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**FIRST - TIER TRIBUNAL**
**PROPERTY CHAMBER**
**(RESIDENTIAL PROPERTY)**

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| **Case Reference** | : | **LON/OOAC/LSC/2013/0328** |
| **Property** | : | **34A Stanhope Avenue, London N3 3LX** |
| **Applicant** | : | **Mr M D Kravetz** |
| **Representative** | : | **Mr Kravetz in person** |
| **Respondent** | : | **Resolute Property Management Limited** |
| **Representative** | : | **Miss Carol Cherriman, from Michael Richards & Co, managing agents for the Respondent** |
| **Type of Application** | : | **Pursuant to Section 27A of the Landlord and Tenant Act 1985** |
| **Tribunal Members** | : | **Mr A A Dutton (Judge)**<br>**Mrs J Hawkins** |
| **Date and venue of Hearing** | : | **20th September 2013** |
| **Date of Decision** | : | **11th October 2103** |

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**DECISION**

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## DECISION

The Tribunal makes the findings as set out below in respect of the various service charge matters.

The Tribunal makes no order for costs against Mr Kravetz, nor in his favour, under schedule 12, paragraph 10 of the Commonhold Leasehold Reform Act 2002 for the reasons set out below.

The Tribunal orders a refund of the application fee only in the sum of £100 to Mr Kravetz for the reasons set out below. The sum is to be paid by the Respondent within 28 days.

The Tribunal records that the Respondent will not be seeking to recover the costs of these proceedings as a service charge, nor indeed could it, for the reasons set out below.

## BACKGROUND

1. This application was made by Mr Kravtez on 29th April 2013. Directions were issued by the Tribunal on 11th July following a meeting at which Mr Kravetz attended but the representative from Michael Richards & Company, acting for the Respondents, did not. In the directions the Tribunal identified the issues to be determined, which were as follows:

   - Service charge year 2003 – the insurance for the years ending 30th June 2000 in the sum of £221; 30th June 2001 in the sum of £221.18; 30th June 2002 in the sum of £221.49 and 30th June 2003 in the sum of £350.90. The Applicant was not challenging quantum.
   - Service charge year 2009 – health and safety asbestos report in the sum of £354.85 and management charge of £172.50.
   - Service charge year 2011 – health and safety in the sum of £134 and management fee of £180.
   - Various service charge years – legal fees.
   - Whether an order under Section 20C of the 1985 Act should be made.
   - Whether any order for reimbursement of application/hearing fees should be made.

2. The directions go on to record that the following matters were agreed not to be in dispute:

   - Service charge year 2005 – the insurance for the year ended 30th June 2004 in the sum of £440.15 and 30th June 2005 in the sum of £467.36.
   - Service charge year 2012 – external refurbishment costs in the sum of £1,596 on the basis the works would not now take place and were not on the service charge account.

3. The directions went on to set out the timetables for the production of documents and it is appropriate to record at this stage that Mr Kravetz's statement of case did not arrive with the Tribunal until a day or two before

the Hearing on 20th September and nor was it sent to the Respondents until that week. No clear explanation was given as to why this was the case.

4. With great respect to Mr Kravetz, his application, on review of the paperwork and certain admissions made by the Respondent, was, to an extent misconceived and/or unnecessary. He sought to challenge not so much the insurance premiums that he was required to pay in the years ending June 2000 to 2003 inclusive (he had in any event paid them), but the fact that he had not been provided with copies of the insurance schedules. There was discussion as to whether or not the provisions of Section 20B might have applied to the earlier payments, that is to say those in the years ending June 2000 and 2001, but the need for such a ruling seemed somewhat otiose. For the record, however, the insurance premiums for the years 1999 to 2000 and 2000 to 2001 would have been paid by the Landlord, presumably in or around July of 1999 and July of 2000. It appears that no demand for these payments was in fact made until 2nd August 2002 and accordingly, on the face of it, Section 20B would apply. In respect of the demands he suggested that there had been a breach of the Landlord and Tenant Act 1987. He did not say what the breach was, nor did this allegation feature in his application. However, and as we will return to the findings section, it seems to us that this does Mr Kravetz no good. Insofar as his concerns relating to the insurance premiums for the years ending 2002 and 2003 are concerned, again these have been paid and whilst he indicated that he thought the premium of £350.90 payable in June 2002 for the insurance year ending June 2003 was high, somewhat surprisingly he did not dispute the following two years where the premium was even higher. He did not provide any evidence as to what a reasonable premium might be. The premiums had been paid and it was not so much the quantum, although he was concerned about the £350.90, but it was in reality the lack of paperwork.

