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Ref: LON/00BE/LSC/2010/0041

**LEASEHOLD VALUATION TRIBUNAL**

LONDON RENT ASSESSMENT PANEL

DECISION ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

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| Property: | 16 Lynn House, Green Hundred Road, London SE15 1RR |
| Applicant: | London Borough of Southwark |
| Respondent: | Mr O Odeku and Mrs A Odeku |
| Hearing Date: | 27th May 2010 |
| Inspection Date: | 7th July 2010 |
| Appearances: | Ms E Sorbjan (Legal Officer for the Applicant)<br>Mr T Wellbeloved (Capital Works Manager for the Applicant)<br>Mr Z Nuaman (Building Surveyor for the Applicant)<br>Mr P Robinson (Contracts Manager for the Applicant)<br><br>Mr Odeku (one of the Respondents)<br>Mr M Orey (leasehold representative of the Tenants Association, assisting the Respondents) |
| Also present: | Mr M Fang (Project Manager for the Applicant) |

Members of Tribunal

Mr P Korn (chairman)
Mr T Sennett MA FCIEH
Mrs J Clark JP

## INTRODUCTION

1. This is an application under Section 27A of the Landlord and Tenant Act 1985 (as amended) ("**the 1985 Act**") for a determination of liability to pay service charges under the lease of the Property.

2. The Respondents are the current leaseholders and the Applicant is the Respondents' current landlord. The lease of the Property ("**the Lease**") is dated 26th October 2004 and was entered into between the Applicant (1) and AA Sanusi (2).

3. Proceedings were originally issued in the Lambeth County Court (Claim Number 9LB53488) by the Applicant for alleged arrears of service charge, interest and costs, the service charges amounting to £12,529.43. The proceedings were then transferred to the Leasehold Valuation Tribunal for a determination of liability to pay and reasonableness of the outstanding service charge.

4. The amounts being claimed by the Applicant relate to certain major works for which the Respondents were invoiced on 10th October 2008. The amount of the invoice was £16,705.90 of which £12,529.43 remains outstanding.

## RESPONDENTS' CASE

5. Mr Orey explained that the Respondents were objecting to paying the outstanding service charge on a number of grounds.

6. It was felt that there had been a lack of consultation with the Respondents in respect of the works in breach of Section 20 of the 1985 Act and that insufficient information had been given to the Respondents when they purchased the Property apart from the contents of the Section 125 Notice.

7. The allocation of costs between leaseholders and occupational tenants did not seem fair; 39.74% of the total block cost was allocated to tenanted units and 60.25% was allocated to leaseholder units, yet more work was carried out to tenanted properties.

8. Mr Orey challenged the Applicant's applied rate of inflation. In relation to the market-testing of costs that the Applicant claimed to have carried out, he

objected that the Respondents have not been given evidence to show that the costs were reasonable in current market conditions.

9. A point was also made about delays in the carrying out of the work. In the Respondents' view, the delay beyond the estimated sixty weeks caused the cost to escalate, for example by increasing the amount of time for which scaffolding had to be up. Furthermore, there was no excuse for the delay as the Applicant should have anticipated the problems with obtaining planning permission that led to the delay.

10. In relation to the charges for new light fittings, mains distribution boards and new 'laterals' to flats (items 5/3E, 5/5B and 5/5D respectively in the list of charges on page 214 of the bundle), the Respondents felt that these were not recoverable under the Lease but did not explain this point in detail other than to say that it was felt that there had been some double-charging.

11. Regarding the quality of the works, the Respondents were unhappy with the standard of work in respect of the installation of the windows which, they submitted, left gaps and led to draughts. The front door to the flat was badly fitted. The asphalt work outside the Property was described as 'shoddy'; it was submitted that rainwater did not flow properly in the gutters and the levels were uneven, causing a trip hazard. The stairwells were felt to be dirty.

12. Mr Orey submitted that it was possible that more work had been specified for the roofs and by way of structural works than was actually needed. In relation to the kitchens and bathrooms, the Respondents felt that the Report dated 17th November 2004 by Abigail Wallinton (Project Manager in the Applicant's Investment and Asset Management Team) demonstrated that these were in poor condition and that therefore there had been historic neglect which had increased the cost of putting them into good condition.

13. The Respondents' view was that a reasonable sum to pay (instead of £16,705.90) would be £9,000.

**APPLICANT'S RESPONSE**

14. Mr Wellbeloved gave evidence on behalf of the Applicant. The original Section 20 Notice was served on the then existing leaseholders and the Respondents were not the leaseholders of the Property at that time. The Applicant had tried to give information to the Respondents where ever possible but was not obliged under Section 20 to begin the whole process again. The subsequent notice dated 8th October 2007 **had** been served on the Respondents.

