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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION  
UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985**

**Case Reference:** LON/00BE/LSC/2012/0107

**Premises:** FLAT 7, ASTON WEBB HOUSE, 115 TOOLEY  
ST, LONDON SE1 2AT

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**Applicant(s):** THORNSETT ESTATES LTD

**Representative:** LONDON RESIDENTIAL MANAGEMENT LTD

**Respondent(s):** MR J AND MRS E CAWLEY

**Representative:** MR ISAAC THOMAS

**Date of hearing:** 21 JUNE 2012

**Appearance for Applicant(s):** MISS L CONACHER (PROPERTY MANAGER)  
MR M WILLIAMS (DIRECTOR, LRM LTD)

**Appearance for Respondent(s):** NO APPEARANCE

**Leasehold Valuation Tribunal:** MS L SMITH (LEGAL CHAIR)  
MR D JAGGER MRICS  
MRS R TURNER JP

**Date of decision:** 9 July 2012

### **Decisions of the Tribunal**

- (1) The Tribunal determines that the service charge for the year 2010-2011 should be reduced by the overall sum of £2340 plus VAT (in relation to cleaning charges) and the Respondents contribution to that sum be reduced proportionately. With that exception, the Tribunal determines that the remainder of the service charge for the year 2010-11 is reasonable and payable.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act) as to the amount of service charges payable by the Respondents in respect of the service charge year 2010-2011. Whilst the issue of the advance service charges payable in the year 2011-2012 was alluded to in the directions order, those were not referred to in the application nor disputed in the Respondents' representative's letters and accordingly were not determined by the Tribunal.
2. No determination is made either in relation to the issue of whether an order should be made under section 20C of the 1985 Act since this was the Lessor's application and the Respondent Lessees were not present or represented at the hearing and did not argue for such an order in correspondence. The Lessor did not seek an order for reimbursement of fees and no determination is made in relation to that issue.
3. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

4. The Applicant was represented at the hearing by Miss Conacher and Mr Williams of London Residential Management Ltd. The Respondents were represented in correspondence prior to the hearing by Mr Isaac Thomas but he did not attend either the directions hearing or the hearing on 21 June.

### **The background**

5. The property which is the subject of this application is a triplex 3 bedroomed flat in a listed building containing 14 flats situated on a main road in Central London.
6. The Tribunal obtained photographs of the outside of the building and the entrance hall. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
7. The Respondents hold a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a

variable service charge. Clause 2.4 of the lease requires the Lessee to pay a proportion of the expenditure properly paid or incurred by the Lessor in connection with provision of services and maintenance of the building and other services set out in clause 6 as provided in the Fifth Schedule at the times and in the manner provided in the Fifth Schedule.

8. Clause 6.2.1 requires the Lessor to insure the building. Clause 6.3.1 requires the Lessor to "maintain renew and keep in good and substantial repair and condition" inter alia the structure and common parts of the building. Clause 6.3.2 and 6.3.3 requires the Lessor to decorate the exterior and interior of the building. Clause 6.3.4 requires the Lessor to keep the common parts of the building adequately lit and cleaned. Clause 6.3.5 requires the Lessor inter alia to pay water rates in relation to the property and building.
9. Clause 6.4 permits the Lessor to employ managing agents, surveyors and such other maintenance staff and cleaners as the Lessor reasonably considers to be necessary.
10. The Fifth Schedule provides for payment of service charges by way of interim payments on 24 March and 28 September in each year and balancing charges payable within 21 days of service of a certificate as to the amount underpaid.

