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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 – SECTION 27A & 20C

LON/OOAM/LAC/2009/0019

Premises: 39B Kenworthy Road, London E9 5RB

Applicant: Mr. Andrew McDonald

Represented by: Mr. C Powell

Respondent: Bankway Properties Limited

Represented by: Bankway Properties Limited
Mr. Peter F Gunby MRICS for B. Bailey &
Company Ltd (managing agents)

Tribunal: Ms. LM Tagliavini, LLM, Dip Law, BA Hons
Mr. B Collins ,
Mr. O Miller, BSc

Hearing Date: 4 February 2010

1. This is an application made pursuant to section 27A of the Landlord and Tenant Act 1985 seeking a determination as to the reasonableness and payability of service charges incurred in 2009, specifically for (i) insurance and (ii) repairs and fire safety measures.

2. The premises are held pursuant to a lease made on 15 June 1988, for a term of 125 years from 24 June 1984, at a ground of £100 per annum rising. The subject premises comprise a self-contained flat on the ground floor of a converted Victorian house. Clause 7(e)(i) of the lease requires the landlord to keep the building comprehensively insured, of which the subject flat forms part, Clause 1(g) sets out the proportion of service charges payable by reference to the rateable value.

The Applicant's Case:

3. In a Statement of Case, Mr. McDonald asserted that he challenged his liability to pay the 2009 service charges, and specifically the insurance premiums as calculated, as well as the cost of the repairs and refurbishments. He stated that the fire doors to flats A and C had to be made to measure, and unless this was done they would not fit. He asserted that the front door to his own flat formed part of his demise. Mr. MacDonald did not object in principle to fire safety works and measures, but asserted that he objected to the cost of these (fire safety) works. However, he did not produce any alternative quotes for any of the items challenged.

4. Mr. McDonald told the Tribunal that he queried whether the property was insured, either at all or to an appropriate level. He

also queried in whose name the policy was held. On hearing from Mr. Gunby, Mr. McDonald accepted that the property was insured but stated he was unable to tell how much insurance he had to pay or how it was calculated as it did not appear to accord with the terms of the lease. Mr. McDonald also queried his liability to contribute to the repairs, in so far as they included works to the front door of his flat, which he believed formed part of his demise.

5. The Tribunal was provided with a copy of the section 20 consultation notices (to which no challenge was made), and the Schedule of Works, which included redecorations to communal parts, and the installation of a smoke alarm system. The total costs of these works was said to be in the region of £5,500 Inclusive VAT and fees.

The Respondent's Case:

6. Mr. Gunby for the Respondent told the Tribunal that the insurance policy was in the name of the freeholder landlord. However, when placing insurance he goes to the market under the banner "William Pears Group" which owns the freeholder company and other companies. He also told the Tribunal that the insurance forms part of a block policy, which identifies and includes Flats 39A, 39B and 39C individually. He produced a schedule purporting to identify the benefits of a block policy as opposed to an individual policy, and which included cover for loss of rental income, although qualified this by saying that this cover related only to the freeholders flat (39A). He accepted that the insurance had not been calculated in accordance with the terms of the lease, but would arrange for it to be recalculated. He stated that Fire Safety Order 2007 required

that fire safety works be carried out in the Building. He had assessed the property himself, and had concluded that certain fire safety works were required. In a letter dated 4 August 2009 from the landlord's agents to Mr. McDonald, it was conceded that the front entrance door to his flat was the responsibility of the lessee. It was also clarified by the Respondent in correspondence, that there was historically a reserve fund, which had been used in the past for redecoration and repair works.

7. The section 20 consultation notices and other documentation was produced from which, the Tribunal could see that the works had been put out to tender, with the lowest quote being accepted. On questioning by the Tribunal, Mr. Gunby stated that he had been responsible for carrying out the fire Risk Assessment as he had experience of doing so in the past and as a chartered surveyor he was qualified to do so. Although, he asserted that this property was covered by the Fire Safety Order of 2007, the Tribunal was of the view, that as Mr. MacDonald conceded that it was reasonable to carry out these work, the Tribunal was not required to consider whether Mr. Gunby's assertions were correct.

The Tribunal's Findings:

8. In light of concessions made by both parties the Tribunal found:
 - The building known as 39 Kenworthy Road is comprehensively insured.

- The calculation of the insurance has not been carried out in accordance with the lease and requires recalculation.

- The insurance premiums, although on the high side, are within the range of what can properly be considered reasonable, (subject to recalculation of the Applicant's share).

- The fire safety works and measures are reasonable. (Including the replacement of the front doors to Flats A and C).

- The Applicant is responsible for repairs/replacement to his own front entrance door (Flat 39B).

9. In light of the above findings, and the concessions made on behalf of the Respondent, the Tribunal considers that in all the circumstances, it is fair and reasonable for costs of this litigation not to be added to the service charges.


Chairman: LM Tagliavini

Dated: 16/03/10