15. Mr Wellbeloved took the Tribunal through the spreadsheets containing the relevant figures and description of works. He confirmed that the cost of any

works carried out to the interior of any properties was non-rechargeable, i.e. leaseholders did not pay for works to the interior of other properties. He therefore considered the complaint about more work being done to tenanted properties, and the related point about the allocation of costs between leaseholders and occupational tenants, to be misconceived.

16. Mr Wellbeloved also referred to various items of correspondence forming part of the statement of case as showing that the Applicant had supplied information requested by the Respondents and had been transparent in its explanations. He also explained the Applicant's market-testing procedure.

17. Mr Nuaman also gave evidence and confirmed that the delays to the works were due to problems with obtaining planning permission. Regarding the various complaints about quality of works, Mr Nuaman referred the Tribunal to various items of correspondence as showing that most issues had been addressed and others were being sorted out and they were still within the defects liability period. Mr Nuaman denied that there was a problem with rainwater collecting in the gutters. In relation to the asphalt trip hazard, Mr Nuaman explained what solution was proposed.

18. In answer to a question from Mr Odeku, Mr Nuaman accepted that there had been some problems with the state of the mechanical services but said that this had been partly due to anti-social behaviour.

19. Mr Nuaman was asked to explain the position regarding preliminaries, general preliminaries and profit percentages and the applied inflation rate. This issue was dealt with rather poorly but an explanation was forthcoming after some discussion within the Applicant's team.

20. Ms Sorbjan was asked why the Applicant had refused to mediate. She said that the Applicant had been prepared to discuss the issues with the Respondents and had provided a lot of information to the Respondents, but she conceded – after some discussion – that this was not the same as mediation, which is generally understood to be a process involving a professional neutral mediator.

**INSPECTION**

21. The Tribunal inspected the building and part of the estate of which the Property forms part on 7th July 2010 (this was the earliest available date after the hearing). The exterior of the building was found to be generally in reasonable condition and the external common areas were reasonably well maintained. Inside the Property there was some evidence of damp around the windows in the bedroom and one of the windows was quite hard to open. There was a small amount of damp in the bathroom. The front door creaked a little. Generally the Property felt poorly ventilated, this problem being

exacerbated by there being no door on the kitchen and the cooker being on at the time of the inspection. Mr Odeku pointed out the area outside his front door which has been referred to at the hearing in the context of drainage problems. The Tribunal also inspected the Respondents' external staircase as well as a staircase in another block and noted that the finish applied to the staircase in the other block appeared to be of a superior quality.

**THE LAW**

22. Section 19(1) of the 1985 Act provides:

*"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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard*

*and the amount shall be limited accordingly."*

23. Section 19(2) of the 1985 Act provides:

*"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."*

24. "Relevant costs" are defined in Section 18(2) of the 1985 Act as *"the costs or estimated costs incurred or to be incurred by or on behalf of the landlord...in connection with the matters for which the service charge is payable"*.

"Service charge" is defined in Section 18(1) of the 1985 Act as *"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 cost of management, and (b) the whole or part of which varies or may vary according to the relevant costs"*.

25. Section 27A of the 1985 Act gives a leasehold valuation tribunal jurisdiction to determine (on an application made to it) *"whether a service charge is payable and, if it is, as to...the amount which is payable..."*.

**APPLICATION OF LAW TO FACTS**

26. The Tribunal notes the Respondents' assertion that the costs were increased by delays in carrying out the work. Whilst it is arguable that the Applicant should have foreseen that there would be a delay in obtaining planning permission, the Respondents have not actually brought any evidence to show

have some bearing on the question of costs it is not relevant to the substantive issues.

33. Therefore, in conclusion, the Applicant has successfully shown – on the balance of probabilities – that all of the sums which are the subject of this application are properly payable and the Respondents have failed to provide any convincing evidence that these sums were not reasonably incurred or that the relevant works were carried out in a substandard manner.

**DETERMINATION**

34. The arrears of service charge of £12,529.43 are **payable in full.**

35. The Applicant stated that it would not be seeking to recover any of the costs incurred by it in connection with these proceedings through the service charge.

36. However, the Applicant did make an application for reimbursement of the hearing fee under paragraph 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003. Under this provision the Tribunal is given quite a wide discretion to order the reimbursement by the respondent of a fee paid by the applicant in respect of the proceedings. The Tribunal has found wholly in favour of the Applicant, the Respondents have not provided any convincing arguments for non-payment and have not paid any service charge since 2008, and the Applicant has spent quite a lot of time providing information to the Respondents. Against that, the Applicant has been unwilling to submit to formal mediation, but in the context of the facts of this case the Tribunal considers that the Applicant has acted reasonably whilst the Respondents have not. Therefore, the Tribunal determines that the Respondents shall reimburse to the Applicant the hearing fee of £150.

37. No other cost applications were made by either party.

CHAIRMAN.....
Mr P Korn

4th August 2010