Flat 33 Southall Court
Kulwant Singh Mudhar	Flat 36 Southall Court
Kamal Preet Kaur	Flat 40 Southall Court
Edna Francis	Flat 45 Southall Court

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.

- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.