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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE RESIDENTIAL PROPERTY TRIBUNAL ON AN APPLICATION UNDER THE LANDLORD AND TENANT ACT 1985 SECTIONS 27A AND 20C

Case Reference:	LON/00AQ/LSC/2012/0159
Premises:	119, 222 and 223 Platinum House, Lyon Road, Harrow, Middx, HA1 2EX
Applicants:	Eileen McNamara, Rosemary McNamara, Cormac McNamara and William Moran
Representative:	Eileen McNamara
Respondent:	Miltonland Limited
Representative:	Brethertons Solicitors
Date of hearing:	August 16th 2012
Appearance for Applicants:	Ms McNamara appeared and represented the Applicants
Appearance for Respondent	Mr Ranjit Bhose (counsel)
Leasehold Valuation Tribunal:	Dr Helen Carr Mr Neil Martindale FRICS Ms Jayam Dalal
Date of decision	13th September 2012

Decision of the Tribunal

(1) The Tribunal determines that the service charges demanded for the service charge years ending 2009, 2010 and 2011 are payable and reasonable.

(2) The Tribunal determines to refuse the s.20C application.

(3) The Tribunal makes the determinations as set out under the various headings in this Decision

PRELIMINARY

1. The Applicants seek a determination under section 27A of the Landlord and Tenant Act 1985 (the Act) as amended of the reasonableness and/or liability to pay service charges during the service charge years ending March 2007 – 2011. They also made an application under s.20C of the Act.

2. The application relates to flats 119, 222, and 223 Platinum House (the flats). The flats have two bedrooms each and are part of a portfolio of eight flats which the Applicants own within Platinum House.

3. Platinum House is a seven storey residential conversion from a previously commercial building. It comprises 168 flats in total, 59 of the flats have one bedroom and 106 have two bedrooms. There is one three bedroom flat and two four bedroom flats within the building. Platinum House has the benefit of a leisure centre on the top floor of the building, and provides 140 car parking spaces. There are two lifts in Platinum House. The apportionment of service charges for each two bedroomed flat is 0.56%.

4. The Respondent, Miltonland Limited is the freeholder of the property.

5. The application was received by the Tribunal on 29th February 2012. At an oral pre-trial review on 3rd April 2012 the Tribunal issued directions as to the conduct of the case.

6. The Applicants were represented at the hearing by Ms E McNamara. She was accompanied by Ms H Harman, the Applicants' letting agent, and Mr Donogh Madigan Managing Director of M & C Property Management UK Ltd. Mr Dale Hobbs, another resident of Platinum House, also accompanied the Applicant. The Respondent was represented by Mr Ranjit Bhose of Counsel who was instructed by Brethertons solicitors. Mr Spencer from Brethertons and Mr Robert Shepherd and Ms Helen Eames both from Comer Property Management also attended the hearing. There were two additional observers attending with the Respondents.

The issues

1. The relevant issues for decision by the Tribunal are:

   (i) Whether the insurance premiums demanded in service charge years ending March 2009, 2010 and 2011 are reasonable

   (ii) Whether certain charges made to the service charge accounts during the service charge years in dispute should properly have been covered by insurance or borne by individual lessees.

   (iii) Whether charges levied in respect of the lifts to the building are reasonable

   (iv) Whether the charges levied in respect of the leisure centre are reasonable and payable, and in particular whether those charges should have been subject to the statutory consultation procedure or should have been levied during the period when the Applicants' tenants were denied access to the leisure facilities

   (v) Whether the services to Platinum House has been properly run by the Respondent, in particular

      a. Whether charges for the concierge services are unreasonably high given the quality of service provided

      b. Whether the charges for cleaning are reasonable

      c. Whether the management fees are reasonable

      d. Whether the charges made for electrical repairs are excessive

   (vi) Whether utility bills are payable by the lessees

2. Having heard evidence and perused the documents provided, the Tribunal has made determinations on the issues as follows.

Insurance charges

3. The Applicant argues that the insurance premiums for the years in dispute are unreasonably high. Ms McNamara has obtained a quotation from Aon which gave a provisional figure of £33,334.88 including tax. Ms McNamara also pointed to another building owned by the Respondent where the RTM company cut the costs of insurance substantially.