#### **The issues**

11. Although the Respondents were not present or represented at the hearing, it was clear from correspondence prior to the hearing that their dispute focussed on the amounts of the service charge and not their liability to pay the same under the lease. The focus of the correspondence was the service charge for the year 2010-2011 even though payments are also outstanding for advance service charges for 2011-2012. In light of this, the Tribunal was only able to determine the reasonableness and payability of the service charges for the year 2010-2011 but it is hoped that what follows will enable the parties to reach a view on reasonableness of the service charges for the following year given that the headings are largely the same.
12. In light of the absence of the Respondents at the hearing, the Tribunal invited the Applicant's representatives to go through the correspondence between the parties which dealt with the detail of the disputed amounts. The Applicant's representatives had also produced a full bundle containing the relevant bills and invoices, certificate and audited accounts for the service charge for the year 2010 and budgets for the years 2011 and 2012.
13. Having heard evidence and submissions from the Applicant's representatives and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

#### **Service charge items and amounts claimed** **The Tribunal's decision**

14. With the exception of cleaning, the amounts claimed, whilst relatively expensive in some cases, are within reason. The Tribunal determines that the overall service charge for cleaning for the year 2010-11 should be reduced by £195 per month (£2340 for the year) plus VAT and the Respondents' contribution to the service charge reduced proportionately.

#### **Reasons for the Tribunal's decision**

15. The Respondents' representative focussed in correspondence on particular items in the service charges which are dealt with and determined below. He made some general points though about the location of various contractors, the fact that there appeared to be some duplication of contractors and that there was some suspicion due to the way in which invoices were raised and paid (and delays between the two) that there was a link between the contractors and the Applicant's managing agent. We therefore deal with those general points first.
16. Firstly, the Tribunal accepts the Applicant's submission that the location of the various contractors' offices is irrelevant. What matters is where those contractors work. Such things as parking charges would be incurred wherever the contractors are based (the building is on a "red route" so that parking charges are high).
17. Secondly, the Applicant's representatives gave evidence that, particularly in relation to general maintenance, during the year 2010 a number of changes were made while they looked for the best and most reliable contractor for general maintenance work. Thus, in addition to individual invoices for one-off repairs, there are general maintenance invoices raised by (in order) Reliable, Reddans, Protech and Total Repairs. The general maintenance for the building is now mainly carried out by Total Repairs. This would though explain why there do appear to be a number of invoices for general maintenance throughout 2010 raised by a number of different contractors. The Tribunal observes here that it might have been helpful to the Respondents (and the Tribunal) if it had been made clear which sums were attributed to which heading in the service charge account. However, Miss Conacher in particular was able to explain the detail of the sums in dispute to assist the Tribunal in reaching a view on the reasonableness of those sums.
18. Thirdly, the Tribunal accepts the assurance given by the Applicant's representatives that, other than where the managing agents are responsible directly for the service provided, there is no link between London Residential Management Ltd ("LRM") and the contractors concerned.
19. Turning then to the detailed disputes, the Tribunal determines those under the headings as set out below.

#### **Cleaning and window cleaning**

20. The amount for cleaning which includes general and window cleaning for 2010 is claimed in the sum of £7229. That includes a sum of £1400 for window cleaning carried out by Regent contractors which is disputed by the

Respondents. The invoices show that Regent invoice on the basis of a quarterly fee of £300 which is increased every other quarter by cleaning of the roof of the atrium to £410. The Tribunal was told that this includes cleaning of all windows of the building and not just the common parts and the photographs suggest that this is a very large number of windows. Whilst the Respondents dispute that their windows are cleaned, there is only a letter from their representative to this effect (and he does not live in the property) and therefore no substantial evidence. In the circumstances, the Tribunal accepts that this figure is reasonable.

21. In relation to general cleaning, this is provided by LRM directly. Mr Williams gave evidence that LRM has its own cleaning contractors so that the figure for cleaning is not based on an hourly rate but rather on recovery of the salaries of the cleaning operatives and supervisor as well as an element of uplift for LRM. Miss Conacher however gave evidence that the cleaning of the communal areas was carried out by 2 cleaning operatives for 4 hours each per week and that the contract charge was £390 plus VAT per month. Whilst this would equate to an hourly rate of just over £11 per hour which would not be unreasonable, it does seem to the Tribunal that the amount of work involved should not take 8 hours per week. This was confirmed by the cleaning specification which the Tribunal requested from LRM after the hearing. Having seen the extent of the cleaning work carried out, in the Tribunal's view, 4 hours per week would be more than adequate. Accordingly, the Tribunal considers that this element of the service charge should be reduced to £195 plus VAT per month (£2340 plus VAT for the year).

