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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	**LON/00AY/LSC/2012/0201**
Property:	**Flat B (First Floor Flat), 218 Gipsy Road, London SE27 9RB**
Applicant:	Mr G Cornet
Representative:	None
Respondent:	Mr S Ijewere
Representative:	None
Date of hearing:	30th May 2012
Appearances for Applicant:	Mr Cornet
Appearance for Respondent:	None
Leasehold Valuation Tribunal:	Mr P Korn (chairman) Mr I Thompson BSc FRICS
Date of decision:	8th June 2012

Decisions of the Tribunal

(1) The Tribunal makes the following determinations:-

- The Respondent's share of the 2011/12 insurance premium (£673.98) is payable in full with immediate effect.

- The Respondent's share of the insurance premium for 2012/13 will become payable as soon as the actual cost has been ascertained and the Applicant has then sent the Respondent a demand. In relation to the Applicant's estimated 5% uplift, if it transpires that the actual premium for 2012/13 is indeed 5% higher than the premium for 2011/12 it is very likely that the premium will still be reasonable and therefore payable in full, although this assumes nothing unusual happening between now and then which significantly changes the position.

- The Respondent's share of the cost of dealing with the rear parapet wall and gutter repairs (£640.20) will be payable after the end of the current service charge year (i.e. after 29th September 2012) and can be included as part of the Applicant's actual costs for the current service charge year once these have all been ascertained.

- The Respondent's share of the cost of the works relating to the manhole cover and drainpipes (£231.00) and the front door new locks and installation (£54.09) will be payable at the same time as the cost of dealing with the rear parapet wall and gutter repairs if the work is done during the current service charge year. If the work is not done during the current service charge year then it will be open to the Applicant to include the estimated costs in an estimated service charge for next year, half of which will be payable on 25th March 2013 and half of which will be payable on 29th September 2013.

- The Respondent's share of the cost of the works relating to the window (£726.00) will also be payable at the same time as the cost of dealing with the rear parapet wall and gutter repairs if the work is done during the current service charge year. Again, if the work is not done during the current service charge year then it will be open to the Applicant to include the estimated costs in an estimated service charge for next year, half of which will be payable on 25th March 2013 and half of which will be payable on 29th September 2013.

- The Applicant is entitled to charge a management fee of 15% of the cost of all other service charge items (including the insurance premium) in respect of the years 2011/12 and 2012/13. In relation to 2011/12, the management fee cannot be charged until after the end of the current service charge year (i.e. after 29th September 2012). In relation to 2012/13, the Applicant can charge a management fee of 15% of the estimated costs for that year, half of which will be payable on 25th March

2013 and half of which will be payable on 29th September 2013. After the end of the 2012/13 year he will need to work out the actual service charges (including the actual management fee) and then make a balancing adjustment (i.e. charge to the Respondent the amount of any underpayment or give credit for any overpayment).

(2) The Tribunal makes no order under section 20C of the 1985 Act as the Respondent has not applied for any such order.

(3) The Tribunal orders the Respondent to reimburse the Applicant's application fee of £100 and hearing fee of £150.

The application

1. The Applicant seeks a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the liability to pay and reasonableness of certain service charge items.

2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was present at the hearing and represented himself. The Respondent was not present and was not represented at the hearing.

The background

4. The building ("**the Building**") of which the Property forms part is a semi-detached Victorian house converted into two flats.

5. The Tribunal did not inspect the Building or the Property. Neither party requested an inspection and the Tribunal did not consider that one was necessary.

6. The Respondent holds a long lease ("**the Lease**") of the Property pursuant to a lease dated 25th February 1983 between Springworth Limited (1) and Joseph Patrick Carey (2) as extended by a further lease dated 27th September 2005 between James Robert Benning (1) and Ego Bertha Iwegbu (2). The specific provisions of the Lease will be referred to below where appropriate.

The issues

7. The Tribunal identified the relevant issues for determination as follows:

   (A) The Respondent's liability to pay and reasonableness of the following service charge items:-

2011/12 Service Charge Year

Item	*Amount stated to be payable by Respondent*
• *Building Insurance*	*£673.98*
• *Rear parapet wall and gutter repairs*	*£640.20*
• *Manhole cover and drain pipes*	*£231.00*
• *Front door new locks and installation*	*£54.09*
• *Management fee*	*£239.89*

2012/13 Service Charge Year

Item	*Amount stated to be payable by Respondent*
• *Building Insurance*	*£707.68*
• *Replace ground floor utility sash window*	*£726.00*
• *Management fee*	*£215.05*

(B) If and to the extent that the above sums are payable, the dates on which they are payable.

