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LON/00AG/LIS/2006/0114

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTION 27A

Applicant: Mr Mathew Wolton

Respondent: London Borough of Camden

Re: Flat 2 Streately Flats Streatley Place London NW3 1HR

Application received: 19 September 2006

Hearing date: 13 November 2006 (PAPER CASE)

Members of the Leasehold Valuation Tribunal:

Mr N K Nichol LLB (Lond)

LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL

DETERMINATION BY LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 Section 27A

LON/00AG/LIS/2006/0114

Address:	**Flat 2, Streatley Flats** **Streatley Place** **London NW3 1HR**
Applicant:	**Mr Matthew Wolton**
Respondent:	**London Borough of Camden**

1. The Applicant applied on 18th September 2006 for a determination as to the payability of service charges levied by the Respondent, namely £1,023.74 (£930.67 for maintenance works + £93.07 administration costs) incurred in the financial year ending 31st March 2005 and demanded in August 2005.

2. Following a pre-trial review attended by both parties on 6th October 2006, the Tribunal made directions to determine the matter by written representations only. The Respondent's representations and documentation were delivered late to the Applicant, apparently because the post went astray, and the Applicant has protested. However, the Tribunal now has both parties' cases and felt it was appropriate to proceed to determine the matter without a hearing on the basis set out below.

3. The Applicant holds a lease of 125 years, commencing 29th April 1985, of Flat 2, Streatley Flats, Streatley Place, London NW3 1HR, a flat in a block of four. He bought it in February 2005. Before the purchase the Respondent delivered the usual summary, dated 18th October 2004, of the position on service charges. It did not appear to warn the Applicant of the charge eventually demanded of him in August 2005 but did state,

> "It is not possible to provide an estimate of what the estimated service charges for the year 2004/2005 will be, however, we suggest that a provisional apportionment should be calculated by using the estimated charges for the year 2003/2004 and adding 10%."

4. The Applicant objects that the Respondent knew about the upcoming charge of £1,023.74 but did not warn him about it. However, the fact is that, apart from two items totalling a cost to the Applicant of £73.77, the work in question was done after 18th October 2004 as part of reactive maintenance. The Respondent must be

right in saying that they could not warn the Applicant about these items because they did not know about them.

5. The Applicant also understood the charge to be in relation to a single works programme in respect of which the Respondent should have issued a notice in accordance with s.20 of the Landlord and Tenant Act 1985. In fact the charge related to six items of work, not one. The Respondent has conceded that s.20 notices should have been issued on two items but were not and has capped the charge to the Applicant accordingly. The Tribunal is disappointed that the Respondent did not see fit to explain their failure to comply with clear statutory provisions but the implementation of the capping is as much as the Applicant could expect in the way of a remedy on that issue.

6. The Applicant has suggested that the charge should be limited to the previous service charges plus 10% but there is no basis for doing that. The Respondent suggested such a calculation as a prudent way of estimating potential liability for upcoming service charges but clearly never made any promise to cap any charges to that level.

7. In the circumstances, the Applicant has not made out his case. Having said that, the Tribunal has looked at the arithmetical calculation of the charge in accordance with the Respondent's statement of case. Taking into account the capping in respect of two items due to the failure to comply with s.20, the total cost of the works to the block was £3,339.14, not £3,722.66 suggested by the Respondent, of which the Applicant's share was £834.83, not £930.67.

8. Further, the capping applies to the total cost of the works, inclusive of any administration charge, so that the 10.2% addition cannot be applied to the two capped items. This limits the administration charge to £34.15 (£3,339.14, less £2,000, multiplied by 10.2% and divided by four).

9. Therefore, by the Tribunal's calculation, on the Respondent's own figures, the correct charge to the Applicant is £868.98, not £1,023.74.

10. The Applicant also applied for an order under s.20C of the Landlord and Tenant Act 1985 that the costs of these proceedings should not be added to the service charge. In fact, the Respondent stated in their representations that they do not intend to attempt to recover any such costs through the service charge and, therefore, there is no need to make any order under s.20C.

11. The Applicant further applied for reimbursement of his application fee of £100. The Respondent submitted that this would be inappropriate because their explanation, accepted by the Tribunal above, had already been given to the Applicant in correspondence. Neither party supplied any such correspondence and so the Tribunal has no idea whether this is true or not. However, it is reasonably clear that the Respondent would not have had its arithmetic corrected without this application. In the circumstances, the Tribunal feels that it would be appropriate and just for the Respondent to reimburse the Applicant his fee of £100.

12. The Tribunal therefore determines that a service charge of £868.98 is payable by the Applicant and that the Respondent should reimburse him the fee of £100.

Chairman N.K. Nicol
Mr N.K. Nicol

Date: 13 November 2006