#### Door entryphone and lift telephone

22. The Respondents' representative complained about the invoices for telephones. It was explained to the Tribunal that these were for the door entry system and lift telephones and that Acorn had taken over from British Telecom. Also that the credit from BT had been passed to the service charge account. These charges amounted to £155 and £289 and the Tribunal was satisfied that these amounts were reasonable.

#### Landscaping

23. An amount of £1206 was claimed for landscaping. This service was provided by Plants by Design. They tend to 2 terraced roof gardens and the plants in the atrium. The invoices are for £280 per quarter plus VAT. Whilst that amount did appear expensive for a building of this nature with no outside space, the Tribunal did note that companies of this nature are generally contracted for commercial companies and are unlikely to be cheap as a result. Again, the Tribunal had no quotations to compare with. Miss Conacher gave evidence that in other properties managed by LRM, the residents association will often take on responsibility for tending to plants in such gardens but in this building there is no residents association to take on the work. There did not appear to the Tribunal to be any alternative option for providing this service and, as noted above, therefore, the figure whilst expensive does appear to be within reasonable bounds.

#### General maintenance and repairs

24. As noted above, general maintenance during 2010 was carried out by a number of companies (Reliable followed by Reddans followed by Protec followed by Total Repairs who continue to provide this service). The Tribunal notes that the increase in this head of the service charge was largely the reason why the service charge increased from the budgeted figure of £41,076 to the claimed actual figure of £53,374 and the Tribunal has therefore carefully scrutinised those items which the Respondents disputed as set out in Mr Thomas's letter of 21 March 2012.
25. As to general maintenance, Miss Conacher gave evidence that there were 2 monthly maintenance contracts, one for lighting inspections and one for guttering and roof inspections. Those were each billed at £110 plus VAT per month. Those figures for maintenance contracts did appear quite expensive. However, the Tribunal was not supplied with any comparative quotations and does note that there are some peculiar features of this property, particularly the difficulty of contractors parking in the area which tends to increase invoice amounts. The Tribunal also notes that the building is listed and this too may serve to increase figures for repairs over those which would normally be expected in a modern block.
26. The Tribunal was supplied with invoices for all the general maintenance and inspections as well as repairs carried out. These all appear to be properly invoiced. Having heard evidence from Miss Conacher, it did not appear to the Tribunal that any of the work was faulty therefore needing rectifying by other contractors. Nor did there appear to be any duplication of work done. There was one item of works which did seem to be caused by flooding (invoice from Reddan for electrical repairs in the sum of £743.68). Miss Conacher gave evidence that this was claimed back through the insurance and offset against later service charges.
27. The Respondents' representative in correspondence had identified a number of individual repairs which he considered to be unnecessary or excessive in amount. Miss Conacher gave evidence in relation to each of these items as set out in her letter to Mr Thomas of 19 December 2011. The Tribunal does not therefore repeat those matters except to comment on certain aspects below. The Tribunal was satisfied however with her explanation for why those repairs had been carried out, that they had been carried out and that whilst some did appear expensive there was good reason for the expenditure and, absent any quotations to compare the figures with, the Tribunal was satisfied that the amounts were reasonable.
28. A figure for rubbish clearance of £881.25 was claimed for work done by The All Clear Company. That figure did seem very expensive when the evidence given was that the company had cleared one van load. However, again, the Tribunal notes that the invoice was increased by parking charges, that there was no evidence as to the volume of items which had to be cleared or the nature of those items nor of the size of van used. Nor were there any comparative quotations to assist the Tribunal in reaching a view on reasonableness. The Tribunal notes that it might have been possible for the Council to have cleared these items if requested to do so by an individual

tenant or the residents generally. Miss Conacher explained though that this building is not served by a residents association and there is therefore no body which can be tasked with such matters as there are in other properties managed by LRM. For those reasons, and since it was clear that this was the amount invoiced and paid for the work, the Tribunal was satisfied that this was within reasonable bounds.