Applicant's case

BUILDING INSURANCE

8. In relation to the building insurance for 2011/12, the Applicant explained that he only purchased the Building in August 2011 and that therefore the insurance arrangements predated his involvement. He agreed with the Tribunal that the level of the insurance premium for the Building did seem quite high. However, he had looked into the position and had established that the Building had an extensive claims history (as shown in the bundle). The advice that he had received was that he would not be able to achieve a lower premium by switching insurers and therefore he was, for the time being at least, going to remain with the same insurers. He stated that he did not receive any

commission and pointed out to the Tribunal that he had a vested interest in keeping the premium as low as possible as he was the leaseholder of the other flat in the Building.

9. As regards the insurance premium for 2012/13, the policy had not yet come up for a renewal but he was asking the Tribunal to confirm that a premium equal to the current premium plus a 5% uplift would be reasonable.

REAR PARAPET WALL AND GUTTER REPAIRS (2011/12)

10. In relation to the rear parapet wall and gutter repairs, the Applicant referred the Tribunal to the survey report in the bundle. He said that he had discussed the issue with the Respondent who had agreed that the work needed to be done but had kept asking for more estimates. The Applicant ended up obtaining four estimates and then had the work carried out in November 2011, but the Respondent had still not paid his share despite repeated demands.

MANHOLE COVER AND DRAIN PIPES (2011/12)

11. In relation to the manhole cover and drain pipes issue, the Applicant again referred the Tribunal to the survey report in the bundle and argued that this demonstrated that the work needed to be done. He also referred the Tribunal to the estimate which he had obtained. He said that he was happy with the estimate and that the Respondent had not requested further estimates and therefore he did not propose obtaining any alternative quotations. This work has not yet been carried out.

FRONT DOOR LOCKS (2011/12)

12. There was nothing wrong with the lock itself, but the problem was that various occupiers had come and gone and the Applicant did not know how many keys there were and who had them. The issue was therefore one of security, and the Applicant felt that it was important to change the lock so that he could know and control who had a key. He referred the Tribunal to a copy of the estimate which he had obtained for the work. He said that he was happy with the estimate and that the Respondent had not requested further estimates and therefore he did not propose obtaining any alternative quotations. This work has not yet been carried out either.

WINDOW REPLACEMENT (2012/13)

13. In relation to the window replacement issue, the Applicant again referred the Tribunal to the survey report in the bundle and argued that this demonstrated that the work needed to be done. He also referred the Tribunal to the estimates which he had obtained. This work has not yet been carried out either.

14. He acknowledged that there might be a question as to whether this work fell within the landlord's repairing responsibilities and therefore whether it should form part of the service charge rather than being each individual leaseholder's responsibility to repair/replace his own window. Although he did not go through the wording of the Lease, the Applicant argued that the repair and replacement of the window was the landlord's responsibility and therefore should form part of the service charge.

MANAGEMENT FEE

15. The Applicant wished to charge a management fee in 2011/12 and in 2012/13 equal to 15% of the remainder of the service charge. He referred the Tribunal to clause 2(f) (i) of the Lease *(the clause numbering referring to the numbering of the original lease)* under which the tenant covenants to pay *"...either the reasonable charges of the Managing Agents appointed by the Lessor to carry out its obligations hereunder or (if the Lessor shall undertake the management itself) a management fee of Fifteen per centum of the said costs and expenses"*.

16. In response to a question from the Tribunal he said that he had done a lot of work for his management fee, including investigating problems, obtaining quotations, liaising extensively with the Respondent and arranging for work to be carried out.

Respondent's case

17. The Respondent did not make any written submissions, despite being required to do so by the Leasehold Valuation Tribunal's Directions dated 26th March 2012 if he wished to challenge the Applicant's case. Furthermore, he did not attend the hearing to make oral representations.

Tribunal's analysis

18. The Respondent has not made any specific challenge to the Applicant's case. However, neither has he admitted that the service charge items concerned are payable, and therefore it is for the Tribunal to make a determination on the basis of an application of the relevant law to the facts.

