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REF LON 00AM/LSC/2010/0221

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE-MATTER OF THE LANDLORD AND TENANT ACT 1985 SECTION
27A and S20C

AND IN THE MATTER OF 20ZA OF THE LANDLORD AND TENANT ACT
1985

Address Flat 1 62 Dunsmure Road London N16 5PR

Applicant in the first
Application, Respondents
in the second Ms S Holland

Represented by In Person

Respondent in the first
Application Applicant in the
Second Quadron Investments Limited

Represented by Mr P O'Reilly of Salter Rex Managing
Agents

The Tribunal
Mr P Leighton LLB (Hons)
Mr D Huckle FRICS
Mr A Ring

Date of Hearing 21st June 2010

Date of Decision 24th June 2010

Introduction

- 1 By an application dated 21st February 2010 the Applicant applied to the Tribunal for a determination under section 27A of the landlord and tenant Act 1985 and an order restricting the landlord's right to recover costs under Section 20C of the Act in respect of service charges for the property known as Flat 1,62 Dunsmure Road London N 16. 5 PR ("the property")
- 2 A pre trial review was held on 27 April 2010 at which directions were given for the conduct of the proceedings and on 12 May 2010 the Respondent issued an application under section 20ZA of the Act for dispensation from all or any of the provisions of the Service Charges Consultation Requirements (England) Regulations 2003. ("the Regulations") in respect of major works of repair carried out to the premises in 2007
- 3 At the hearing the Applicant appeared in person accompanied by her sister and Mr P O'Reilly of Salter Rex the managing agents appeared on behalf of the Respondent. The Tribunal invited the parties to consider whether there were any issues in respect of which agreement could be reached and following a short break in the proceedings the parties were able to agree an important item relating to major building works and also the application involving section 20ZA of the Act.
- 4 The issues raised by the applicant covered the service charges for 2005, 2006, 2007, 2008 and 2009 but at the hearing it was agreed that the service charges paid in respect of the years 2005 and 2006 were not now in issue as they had been paid and agreed at the time and the Tribunal was concerned solely with the service charge years 2007, 2008 and 2009
- 5 The remaining issues which the Tribunal had to consider related to (1) an electrical repair carried out in about February 2007 in the sum of £163 32 (2) the insurance premiums for the years 2007, 2008 and 2009 and (3) the management fees charged in respect of each of those years

The Property

- 6 The Applicant purchased the property in December 2004 and resides in the flat which is situated on the ground floor. She holds under the terms of

a lease for 99 years from 25th December 1984 at a ground rent of £75 per annum until 2019 and thereafter subject to increases throughout the term.

- 7 The building is a house built in about 1900 and now converted into three self contained flats with a common front door and is managed by Salter Rex on behalf of the Respondent although a number of different persons have been involved in the management of the property during the period of Ms Holland's lease.
- 8 The issue relating to the electrical repair arises from an incident in February 2007. At that time the Applicant was unable to gain access to her property because the lock had broken. As a result she contacted the agents who sent a locksmith to repair the lock. At the same time it appears that someone, possibly another leaseholder, contacted the agents with regard to the state of the electricity at the premises as a result of which the agents instructed an electrician to attend out of hours and carry out repairs. The cost of the repairs was £80 plus £50 for an out of hours service charge plus £9 for the cost of two light bulbs to which a sum of £24.32 VAT has been added. The Applicant stated that she knows nothing of this action because to her knowledge there was no problem with any of the lights in the common parts working at that time. Although her telephone number is shown on the job sheet produced by the Respondent at the hearing she is adamant that she did not telephone the agents in respect of this work. In addition she states that she was informed by Mir Preko the agent who was acting at the time, that this item had been billed to the service charge account in error in that it should have related to some electrical repairs carried out in 2003 when requested by the Applicant's predecessor in title. Mr O'Reilly on behalf of the Respondent disputed that this information had been given and stated that there was a separate invoice in respect of electrical works were 2003 and that this item was separately chargeable. The Tribunal in the absence of hearing evidence from any of the other parties concluded that since an invoice was rendered some work must have been undertaken at the

premises. The Tribunal cannot specifically identify from the invoice what that work was. It may have been more extensive than replacing a light bulb and the Tribunal cannot be certain as to whether the work was of such a type as to justify an electrician attending out of hours. In the circumstances the Tribunal has to consider what would be a reasonable sum to be charged on the basis of the evidence, which it has heard.

Because of the difficulty in making an assessment the Tribunal has decided that the appropriate figure to be allowed under this heading is £80 inclusive of VAT which is approximately half of the figure claimed by the Respondent. It was for the Respondents to provide the evidence to justify this head of expenditure. They were aware of the fact that it was challenged and have produced no evidence to satisfy the tribunal as to the exact nature of the work which was undertaken but merely produced the invoice from Home County Electrical, who, although based in Cambridge, allegedly provided an electrician who came from Enfield to undertake the work.

