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IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AW/LSC/2006/0366

IN THE MATTER OF FLAT 2, 15 CAMPDEN HILL GARDENS, LONDON, W8 7AX

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

BETWEEN:

METROPOLITAN PROPERTY SERVICES LIMITED

Applicant

-and-

MR & MRS AYACOUTY

Respondents

THE TRIBUNAL'S DECISION

Background

1. This is an application made by the Applicant pursuant to s.27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of the Respondents liability to pay and/or the reasonableness of service charges arising in the service charge year ending 31 December 2006. The service charges in respect of which this application is brought are:

(a) Estimated service charges for the period 01.01.06-31.12.06 in the sum of £500.

(b) Total buildings insurance premiums in the sum of £1,203.61 for the period 23.03.05-13.06.07.

Strictly, although a proportion of the total buildings insurance premium falls outside of the service charge year pleaded in the originating application, nevertheless, the Tribunal gives permission to include the apportioned amounts in so fat as they fall within the 2005 and 2007 service charge years to be considered in this determination. Each of the service charge costs in issue are dealt with in turn below.

2. The Respondents occupy the subject property by virtue of a lease dated 28 August 2001 granted by the Applicant to Mandrake Properties Ltd for a term of 999 years from the same date ("the lease"). The Applicant is the freeholder owner of 15 Campden Hill Gardens, Kensington, London, W8 ("the Building"), which is comprised of 5 flats. The Respondents are the present leaseholders of Flat 2 on the lower ground and ground floors of the Building. Clause 1 of the lease defines "the Service Charge Proportion" as an amount that is fair and reasonable. By paragraph 10(a) of the Fourth Schedule of the lease, the tenant covenanted to:

"...pay to and keep the Landlord indemnified against the Service Charge Proportion of all reasonable and proper costs charges and expenses

which the Landlord shall incur in complying with the obligations set out in the Sixth Schedule...."

3. By paragraph 11(a), the tenants further covenanted to pay the said Service Charge Proportion in equal amounts on 1 January and on 1 July in each year in such sum as the landlord shall estimate. Paragraph 11(a)(iii) of the Fourth Schedule goes on to give the landlord an absolute discretion to demand such sums for the Service Charge Proportion whether they had been actually incurred or anticipated and whether of a periodically recurring nature or not. By paragraph 6, the landlord covenanted, *inter alia*, to insure and keep insured the subject property.

4. It appears that the service charge proportion applied by the previous managing agents, Phillips & Southern, and deemed to be fair and reasonable in relation to the subject property was 22.5% of the total service charge expenditure incurred by the Applicant pursuant to the Sixth Schedule of the lease. The present managing agents, Charterfield Asset Management Ltd ("Charterfield"), took over the management of the Building in January 2006 as a result of dissatisfaction with the previous managing agents. Upon appointment, Charterfield , in an attempt to improve the management of the Building, immediately arranged for various works to be carried out. To finance this, on 5 January 2006, Charterfield wrote to all of the leaseholders proposing to collect £250 on account of the estimated service charge expenditure. Charterfield also arranged for buildings insurance cover to be effected.

5. The total buildings insurance premium of £1,203.61 sought from the Respondents is comprised as follows:

Period 23.03.05 to 09.10.05	£313.50
Period 10.10.05 to 14.06.06	£360.61 (apportioned)
Period 13.06.06 to 13.06.07	£529.50

It appears that the premium paid for cover until 9 October 2005 was for buildings insurance arranged by Phillips & Southern and the Respondents contribution was calculated at 22.5% of the total premium, as being fair and reasonable. The premium for the period 10 October 2005 to 13 June 2006 is the pro rata insurance arranged under a block policy. The premium for the current year is arranged under the same block policy. Apparently, in relation to the two subsequent periods of cover, Charterfield, whether in error or otherwise, had calculated the Respondents contributions for the buildings insurance premium by applying a rate of 20%. It is Charterfield's stated intent to reinstate the rate of 22.5% at the end of the present service charge year. The Applicant complains that despite demands made to the Respondents, the service charge arrears claimed in this application remain outstanding.

Decision

6. The Tribunal determination of this application took place on 5 December 2006. It was made entirely on the basis of the witness statements and other documents filed on behalf of the Applicant. There was no hearing and the Tribunal heard no

oral evidence. The Respondents have not filed any evidence pursuant to the Tribunal's Directions made on 19 October nor, indeed, have they responded in any way in these proceedings.

7. The Tribunal should also make it clear that its findings in this matter are limited to whether the sums claimed against the Respondents are reasonable *per se*. The Tribunal does not make any finding that the "fair and reasonable proportion" applied by the Applicant is reasonable or that, in failing to pay the amounts claimed, the Respondents are in breach of the terms of the lease.

(a) The Interim Demand

8. *Prima facie*, the total estimated service charge of £500 demanded on account for the year ending 31 December 2006 did not appear to be unreasonable to the Tribunal. The Tribunal had regard to the obligations imposed on the landlord by the Sixth Schedule. In the performance of one or more of those obligations during any 12 month period, the Tribunal considered the total amount claimed as modest. A witness statement prepared by a Miss Tracy Markham dated 24 November 2006 was filed on behalf of the Applicant. She is a Property Manager employed by Charterfield with responsibility for managing the Building. At paragraphs 8 and 9 of her statement, she stated that the £500 collected from the lessees was to enable her to undertake general management duties, which included paying the cost of electricity for the common parts, the cost of a fortnightly cleaner and to have a small fund available for any emergency repairs.

Indeed, the lease itself, in clause 1, envisaged the payment of such a sum as an estimated service charge contribution as "the First Service Charge Payment" upon grant was stated to £500. Moreover, the Respondents have the reassurance of the provisions of paragraph 11(a) whereby credit is given for any payments on account made by the tenant against the actual service charge expenditure in any 12 month period. Any over payments made by the Respondents could possibly extinguish any such liability or be set off against any liability in future service charge years. Accordingly, for the reasons stated, the Tribunal finds the total estimated interim service charge demands of £500 for the year ending 31 December 2006 to be reasonable and payable by the Respondents.

(b) Buildings Insurance Premium

9. As to the individual buildings insurance contribution sought from the Respondents, on the face of them, they also appeared to be reasonable. The Tribunal had before it a Schedule of the present policy, which appeared to provide a level of cover in accordance with the risks stipulated in paragraph 6 of the Sixth Schedule of the lease. The Respondents have not challenged the premium sought, as they have not responded to these proceedings. It is not for this Tribunal to anticipate those challenges, if any. It is also not open to this Tribunal to seek to make findings as to the reasonableness or otherwise of the overall buildings insurance premium in the absence of any comparable evidence because to do so would be to act arbitrarily. The Tribunal has no doubt that building insurance cover can be obtained on the open market. However, there is no evidence before

the Tribunal as to what premium might be obtained. In any event, there is no obligation on the Applicant to obtain buildings insurance cover at the cheapest rate: see ***Berrycroft Management Co. Ltd. v Sinclair Garden Investments (Kensington) Ltd*** [1997] 1 EGLR 47. The Tribunal, therefore, finds the buildings insurance premiums claimed by the Applicant totalling £1,203.61 to be reasonable and payable by the Respondents.

Dated the 5 day of December 2006

CHAIRMAN..

Mr I Mohabir LLB (Hons)