19. As a general point, the Tribunal was impressed by the way in which the Applicant put together his case and the way in which he presented it at the hearing. He came across very credibly, and in the absence of any challenge from the Respondent the Tribunal is content to accept that, on the balance of probabilities, the Applicant's statements as to the factual position are accurate.

20. The Tribunal therefore accepts the Applicant's explanation for the level of insurance premium. It also accepts that it is reasonable to carry out all of the works referred to in the Applicant's application and that the amount that the Applicant has spent on the work (in the case of the rear parapet wall and

gutter repairs) and the amount that he intends to spend on the work (in the case of the manhole cover and drain pipes and the front door locks and the window replacement) are reasonable.

21. The Tribunal also accepts that the proportion of the cost of the items referred to above (including the building insurance) payable by the Respondent is 66%, this being the "Due Proportion" as defined in the Lease. It further accepts that the Applicant is entitled under the Lease to charge a management fee of 15% of the remainder of the service charge and that he has in any event so far justified his fee by the amount of work that he has done.

22. However, there are some technical difficulties. The mechanism set out in the Lease envisages that the service charge contribution (except in relation to the insurance premium) will be estimated by the landlord or its managing agent as soon as possible after the beginning of each service charge year (which begins on 30th September) and that the tenant will pay the estimated amount by two instalments on 25th March and 29th September (see clause 2(f)(ii) of the original lease). As soon as practicable after the end of the service charge year once the actual amount of the service charge costs for the year has been ascertained the landlord then needs to make a balancing adjustment and charge the balance to the tenant if the actual costs are higher or allow a credit to the tenant if the actual costs are lower (clause 2(f)(iii) of the original lease).

23. The Applicant has not been through this process. Instead, he has sought to charge costs either as they have been incurred or after having been through a process of liaising with the Respondent and obtaining estimates. In acting in this way, the Tribunal is satisfied that the Applicant was acting in good faith and was simply trying to deal with the issues in a practical manner. Nevertheless, the mechanism set out in the Lease is to some extent there for the tenant's protection and the Tribunal cannot ignore it just because the Applicant has tried his best and the Respondent has seemingly failed to respond in a reasonable manner.

24. Nevertheless, an analysis of the relevant Lease provisions does not, in the Tribunal's view, lead to the conclusion that the service charge cannot be collected at all if it has not previously been estimated. If there is no estimate during a service charge year then the costs incurred during that year cannot be collected during that year but they can still be invoiced and collected after the end of that year because under clause 2(f)(iii) the landlord can still charge the actual costs for the year (once ascertained) less the estimated amount (i.e. in this case less zero).

25. Applying the above to the items in dispute, there is no problem in relation to the 2011/12 insurance premium. That is because in clause 1 of the original lease the payment of the insurance premium is dealt with as follows:- *"AND ALSO YIELDING AND PAYING by way of additional rent the Due Proportion of such sum or sums as the Lessor shall pay for keeping the Building insured ... such additional rent to be paid on demand"*. As the building insurance for 2011/12 has already been organised and paid for and the Applicant has demanded

payment from the Respondent it is already overdue and is therefore payable immediately.

26. As regards the rear parapet wall and gutter repairs, these works have been carried out but this has happened during the current service charge year. The Applicant could have included an estimate of these works as part of an estimated service charge near the beginning of the service charge year but he has not done so. Therefore, to recover these costs he will need to charge them as actual costs under clause 2(f)(iii) of the original lease and will need to do this after the end of the current service charge year (i.e. after 29th September 2012) as part of the total actual costs incurred during the current year once these have been established.

27. As regards the manhole cover and drain pipes issue and the front door locks these works have not yet been carried out. It is, in the Tribunal's view, now too late in the service charge year for the Applicant to be submitting an estimate of this year's service charge for the first time (as envisaged by clause 2(f)(ii) of the original lease), and therefore the Applicant has two choices. One option is to proceed to carry out the work during the current service charge year, in which case he can charge the actual cost after the end of the current service charge year in the same way as in relation to the rear parapet wall and gutter repairs. Alternatively he can defer the work until the next service charge year and can then incorporate the estimated cost into an estimated service charge demand sent out as soon as possible after the beginning of the next service charge year which will be payable in two instalments – half on 25th March 2013 and half on 29th September 2013.

