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Residential Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00AC/LSC/2009/0678

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL on an application under section 27A and 20C of the Landlord & Tenant Act 1985

Property:	Flat 6, 102-104 Long Lane, Finchley, London N3 2HX
Applicant:	Quadron Investments Limited (Freeholder)
Represented by:	Miss L. Worton of Counsel Mr G Abrahams; Salter Rex, managing agents
Respondent:	Mr J. M. Nathan (Leaseholder)
Represented by:	In person
Date of Referral:	13th October 2009
Date of Hearing:	4th March 2010

Tribunal: Mr L.W. G. Robson LLB (Hons)
Mr P. M. J. Casey MRICS
Mr L. G. Packer

Preliminary

1. The Applicant seeks a determination under section 27A of the LANDLORD AND TENANT ACT 1985 (as amended) of reasonableness and/or liability to pay estimated service charges relating to the service charge year commencing on 25th March 2009 under a lease (the Lease) dated 21st March 1988 for a term of 99 years from 25th December 1987, as subsequently amended by a Deed of Variation dated 11th October 2006. Extracts of the relevant legislation are attached as Appendix 1.

2. This case was referred to the Tribunal by an order of Deputy District Judge Shelton in the Barnet County Court dated 13th October 2009, under case reference 9BT02158. The Court transferred the case to the Tribunal for determination of the service charge issue. Section 20C may be an issue as the Applicants had claimed for costs in the county court action.

3. Directions for Hearing were given at a pre-trial review on 17th November 2009 for a hearing on 15th February 2010, subsequently postponed until 4th March 2010.

4. In the absence of a detailed statement of case from the Respondent the Tribunal identified from the brief Defence to the County Court claim in a letter from the Respondent dated 25th September 2009, that the issues in dispute related to the estimates for insurance, cleaning, gardening, and the management fee. The Tribunal noted that the Applicant only produced its statement of case on 28th January 2010, but the Tribunal directed that bundles be lodged with the Tribunal by 25th February 2010.

5. The Tribunal decided that an inspection in this case was unnecessary. However we were informed at the hearing by the parties that the property is a purpose built block of 6 flats on 3 floors built about 1987 using an orthodox brick construction under a tiled roof. Modest carpeted internal common parts lead from the main entrance door to the first floor, controlled by an entryphone. Access to the Respondent's flat is from a door on the first floor, leading to the second floor. Flat 6 occupies the whole of the second floor. The external grounds comprise a small lawn and borders to the front of the property, with a parking area and small lawn to one side at the rear of the property.

Hearing

6. At the start of the hearing, the Respondent agreed that he had not provided a statement of case in accordance with the Directions, and stated that he had no documentary evidence to put before the Tribunal. Due to pressure of work, he had not had time. He agreed that the issues noted in paragraph 4 were those he wished to contest.

7. Miss Worton also clarified that the issues in dispute arose from the 2009/10 estimated service charge, rather than any earlier period. She referred to the demand dated 23rd March 2009, showing an estimated service charge for Flat 6 totalling £1,693.91 for the year. It was not immediately clear from the demand, but Ms Worton confirmed that the amount of estimated service charge claimed

from the Respondent in the County Court case was £846.62, for the first half year commencing 25th March 2009. The estimate had been prepared in the light of the certified final service charge account for the year 2008/9. In turn the final account quite closely followed the estimate for that year. Ms Worton submitted that the estimated demand for 2009/10 was in all the circumstances reasonable.

8. Ms Worton referred to the Lease provisions relating to the service charge. The Respondent confirmed that he had no concerns about the Applicant's right to make the demand under the Lease, his concern was with the amount. Ms Worton moved on to deal with the specific issues identified by the Respondent, calling as a witness Mr Geoff Abrahams, the Property Manager in charge of this property at Salter Rex. Mr Abrahams was examined on his witness statement dated 23rd February 2010, was cross-examined by the Respondent, and answered questions from the Tribunal. The Respondent also made his submissions and answered questions. The Tribunal has set out the parties' respective evidence and submissions under each specific heading below, followed by the Tribunal's decision on each item.

