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Residential
Property
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION BY LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985 Sections 27A(1) and 20C

Ref : LON/00AE/LSC/2009/0472

Address: 110 Craven Park, London NW10 8RE

Applicant: E. M Dunn Property Management Limited

Represented by: Mr Carter of the managing agents

Respondents: Mr M Mc Kenzie (Flat B)
Mr R Scarffe (Flat A)

Represented by: Ms Idries of BPP Law School with Mr Duffy and Ms Moss also attending

Tribunal: Mrs Sonya O'Sullivan
Mr Michael Mathews FRICS
Mr David Wills

Background

1. By an application dated 5 June 2009 the Applicant sought a determination of the reasonableness and/or liability to pay service charges under section 27A of the Landlord and Tenant Act 1985 (the "1985 Act") for the service charge years ending 30 September 2006, 2007, 2008 and 2009. An order under section 20C was also sought.

2. The application concerns two flats contained in the premises known as 110 Craven Park, Harlesden, London NW10 8RE (the "Property"). The property is described in the application as a converted Victorian end terrace three storey house now comprising a betting shop on the ground floor and two flats in the upper parts.
3. The Respondents to the application are the lessees of the flats contained in the upper parts of the Property. The First Respondent holds the flat on the second floor of the Property ("Flat A") further to a lease dated 28 March 1991. The Second Respondent holds the flat on the first floor ("Flat B") further to a lease dated 16 March 1990. Copies of both leases are contained in the bundle.
4. Directions were issued by the Tribunal dated 3 December 2009 and in accordance with those directions statements of case were prepared by the Applicant and the Second Respondent. The Applicant also lodged a bundle for use at the hearing with the Tribunal.

Inspection

5. An inspection of the Property took place on the morning of the 3 December 2009.
6. The Property is an end of terrace Victorian house with the ground floor now let as commercial premises. The exterior of the Property is in poor condition with poor external decorations and evidence of leaking and/or overflowing rainwater gutters. Tiles were seen to be missing from the roof. To the front of the Property is a small garden comprising a concrete section and some small shrubs. The garden was unkempt and full of litter. There is a side passageway down the side of the Property which was seen to be full of rubble and piles of bricks. The entrance has an intercom which was not functioning.
7. The internal common parts were shabby and in need of decoration. The wallpaper to the common parts was damaged and there was some evidence of damp. Loose carpet was seen on the stair coverings together a loose stair rod.
8. The Tribunal also inspected the interior to Flats A and B. In Flat B the Tribunal saw evidence of a substantial leak above the kitchen area leaving disrepair to the ceiling and with the kitchen worktops seen to be damaged. The Tribunal also inspected the ceiling repairs in the bedroom following the reported leaks. In Flat A the Tribunal saw evidence of a severe water leak to the kitchen ceiling and cracks throughout. Likewise in the living room in Flat A evidence of a water leak was seen with the ceiling in very poor condition including large cracks and blown plaster..

The Hearing

9. The hearing took place on the afternoon of 3 December 2009 continuing on 4 December 2009. The Applicant was represented by Mr Carter of Protheroe, Carter & Eason, the managing agents with Mr Morgan Jones of the Applicant company also attending. The First Respondent was represented by Ms Idries of the BPP Law School. The Second Respondent attended but was not represented.
10. The application contained a claim for ground rent. The Tribunal does not have the jurisdiction to consider ground rent which is a matter for the County Court and this was explained to the parties.
11. The Tribunal noted that there had been an issue between the parties as to whether the invoices had been properly served. At the pre-trial review the chairman had directed that the managing agents should by 18 September 2009 re-send copies of the service and administration charge demands for the years 2006-2008 together with the necessary statutory notices. It was now agreed between the parties that the invoices had now been properly served.
12. The Tribunal went through the accounts on an item by item basis by reference to each service charge year hearing the submissions on each from both parties.
13. A summary of the submissions made and the Tribunal's decision in relation to each of the disputed items are set out below. For the sake of brevity we are not setting out all of the evidence heard but only the most salient points.

Insurance 2006-2009

14. The Tribunal heard that the insurance is a block insurance policy which also covers one other property, a defunct garage site at 57 Ravensworth Road ("Ravensworth Road"). The insurance is therefore calculated by first deducting part of the premium applicable to Ravensworth Road, this was calculated by deducting 10% which was considered as the approximate reinstatement value. Once 10% had been deducted the premium remaining related solely to the Property. A further deduction (representing 2 years rent) was then made in respect of the commercial premises and the remaining premium was then divided into three.
15. The Tribunal were referred to a table at page 32 of the bundle. This showed the figure for the block premium with a deduction made for the property at Ravensworth Road. The Applicant relied on a letter dated 5 February 2008 from the insurance brokers, NBJ United Kingdom Limited,

at page 48 of the bundle as evidence that the insurance premiums were competitive in which it was stated by Mr Nick Pengelly on behalf of NBJ "*I would advise that the current insurer's renewal terms remain competitive*".