- 9 The second area in dispute relates to the payment of insurance over the years 2007, 2008 and 2009. The figures for 2007 were £1424.96, for 2008 £1468, and for 2009 £1515.36. The invoices for these sums were produced by the Respondent. The Applicant made alternative enquiries and obtained quotations from other insurers. One of the quotations related to commercial premises in Canary Wharf the second and third from Axa and Zurich insurance companies related to the current premises. Those quotations were considerably less than the amount which is charged by the Respondent's insurer Allianz and the Applicant invited the Tribunal to infer that the amounts charged by the landlord were excessive.
- 10 The Tribunal concluded that the estimates produced by the Applicant were not a like-for-like insurance as would be provided by a landlord with a portfolio of properties such as the Respondent owned. Indeed Ms Holland conceded that the figure did not include a sum for loss of rent by the

landlord and the Tribunal was not assisted by the figure given for the commercial premises which had been provided by the Applicant's sister. .

- 11 The Tribunal concluded having heard Mr O'Reilly that the landlord had made some effort to place the matter in the hands of brokers, Messrs Alan Field who would have made some enquiries as to the level of insurance premiums although details were not provided to the Tribunal. The figure produced by the landlord appeared to the Tribunal to be somewhat high in respect of a property of this kind but at the same time the Tribunal was unable to conclude that the figures put forward by the Applicant were a realistic cost for a landlord seeking to insure a large portfolio of properties that with a reputable insurer. Doing the best it can on the material provided the Tribunal concludes that the insurance premiums for each of the years in question should be reduced and that the Applicant's share in each case should be reduced by £50 plus VAT. The figures for the Applicant's share of the insurance for each of the years in dispute are assessed in the sum of £425 for 2007, £440 for 2008 and £445 for 2009. on the general principle is that these sums are broadly in line with what could reasonably be recovered for a property of this kind
- 12 The Tribunal would wish to add that in the event of the insurance being disputed in the future the Tribunal would expect the landlord to provide details of all quotations obtained by the landlord before placing the policy, details of any commission received by the landlord and any claims history related to the property or other properties in the landlord's portfolio which might have affected the premium.
- 13 Finally there is a criticism made of the management of the premises during the period 2007 to 2009 during which time Mr Preko and Mr Darkwah were involved in the management of the property. The Tribunal was shown a number of e-mails from the Applicant which had not been answered and she contended that there had been considerable delay in dealing with the repair to the concrete lintel and also a failure to produce relevant documents over disputed service charges. She conceded,

however, that had the management services been carried out correctly a proper figure would amount to the £240 plus VAT which is currently being charged by way of her share of the management fee for the property. The Tribunal agreed that a reasonable management fee for managing a property of this type was the amount charged for each of the years in question provided the management services were properly and competently performed.

- 14 The figures charged for management for the years in question were £775.50 for 2007 £828.38 for 2008 and £846 for 2009 all inclusive of VAT. The Tribunal agrees that these figures are in principle reasonable as a management charge and that the only issue is whether a deduction should be made in respect of poor performance during that period
- 15 The Applicant conceded that since Mr O'Reilly had taken over management of the premises in September 2009 that the situation had considerably improved and indeed he had spent a good deal of time endeavouring to solve the problem relating to the metering of the premises with the power suppliers This issue had featured in the application but the parties agreed that it should be adjourned generally pending resolution between the parties following the submission of details from the power companies . The Tribunal does not expect this issue to require determination but should the parties fail to agree the matter can be referred back to the Tribunal and probably best dealt with by way of written representations from the parties.
- 16 The figures which the Tribunal assesses in respect of the management charges represents a deduction of approximately one third from the amount claimed against the Applicant's share This will result in a figure of £150 plus VAT being allowed for the year 2007, £160 plus VAT for the year 2008 and £165 per annum plus VAT for 2009
- 17 There remains one final matter which has been resolved by agreement between the parties The Applicant's share of the cost of the building works as demanded was just under £1100 Under the terms of the respondent's

insurance policy the Applicant's liability is restricted to one third of £2500 which is the excess which would have been payable for the works in question if the insurance company had met the claim in full as had been originally anticipated.

- 18 On the assumption that this figure is agreed by the Respondent in respect of the section 27A application the Tribunal invited Mr O'Reilly to withdraw the Respondent's application under Section 20ZA on the basis that the other two Respondents to that application, the lessees of Flats 2 and 3, were served with notice of that application and chose not to appear or to respond to it.
- 19 If the other two Respondents to that application were to seek to raise this issue in the future the Tribunal would consider that it was potentially an abuse of the process and would be unlikely to allow it to proceed.
- 20 With regard to the Respondent's costs Mr O' Reilly indicated that there was no intention of adding these to the service charge so that it was unnecessary for the Tribunal to make any determination although it would have made an order under section 20C if this had been necessary.
- 21 The only other issue relates to the recovery of the fees which were paid by both parties The Applicant paid £200 for the application and £150 for the hearing and the Respondent paid £150 for the Section 20ZA application and a further sum of £150 for the hearing. The Tribunal is of the opinion that the Respondent ought not to have been required to pay a separate hearing fee on that application as all matters were dealt with at the same hearing and that figure should be refunded to it by the Tribunal
- 22 With regard to the other fees the Tribunal considers that a fair assessment would be for the respondent to contribute £200 towards the Applicant's fees and that she should bear the balance herself.
- 23 The Applicant indicated to the Tribunal that she had the money with which to clear the balance of the service charges and would do so once the matter had been determined by the Tribunal. This is to be welcomed as there is a considerable sum outstanding which if not paid promptly is

likely to result in a deterioration to the property which is not in the interests
of any of the parties

Chairman Peter Leighton
Date 24th June 2010

A handwritten signature in black ink, appearing to read 'Peter Leighton', written in a cursive style.