Cleaning

9. Mr Abrahams stated that the cleaning services were provided by GreenClean Limited. A copy of the cleaning contract was in the bundle. In response to approaches by the Respondent, he had contacted a number of other contractors to test the market. He recalled that he approached Beechwood, another contractor known to him. Their verbal response was that they could not match the price paid to GreenClean. After some discussion of GreenClean's hourly rate, the Tribunal established that it was slightly in excess of £23 per hour inclusive of VAT on the basis of Mr Abrahams' opinion that the cleaning work set out in the contract took about an hour per fortnightly visit. The Respondent had suggested that his Polish cleaner could do the work for £15 per visit. In Mr Abrahams' view a cleaner carrying insurance and the necessary overheads could not do the work for £15 per visit. A cleaner employed by managing agents was not the same as a cleaner employed in the home. The agents had to check that tax, insurance and legal requirements would be met. He disagreed with the Respondent's suggestion that he had been prepared to take on his cleaner without making further enquiries. He considered that this was a misreading of his email on the subject (produced to the Tribunal). Ms Worton noted that although the Respondent had complained he had produced no evidence, and admitted that he had done no research. The Tribunal should not make a finding without evidence.

10. The Respondent submitted that the overall cost of the service charge was too high, nearly £1,700 per year. Enquiries of friends and relatives suggested that they paid £600-£1200 per year in service charges. Mr Abrahams had promised information, but had not produced it. The services in this building were minimal. Another resident had reported that the cleaners had attended on one occasion for only half an hour. They had only vacuumed the carpets and stairs. They had not cleaned the banisters and doors. In response to questions, the Respondent stated that the main entrance door was dirty. The banisters were clean. Outside there was an accumulation of rubbish, but it usually went every week. The path was usually cleared of rubbish. He did not know who did that, but conceded that it could be the cleaners. He submitted that £1,400 per year for cleaning was too much. He

considered that £750 was ample. The work should take one cleaner an hour at £10-11 per hour

11. The Tribunal noted the evidence and documents offered by the Applicant. The Respondent had produced no evidence other than anecdotal evidence of third parties, and his own view. The Tribunal concluded that there was insufficient evidence to show that the cleaning estimate was unreasonable.

Gardening

12. Mr Abrahams gave evidence that the gardening was currently done by 51 Acres. When he had joined Salter Rex in June 2008 he had been aware of problems with the previous gardener, Mr Buckle. The lessees of Flat 1 had complained about inadequate work. Mr Abrahams had engaged RJB to do a clearance and then the current contractors to do the ongoing maintenance The lessees of Flat 1 had said they were satisfied. The contract was in the hearing bundle. He periodically checked the gardening himself. Mr Abrahams stated that he tested the market when awarding the new contract. He agreed that he had no documentary proof of testing the market.

13. The Respondent questioned Mr Abrahams about the problems in 2008. He wished to establish that there should have been a reduction for the following year. The Tribunal pointed out that the estimate in issue related to 2009/10. The Respondent was entitled to dispute the actual charge in 2008/9, but not as part of this application. The Respondent submitted that Mr Abrahams had failed to test the market. There was a recession and costs should be falling, not creeping up each year. He agreed in response to questions that the gardeners were doing a reasonable job, but they were too expensive. They had not, in his view done some of the items in the contract. They cost £1,200 per year. He considered that £1,040 was adequate.

14. The Tribunal noted the evidence. Despite the Respondent's criticisms of the work done, there was some evidence of recent market testing. The Tribunal preferred the evidence and submissions of the Applicant and concluded that the estimated charge was reasonable.

Insurance

15. Mr Abrahams noted in his Proof of Evidence that the insurance was provided not through Salter Rex but through a block policy arranged by the Applicant. His, and Ms Worton's knowledge was therefore limited. At the Tribunal's request, Mr Abrahams arranged for further evidence to be faxed from his office and this was available for inspection by all at the hearing. They had no direct knowledge of placing the insurance, but Ms Worton's instructing solicitors had advised her on the telephone that the Applicant placed the insurance through its brokers, Towergate who had tested the market. It was a block policy. The Applicant received no commission for placing the insurance, although Towergate did so, the amount not being to known to Ms Worton. There was no connection between Towergate and the Applicant. Mr Abrahams gave evidence of his experience of insurance matters. He had 26 years experience of property management and his experience included management of his own family portfolio. He lived near the property and there paid

approximately £1,000 per year for 2 units of accomodation. He considered that £2,000 for six units was reasonable in that area. He was unaware of any claims being made on the policy. Ms Worton submitted that an alternative quote obtained by the Respondent was not comparable, as the Respondent only had the briefest details. She also referred us to Berrycroft Management Ltd v Sinclair Gardens Investments (Kensington) Limited 1996 HLR 444 CA. In her view that case decided that the landlord was not obliged to obtain alternative quotes, but only to act reasonably and use an insurer of repute. The Insurer in this case was Allianz Cornhill.

