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Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/OOAL/LSC/2010/0039

**THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER
SECTION 27A of the Landlord and Tenant Act 1985 AND UNDER
SCHEDULE 11 of the Commonhold and Leasehold Reform Act 2002**

Applicant: Dr Boukadida

Respondent: Solitaire Property Management Company Ltd &
Holding and Management (Solitaire) Ltd

Premises Flat 6, 4 Chantry Close, London SE2 9PY:

Date of Application: 20 January 2010

Date of Oral Pre-Trial Review: 12 February 2010

Date of Hearing 15 & 16 July 2010

Appearances for Applicant: Dr Boukadida

Appearances for Respondent Mr Andresen of Peverel Property Management
Mr Bettison of Insurance Estate Management
:

Leasehold Valuation Tribunal: Mrs B. M. Hindley LL.B
Ms S. Coughlin
Mr O. Miller BSc

Date of Tribunal's Determination: 12 August 2010

1. This is an application under Section 27A of the Landlord and Tenant Act 1985, received on 20 January 2010, to determine the reasonableness of service charges for the years ending March 2007, 2008, 2009 and the budget for 2010.
2. A Pre Trial Review took place 12 February 2010 at which time the application was amended to include also administration charges of £303.63 and £12.37 sought under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 for the year 2006/7.
3. Twenty five other leaseholders of the development were parties to the application and at the commencement of the hearing a further four were added. A complete list of their names and addresses is available from the Tribunal.
4. As a result of the Directions issued the applicant had completed a Scott Schedule provided by the respondents for each of the years in question. However, because the block and estate costs were accounted for separately and because the estate accounts were not received by the applicant timeously, not all of his concerns were listed on the schedule. Also, not all of the available supporting invoices had been provided to the applicant prior to the hearing.
5. The focus of the applicant's attacks on the various cost headings at the hearing varied from incomprehension of the charge to lack of supporting invoices and the unreasonableness of the costs, particularly in the light of their escalation year on year, from those of which he had been informed when he had purchased the flat in 2004.
6. Accordingly, the Tribunal examined each cost headings identified by the applicant as in issue and now marked with a * on the schedules attached at Annex 1, commencing with the schedule relating to the block costs and continuing onto the schedule of the estate costs.

Block Costs

7. Mr Andresen conceded that the charge for a lightening conductor in the budget for 2010 should be deleted.
8. Mr Andresen conceded that the charge of £613.35p in respect of electrical maintenance in the year ending 2009 should be deleted because it also formed part of the total shown under Repairs and Maintenance. He also conceded that the charge of £2000 made in the budget for 2010 could not be supported.
9. The cleaning charges for the years ending 2007 and 2008 were reduced by the Tribunal on account of missing invoices.
10. The repairs and maintenance charges were reduced by the Tribunal for the year ending 2007 because of an audit adjustment, for the year ending 2008 as the result of a missing invoice and a wrong apportionment, and for the year ending 2009 because a charge was incorrectly attributed to the block rather than to the estate. Much time was spent at the hearing on this item because invoices, particularly for dumped rubbish, were very unspecific showing neither the time involved nor the items removed.
11. The applicant considered the cost of the insurance to be too expensive and he had obtained other quotations which, prima facie, showed that it could be obtained at a lesser cost.

12. On the second day of the hearing Mr Bettison, the head of Insurance Estate Management, who acted on insurance matters on behalf of the freeholder and others, examined the quotations obtained by the applicant from Ark Insurance and Aviva. Having been given time by the Tribunal to examine them in detail he gave an item by item comparison of the similarities and differences between these two policies and the existing, and demonstrated that when everything was taken into consideration the cost of the exiting policy compared very favourably.
13. Mr Bettison also, at the Tribunal's request, revealed the commissions received for the years in question by the freeholder and the broker. These were as follows;-

	Freeholder	Broker
Y/e 2007	£3887 (20%)	£750 (3.4%)
Y/e 2008	£5129 (25%)	£593 (2.66%)
Y/e 2009	£5540 (25%)	£656 (3.14%)
Y/e 2010	£5394 (25%)	£639 (3.14%)

He explained that this money was not actually received by the freeholder but was credited on account of the freeholder, rather than the insurance company, dealing with all administrative questions relating to insurance such as documentation and claims.

