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REF LON 00/AU/LSC/2010/0335

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE-MATTER OF THE LANDLORD AND TENANT ACT 1985 SECTION
27A and S20C

Address 15 Yonge Park London N4 3NU

Applicant Melanie Armstrong and other leaseholders of
15 Yonge Park London N4 3NU

Represented by Ms M Armstrong and Mr D Schaller

Respondent Assethold Limited

Represented by Mr J Gurvits of Eagerstates Limited

The Tribunal
Mr P Leighton LLB (Hons)
Ms S Coughlin
Mr O N Miller

Date of Hearing 13th September 2010

Date of Decision 22nd November 2010

Introduction

- 1 By an application dated 18th March 2010 the Applicants applied to the Tribunal under Sections 27A and 20C of the Landlord and Tenant Act 1985 for a determination of the service charges payable by them in respect of the property known as 15 Yonge Park London N4 3NU ("the property") and for a restriction of the landlord's costs payable in respect of the application
- 2 Following directions given at a pre trial review the matter came before the Tribunal for hearing on 13th September 2010 when the applicants appeared in person and the respondent was represented by Mr J Gurvits of Eagerstates, the managing agents of the landlord

The Property.

- 3 The property is a large Victorian House in Finsbury Park divided into five flats. The parties did not request the Tribunal to inspect the property and the Tribunal did not consider it necessary having regard to the issues raised in the proceedings. There were some photographs showing the property and parts of the property exhibited in the bundle of documents

The Leases

- 4 Each of the applicants holds on a lease for 125 years. The lease of flat 4 which is included in the bundle dates from 14 November 2003. The tenant's covenant with the landlord are contained in the fourth schedule and the obligations relating to service charges are to be found in the seventh schedule of the lease.
- 5 The obligation to pay service charges is found in clause 4.31 which provides: --
" to pay to the landlord the interim charge and the service charge at the times and in the manner provided in the seventh schedule both of which shall be recoverable in default as rent in arrear"

- 6 The seventh schedule provides that the service charge year runs from the first January to 31st December and that interim payments are to be made on 25th March and 29th September in each year
- 7 The lease also contains the usual provision that the landlord is to provide certified accounts as soon as practicable after each accounting period and that if the tenant has overpaid then any balance is credited to the following year, and if there is any deficit the same is to be paid within 14 days of the service of the certificate.
- 8 Each of the lessees pays a specified proportion of the service charges. In the case of the first Applicant she is required to pay 16% of the total cost.

The Issues

- 9 The Applicants challenged the service charges for the years 2009/10 and 2010/11 in each of the years on the amount of the buildings insurance accountancy and management fees and window cleaning.. In addition they take issue with the fire health and risk assessment in the sum of £700 for the year 2010/11 and the cost of external decorations and roof works and asbestos survey in the year 2009/10.
- 10 The amounts challenged by the Applicant's for 2009 /10 are as follows:-
 - Buildings insurance £1,754.67
 - Window cleaning £476.53
 - External decorating £3,515.16
 - Roof works £588.77
 - Accountants fee £411.25
 - Management fee £1,175
 - Asbestos survey administration charge £115
- 11 The amounts challenged by the Applicants for 2010/11 are as follows
 - Buildings insurance £1,842.40
 - Window cleaning £500
 - Fire health and risk assessment £700
 - Accountancy fee £450

Management fee £1,292.50

These are of course the total charges for the building to which the Applicants each contribute a proportion

- 12 The Applicants indicated to the Tribunal that they had paid all the service charges which had been demanded and were seeking adjustments on the conclusion of a right to manage application which they had made in respect of the property.
- 13 The Applicants also indicated in evidence that they had attempted to discuss what they considered to be the unreasonably high service charges with the managing agents but whenever they rang they were treated with rudeness and had received a number of threatening letters for payment. Eagerstates did not admit the rudeness but accepted that they had written letters demanding payment of arrears. They did not consider these letters to be threatening.
- 14 There was originally an issue relating to the service charge demands on the basis that the managing agents had not sent a summary of rights and obligations. Whatever the position was prior to the issue of the application a summary of rights and obligations was served on the Applicants on 3rd June 2010.
- 15 Therefore the only issues which the Tribunal has to determine is the reasonableness and the right to recovery of the disputed service charge heads for the years in question.

The Evidence

- 16 The Respondent in its statement of case alleges that the complaints made are trivial and that the Applicants ought to have mediated the complaints rather than incur the costs of a Tribunal hearing. The Applicants state that the attitude and conduct of the agents made it impossible to settle the matter as (a) they had not been provided with the necessary documents which they had been seeking, (b) the agents were rude and uncooperative

17 Insurance

The main complaint from the Applicants was that they had never seen any insurance documents from the agents, Eagerstates, although they had requested them on many occasions. There was a specific complaint that the insurance costs had risen sharply in each of the years in question. The insurance charged amounted to £1,754.67 in 2009/10 and £1,862.40 in 2010/11. As they had not received the insurance documents they had not been able to obtain a competitive quotation for the insurance premium.