5. In response to this Miss Cherriman, as set out in an email dated 28th July 2013, had made enquiries through the freeholder to see whether or not the insurance paperwork was available. The response was that David Glass Associates had been managing the property at that time and that the management arm no longer existed and in any event they would not have retained insurance documentation for this length of time. In his statement of case, which had not been sent to Miss Cherriman until the Monday of the week of the Hearing, Mr Kravetz suggested that the managing agents should contact AXA Insurance Direct to obtain copies of the schedules for the years in dispute.

6. Mr Kravetz's position was that he had lived at the property for 30 years or more. Indeed he was the original lessee. In that period, apart from the management carried out by David Glass Associates, which he considered to be poor, he had never had difficulties in obtaining the insurance information. Accordingly the issue with regard to the insurance premiums was not the cost of same but the lack of documentation.

7. In the bundle of papers provided for the Hearing Mr Kravetz, for the first time in these proceedings, made an assertion that the lease did not enable the landlord to recover any form of service charge payments and that the only

obligation he had to the landlord was to pay for the insurance and the ground rent. An examination of the lease by the managing agents appears to have confirmed this and Miss Cherriman confirmed, unequivocally, that there was no on-going, nor indeed past service charge liability and that the only liability that Mr Kravetz had to the freeholder was to pay the insurance premiums and the ground rent when it fell due. In addition, Miss Cherriman confirmed that there would be no claim made for legal fees or costs up to and including 19th September 2013 from December 2004 being the period of management of Michael Richards & Co. This, therefore, should have assuaged Mr Kravetz' concern that legal fees of £548, which were referred to in respect of some court proceedings, although never actually claimed from him, would not be sought from him. He did, however, express some concern that there appeared to be a fee of £50 which had been sought for a charging order which appeared from the correspondence in the bundle to have been refunded by the Court to the landlord. It seems, therefore, appropriate for Miss Cherriman to check with the landlord to make sure this sum of £50 has been properly credited to Mr Kravetz, if so required. Mr Kravetz also indicated that he would like to see copies of the asbestos and health and safety reports but was not prepared to make any payment for same.

8. Miss Cherriman wished to make a statement and told us that Mr Kravetz had been sued in the County Court five times since 2001 and had never sought to seek a transfer to the Leasehold Valuation Tribunal where those proceedings had included a claim for insurance. Mr Kravetz sought to explain one of the default judgments as being a wrongful act by the County Court or the Respondents based on a conversation he had had with a friend who had some legal training. However, it is not a matter that we could or indeed wished to take any further. The point being made by Miss Cherriman was that the insurance premiums, that had been paid by Mr Kravetz, were incurred more than ten years ago and no proceedings had been taken until this year to seek to raise these as an issue.

9. Mr Kravetz sought a refund of the application and hearing fees and asked if he could have copies of the insurance schedules going back to 2000 for peace of mind.

10. Miss Cherriman believed that Mr Kravetz's applications were vexatious and unreasonable and sought costs under the provisions of schedule 12, paragraph 10 of the Commonhold and Leasehold Reform Act 2002. Mr Kravetz said that he was 'shell shocked' and 'dumbfounded' by this application. He had, he said, made the application in good faith, had attended the PTR and had complied with the directions. All he wanted, he said, was the documents. Nothing in the bundle that he had produced before the Hearing was unknown to Miss Cherriman and the only document she had not seen was the witness statement and schedule which was sent across on Monday of the week of the Hearing. He was also asked why the application had brought the claim against Resolute when in fact the landlord at the time of the alleged deficiencies was Hathaway Properties Limited who admittedly is part of the same group. He pointed out that although that may be the case Resolute were seeking to recover service charges and other costs from him prior to their ownership. The change of ownership was evidence by land

registry documents which appeared to indicate that Resolute had acquired the property title by way of internal transfers in November of 2009.