14. Mr Andresen said that the reason why the commissions had not been revealed before was because under the rules of the Financial Services Authority the information needed to be provided only when sought.
15. The Tribunal was satisfied from the information provided by Mr Bettison that the cost of the insurance provided by Zurich for all of the years in question was reasonable and reasonably incurred.
16. However, they were informed by Mr Andresen that leaseholders had already been advised of reduced costs to those originally shown for 2008 and 2009 and the Tribunal reduced the cost shown in the budget for 2010 to the actual cost.
17. Mr Andresen conceded that the amounts paid for insurance as evidenced by the insurance certificates for 2008 and 2009 should replace the amounts in the accounts.
18. The applicant did not seek to pursue his objection to the heading External Reserve once it was explained by Mr Andresen that this related to contributions charged for a reserve to fund future major works,
19. Mr Andresen conceded that account handling charges in the years ending 2008 and 2009 should be omitted.
20. The Tribunal considered the costs of audit to be reasonable but in view of the many errors which this application had shown up, many of which could and should have been discovered by the auditors, the Tribunal determines that it is just to deduct 30% from these costs for each of the years in question.
21. Similarly, the Tribunal considered the per unit management costs, all inclusive of VAT, ranging from £190. 26p in 2007, to £205.05p in 2008, to £232. 23p in 2009, to be in themselves reasonable. However, in view of the examples of poor management brought to light by this application, such as the ready payment of invoices which do not clearly state the basis on which payment is being sought, the unavailability of some invoices, the apparent lack of proper contracts with regular contractors and the substantial number of errors revealed in the accounts which have resulted in demands for higher costs than

those actually incurred, the Tribunal determines that it is just and reasonable to reduce the management costs for the years 2007, 2008 by 10% and for 2009 by 20%.

Estate Costs

22. Mr Andresen conceded that a duplicate invoice for £719.38p had been included under the total for landscape maintenance for the year ending 2008 and that an invoice for £208.04 was missing for the year ending 2009.
23. Under the heading of repairs and maintenance Mr Andresen conceded an audit adjustment for the year ending 2007, a lost invoice in the year ending 2008 and a further audit adjustment for the year ending 2009.
24. Under the heading of insurance Mr Andresen conceded that the actual amounts shown on the certificates for the years ending 2008 and 2009 should be adopted.
25. Mr Andresen conceded that the account handling charges for the years ending 2007 and 2008 should be omitted.
26. Mr Andresen conceded that the estate management fees for 2008, 2009 and the estimate for 2010 had been incorrectly calculated and should be reduced by 50%.
27. As with the block costs set out above the Tribunal considered that whilst the overall costs of audit and management for the years in question were reasonable, the failures noted meant that it was just and reasonable to reduce them by 30% and 10/20% respectively.

Water and Electricity Charges

28. At the hearing the Tribunal found it impossible, from the information provided, to reconcile the costs shown with the invoices provided in respect of the water charges under the block costs and the electricity charges under both the block costs and the estate costs. They, therefore, agreed to a request from Mr Andresen that he should be allowed time to make further enquiries.
29. On receipt of the new information it was sent by the Tribunal to the applicant. He wrote that he now understood that there were two water meters and that only the costs incurred by one were chargeable to the flats. He considered the costs of electricity to be high when compared with another property managed by the respondents.
30. In respect of the water charges the Tribunal notes that the first invoice for water in relation to the block was dated 13 June 2007 and covers the period March 2004 - April 2007. In his submission Mr Andresen claimed a sum of £44,008.59, which is evidenced by the invoices. He stated that the sum of £11,134.14 was collected towards water charges in 2005/06. The Tribunal considers that this amount should be deducted from the amount claimed and, accordingly, determines that a reasonable amount for the year 07/08 is £32,874. 15.
31. Mr Andresen conceded that the sum of £5493.56 charged for 06/07 was incorrectly charged and the Tribunal determines that no charge is payable for that year.
32. The Tribunal determines as reasonable the charges for 08/09 at £14,519.64 and, based on the previous years' annual consumption, the estimated charge

for 09/10. The Tribunal accepts Mr Andresen's statement that all charges from the meter are Group 5 charges.

33. With regard to the electricity costs the Tribunal accepts, from the evidence provided, block costs for 2006/7 of £6385.17p, for 2007/8 of £5229.29p, and for 2008/9 of £2664.86. The Tribunal reduces the estimate for 2009/10 to £6,500 on the basis of the annual consumption in the previous years.
34. With regard to the estate electricity costs, again from the information provided, the Tribunal determines the cost for the year 2006/7 to be £131.46p. In the year 2007/8 an invoice for £179.95 was wrongly included as an estate cost when, in fact it was a block cost. Accordingly, the Tribunal determines that the block cost of £5229.29p, shown at paragraph 33 above, should be increased by £179.95p. The estate charge for 07/08 is, therefore, £75.81.
35. For the year 2008/9 no invoices have been provided so the Tribunal determines that no costs are payable.
36. With regard to the estimated block costs for 2009/10 the Tribunal considers that, on the basis of the consumption shown for previous years, the estimate of £300 should be reduced to £200.