16. The insurance premium runs from 10 February in each year whereas the service charge year runs from 1 October to 30 September. The Respondent chose to simply apply the insurance premium to the year in which it was paid instead of making adjustments.
17. The Second Respondent complains that he has requested a copy of the insurance policy on several occasions but that it had not been provided.

Insurance – the Tribunal's decision

18. The Tribunal had been referred to the way in which the apportionments were made to the insurance premium and had seen Mr Carter's working documents and were satisfied that this was a reasonable way to apportion a block policy. The Tribunal had also proof of the debit payments and a copy of the insurance schedule for each of the years in issue. The Tribunal considered it reasonable to include the insurance in the year in which it was paid rather than apportion the insurance premium to relate the service charge year to the premium.
19. Having regard to its own expertise and experience the Tribunal considered that although on the high side the insurance falls within the reasonable range of insurance premiums expected for a property of this type. Accordingly the Tribunal allows the amount claimed by way of insurance for the period in full.

Management/Accountancy and certification 2006 - 2009

20. The Tribunal were informed that the sum of £600 plus Vat was charged for the service charge years ending 30 September 2006 to 2008 in respect of management. In the year ending 30 September 2009 the sum was increased to £1035. The Applicant submitted that the sums charged represented only a small proportion of the time actually spent. The Applicant was unable to say how much of this sum represented time spent on accounting and certification. The evidence given by Mr Carter was that the management charges covered the keeping of accounts, advising the Applicant and preparing demands. When asked if this remit included visiting the Property Mr Carter's response was "*good heavens, no*".
21. In relation to the year ending 30 September 2009 the Tribunal heard that more time was spent by the managing agents in obtaining an engineers

report (although no visit to the Property took place) and reviewing the insurance provision. It was Mr Carter's evidence that the managing agent's fees were previously too small.

22. The sums charged by way of management and accountancy were disputed by both Respondents on the basis that the service charge invoices had been wrongly served until they had been properly re-served on 22 September 2009. Poor communication was also a complaint and the Second Respondent also pointed to the fact that due to the managing agent's inaction he had had to arrange works to repair the roof when leaks were occurring into his flat.
23. Although neither Respondent had any evidence on any alternative quotations in relation to management fees they both suggested a sum on the region of between £100 to £150 plus VAT per flat.

Management/accountancy – the Tribunal's decision

24. The Tribunal noted that Mr Carter described his professional qualification as "*pf RICS*". The Tribunal did not recognise this as a form of recognised qualification and on questioning Mr Carter had confirmed that "*pf*" was shorthand for "*past fellow*" and that he had been struck off the RICS register on account of various breaches of regulatory matters. His evidence was that his breaches of regulatory provisions had no bearing on the matters before the Tribunal.
25. The Tribunal considered the accounts to be very basic. In terms of the management services provided these were very basic. The managing agents had not inspected the Property since at the earliest mid 2006 and when asked whether Mr Carter routinely inspected his answer had been "*good heavens, no*". Service charge demands had been served but these had been in incorrect form and had been recently re-served. Insurance was arranged by the landlord. The Tribunal therefore considered that for the bare management provided a fee of £100 plus Vat per flat was reasonable. The Tribunal also considered that all allowance should be made in respect of the accounts of £75 plus Vat per flat.
26. The total sum allowed therefore in respect of management and accountancy fees in the service charge years ending 30 September 2006 to 2008 was £350 plus Vat or £175 plus Vat per flat.
27. The fees charged had been increased to £1035 for the year ending 30 September 2009. The Tribunal saw no evidence to suggest that any increased provision should be made for management in this year and accordingly the sum of £350 plus Vat or £175 plus Vat per flat should be allowed.

Electricity 2006-2009

28. The Respondents were concerned that the electricity charges were made on the basis of estimated charges only and that no actual readings had been taken. Thus the Respondents say that the charges may not be accurate and were critical of what they saw as the poor management of the electricity account.
29. The Tribunal were provided with copy invoices for the periods in question although there were missing invoices for the years ending 30 September 2006 and 30 September 2009. Further directions were made at the hearing for the provision of the missing electricity invoices but these were not provided.

Electricity – the Tribunal's decision

30. Invoices were provided for the years ending 30 September 2007 and 2008 and these charges were allowed in full.
31. Although the Tribunal had requested copies of the missing invoices in relation to the electricity charges in respect of the years ending 2006 and 2009 these were not provided. Accordingly the Tribunal allowed only those charges in respect of which they had been provided with a valid invoice. Accordingly for the year ending 30 September 2006 the sum of £20.42 is allowed which should be apportioned between the lessees, for the year ending 30 September 2009 the sum allowed is £46 which again should be apportioned between the lessees.

2006 - Administration fees

32. The sum of £235 was charged to each leaseholder in the year ending 30 September 2006 which the Applicant described as a "*nominal sum*" which was charged by the Applicant for the time spent "*in deciding what to do*". Conflicting evidence was given by Mr Carter during the course of the hearing as to what this sum related to. However after a letter dated 18 September 2007 was produced from Protheroe Carter which suggested that the sum related to time spent in chasing arrears of ground rent, Mr Carter confirmed this was the case adding that his "*memory was not so good*".