11. Following the conclusion of the hearing and notwithstanding that Mr Kravetz raised the question of the refund of fees, was told that no order under the Commonhold and Leasehold Reform Act 2002 would be made against him and was given the opportunity of raising any other issues, he submitted three written statements. We gave the Respondent 7 days to respond and by letter dated 10th October 2013 Michael Richards & Co responded. We have considered these late submissions and our findings on them are included below.

## THE LAW

12. The law relating to this application is set out in the schedule attached.

## FINDINGS

13. There is really very little for us to make any findings upon. The Respondent has rightly accepted that the lease makes no provision for it to recover anything other than insurance premiums and ground rent. Accordingly their attempts to recover any form of service charge payment from Mr Kravetz were misconceived and have been conceded. Indeed were conceded by Michael Richards & Co on behalf of the Respondent in a letter to Mr Kravetz dated 25th July 2013. The question of the £50 refund of the charging order application fee might be investigated but that would seem to be a matter to be aired before the County Court. The concession on the question of past and future service charge liabilities did not seem to satisfy Mr Kravetz because he still wished to have sight of the dated insurance papers. At the very least however, he should have abandoned the dispute with regard to the payability of the service charges for the periods and in respect of the items in dispute, as there was no longer a dispute. For the record we confirm that the Respondent landlord is not entitled to recover service charges from the lessee, save insurance premiums, and of course, ground rent.

14. Insofar as the insurance premiums are concerned, Mr Kravetz indicated that he did not challenge the quantum of same but wanted copies of the insurance schedules, notwithstanding that in some cases these are now 13 years old. He is entitled to them but waiting this length of time causes us to question what use to Mr Kravetz copies of these dated insurance documents might be. Having received the assurance from the Respondent that it was not entitled to recover service charges at any time and would not be seeking to do so in the future, he had achieved all that he might have expected. As he was not looking to recover a refund of any of the insurance premiums (we question whether the laws of restitution would have enabled him to recover them in any event by reason of limitation) there is it seems to us very little we can actually do to assist him. If Miss Cherriman can, without too much difficulty, obtain copies of these ancient insurance documents from AXA, then we leave

that to her to consider that option. However, there is really no decision that we need to make on the basis of Mr Kravetz's application under section 27A.

15. We do order a refund of the application fee. It was wholly inappropriate for the Respondent to demand service charge payments and reasonable for Mr Kravetz to bring the matter to the Tribunal. However, we do not think a hearing was necessary. Mediation could have been followed, it was apparently declined by Mr Kravetz. The hearing achieved nothing more than a pyrrhic victory for Mr Kravetz. We are not, however, prepared to accept that Mr Kravetz has acted in such a way that he should be responsible to pay the costs under the Commonhold and Leasehold Reform Act 2002. Although he has in truth brought the application against the wrong parties, there is evidence that the Respondent was seeking to recover service charges prior to the time when it had legal title to the property and, although Mr Kravetz was very late in producing his statement, the statement itself merely echoed a defence that had been filed in one of the number of County Court proceedings that had taken place between the parties. Similarly we do not find that the Respondent has acted in a manner which would justify visiting the provisions of the 2002 Act upon it. Michael Richards & Co conceded the point on the service charges in July 2013 and attempted to obtain copies of the insurance papers also in July, but could not do so. Mr Kravtez should have accepted the position or perhaps asked Miss Cherriman to contact AXA at that time, not in his witness statement served only days before the hearing.

16. As we have indicated there is no provision to charge the lessee under the terms of the lease save for insurance and ground rent. The lease certainly includes no provision for the recovery of costs and accordingly an order under section 20C would seem to be otiose.

17. We hope that Mr Kravats will take comfort from the fact that he now has confirmation that he does not face a service charge cost in the future and that if he has any concerns with regard to the insurance premium, he should challenge those timeously and not leave the matter for ten or more years.

Andrew Dutton

Judge: ____________________

A A Dutton

Date: 11th October 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.

**Commonhold and Leasehold Reform Act 2002**

**Schedule 12, paragraph 10**

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—
(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
(a) £500, or
(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except

by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.