Administration Charges

37. Mr Andresen said that he was not seeking now to recover the charge of £12.37p. However, he was pursuing the charge of £303. 63p which had arisen because the respondents had been compelled to instruct solicitors in respect of service charges which the applicant had failed to pay for the year ending 2006.
38. Mr Andresen produced the invoice from the solicitors for the amount sought.
39. The applicant did not seek to contest the charge but considered that the solicitors had been instructed prematurely.
40. The Tribunal, whilst they were critical, again, of the unspecific nature of the invoice which failed to show the time spent or the grade of the person carrying out the work, considered the cost to be reasonable and reasonably incurred.

Section 20C of the Landlord and Tenant Act 1985

41. Mr Andresen said that he was not prepared to concede that the applicant should not contribute towards the costs through the service charge since the respondents had been prepared to mediate and the applicant had simply said that he was not paying. He criticised the manner in which the application had been founded saying that the respondents had been forced to meet many rather unspecific challenges with little detail provided.. He considered that what had taken place had been an audit of the respondents who, he admitted, had been let down by their accountants. He was of the opinion that the outcome of the day had little to do with the case brought by the applicant. He pointed out that it had been necessary to require the attendance of Mr Bettison to answer the challenge to the insurance costs and, overall, he estimated the respondent's costs of the hearing to be £3,500 - £4,000.
42. The Tribunal considered that in all the circumstances of the case it would not be just and equitable to allow the respondents to recover their costs through the service charge account. The applicant had called into question many of the service charge costs and many of them had been found to have been charged in error. The Tribunal was particularly concerned that so many errors had gone

un-noticed by the respondents and that basic and recurring heads of expenditure, such as the charges for water and electricity, should have been so muddled for so long and, indeed, were only finally clarified subsequent to the hearing.

43. Accordingly, the Tribunal determines that the costs of this hearing should not be taken into account in determining the amount of any service charge payable by the applicant.

Reimbursement of Fees

44. Under Regulation 6 of the Residential Property Tribunal (Fees)(England) Regulations 2006 the Tribunal can exercise a discretion to order the repayment of application and hearing fees.
45. In the circumstances of this case the Tribunal considers it appropriate to exercise this discretion in favour of the applicant. Accordingly, the Tribunal orders the repayment by the respondents of the applicant's application and hearing fees in the sum of £350.

Conclusion

46. Clearly, as a result of all of the above, the applicant's service charge costs need to be recalculated. If the parties fail to agree on what is, therefore, reasonable and payable for the years in question, the applicant has liberty to apply to the Tribunal.