28. In relation to the management fee for 2011/12, it is directly linked to the recoverability of other service charge items and the mechanism for recovery is the same. Therefore in the absence of an estimated service charge the Applicant will only be able to charge a management fee for 2011/12 after the end of the 2011/12 service charge year. The amount will be 15% of actual expenditure during 2011/12.

29. Can the Applicant charge a management fee on the insurance premium? Clause 2(f)(i), part of which has been quoted above, begins by requiring the tenant to pay *"the Due Proportion of the costs and expenses of the Service Obligations"* before going on to allow the landlord to charge a management fee equal to 15% of *"the said costs and expenses"*. The Service Obligations are defined as including the obligation to insure the Building and therefore, in the Tribunal's view, in the light also of the work that the Applicant has done in looking into insurance issues and investigating the claims history and the fact that he does not receive commission, the Applicant is entitled to charge a management fee on the insurance premium. Therefore the Applicant can charge a management fee of 15% of the actual cost of services during the current service charge year including the cost of insurance.

30. In relation to the insurance premium for 2012/13, the problem with the figure provided by the Applicant is that it is merely an estimate, and the payment

mechanism for insurance is not the same as for other services, as explained above. Therefore, when the actual insurance premium for 2012/13 has been established the Applicant will be able to charge it to the Respondent. As regards whether an uplift of 5% will be reasonable, it is likely to be so but the Tribunal is not in a position to establish this for certain as the insurance market does fluctuate and there could be other relevant factors at the time.

31. As regards the window work, the description of the Demised Premises in the Lease is very brief. They are described as *"First and Second Floors ... edged red on the plan ... including the ceilings and floors (but not the structures supporting them) and all interior surfaces of the Flat"*. The Common Parts are described as *"the foundations main structure including all timbers beams joists roof main entrances passages landings staircases external doors windows and chimney stacks (if any) gutters and rain water pipes of the Building not comprised in the Demised Premises or any other flat ..."*. The landlord covenants to maintain, repair, redecorate and renew the Common Parts.

32. The Respondent has not argued that the window replacement goes beyond the parameters of the Applicant's repairing obligations. Whilst the point is not crystal-clear, it seems to the Tribunal on the balance of probabilities that the intention was for the landlord to be responsible for all windows other than the cleaning and maintenance of the interior surfaces of the windows of each flat. Therefore, in the Tribunal's view, the window replacement is a service charge item. Again, as this work has not been carried out, the Applicant has two choices. He can carry out the work during the current service charge year and then charge the Respondent's proportion of the cost to the Respondent after the end of the service charge year as part of the actual costs for the current year. Alternatively he can carry out the work during the next service charge year and include the estimated cost in the estimated service charge, which can then be charged in instalments on 25th March 2013 and 29th September 2013.

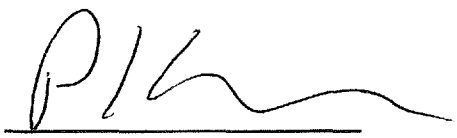
33. The above principle also applies to the management fee for 2012/13. If the Applicant sends out an estimated service charge demand at or near the beginning of the next service charge year he can include a management fee of 15% of the estimated cost of services (including 15% of the insurance premium). If he does not wish to send out an estimated service charge then he will not be able to charge the management fee until after the end of that service charge year (i.e. after 29th September 2013).

No application under section 20C

34. The Respondent was not present at the hearing and did not make any application prior to the hearing for an order under section 20C of the 1985 Act and therefore this issue does not fall to be considered.

Application and hearing fee

35. The Applicant applied for an order for the Respondent to reimburse his application fee and hearing fee. Although the Tribunal has found for technical reasons that certain items are not payable at the times that the Applicant believed them to be payable, he is clearly on a learning curve in relation to these technicalities and is trying very hard to deal with the issues in a practical manner. The Respondent, on the other hand, has seemingly not engaged with the process in a meaningful way and the Applicant is justified in feeling frustrated. The Applicant has gone out of his way to approach the issues in a professional and practical manner and has obtained estimates and generally tried to act toward the Respondent as reasonably as possible. In return, the correspondence indicates that the Respondent has repeatedly failed to make payments without offering any proper explanations. The Respondent has not made any submissions to the Tribunal in support of his position, and the Tribunal therefore considers in the circumstances that it is appropriate to order the Respondent to reimburse the Applicant's application fee of £100 and his hearing fee of £150.

Chairman: 

Mr P Korn

Date: 8th June 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.