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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/00AG/LSC/2013/0060

Premises: FLAT 1, 31 BROADHURST GARDENS,
LONDON NW6 3QT

Applicant(s): 31 BROADHURST GARDENS LTD

Representative: URBAN OWNERS LTD (PROPERTY MANAGERS)

Respondent(s): MR AMIN AKBAR

Representative: N/A

Date of hearing: 2 MAY 2013

Appearance for Applicant(s): MR S CHARLES, URBAN OWNERS LTD

Appearance for Respondent(s): MR AKBAR
MR PINNELL

Leasehold Valuation Tribunal: (1) MS L SMITH
(2) MR J BARLOW, JP, FRICS
(3) MRS R TURNER, JP

Date of decision: 7 MAY 2013

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £6852.35 is payable by the Respondent in respect of the service charges for the years 2010, 2011 and 2012 subject to the adjustments which are set out at paragraph 8 below.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision
- (3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so that the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge

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 Respondent in respect of the service charge years 2009-10, 2010-11 and 2011-12.
2. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicant was represented by Mr S Charles of Urban Owners (managing agents) at the hearing and the Respondent attended in person with Mr Pinnell who is a solicitor no longer in practice who assisted Mr Akbar as his "litigation friend". Mr Pinnell explained that Mr Akbar had been unable to comply with the directions set by the Tribunal by providing documents as Urban Property Owners had raised the matter of outstanding service charges with his mortgagee and he had to send his file of correspondence to the mortgagee. The Tribunal therefore allowed Mr Pinnell to set out Mr Akbar's case orally at the hearing and to produce a further document being an undated letter from Urban Owners written to Mr Akbar in response to a letter from him of 14 August 2011.

The background

4. The property which is the subject of this application is Flat 1 ("the Property") which is a ground floor flat in a block of 5 flats.
5. 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.
6. The Respondent holds a long lease of the Property dated 8th May 1997 ("the Lease"). Clause 5(4) of the Lease requires the lessor to provide services. Clause 6 of the Lease requires the lessor to keep the Property insured "against loss or damage by all usual comprehensive risks through such agency as the Lessor thinks fit in full reinstatement value thereof". Clause 2 of the Lease requires the lessee to pay "by way of further or additional rent a rateable proportion calculated by reference to gross floor area of the cost incurred by the Lessor in effecting insurance". The Fifth Schedule of the

Lease requires the lessee to pay a "percentage of Total Expenditure" by way of service charge. That percentage is stated in the particulars of the Lease to be 23.15%. Total Expenditure is calculated by reference to the Accounting Period which is stated in clause 1 to be 1 January to 31 December in each year. The service charge is payable by way of an interim charge on account, payable on 1 January and 1 July each year in advance. The Total Expenditure is determined by way of audited, certified accounts. If the amount paid towards the service charge by way of the interim charges exceeds the proportion of the Total Expenditure due that is carried forward to future years. If there is a deficit in relation to the proportion of Total Expenditure due, the balance is payable by the lessee within 28 days of service of the certified account.

The issues

7. As clearly set out in the application, the relevant issues for determination are as follows:
- (i) The payability and/or reasonableness of service charges for the year ending 31 December 2010 in the sum of £1813.
 - (ii) The payability and/or reasonableness of service charges for the year ending 31 December 2011 in the sum of £2718.03
 - (iii) The payability and/or reasonableness of service charges for the year ending 31 December 2012 in the sum of £2321.32

together totalling £6852.35

The Tribunal's Determination

8. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal determines that the amounts claimed are reasonable and payable save for the following:-
- (a) Fee of £15 for Companies House fee and penalties for the year ending 31 December 2010. This arose at a time before Urban Owners took over management of the Property and Mr Charles was (understandably) unable to explain this item. If this was a penalty incurred by the previous management company, the Tribunal considers it unreasonable to charge this to lessees. The Respondent's proportion of this charge should therefore be deducted.
 - (b) Management charges for the years ending 31 December 2011 and 31 December 2012 are claimed in the sums of £1988 and £1580 respectively. Paragraph 1(1)(b) of the Fifth Schedule to the Lease permits the lessor to claim the cost of employing Managing Agents but the commission or charge should not exceed 10% of the Total Expenditure. The figures claimed exceed that 10% figure and should accordingly be adjusted to 10% and the Respondent's share of those figures should be recalculated.