Chairman B. M. Hindley

Date 12/8/10

ANNEX 1

Case LON/OOAL/LSC/2010/0039 - Block Costs

Item	A	2006-2007		B 2007-2008		C 2008-2009		D 2009-2010 Estimate	
		Amount	Decision	Amount	Decision	Amount	Decision	Amount	Decision
Window cleaning	*	£900.00	£900.00	£0.00	£0.00	£0.00	£0.00	£0.00	0
Lightening conductor		£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	* £570.00	£0.00
Electrical maintenance		£0.00	£0.00	£0.00	£0.00	* £613.35	£0.00	* £2,000.00	£0.00
Electricity	*	£7,809.67	£6,385.17	* £6,476.29	£5,229.29	£2,644.85	£2,644.85	* £8,000.00	£6,500.00
Electricity invoice transferred from estate charges					£179.95				
Water and sewerage		£0.00	£0.00	£0.00	£0.00	£0.00	£0.00	£150.00	£150.00
Water charges	*	£5,493.56	£0.00	* £49,717.70	£32,874.15	* £14,519.64	£14,519.64	* £15,000.00	£15,000.00
Cleaning	*	£15,856.30	£13,240.30	* £15,944.70	£13,342.70	* £16,818.00	£15,752.00	* £17,654.00	£17,654.00
Bin Hire		£1,351.25	£1,351.25	£1,974.00	£1,974.00	£2,190.86	£2,190.86	£2,118.00	£2,118.00
Repairs and Maintenance	*	£13,840.77	£12,993.23	* £10,708.39	£9,069.27	* £6,424.52	£5,396.36	* £10,000.00	£10,000.00
Insurance	*	£19,317.73	£19,317.73	* £23,151.21	£20,360.88	* £25,064.01	£21,989.75	* £23,331.00	£21,413.50
External reserve	*	£8,090.00	£8,090.00	* £8,000.00	£8,000.00	* £10,000.00	£10,000.00	* £10,000.00	£10,000.00
Risk assessment reserve	*	£592.00	£592.00	£741.00	£741.00	£0.00	£0.00	£0.00	£0.00
Acct handling fee				* £70.00	£0.00	* £72.00	£0.00	* £0.00	£0.00
Bank charges paid		£73.02	£73.02	£74.19	£74.19	£144.26	£144.26	£0.00	£0.00
Bank interest received		-£240.04	-£240.04	-£9.77	-£9.77	-£41.09	-£41.09	£0.00	£0.00
Audit	*	£1,677.90	£1,174.53	* £1,727.25	£1,209.08	* £1,749.67	£1,224.77	* £1,792.00	£1,500.00
Management	*	£6,434.04	£5,790.64	* £6,934.47	£6,241.02	* £7,542.13	£6,033.70	* £9,324.00	£9,324.00
VAT on management	*	£1,125.96	£1,013.36	* £1,213.53	£1,092.18	* £1,257.03	£1,055.89		
		£82,322.16	£70,681.19	£126,722.96	£100,377.94	£88,999.23	£80,910.99	£99,939.00	£93,659.50
Notes									

1. Stars in columns A to D indicate items in dispute

2. Amounts to be allocated to flats in Chantry Close in accordance with lease percentages

Case LON/OOAL/LSC/2010/0039 - Estate expenses

Item	A	2006-2007		Decision	B	2007-2008		Decision
		Gp1	Gp2			Gp1	Gp2	
Gate Maintenance contract		£0.00	£123.38	£123.38		£0.00	£0.00	£0.00
Landscape maintenance contract	*	£5,378.65	£0.00	£5,378.65	*	£6,726.42	£0.00	£6,007.04
Electricity		£1,634.50	£311.33	£131.46		£310.85	£75.81	£75.81
Electrical maintenance contract		£0.00	£0.00	£0.00		£0.00	£0.00	£0.00
Repairs and maintenance	*	£6,753.27	£692.18	£5,895.76	*	£8,733.30	£1,365.22	£7,834.91
Insurance	*	£318.79	£0.00	£318.79	*	£643.19	£0.00	£369.60
General reserves		£1,080.00	£0.00	£1,080.00		£1,080.00	£0.00	£1,080.00
Account handling charges	*	£56.40	£0.00	£0.00	*	£70.00	£0.00	£0.00
Bank interest paid	*	£1,191.87	£0.00	£1,191.87	*	£30.59	£0.00	£30.59
Bank interest received		-£22.97	£0.00	-£22.97		-£25.04	£0.00	-£25.04
Audit fees	*	£1,085.70	£0.00	£759.99	*	£1,135.05	£0.00	£794.50
Management fees	*	#####	£0.00	#####	*	#####	£0.00	#####
VAT on Management fees	*	£2,251.91	£0.00	£2,026.72	*	£4,854.13	£0.00	£2,184.36
Total		#####	£1,126.89	#####		#####	£1,441.03	#####

C	2008-2009		Decision	D	2009-2010		Decision
	Gp1	Gp2			Gp1	Gp2	
	£0.00	£2,059.00	£2,059.00		£0.00	£1,065.00	£1,065.00
*	£7,088.94	£0.00	£6,880.90	*	£7,151.00	£0.00	£7,151.00
	£300.00	£100.00	£0.00		£1,700.00	£300.00	£200.00
	£0.00	£0.00	£0.00		£650.00	£0.00	£0.00
*	£7,664.64	£3,011.88	#####	*	£8,000.00	£1,900.00	£9,900.00
*	£553.30		£535.89	*	£536.00	£0.00	£536.00
	£894.00	£827.00	£1,721.00		£1,080.00	£1,000.00	£2,080.00
*	£72.00	£0.00	£0.00				
	£0.00	£0.00	£0.00				
	-£44.38	£0.00	-£44.38				
*	£1,149.78	£0.00	£804.85	*	£3,583.00		£1,200.00
*	#####		#####	*	#####		#####
*	£5,028.09		£2,011.24				
	#####	£5,997.88	#####		#####	£4,265.00	#####