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H M COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

In the matter of an Application under Sections 27A and 20C of
the Landlord & Tenant Act 1985 (Service Charges)

Case No. LON/00AG/LSC/2012/0772

Property: Flat 7 Oliver Court South Hill Park Gardens London NW3 2TE

Between:

Oliver Court Properties Ltd

(Applicant/Landlord)

and

Mr G G Royce

(Respondent/Tenant)

Members of the Tribunal: Mrs F J Silverman Dip Fr LLM
Mrs E Flint FRICS
Mr L Packer

Appearances for Applicant: Mr P O'Reilly

Appearances for Respondent: Mr J Browne Counsel

Date of Hearing: 8 April 2013

Date of the Decision: 8 April 2013

DECISION

The Tribunal assesses the service charges payable by the Respondent for the years 2009-2010 , 2010-2011 and 2011-2012 as detailed below . The Respondent is the tenant of Flat 7 , Oliver Court South Hill Park Road London NW3 2TE (the property) and therefore responsible for payment of the sums shown below in the relevant proportion as detailed in the lease . The Tribunal makes an order under s20C Landlords and Tenant Act 1985.

REASONS

- 1 The Applicant is the freehold owner and landlord of the property and made an application to the Tribunal on 13 November 2012 asking the Tribunal for a determination under s27A of the Landlord and Tenant Act 1985 in relation to the service charges for the years 2009-2010, 2010-2011 and 2011-12 .
- 2 The Respondent is the tenant of Flat 7 Oliver Court. and has an obligation under the lease dated 25 November 1964 to pay service charges to the Applicants .
- 3 The Tribunal did not consider it necessary to inspect the property.
- 4 The hearing of this matter took place on 8 April 2013 at which the Applicant was represented by Mr O'Reilly of Salter Rex, the Applicant's managing agents, and the Respondent by Mr J Browne of Counsel.

5 At the hearing it was established that the Respoondent had accepted liability for and agreed the reasonableness of the following charges:

5.1 2009-2010 - building repairs, general maintenance repairs and professional and accountancy fees totalling £6,784.53.

5.2 2010-2011 - building repairs, general maintenance repairs and professional and accountancy fees totalling £7,519.02.

5.3 2011-2012 - building repairs, general maintenance repairs and professional and accountancy fees totalling £4,830.00.

The above sums are therefore payable by the Respondent in the proportion to which he is liable under the terms of the lease.

- 6 The remaining items of the service charge which the Applicant challenges are dealt with individually in the following paragraphs.

7 Insurance

7.1 The Respondent maintained that the insurance premiums charged for each of the years in dispute were excessive. He had obtained alternative quotations which the Applicant disputed on the grounds that the Respondent's quotations (which were substantially lower than those charged by the Applicant) had not taken account of the garages at the property, the disrepair of the property or its claims history.

7.2 The Tribunal was however not satisfied by the Applicant's representative's responses to questions put to him in relation to the manner in which the managing agent tested the market, tested the broker or dealt with the question of the broker's commission.

7.3 The Applicant's insurance policy did not make it clear that the garages were part of the insured property, this criticism of the Respondent's quotations could not therefore be sustained. The claims history of the property was reasonably good (one small claim in the preceding three years) and it is unlikely that this issue would have affected the quotation obtained by the Respondent. Disrepair of the building was not evident from a photograph contained in the Tribunal bundle and the Applicant did not identify any major item of disrepair which he asserted could have adversely affected the premium demanded. The Applicant had used the same insurance company and broker for the last few years under a block policy and the Tribunal considered that this was an inadequate testing of the market.

7.4 On balance therefore, the Tribunal finds that it prefers the Respondent's alternative quotations as more reasonable than the sums charged by the Applicant and declares that in respect of the year 2009-2010 the Respondent is liable for the relevant proportion of the sum of £ 982.72, for the year 2010-2011 the relevant proportion of the sum of £ 942.88 and for the year 2011-2012 the relevant proportion of the sum of £ 1,317.17.

8 Management fees

8.1 The Respondent argued that the management fee charged by the managing agent was too high. The fee agreed in 2002 had been £160 per flat/unit (plus VAT) and it was currently £265 plus VAT.

8.2 At the hearing the Respondent conceded that there was no long term agreement relating to the managing agents fees but put the Applicant to proof that the increase in fees since 2002 had been agreed.

8.3 Although the Applicant was unable to produce documentary evidence of any agreement to increase the managing agent's fees the Tribunal accepts their representative's explanation that an annual budget which showed the fees was supplied by the agents to the Applicant landlords (a company of which the Respondent is a member) and had never been challenged or disputed by them.

8.4 On that basis and on the basis that the fee of £265 plus VAT per unit is within the range of charges currently made by managing agents the Tribunal finds that the fees charged by them (year 2009-10: £2056.25; year 2010-2011: £ 2067.19; and year 2011-2012: £2226.00) are reasonable and are therefore payable proportionately by the Respondent .

9 External repairs

The Respondent challenged the Applicant's right to demand the sum of £64,889.19 (year 2009-10) in respect of an advance payment for external repairs which have not yet been carried out. This sum can only be demanded if the lease contains an appropriate clause allowing the landlord to demand payments in advance . This lease, as conceded by the Applicant contains no such clause. This sum cannot therefore be charged as an item of service charge and is not payable at all by the Respondent.

10 Legal fees .

The Applicant sought to recover from the Respondent the sum of £1,115.00 representing various legal fees , including an application and hearing fee to the Leasehold Valuation Tribunal, which the Applicant alleged has been incurred in pursuing proceedings against the Respondent. All of these sums are disallowed by the Tribunal for two reasons. Firstly the lease does not contain a clause permitting the recovery of legal fees except in the limited circumstances of service of a s 146 notice (not relevant here) and thus the charges are irrecoverable as service charge. Secondly, the Applicant was

unable to explain to the Tribunal what the charges represented nor to produce any evidence of the expenditure. The issue of re-imburement of a fee to the Tribunal itself is at the Tribunal's discretion which in this case it declines to exercise because the Applicant's case, in areas where there was a dispute between the parties, has largely not been sustained.

11 Section 20C

The Respondent made an application under s20C Landlord and Tenant Act 1985 which was opposed by the Applicant. . Most of the disputed matters which were conceded by the Respondent related to issues in respect of which the Applicant had failed timeously to supply the Respondent with the relevant invoices and supporting documents. The major item before the Tribunal at the hearing was the sum of £64,889.19 in respect of an advance payment for repairs yet to be carried out, This item had no prospect of success since the lease made no provision for its recovery (as conceded by the Applicant) . It appears therefore that if the Applicant's managing agent had complied with its duty to supply documents, and had it read and noted the limitation on the service charge clause contained in the lease, this litigation might have been avoided. For that reason it would be unfair to allow the Applicant to put the cost of this application on to the tenant's service charge accounts and accordingly the Tribunal makes an order under section 20C Landlord and Tenant Act 1985.



Frances Silverman

Chairman

8 April 2013