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Residential Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

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

Case References
LON/00BJ/LSC/2012/0818

Premises:
2ND & 3RD FLOOR FLAT 2-4 BROADWATER ROAD SW17 0DR

Applicants:	**MR & MRS J COLL**
Respondent:	**PROPERTY LAND LIMITED**
Leasehold Valuation Tribunal:	**Mrs T Rabin** **Mrs J Davies**
Date of paper determination:	**25th February 2013**

Determination of the Tribunal

(1) The method of calculation proposed by the Respondent is not reasonable and should be charged on a rateable value basis

(2) The management fee should be £350 per residential unit plus VAT

(3) A Section 20C order under the 1985 Act has been made.

The application

1. The Applicants issued an application to the Tribunal on seeking a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether the proportion of service charge demanded was respect of the service charge years from 31st March 2009 to 2012 were reasonable and payable by the Applicant. The application also related to whether the management fee of 12.5% was reasonable and payable. The application relates to 2nd & 3rd floor Flat 2-4 Broadwater Road London SW17 0DR ("the Flat"). The Applicants are the long leaseholders of the Flat and the Respondent is the freeholder of 2-4 Broadwater Road aforesaid ("the Property")

2. The issues before the Tribunal were whether:

   (a) The Respondent was justified in altering the proportion of service charge payable by the Applicants and other occupants of the Property

   (b) Whether the management fee of 12.5% was reasonable

   (c) Whether an order should be made under Section 20C of the 1985 Act

3. The Property consisted of two leasehold flats situated as to one of the first floor and the Flat on the 2nd and 2rd floors. There were commercial premises on the ground floor and basement.

4. The parties requested a paper hearing and the Tribunal were provided with a bundle of relevant documents which it carefully considered

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

Inspection

6. In view of the nature of the disputed items, the Tribunal did not consider that an inspection was necessary.

The Evidence

7. The Applicants' evidence is set out in the application to the Tribunal to which the Respondent made a reply. This can be summarised as follows:

8. The Applicant states that the lease under which the Flat is held provides that the service charge should be based on the rateable value of the various units in relation to the rateable value of the whole of the Property. The service charges have been calculated on this basis continuously until 2012 and the water rates continue to be collected on this basis. The Respondent is now demanding 20% contribution from the Applicants and has stated that the proportion will increase to 27% for future charges and that the management fee would be 12.5%.

9. In 2012 the Respondent changed the proportion having reviewed the service charge provision in the leases. The use of rateable values ceased in 1990 and the Respondent considered that charging on the basis of floor areas of each of the units would be more appropriate. By their calculations, the proportion attributable to the Flat was 27% and that is what they proposed to charge. The lease allows for the landlord to use an alternative method if the fixing of rateable values is no longer in force. The Respondent made no representations on the level of the management fees.

The Tribunal's decision

10. The Tribunal was hampered by the poor bundle and the lack of any supporting evidence for the calculations. The Respondent's bundle included a plan of the ground floor and basement and this appeared to have been used as the basis for the calculation of the floor areas of each of the units in the Property. There were no scale plans produced of the flats and only the briefest of calculations were produced. No surveyor's report was provided to confirm the correct measurements.

11. Although council tax has superseded Council Tax, rateable values remain a matter of public record easily obtainable on written request. The Respondent has been using this method since 2012 and this method remains in use for the collection of water rates.

12. The lease does allow the landlord to adopt an objective or reasonable method of calculating the rateable proportion and it appears to have been used since general rates were abolished in 1990. In the absence of any persuasive evidence that the proposed method of apportionment is appropriate the

Tribunal can see no reasons to depart from the lease provisions for a charge based on the rateable value.

13. The application refers to a management fee of 12.5%. No evidence of this sum was produced and the Respondent made no representations. If the management fee relates to a comprehensive management service, the Tribunal prefers to use a unit cost. Base on the Tribunal's knowledge and experience and the Property is mixed residential and commercial, an appropriate fee would be £350 per residential unit plus VAT. If the fee referred to related to the costs of repairing the roof, this was not a matter before the Tribunal and no determination could therefore be made.

Section 20C

14. The Applicants have made an application under Section 20C of the 1985 Act requesting that the costs of these proceedings should not be considered relevant costs for the purpose of calculating the service charge. Since the alteration to the service charges was made without consultation with the Applicants and the Respondent has failed to provide proper information to the Tribunal the Applicants had no alternative but to bring these proceedings. Accordingly in relation to the costs of these proceedings.

Tamara Rabin – Chair

25th February 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.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or
(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).