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Residential Property
TRIBUNAL SERVICE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

REF: LON/00BG/LSC/2006/0277

FLAT 3, LADYFERN HOUSE, GALE STREET, LONDON E3

TELFORD HOMES Plc **Applicant**

MS S.A. THOMPSON (Flat 3)
MS C.R. KELLY (Flat 8)
MR P.O. SELLBERG (Flat 6)
MR P.R. WEDDELL (Flat 10)
MR N. WEDDELL (Flat 1) **Respondents**

Date of hearing:	19 December 2006 (Further written submissions/statements made by the parties dated 3, 4 & 5 January 2007)
Date of decision:	16 January 2007
Tribunal:	Mr M.A. Martynski - Solicitor Mr M. Cairns MCIEH Dr A.M. Fox Bsc PhD MCIArb
Present:	Ms A. Porter (Counsel for the Applicant) Mr A. Deeks MRICS (Applicant's managing agent) Ms S. Thompson (Respondent)

Summary of decision

The tribunal finds that all sums in dispute (set out later in this decision) are reasonable and accordingly payable by the Respondents. No order is made under section 20C Landlord and Tenant Act 1985 in connection with the Applicant's costs of these proceedings.

Background

1. This is an action transferred from the Bow County Court by order of District Judge Johns dated 31 July 2006. The proceedings in the County Court concerned action taken by the Applicant against the Respondent (Ms Thompson) for non-payment of ground rent and for non-payment of half the amount of service charges that fell due in the service charge year April 2004 to March 2005.

2. On 4 September 2006 directions were given by the Tribunal for, inter alia, the filing of a statement of case and reply.

3. On 19 October 2006, permission was granted for the following parties to be added to the proceedings in the Leasehold Valuation Tribunal as Respondents;
Ms C. R. Kelly – Flat 8
Mr P.O. Sellberg – Flat 6
Mr P.R. Weddell – Flat 10
Mr N Weddell – Flat 1

4. Apart from a letter sent in by Ms Kelly, no evidence was provided to the Tribunal by any of the added Respondents and none of them attended the hearing. From hereon in, references to the 'Respondent' is a reference to Ms Thompson.

5. The building in which the subject property is situated is a small block on three floors containing 11 flats. The service charge is apportioned between the flats equally.

The issues

6. The Applicant wanted the Tribunal to deal with service charges due from 2004 to 2006. The Tribunal decided that the only issues it would deal with were the service charges that were claimed for the service charge year April 2004 to March 2005. It was service charges claimed in this year that were the subject of the court proceedings in the Bow County Court from which the referral to the Tribunal came. In order for the Tribunal to deal with any other service charge period, a separate application would have to be made.

7. At the final hearing, the parties agreed that the issues on which decisions were required were as follows;

Window cleaning – £1040.00
Bulb replacement - £89.00
Cleaning of communal areas - £1,830.00
Drains - £59.00
Entryphone - £470.00
Insurance - £1,387.00
Terrorism insurance - £480.00
Legal advice - £587.50
Sinking fund - £750.00
Consultation (Section 20 notices)
Certification of service charge demands
Costs

The lease

8. Before going on to deal with the items in dispute, it is important to note the service charge terms of the lease in this matter (at clause 3 of the lease) which can be summarised as follows;

9. The landlord is obliged each year, on or before 31 March, to provide an estimate of costs to be incurred towards which the tenants are liable to contribute. The tenants are then to pay their share (one eleventh) of this amount in two instalments. The first instalment being payable on 31 March and the second being due on the following 30 September.

10. When compiling the estimate of costs, the landlord has to give effect to any debit (that is where expenditure exceeded the payments made on account) or surplus (that is where payments on account exceeded expenditure) from the previous service charge year. A debit will be added to the estimate, a surplus will be taken away from the estimate. It is by this mechanism that the tenants effectively end up paying the true costs incurred during a service charge year.

11. The amount a tenant is asked to contribute by way of service charges in any one service charge year therefore is not necessarily the costs are actually incurred in that service charge year.

The disputed items and the Tribunal's decisions

Window cleaning –£1040.00

12. For the Applicant, this item was supported by 4 invoices from June, August, November 2004 and February 2005. Each invoice was for £70 plus VAT. The total of those invoices was £329.00. The accounts for the service charge year recorded that the total spend on window cleaning was £246.75, this was due no doubt to one of the invoices not being taken into account.

13. The Respondent objected to the claims for this item on the grounds that she had never witnessed any window cleaning. She had seen window cleaning taking place on other blocks of flats around her. She said that the communal windows were very dirty.

14. Ms Kelly, one of the other Respondents, in a letter dated 3 November 2006, intended to be her statement of case, said that she had never seen a contract cleaner and *"On many occasions, in fact, I was dissatisfied that I was paying a service charge for window cleaning this [sic] as they were quite grubby."*

15. For the Applicant, Mr Deeks said that as far as he was aware, there were no complaints made about window cleaning at the relevant time. He said that his firm inspected the property quarterly. No notes were made at this time of those inspections. However a log was kept during the period in question which recorded complaints made by tenants. There were no recorded complaints about windows.