4. Mr Shepherd, on behalf of the Respondents, gave evidence that the freeholder market-tested the insurance cover. It uses AA rated insurance companies. Whilst it insures each of its properties individually it puts the policies through the same insurer so that premiums are minimised. It takes no commission on its insurance business.

5. Mr Shepherd explained the high level of premiums on the poor claims history of the property. Claims are running at approximately 55% of the premium value. He also argued that the quotation from Aon was not on a like-for-like basis. The excess for instance was £1000 whereas the current policy provided for an excess of £250. He also noted that the quotation was provisional pending the current claims history and a survey of the building. Ms McNamara pointed out that the reason for the lack of a current claims history was that this information had not been forthcoming from the Respondent.

6. The Tribunal noted the lack of terrorism cover in the quotation provided by the Applicant. Ms McNamara was prepared to concede that in view of the differences between the provisional quotation from Aon and the current policy a premium of £37,000 for the property would be reasonable.

The Tribunal's decision

7. The Tribunal determined that the insurance premiums demanded for the years in question by the Respondent are reasonable and payable.

Reasons for the Tribunal's decision

8. The Tribunal considered the evidence before it carefully. It understood the frustration of the Applicants who were clearly struggling to understand why insurance costs were so high. Nonetheless it considered that the premiums charged were reasonable considering the claims history of the building and drawing upon its own knowledge of the insurance market. The Applicant must bear in mind that the responsibility of the Respondents is not to find the cheapest insurance but to behave reasonably in its choice of insurer and level of cover. It appears that the insurance payable per flat is around £200 per annum. The Tribunal considers that this is reasonable considering the type of building, the facilities provided and the claims history of the building.

Charges made inappropriately to the service charge account

9. The Applicant argued that certain charges made to the service charges accounts in the years in dispute should properly have been borne by individual lessees or alternatively covered by insurance claims.

10. Ms McNamara produced a table of charges levied in 2009 and 2010 for work which she claims should have been covered by insurance claims and a

second table setting out those charges which she considers should have been met by individual lessees.

11. Mr Shepherd gave evidence that he considered that all the charges were appropriately charged to the service charge account. He argued that most of the charges in the first table arose from wear and tear which would not be covered by insurance. He also gave evidence that the management company sometimes decided that it made more sense to charge work to the service charge account rather than deal with the stress and the timescale of making claims. With regard to the second table he considered that most of the charges were appropriately made to the service charge account. He did agree that sometimes when lessees failed to carry out necessary works (a problem arising from the proportion of buy to let lessees in the building) the works were carried out and charged to the service charge account.

12. The Tribunal questioned whether the lease gave the Respondent authority to do this. Mr Shepherd considered that in certain circumstances it was common sense to do this. The Tribunal asked the Applicant whether she considered it to be reasonable to do this, rather than pursue the matter through the courts incurring greater costs. The Applicant agreed that in certain circumstances it made sense not to use legal proceedings.

13. The Tribunal notes that the amounts in dispute are very small. Further, certain charges that are queried by the Applicant clearly fall within the ambit of the service charge account such as paying the insurance excess and paying for the aerial.

The Tribunal's decision

14. The Tribunal determined that the charges raised by the Applicant as being inappropriately charged to the service charge account are appropriately charged and are reasonable and payable.

Reasons for the Tribunal's decision

15. The Applicants are unable to provide evidence that the charges should properly have been paid for by insurance claims. Even if there were evidence to substantiate the claim the Tribunal considers that it is appropriate in certain circumstances for the management to make a judgement call and carry out very minor works swiftly and charge the very small amounts of costs incurred to the service charge account.

16. Similarly there is no evidence to suggest that the Respondent behaved other than reasonably in carrying out the repairs in the second table and charging the costs to the service charge account.

Lifts

17. Ms McNamara informed the Tribunal that there are two large lifts to the building. In the Applicants' opinion an excess amount of money has been spent maintaining the lifts during the service charge years in dispute. The Applicants produced a useful table of lift expenditure over the years in question. Despite the level of monies expended there is frequently only one lift available and occasionally no lift. The Applicants argue that new lifts could have been provided with the same level of expenditure which would have resulted in a much better facility for lessees. They believe this demonstrates incompetent management.