33. The Respondents disputed the claim for this sum on the basis that it included costs for a period outside of the period before the Tribunal and submitted that an apportionment should be made.

Administration Fees – the Tribunal's decision

34. The Tribunal considered the claim for the administration fees. It was clear that this sum related to time spent in chasing arrears for several years previous to 2006, that is, in respect of a period predating the period before the Tribunal. The Tribunal therefore considered that this charge should be reduced to reflect this. Accordingly the Tribunal allowed the sum of £50 plus Vat in relation to the time spent in the year ending 30 September 2006.

Professional Fees - 2007

35. The sum of £781.25 was included in the accounts in respect of survey fees incurred in 2006 in relation to a survey on the building in relation to anticipated works. The works were not carried out as Mr Carter's evidence was that he had been unable to get a builder to do the works. As a result the works became urgent and the First Respondent instructed a builder to carry out some of the works in July 2007.

Professional Fees 2007 – the Tribunal's decision

36. The Tribunal accepted that the managing agents had recognised the necessity for a survey in 2006. However following the survey no works were in fact undertaken by the managing agents. Mr Carter's evidence was that he had been unable to find a contractor although the Tribunal noted that the First Respondent had been able to find a contractor to carry out at least some of the more urgent works. In the Tribunal's view the survey had been of no benefit to the lessees, no works had been carried out and now some three years later the specification was unlikely to be of any value as undoubtedly a further survey would now be required. Accordingly the claim for professional fees was disallowed.

Roof works 2007

37. The Tribunal heard that in 2007 works to repair the roof were commissioned by the Second Respondent as the managing agents had

failed to take action to remedy the leaks. Works were carried out by Burna Maintenance at a total cost of £1925, the invoice in respect of which was at page 84 of the bundle. Mr Scarrfe had been credited 50% in respect of this amount and at the hearing Mr McKenzie also agreed to pay a 50% share of the cost of the works.

2008 - Provision for future roof repairs

38. A provision in the sum of £3,000 was made for future roof repairs. However the Tribunal had heard and it was not contested that these works had in fact been commissioned by the Second Respondent in 2007 and accordingly this provision was disallowed.

2007 - 2009 – Provision for future general repairs

39. A provision in the sum of £1,000, £500 and £3,000 respectively was made for future general repairs and decorations in respect of the service charge years ending 30 September 2007, 2008 and 2009. The Tribunal accepts that it is sensible to make proper provision for future maintenance in respect of a property such as this. However the Tribunal was not provided with any maintenance plan, quotations or any evidence at all that the managing agents had properly considered the scope of any such maintenance and accordingly disallows this provision in respect of both service charge years.

40. Likewise the provision made for roof leakage repairs in the sum of £2,000 for the year ending 30 September 2009 is disallowed the managing agents having been unable to satisfy the Tribunal that any proper maintenance plan was in place.

2009 – Professional fees

41. The sum of £1,365.63 was included in the accounts in respect of professional fees of Hurst Peirce and Malcolm. The invoice for these fees was not included in the original bundle and although the Tribunal made a specific direction for its provision in the directions made at hearing it had not been provided. The Tribunal has therefore been unable to satisfy itself in relation to these fees and the sum is disallowed.

Section 20C - Costs

42. An application was made by the Respondents under section 20C of the 1985 Act. Pursuant to section 20C the Tribunal has the power to make an order which precludes the landlord from recovering its costs of the

proceedings through the service charge where it considers it "*reasonable to do so*".

43. The Respondents' grounds for the application were that the managing agents had dealt with the Property very poorly. If the managing agents had dealt with matters properly and responded to queries from leaseholders the application to the Tribunal would not have been necessary. In particular it was pointed out that the service charge demands had not been served in the correct format until only a few months ago. The Respondents submitted that they had demonstrated to the Tribunal the poor management and their failure to deal with paperwork in a satisfactory fashion.
44. The Applicant opposed the application under section 20C. Mr Carter submitted that the amounts which the Tribunal would be likely to hold as payable would not greatly vary from those demanded. Mr Carter accepted that the managing agents had not been fully appraised of the statutory requirements but questioned whether the Respondents would have paid the service charges demanded in any event.

Section 20C – the Tribunal's decision.

45. The Tribunal agreed that the Property had been poorly managed. The managing agents had let arrears accrue on the basis that it was not worthwhile taking proceedings to recover them until a sufficient amount of arrears had accrued. The Tribunal considered this was fundamentally flawed. Had the managing agents addressed the issue of the arrears and the management of the Property at an earlier stage the parties could have achieved resolution earlier and had the opportunity to move forward.
46. In the circumstances therefore the Tribunal considers it appropriate to make an order under section 20C. The effect of this order is that the Applicant is precluded from recovering the costs of the proceedings through the service charge. The Tribunal would point out that the effect of this decision is that the sum included of £350 in the accounts for the year ending 30 September 2009 in respect of the application fee to this Tribunal is disallowed forming part of this decision on costs.

Chairman: Sonya O'Sullivan

Dated: 8 April 2010