- 18 The Respondent maintains that the building is insured in the sum of £665,000 by reputable insurers Axa and is placed through brokers, that the insurance covers subletting and that the premium includes FSA registration. **The agents conceded that the actual cost of the insurance for 2009/2010 was £1671.12 including an administration fee.**

19 Window cleaning

The amounts charged for 2009/10 were £476.53 and £500 for 2010. The applicants complained that although they were often at home during the day and kept an eye on what was going on, they had never seen window cleaners at the premises. They said that the windows themselves showed no signs of having been cleaned and that they were effectively being charged for nothing.

The Respondent produced paid invoices for work allegedly carried out by the window cleaners during the relevant period. DC Cleaners Limited wrote a letter stating that they cleaned the windows monthly and produced four job sheets. It is clear from the letter however, that the job sheets are not signed as they do not have a contact address for this purpose. They maintain that they clean the ground and first floor front windows but do not clean the top floor windows as they are unable to get access.

20 External Decorating 2009/10

When the external decorating work was due to be carried out in 2009 the Applicants were consulted and invited to provide the name of a contractor. They nominated a German company based in Germany which the Respondent refused. The Applicants complained that the Respondent selected their own contractor so that they could charge 15% administration and benefit themselves. They also contended that there was no reason not to allow a tender from the German company which frequently carried out work in the United Kingdom. In addition they claimed that the quality of the work carried out to the property was poor. The Respondent contended that the works were put out to tender, that they did not consider it appropriate to include a contractor from Germany. They accepted the lowest tender and they considered that the work was properly completed and that no complaints were received by any of the Applicants prior to the application to the Tribunal.

21 Roof Repairs 2009/10

The Applicants were charged £588.77 for roof works in 2009/10. They complained that this was merely a duplication of works which had been carried out in 2006/7 and 2007/8 for which they had been charged £276.42 and £335.22 respectively. They maintained that if the work had been done properly it would not have been necessary for it to be done again in 2009/10.

The Respondent contends that the works carried out in 2007 were different in character from those carried out in 2009. Earlier works related to work to the balconies and other minor works whereas the work in 2009 related to a leak over flat 2 and required more extensive work.

22 Accountancy Fees

The Applicants maintained that the fees of the accountants namely £450 in 2009 and £411.25 in 2010 were excessive and that they reflected an increase of 43% over previous years.

The Respondents contend that the works were charged externally and they have only charged what the works cost them. They maintained that there were more invoices to consider in the year for which the sum of £450 was charged, namely 2010. All charges carry VAT.

23 Management Fees

The Applicants complained of the excessively high management charges and the poor quality of management. They objected to the manager adding a variable surcharge on every service which was provided in addition to the basis management fee

- 24 They maintained that because they were charged an additional management charge every time anything was done at the premises they were wary about asking, both because they knew they would be charged extra and also because they maintained that they were treated rudely every time they telephoned the agent's office asking for anything to be done or for any information to be supplied.
- 25 The Respondent maintains that the management fee is only £200 per unit plus VAT and that they are entitled to charge 15% for everything which they carry out in addition at the request of the lessees. They maintain that taken as a whole their management fees are in line with other agents and are not excessive.

Fire Health and Risk Assessment

- 26 The Applicants were charged £700 for this service. They maintained that it was not covered by the terms of their leases and that in any event the amount charged was excessive. They maintained they could have provided an adequate survey report for £150.
- 27 The Respondent claimed that these sums are recoverable under the lease under the Sixth Schedule clauses 6, 8.2 and 14 and that the cost is estimated in the sum of £700, which in their view was a reasonable estimate of the works required plus VAT.

The Tribunal's Decision

28 Insurance

The latest debit notes from Axa appear to show that the amount debited for the period 2009/10 was £1,519.20 and for 2010/11 is £1,595.16. This includes insurance premium tax. It is always difficult to assess the insurance figures in the absence of expert evidence or comparable quotations and the Tribunal is unable to ascertain whether the amounts charged are excessive. Accordingly the tribunal has decided to allow the amounts shown on the debit notes. It may well be the case that if the insurance premiums continue to rise and the issue is challenged in future the landlord ought to show what steps he has taken to test the market for reasonable cover. However the amounts charged for this type of cover including public liability do not appear unreasonable. The 10% administration fee is disallowed.