16. The Tribunal had two decisions to make. In respect of the demand for this item (based on the estimate) of £1040.00, was that reasonable and payable? Second, in respect of the actual amount incurred on this item during the service charge year in question, was that reasonable and payable?

17. The Tribunal decided that the estimated amount of £1040.00 was high considering the experience of the previous accounting period. This is however academic given that a balancing exercise would have been made for the following service charge year based on the amount actually spent on this item.

18. As to the actual expense incurred (in the service charge accounts), given that this expense amounts to just 47 pence per week per flat the Tribunal found that there was insufficient evidence to make a finding that such expenditure was either unreasonable and so not payable by the Respondent.

Bulb replacement - £89.00

19. This item was supported by two invoices that were for a total of £47.00 which was the actual amount expended for this service charge year. This represented five bulbs (low energy) at £8.00 per bulb.

20. The Respondent stated that there were six bulbs in the communal parts and so felt that both the estimated sum demanded and the actual amount expended was unreasonable.

21. The Applicant stated that bulbs went missing and wore out and had to be replaced.

22. The Tribunal's decisions in respect of the estimated and actual costs are that both appeared reasonable. The Tribunal noted that the spend for the previous year on bulbs was slightly higher.

Cleaning - £1,830

23. There were ten invoices produced in support of this item with a credit note for one month's cleaning. The invoices totalled £1,291.77. The amount in the audited accounts for the year in question showed an amount of £1,689.70 being expended on cleaning. It was clear that some invoices therefore were missing. Clearly there must have been invoices for the actual amount spent of £1,689.70 (this figure appears to have included some extra 'one-off' cleaning of a wall – see below) given that expenditure of this amount was approved by the auditors. Mr Deeks in his supplemental witness statement dated 3 January 2007 gave a breakdown of payments made and dates on which they were paid which amounted to the figure of £1689.70 (this figure includes the payments for lightbulbs mentioned earlier).

24. The Respondent said that the block in question was small. There were eleven flats over three floors. The cleaning was in respect of the communal stairwell in the middle of the building and the lobby area on each floor. The space to be cleaned therefore was relatively small. The Respondent stated that she had not been living in the block for most of the period in question. However, she visited the property regularly to collect her post. She saw that the communal areas were often not clean.

Her tenant who was living at the property complained that the communal area outside the flat was dirty. The Respondent said that she had telephoned the managing agents to complain about the cleaning. They had told her that no-one else had complained but that they would inspect the property.

25. The Respondent challenged both the amounts spent on cleaning and the quality of the cleaning that was carried out.

26. Ms Kelly, one of the other Respondents, in her letter dated 3 November 2006, said, *"Before the cleaning services 'suspension' in October 2005 I never saw once a contracted cleaner cleaning the communal areas and on more than one occasion I actually vacuumed the second floor landing myself."*

27. On behalf of the Respondents, it was said that, there was a period when there was a problem. A month's credit was given on the cleaning bills due to the fact that the cleaners missed three cleaning sessions because they were not able to get into the building.

28. Problems were noted in the managing agent's log (referred to above) on two occasions. First on 20 August 2004 when there was a complaint that the cleaning was not up to standard. The log confirmed that this matter had been taken up with the contractor and that "cleaning appears to have improved". Second, there was a note dated 20 October 2004 to the effect that the walls were dirty and needed washing down. The note stated that a quote had been obtained from the cleaners for this and that the work had been carried out.

29. The Tribunal decided that both the estimate and actual spend were reasonable. There were documented problems with the cleaning which appear to have been dealt with by the obtaining of a credit from the cleaning company. There was insufficient evidence of poor cleaning over and above this to justify the Tribunal in making any finding that the costs were not reasonably incurred.

Drainage - £59.00

30. The Respondent objected to this on the basis that the block in question was newly built and accordingly there should not be any need for expenditure on drains.

31. The Tribunal concluded that the sum in question was a reasonable token provision to make.

Entryphone - £470.00

32. Nothing was in fact paid by the landlord in respect of the entryphone for the year in question.

33. The Respondent complained that this had only worked periodically and that complaints had been made by her and other tenants. The Applicant's log, reference to which has been made above, contained a curious entry in respect to this item dated 21 June 2004 which is worth quoting in full as follows;

> *"Flat 3 – Suzette advised that her door entry doesn't work. HCT advised that we can't repair at present as no funds. Suzette is letting flat & requested to arrange*

repair herself & deducted from her service charge! HCT to check. Hasn't paid her service charge."

34. According to the running accounts for this period, there was upwards of £1,200 in the account around June 2004. For the Applicant, Mr Deeks on inspecting the account pointed out that, although there was seemingly sufficient money in the account to deal with the entryphone; (a) some of the money in the account was ground rent which was paid out on 16 July 2004, and; (b) a Thames water bill from April 2004 of just over £2,000 was paid out on 20 August 2004. Mr Deeks stated that at this time, there were problems with many tenants not paying the service charge that was due on 31 March 2004 (this is backed up by the figures in the running account – the Respondent admitted that she had not paid the service charge due on 31 March until October that year). Accordingly, said Mr Deeks, it may well have been apparent to the managing agent at the time of the Respondent's request for a repair that, whilst there was money in the account, some of that money was in fact ground rent and there was a large priority water bill outstanding that had to be paid.