- (c) By an invoice dated 19 August 2011 (reference 105/6449), the Applicant claimed the sum of £120 from the Respondent in relation to a debt recovery fee. Mr Charles explained that he thought that this had been re-credited to the Respondent but if it had not been, it should have been. He agreed to check this and re-credit the Respondent in that sum or deduct it from the relevant charges if it were included. For the assistance of the parties, the Tribunal indicates that it would not have found that this could be claimed by way of a service charge under the Lease.
- (d) Mr Charles pointed out that it appeared that Mr Akbar had been charged only 22.15% and not 23.15% of the Total Expenditure for the relevant years. He was not sure why that should be so and indicated that he would need to check with the lessor whether there was a reason for this. It may be, for example, that a combination of the percentage contributions for the Property and the other flats in the block gives rise to a recovery of more than 100% so that it has been agreed that a lesser contribution should be sought. For the avoidance of doubt, though, if it transpires that the Respondent should have been paying 23.15% for the relevant years, the Tribunal would accept this to be reasonable and payable since this is the percentage specified in the Lease.

Reasons for the Tribunal's decision

9. The Tribunal has set out above its reasons for the adjustments to the figures claimed by the Applicant.
10. Mr Charles took the Tribunal through the relevant items and explained the sums claimed. The Tribunal was satisfied that the items were properly claimed as service charges under the Lease and were reasonable in amount except in relation to the Companies House fees and penalties and the debt recovery fee (insofar as that was included in any event).
11. Mr Pinnell on behalf of Mr Akbar explained that he did not take issue with the service charges in the years which are the subject of this application. His only issue was in relation to what he actually owed at the start of the period and insurance premiums.
12. Mr Charles had explained to the Tribunal at the outset and in the statement of case that, when Urban Owners took over management of the Property, there had been an outstanding dispute between Mr Akbar and the former management company in relation to major works which had been carried out. It had been accepted by the lessor that there had not been compliance with s20 Landlord and Tenant Act 1985 in relation to those major works so far as Mr Akbar was concerned and accordingly he had been refunded the sum of £11688. Whilst not strictly a matter for the Tribunal in relation to this application, Mr Charles was able to satisfy the Tribunal that the relevant credits had now been made to Mr Akbar's account.

13. Mr Pinnell explained the dispute in relation to insurance premiums by reference to the breakdown attached to Urban Owner's letter referred to in paragraph 3 above. The insurance premium in 2003 had been £1334.31. It had then increased threefold in the following year to £5454 and had remained at that level with some minor fluctuations over the subsequent years including the years which were the subject of this application. If the insurance premiums were unreasonable, this would affect Mr Akbar's opening balance and he might not owe anything at all which was why he had not paid the sums due for the years which are the subject of this application.
14. The Tribunal pointed out that the application did not cover the years 2003 and 2004 and it had no evidence before it as to why the premium might have increased at that time. There were a number of possibilities including premium increases for terrorism risk or a revaluation of the building. It was not for the Tribunal to surmise, however, and if Mr Akbar remained concerned about the increase in 2004, he would need to raise it in a separate application accompanied by evidence (or to discuss the matter further with Mr Charles who – as Mr Pinnell readily acknowledged – appeared very willing to listen to and act upon Mr Akbar's concerns). Mr Charles explained that Urban Owners procure insurance through a reputable broker who tests the market each year. It seemed to the Tribunal that the amounts claimed for the relevant years for insurance of £5790, £6360 and £6680 respectively were reasonable for a building of this size.

Application under s.20C and refund of fees

15. Mr Charles indicated that the Applicant was not making an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of fees.
16. Mr Pinnell for the Respondent indicated that the Respondent was not making an application under section 20C of the 1985.

Chairman:



Ms L Smith

Date:

7 May 2013

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.
- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified

- description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (b) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (c) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (d) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (e) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003**Regulation 9**

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).