29. Window Cleaning

The landlord has produced 4 job sheets and the letter sent by the window cleaning firm. The Tribunal therefore is bound to accept that on balance some window cleaning work must have been carried out though apparently not to a very good standard. The Tribunal accepts the evidence of the Applicants that they were not seen in a good condition on many occasions. The procedure for checking the window cleaning should be changed so that someone can inspect when the work is done otherwise this type of dispute is always likely to occur. In the circumstances the Tribunal proposes to allow the amounts claimed less a figure of £200 for 2009/10, and £400 for 2010/11 on the assumption that this is the budgeted figure and that the work will be completed during that year. The administration charge for this work is disallowed.

30 External Decorations 2009/10

There is an invoice from A J Martin for £2,998 which appears to have been the lowest tender received by the landlord for the work. There is criticism of the work as having been poorly performed and this is

supported to some extent by the photograph in the bundle. The landlord has stated that the work will be put right. If this is done the Tribunal is of the opinion that the sum of £2,998 should be allowed. For the poor workmanship then the invoice should be reduced by £200 to £2,798.

31 Roof Repairs

The Tribunal has examined the separate invoices which have been submitted by the roofing contractor and have concluded that the work undertaken in 2009/10 was separate from works which had been undertaken earlier and there was no evidence that previous work had been done badly. It is a common problem that where old roofs are patched, further leaks arise in different areas following heavy weather conditions. The Tribunal therefore allows the sum of £520 on the Homesolve Invoice, but nothing for administration

32 Accountancy Fees

The Tribunal recognises that the Respondent has put the accounts out to an independent contractor and has paid their fees. However, the accounts in this case are not particularly complex. The accounts for the year ending March 2009 were only £250 plus VAT and the significant increase does not appear to be justified. The Tribunal proposes therefore to allow the sum of £300 plus VAT for the two following years making £352.50 for 2010/11 and £345 for 2009/10

33 Management Fees

34 The Tribunal was extremely critical of the practice of charging a management fee and then adding an administration charge to each of the services provided. Mr Gurvits had argued that the total claimed was in line with the fees charged by managing agents and was not excessive but the tribunal pointed out that the RICS Management Code strongly recommended that the managing agent's fee should be based on a unit cost so that leaseholders could budget in advance for this payment . The Tribunal strongly endorses that view.

35 Further as the Tribunal pointed out in argument to Mr Gurvits, applying a separate management fee for each service provided in addition to the standard fee was likely to deter the tenants from requesting necessary services as they would be uncertain as to the liability which they might incur.

36 The Tribunal proposed therefore to allow a basic management fee for each of the years in question and to disallow the separate administration fees which had been added by Eagerstates. The management fee allowed for 2009/10 is £200 per unit and for 2010/11 £210 per unit.

37 Fire Health and Risk Assessment Survey

The Tribunal considers that it is reasonable for the Applicants to pay for a fire and health assessment which is now a legal requirement and therefore justified under the lease. The Tribunal considers that the sum of £700 is however, excessive and is of the opinion that a reasonable figure to enable this work to be carried out would not exceed £350 plus VAT making a total of £411.25.

The Tribunal also agreed to allow the asbestos survey in the sum of £345 for the year 2009/10 which is the basic fee but excluding the administrative charge.

Section 20C Costs and Reimbursement of Fees

38 The Tribunal is of the opinion that the Applicants were justified in bringing the current proceedings, that they did not act unreasonably in doing so and that they were not unreasonable in proceeding to a hearing. The Tribunal therefore does not consider it reasonable that they should be required to pay any costs to the landlord whether or not such costs are recoverable under the terms of the lease.

39 The Tribunal also considers that the fees paid by the Applicants should be reimbursed by the Respondent as it was necessary to bring the proceedings in which they have been largely successful. The Respondent

is therefore ordered to reimburse the application and hearing fees amounting to £350.

Conclusion

40 The Tribunal therefore concluded that the Applicants are liable to pay the sum of £7510.03 for the year 2009/10 and £5412.66 for the year 2010/11 and that they are entitled to be credited the sum of £350 in relation to the reimbursement of fees and are not liable to pay any costs of the landlord in relation to the proceedings. The details of the figures allowed by the Tribunal are set out in the Schedule

Chairman

Peter Leighton



Date

22nd November 2010

2009-2010	Charged	Tribunal decision
Insurance	1754.67	1519.2
Common parts electricity	50.11	50.11
Window cleaning	476.53	215.5
Common parts cleaning	468.79	468.79
Front door repair	98.43	98.43
Asbestos survey	460	345
External decorating	3515.16	2798
Roof works	588.77	520
Accountancy	411.25	345
Management	1175	1150
Total	8998.71	7510.03

2010-2011 estimate	Estimate	Tribunal decision
Insurance	1842.4	1595.16
Common parts electricity	120	120
Window cleaning	500	400
Common parts cleaning	600	600
Fire health and risk assessment	700	411.25
Accountancy	450	352.5
Management	1292.5	1233.75
Emergency repair	700	700
	6204.9	5412.66