35. The Tribunal's view of this was that the estimate of £470.00 was reasonable. Clearly, if it was the communal entryphone that was in disrepair, the Applicant was wrong (understandably in the circumstances) not to have repaired it regardless of the fact that the Respondent had not paid her service charge. This is however academic given that a balancing credit would have been made for the following year's service charge.

Insurance and terrorism insurance - £1387.00 & £480.00

36. The amounts actually spent on insurance during the year in question were very slightly less than the estimated amounts of £1387 and £480.

37. The Respondent objected to the premiums paid mainly because she had made two claims on the insurance. In fact it may have been the case that neither insurance claim was actually within the service charge year in question. However, the first claim made by the Respondent was in respect of patio doors damaged during a burglary. The Respondent had to pay a £350.00 excess and had to wait approximately six months for the claim to be finalised. The second claim was for damage to a window. The Respondent ended up paying for this herself as the excess on the insurance was around the same amount as the cost of the repair (approximately £175).

38. As to terrorism, the Respondent did not see the point of such insurance.

39. The Applicant's response to this was that the excesses on the insurance were reasonably standard. It was agreed that the first of the Respondent's insurance claims took too long to sort out. However, having a lower excess on the insurance would probably have meant a higher insurance premium. As to terrorism insurance, the property was a block in London and terrorism is now a common and sensible risk to insure against.

40. The insurance policy for the year in question was obtained and shown to the Tribunal. It was a standard policy with a mainstream and reputable insurer. The excess for third party damage was £350.00; the excess for other sundry damage was £150.

41. The Tribunal concluded that all amounts for insurance were reasonable. The Respondent's objections based on her claims against the insurance were not relevant. The excess payable under the insurance was reasonable. The Tribunal accepted that terrorism was a reasonable peril against which to insure.

Legal advice - £587.50

42. The actual amount spent on this item was £494.64 as shown in the end of year accounts. The documented figures available to the Tribunal amounted to more than this amount. The legal fees were made up of disbursements for court fees and solicitor's fees for pursuing unpaid service charges.

43. The Respondent objected to these fees on the ground that it would have been cheaper to pursue unpaid service charges via this Tribunal rather than via the courts.

44. The Tribunal found that both the provision and the actual amount spent for this item were reasonable. It was reasonable for the Applicant to seek a judgement in the County Court in the first instance.

Sinking fund - £750.00

45. The Respondent did not challenge the need for a sinking fund; however she thought that the contribution to such a fund should be in the order of £500.00.

46. The Tribunal decided that the provision made was reasonable.

Consultation (Section 20 notices)

47. The Respondent objected to any sums claimed that would have been subject to consultation process provided for by section 20 Landlord and Tenant Act 1985. Section 20 provides that a landlord needs to consult with tenants over works if the cost of such works to any tenant will be more than £250.00. The section also provides that a landlord has to consult before entering into a long term arrangement where the cost to any tenant would be £100.00 in any accounting period.

48. The Tribunal found that no items in service charge for the year in question would have been subject to the consultation process. There were no works carried out that would have cost over the relevant amount and there were no long term arrangements.

Certification of estimates

49. A point was raised by the Tribunal over the certification of the estimate for the service charge year in question upon which the service charge for the year was based and demanded.

50. The relevant words of the lease are found at clause 3(1)(a) which provides as follows;

> *'the Lessor shall on or before the 31st March in each year of the term prepare an estimate .....such estimate shall be certified by a competent and qualified person appointed by the Lessor .....'*

51. The estimate for the year in question shown to the Tribunal in the hearing bundle did not contain any certification as required by the lease. The Tribunal was however referred to a report of the independent auditors dealing with the service charge accounts dated 20 May 2004. That report stated;

> *'We have audited the financial statements of The Service Charge Fund of Ladyfern House, Gale Street, London E3 for the period ended 31 December 2003 on pages four to six.'*
>
> *'An audit includes..... It also includes an assessment of the significant estimates and judgements made by the director in the preparation of the financial statements,.....'*

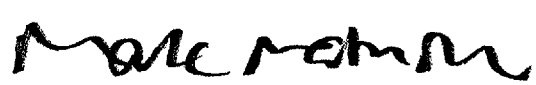
52. The Tribunal considered that the certification in the auditor's report satisfied the requirements of the lease. Initially the auditors, by mistake, audited the account to the wrong end date and that is why the auditor's report in the original bundle before the Tribunal stated *'the period ended 31 December 2003'*. By a statement received from the Auditors dated 3 January 2007 it was made clear that this mistake was rectified and that the accounts were audited for the period to the year end 31 March 2004. The Tribunal were content with this explanation.

Costs of the proceedings

53. The Respondent made an application pursuant to section 20C Landlord and Tenant Act 1985 which provides as follows;

> *(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.*
>
> *(2).....*
>
> *(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.*

54. Given that the Tribunal has found against the Respondent on all the points that she raised, it is not appropriate for any order to be made under the above section.



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Mark Martynski
Chairman