16. The Respondent submitted that only he and the lessee of Flat 3 were residents. The lessee of Flat 3 had obtained a verbal quote for the property of £955 plus "legal costs" of £30 using the schedule for 2007 which he had obtained from Mr Abrahams. He had sent this quote to Mr Abrahams. He agreed that all he had was a figure, with no other information. He submitted that the Applicant was merely renewing the policy every year and not testing the market. There had been no claims, and a block policy should be cheaper.

17. The Tribunal considered the evidence. The Respondent's quote was unsatisfactory. There was evidence of the policy schedule and the risks covered, (which Miss Worton stated did not include Terrorism cover). The Tribunal from its own knowledge considered the premium quite high, but the sum demanded was still only an estimate, based on the actual premium for the previous year. Whilst the insurer apparently paid commission, the amount was unknown. The Tribunal was told this went straight to the brokers, not the Applicant. The Tribunal decided the estimate was not unreasonable. This does not preclude either party from making an application on this, or any other issue once the certified final accounts for the year 2009/10 have been issued.

Management

18. Mr Abrahams gave evidence of the fee charged, and referred to a list of duties set out in his proof of evidence. He stated that he visited the property 3-4 times a year, and passed by frequently. He did not carry out a survey when he visited. His last visit had been in January 2010. He agreed he had not gone inside. He did not set fees for the firm, but it charged by the unit. For this property the firm charged £240 per unit. He considered £300 to be a standard fee in London. He considered that £240 was the bottom end of the range. Salter Rex included a number of useful items in its standard fee, for which many agents charged extra, e.g. serving Section 20 notices, and appearing at the Leasehold Valuation Tribunal. The firm had acted since at least 1988, but he did not know if the Applicant market tested its managing agents' fees. Ms Worton submitted that the Respondent was in fact disputing the charges for the problems in 2008. These were not in issue in this application.

19. The Respondent submitted that the agents were not market testing or supervising the various contracts satisfactorily. The property visits did not discover defects. The lessees were not treated as customers. The costs charged were too high for a "minimal service block". The charge amounted to 20% of the service charge. In his view the cost should not be per unit but 12% of the cost of the work done.

20. The Tribunal considered the evidence and submissions. It considered that the unit fee charge was quite high, but for the extensive service included within the charge it was not unreasonable as an estimate. The adequacy of the actual service provided for the year in question was not a matter for this hearing, dealing as it did only with the estimated charge. Again either party was free to apply on the basis of the final accounts when they were presented.

Total estimated charge

21. Having decided upon the specific matters of complaint, the Tribunal then decided upon the totality of the estimated service charge demand for 2009/10. It was founded closely upon the certified final service charge for the previous year, which was a perfectly reasonable approach. While individual items might be challenged in the final account when it fell due, the estimate, as an estimate was reasonable.

Section 20C, Costs and Fees

22. Ms Worton agreed that while the Lease entitled the landlord to charge a lessee directly for the costs of remedying a breach of the Lease (Paragraph 3 of the Third Schedule to the Deed of Variation), there was no provision in the Lease to charge such costs to the service charge. The Tribunal therefore decided (so far as relevant) to make an order under Section 20C limiting the landlord's costs of this application to nil.

23. Ms Worton stated that the Applicant would not apply to this Tribunal for reimbursement of its fees for the Application.

24. Miss Worton submitted that the Respondent's conduct of the application could be described as "otherwise unreasonable" within the terms of Paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002. If he had researched the matter he would have known he had no case, or if he had, he would have produced some evidence to back up his claims.

25. The Respondent stated that he thought it was reasonable for the Applicant to bring the Application, but he did not know that he could have got assistance before the Application was heard. He still considered that he was right to challenge the insurance and the management fees.

26. The Tribunal considered the Paragraph 10 application, which is a matter for the discretion of the Tribunal in the light of the facts of each case. The Respondent had perhaps acted unwisely in pursuing his challenge to the interim service charge, rather than contesting the matters concerning him in due course when the final service charge is demanded. The Tribunal did not consider that his conduct was sufficiently gross and obvious to cross the high threshold envisaged by the wording of Paragraph 10. The Tribunal accordingly made no order.

Chairman .....
Date: 10th March 2010

Appendix 1

Section 27A(1) Landlord & Tenant Act 1985

"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"

Section 20C Landlord & Tenant Act 1985

"(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 Lands 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)……

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

Commonhold and Leasehold Reform Act 2002
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) ……"