18. Mr Shepherd gave evidence that the works carried out to the lifts had been necessary and that the Applicants had not suggested that the charges levied were anything other than reasonable. Throughout the period in dispute there has been a service contract but in additional quite extensive work has had to be carried out.

The Tribunal's decision

19. The Tribunal determines that the charges levied for the repair and maintenance of the lifts in the service charges years in dispute are reasonable and payable.

Reasons for the Tribunal's decision

20. The Applicants have not suggested that any one particular item is unreasonably charged. Their argument is rather that over the years an excessive amount has been paid for lift maintenance and repair. The Tribunal does not accept that this argument means that the charges are not reasonable.

21. Drawing on its own expertise, the Tribunal is aware that the maintenance of lifts is costly. The two lifts in the building are likely to be very well used and require extensive maintenance and repair. It is all very well, with the benefit of hindsight, to argue that it would have been better to replace the lifts. However the Applicants have produced no evidence as to what the costs of this would have been, and even if the lifts had been replaced it is highly likely (as the Applicants' experience of an RTM in another building indicates) that maintenance and repair costs would have additionally been incurred.

The costs of the leisure centre

22. The Applicants' argument in connection with the maintenance and repair of the leisure centre comprising swimming pool and gym facilities is not dissimilar to the arguments made in connection with the lifts. In essence the Applicants argue that over three years the expenditure was £99,769.97 which

they consider excessive. Despite this the facilities are in poor condition, the pool has been closed for a considerable proportion of the three years and there is a poor level of cleanliness. They suggest that as there has in reality been a refit of the facilities over the time period it would have been appropriate for a s.20 consultation process to be carried out. This would have enabled consultation with the lessees and a genuine input as to the best way to provide the service.

23. The Respondents took the Tribunal through the various items of expenditure on the leisure facilities and particularly the expenditure on the swimming pool. Problems have been caused by leaks, which are exacerbated by the location of the facilities. Mr Shepherd gave evidence that even after draining the pool and trying to repair leaks, once the pool is refilled it can become apparent that the leak has not been repaired. The Respondents were unaware that the Applicants would argue that a section 20 consultation procedure was required, but pointed out in response that the expenditure did not cross the £250 per lessee threshold.

The Tribunal's decision

24. The Tribunal determines that the expenditure on the leisure centre over the three years in dispute is reasonable and payable.

Reasons for the Tribunal's decision

25. Whilst the Tribunal understand the Applicants' concerns at the costs of the repair and maintenance of the leisure facilities in the building, particularly when those facilities have frequently been out of action, the Tribunal considers that the Applicants have been unable to demonstrate that any particular expenditure was unreasonable. It is not sufficient for the Applicants to argue that they would not have organised the repairs and maintenance in the way that the Respondents have; they must demonstrate that the expenditure was not reasonable.

26. The Tribunal note that the Respondents intend to reimburse the Applicants' share of the running costs of the leisure facilities for those periods when the Applicants have been excluded from using the facilities. This will of course be a relatively small reimbursement as the vast majority of the charges relate to repair and maintenance.

Standard of management of the building

27. The Applicants were very dissatisfied with the level of services and general management of the building and considered that the charges for delivering these services was disproportionate to the quality. They pointed to the charges for the concierge service which they argued was minimal yet charged at a relatively high hourly rate, they pointed to the cleaning and security services and suggested that they could have been delivered more

cheaply, and they pointed to the electrical repairs which they considered to be unsupported by documentation. The Applicants' concerns about the poor quality were supported by Mr Hobbs and a former concierge who said that she was instructed simply to staff the porter's desk and provide no further services.

28. More specific evidence was produced in connection with the management fees which the Applicants argue are unreasonably high. The Applicants had obtained a quotation from M and C Property Management UK which at £32,400 was considerably cheaper than the £39,950 charged by the current property managers, Comer Property Management Limited. Mr Donogh, of M and C Property Management UK attended the Tribunal and gave evidence that he would be able to reduce charges and improve the quality of services. He pointed to his company's achievements at an RTM in which the Applicants are lessees. He also gave evidence in support of the Applicants in connection with the poor management of the building.