29. There is a claim in the 2010 service charges for surveyors' fees related to major works. There are 2 such invoices from Cardoe Martin for £1702.32 and £1057.50 which the Respondents consider are unreasonable for effectively printing and binding documents and inspecting a building respectively. Firstly, the invoice which includes preparing documents is for dealing with the whole tender process and it is not simply for printing and binding. That is not an unreasonable figure for the work involved. Survey of a listed block of flats is also not comparable to a survey of an ordinary residential property and in any event is only in the sum of £900 plus VAT which is not unreasonable. It is not entirely clear where those sums have been included in the service charge accounts – probably under general repairs and maintenance. As noted above, this is likely to cause confusion and disputes about the charges if it is not obvious what global figures include (particularly where those global figures increase by more than 100% from the budgeted figure). However, the Tribunal considers that those charges are reasonable and reasonably incurred.

#### Lift maintenance

30. An amount of £940 for lift maintenance was claimed in relation to work done by Guideline Lift Services Ltd. That amounted to a figure of £200 per quarter plus VAT. Miss Conacher and Mr Williams gave evidence that, although the lift in this building was quite new and not liable to breakdown, LRM did not as a matter of practice enter into minimum contracts for lift maintenance because of the need to ensure reliable service if the lift did break down and to avoid unanticipated large bills in the event of breakdowns. The figure claimed for a silver contract did not appear to the Tribunal to be unreasonable.

#### Pest control

31. An amount of £1069 was claimed in relation to pest control. This comprised invoices from Cleankill for £195 per quarter plus VAT for inspections and one invoice for an additional £495 plus VAT for the purchase and installation of bait stations. That latter charge was therefore a one off charge for purchase. The Tribunal was satisfied that these amounts were reasonable and reasonably incurred.

#### Water pump maintenance

32. A figure of £2483 was claimed in relation to water pump maintenance. This work was carried out by Acorn and then Alltype pumps. Miss Conacher gave evidence that there had been quite a lot of problems in relation to the water pumps which is perhaps not surprising for a building of this age. This is also consistent with the fact that at least 3 of the invoices relate to call outs. The hourly charges claimed do not appear excessive and it is noted that the parking charges have increased the figures claimed as noted above. It is also

noted that one of the invoices from Acorn was possibly not related to water pumps as it is described as "Planned preventative maintenance of the building services". The Tribunal does note in this regard that some of the headings to which invoices have been attributed by LRM are rather apt to cause confusion and therefore lead to disputes. The Tribunal is satisfied though that the invoices are reasonable and that the charges were reasonably incurred.

#### Insurance

33. This is claimed for 2010 in the sum of £11,321. The premium is in line with other years once it is noted that the figure is affected by claims made and the evidence given by Miss Conacher that a large claim was made in relation to the building in 2009 for a flood. It is noted that the figure is much lower for 2011-12 as a result of the lack of claims. The Tribunal also notes that the building is a listed building in Central London (and therefore there is a premium for terrorist threat). Miss Conacher gave evidence that LRM use a reputable broker who obtain various quotations and offer the most competitive rate. Mr Williams accepted very fairly that LRM obtain commission from the broker of 15% but that is not an unreasonable rate in the Tribunal's experience. There is no comparative quotation provided by the Respondents and no evidence therefore that the insurance cover required could be provided more cheaply. The Tribunal therefore accepts that the figure claimed is reasonable.

#### Health and safety

34. There is a charge in the service charge for health and safety in the sum of £2432. This includes invoices from Primec for inspections of the water tank in the sum of £616.88 and another invoice for a legionella risk assessment of £743.19. The Tribunal was told by Miss Conacher that the latter was a one off charge and the former for routine inspections which are necessary in a building of this type and age where the water tanks are shared by all the properties in the building. The Tribunal accepts that explanation and that the amounts claimed are reasonable.

#### Management charge

35. Finally, LRM claims a management charge of £5000 plus VAT. That is lower than charged by the previous managing agent. It is also within the range of reasonable figures in the experience of the Tribunal. It is noted that although there are few flats in the building (only 14) the level of work which the managing agents have to carry out is increased by the building not having the benefit of a residents association so that the managing agent have to deal with lessees individually which is likely to increase their workload. The Tribunal considers that the amount claimed is therefore reasonable.

Chairman:



Ms L Smith

Date:

9 July 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.
- (2) Subsection (1) applies whether or not any payment has been made.