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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/00AH/LSC/2012/0176

Premises: 32 Outram Road, Croydon, Surrey, CR0 6XE

Applicant(s): Mr John Edward Fletcher and other leaseholders
as per attached the list to the application.

Representative: Mr John Fletcher

Respondent(s): Assethold Limited

Representative: Eagerstates Limited

Date of hearing: Paper determination on 30 April 2012

Appearance for Applicant(s): N/A

Appearance for Respondent(s): N/A

Leasehold Valuation Tribunal: Ms E Samupfonda LLB (Hons)
Mr I Thompson BSc FRICS

Date of decision: 30 April 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the landlord is not entitled to recover the cost incurred in respect of window cleaning to the individual flats through the service charge account.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.
- (3) The Tribunal determines that the Respondent shall pay the Applicant £100 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.

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 Applicant in respect of the service charge years 2010/2011 and the estimated service account for the year 2011/2012.

The background

2. The property, which is the subject of this application is a converted block of 8 flats extending over 4 storeys including basement. There are 2 communal entrances. In 2010, discussions ensued between Eagerstates and lessee representatives as to the possibility of entering into a contract to clean the flat windows externally. A quotation of £180 plus VAT was obtained to clean the windows once per month. Mr Fletcher and other lessees objected to this on the basis that it was too frequent and they considered that bi- annual cleaning of the windows could be undertaken at a lower cost. Evidently, however a contract with D and C Cleaners Limited was entered into and costs were incurred which the landlord seeks to recover through the service charge.
3. It was decided and agreed that the issue could be determined on the basis of written representations and without an oral hearing. Both parties have submitted written representations.
4. The Applicant holds 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. The specific provisions of the lease will be referred to below, where appropriate.

The issues

5. The issue to be determined is whether the landlord is entitled under the terms of the lease to recover the cost of cleaning the windows to individual flats.

6. Having considered evidence, terms of the lease and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations as follows.

The Tribunal's decision

7. The Tribunal has been provided with a sample lease being that for flat 2. It is assumed that all flats' leases are in the same form, The following clauses are relevant to the issue to be determined; at clause 1.6 the demised premises are defined with reference to the first schedule. Within the first schedule, at clause (a) the demised premises includes " window frames and the paintwork finish and the glass fitted in such window frames...." At clause 4.5 the tenant covenants to perform the regulations as set out in the fourth schedule. Regulation 19 of the fourth schedule states that the tenant shall; "at least once in every month of the said term to cause to be properly cleaned all windows of the demised premises both internally and externally...." This covenant is supported by the landlord's covenant at the cost of the service charge to clean the windows in the common parts (clause 5.5.6)
8. It is quite clear from these covenants that the obligation to clean the flat windows both internally and externally rests with the individual leaseholders. The landlord cannot take over this obligation and in doing so cannot seek to recover any costs incurred through the service charge.
9. In the written submissions made by Eagerstates, they state that the landlord can amend and add to the regulations set out in the fourth schedule as it sees fit. This is only possible, however, within the confines of the contractual arrangements as they exist. The fact that from a practical perspective it maybe good practice to have appropriately insured contractors carrying out this service, this is not a reason in itself for seeking to amend the terms of the lease unilaterally. Any such arrangements would need 100% agreement with the tenants. That is not the case here. There was no agreement on the costs or frequency.

Application under s.20C and refund of fees

10. In the application form and in the statement of case, the Applicant applied for an order under section 20C of the 1985. The Tribunal determines that no costs would be passed through the service charge, for the avoidance of doubt, the Tribunal finds that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Chairman:

Evis Samupfonda

Date:

30 April 2012