29. The Respondents argued that the services provided by the management company were more extensive than acknowledged by the Applicants. They pointed to the letters written by residents of Platinum House (including tenants of the Applicants) in support of a concierge dismissed by the Respondents, which gave ample evidence of the scope of his responsibilities, and evidence that the concierge service was of good standard. They pointed out that much of what the Applicants said was assertion, and that there was no evidence that the charges they made were unreasonable. The Respondents pointed out that Mr Donogh's evidence was based upon a single visit to the property. They argued that the building had proved more difficult to manage because of the high level of buy-to-let lessees. The short term tenants who had no investment in their flats were often more careless with the property.

30. In connection with the charges for management fees the Respondents argued that the fees were in line with the fees charged for similar properties, that Mr Donogh's quotation was based upon his experience out of London, that his experience of management with the UK was very limited and that the quotation was not on a like for like basis.

31. The Respondent also pointed out that Mr Donogh's office was based in Ireland, he had no offices nor staff in UK, and only managed one property in UK since 2010. Furthermore M and C Property Management costs exclude stationery and postage costs, which are levied over and above their management costs. The current Managing Agents include these costs within their management costs. Therefore if these costs are quantified then the management costs are very similar and there is no saving indeed.

The Tribunal's decision

32. The Tribunal determined that the charges demanded in connection with cleaning, concierge services, security, electrical repairs and the management fees were reasonable and payable.

Reasons for the Tribunal's decision

33. Whilst the Tribunal has sympathy for the frustration that the Applicants evidently feel in connection with the management and services provided in Platinum House, the Tribunal accepted the argument of the Respondents that there was no evidence to support the claim that the service charges demanded were unreasonable.

34. The Tribunal was not persuaded by Mr Donogh's evidence that he could provide better services for a lower price than the current management and accepted that the management fees currently charged fell within the normal market levels. There was minimal evidence that the Respondents were not providing a reasonable level of service within the building and the Tribunal accepted the evidence of the Respondents that any lapses in standards were caused by the difficulties of managing short term tenants.

Utility charges

35. The Applicants argued that they should not have to pay the utility charges that were paid to former management companies that went into liquidation without themselves paying the utility bills.

36. This argument was not very clear but seemed to focus on the managing agents somehow benefitting from the insolvency of previous managing agents. Nor was it clear how the monies in question related to the service charge years in dispute.

37. The Respondents argued that they were unaware of the complexities of this claim until the day of the Tribunal. If they had known they could have produced evidence that the bills had been paid. They considered the service charges to be reasonable and payable because the utilities had been consumed by the lessees. Moreover if the current management had not discharged the debts the utility companies would not have continued to provide services.

The Tribunal's decision

38. The Tribunal determined that the utility charges for the years in dispute were reasonable and payable.

Reasons for the Tribunal's decision

39. The Tribunal accepted the Respondent's argument that the lessees had consumed the utilities and those utilities had to be paid for, and it agreed that if the charges had not been paid there would have been no further service provision. As the building is currently in receipt of services this indicates that the bills were paid.

40. The Tribunal is aware that the Applicants have been very frustrated by the problems that have arisen at Platinum House and that they will be very disappointed with this decision. The Tribunal would urge the Respondents to give a greater priority to communications with the lessees. Effective dialogue, as the Applicants suggested several times during the case, would ease some of the dissatisfaction that the Applicants feel. However the Applicants must realise that in order to argue effectively that service charges are unreasonable they must present substantive evidence and make reasoned arguments about amounts which are payable. It is not sufficient to rely on beliefs that behaviour has been unreasonable, and broad assertions of unreasonableness, nor is it sufficient to assert that the Applicants themselves would have done things differently, better and more cheaply.

Chairman: _____

Helen Carr

Date: 13th September 2012

Appendix of relevant legislation

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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.

(2) The application shall be made—
  (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
  (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
  (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—
(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
(a) £500, or
(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.