7349

Residential
Property
TRIBUNAL SERVICE

Case Reference
LON/00BC/LSC/2011/0315

THE LEASEHOLD VALUATION TRIBUNAL

FOR THE LONDON RENT ASSESSMENT PANEL

IN THE MATTER OF THE
LANDLORD AND TENANT ACT 1985 ("The Act")
SECTIONS 19, 27A and 20C

Re: 13c Elgin Road
Seven Kings
Essex IG3 8LL

Applicant:	Miss Angela Van Den Bossche
Respondent:	Mr Maxwood Latif
Appearances:	The Applicant in person and by Mr K Geary
	The Respondent appeared by Mr M Latif (his brother)
The Tribunal:	C Norman FRICS (Chairman) F Coffey FRICS
Hearing:	12 October 2011 Held at 10 Alfred Place London

Background

1. This matter concerns the payability of a service charge. It is before the Tribunal pursuant to an application made on 6 April 2011. The Applicant is the lessee under a long lease of a flat in a converted house. The Respondent is the freeholder.

2. The application is made under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act"). The main issue is whether or not good service of notices required to be served under section 20 of the 1985 has been given to the Applicant by the Respondent and if so the reasonableness of the charge.

3. The amount in dispute is £1,268.53 for the major works. There is also a dispute in relation to two smaller items. These are cockroach treatment to the flat and a contribution to replacement of the front door lock costing £87 and £40.40 respectively.

4. Directions were given on 17 May 2011.

5. On 1 August 2011 the hearing commenced but was adjourned due to the absence of the Respondent owing to his ill-health.

6. The Tribunal carried out an inspection of the property on 12 October 2011 prior to commencement of the resumed hearing.

7. At the resumed hearing of 12 October 2011 both parties were present. The Applicant was represented by Mr K Geary. The Respondent Mr Maxwood Latif was represented by his bother Mr M Latif. In this decision Mr M Latif is referred to as Mr Latif and Mr Maxwood Latif, as such.

Inspection

8. From its inspection the Tribunal finds as follows. The property is a mid-terraced house dating from before the first world war. As some point it was converted into flats. The front garden has long since been paved over to provide parking spaces and a bin area. The front of the house has been recently redecorated and the gutter replaced.

9. To the rear of the property, a felt flat roof to the rear extension had been recently replaced. Internally, the Tribunal noted that a replacement laminated floor had been installed to the entrance hall and new skirting boards installed, although the hall itself is small. There was evidence of a past break in to the property which had caused some damage.

The Resumed Hearing

10. At the commencement of the resumed hearing on 12 October 2011 the Tribunal referred to its directions of 1 August 2011 and in particular the reference to dispensation of the consultation requirements under section 20ZA of the Act. In its directions of 1 August 2011 the Tribunal expressly raised this as follows:

> [8]"The relevant law is given at paragraph 41 of the decision in *Warrior Quay Management Company & Another v Joachim & Others* (LRX/46/2006) where His Honour Judge Huskinson, sitting as a Member of the Lands Tribunal, said
>
> > "Where there is a hearing before an LVT and there is an absence of a formal application for dispensation from a landlord (or at least from a landlord not professionally represented) I consider that the LVT should ask the landlord whether it wishes to apply for dispensation, rather than not raising the point and omitting to consider at all whether dispensation should be granted under section 20 ZA of the 1985 Act."
>
> Section 20ZA(1) (as amended) is in these terms
>
> > "Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works.... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."
>
> [...]
>
> [14]The Respondent must by not later than 4 pm on Tuesday 16 August 2011 state whether he wishes to seek dispensation under section 20ZA stating his grounds why dispensation should be granted.
>
> [15]The Applicant may then reply to the Respondent by no later than 4pm on Tuesday 30 August 2011 stating a case why dispensation should not be granted."

11. The Tribunal again asked Mr Latif whether he wanted to make the application for dispensation. However, he declined to do so saying that the Respondent had complied with the section 20 procedures.

The Issues

12. The live issues at the hearing were as follows:

    (i) Whether the Respondent had complied with the section 20 procedures in relation to the major works;

(i) if so whether the sums charged were payable by the Applicant;

(iii) whether a service charge demand for pest control and a replacement front door lock were payable by the tenant;

(iii) whether an Order under section 20C of the Act should be made in favour of the Applicant;

(iv) whether costs should be awarded to the Applicant under Para 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002.

The Lease

13. The Applicant holds under a lease dated 4 August 1992 for 99 years from 24 June 1992.

14. By clause 4(b) the lessee covenants to pay one-quarter of the costs expenses and outgoings mentioned in the Fourth Schedule. The Fourth Schedule refers to the cost of maintaining repairing redecorating and renewing the main structure including the roof, services, entrances passages landings and external redecoration. By clause 5 the lessor covenants to repair redecorate and renew.

15. By clause 4 (d) the lessee has covenanted to permit the lessor (with others) to enter the demised premises to carry our repairs cleanse and keep in good order drains pipes and cables and make good all defects decays and wants of repair of which notice in writing shall be given by the lessor to the lessee.

16. By Para 7 of the Fourth Schedule the lessor is entitled to charge 15% of disbursements as an administration fee. By Para 8 of that Schedule he is entitled to charge 15% of repair and decoration costs.

The Relevant Statutory Provisions concerning Service Charges

17. Section 19 of the Act is in these terms:

> "(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."

18. By section 20 of the 1985 Act, consultation requirements are imposed on landlords as follows:

> "(1) Where this section applies to any qualifying works ...the relevant contributions of tenants are limited ...unless the consultation requirements have been either—
> (a) complied with in relation to the works..., or
> (b) dispensed with in relation to the works or agreement by...a leasehold valuation tribunal"
> (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount."

19. By s.20 (5) an appropriate amount is an amount set by Regulations, which by Article 6 of the Regulations is £250.

20. The Regulations insofar as relevant are as follows:

> **"Schedule 4 Part 2**
>
> *"Notice of intention*
> **8.**(1) The landlord shall give notice in writing of his intention to carry out qualifying works—
> to each tenant;
> (2) The notice shall—
> describe, in general terms, the works proposed to be carried out ....
> state the landlord's reasons for considering it necessary to carry out the proposed works;
> (3) The notice shall also invite each tenant ...to propose ...the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works
> *Duty to have regard to observations in relation to proposed works*
> **10.** Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations
>
> *Estimates and response to observations*
> (5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—
> (a) obtain estimates for the carrying out of the proposed works;
> (b) supply, free of charge, a statement ("the paragraph (b) statement") setting out—
> (I) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
> (ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and
> (c) make all of the estimates available for inspection.
> (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
> (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—
> (a) each tenant;
> (10) The landlord shall, by notice in writing to each tenant ...
> specify the place and hours at which the estimates may be inspected;
> invite the making, in writing, of observations in relation to those estimates;
> (c) specify—
> the address to which such observations may be sent;

that they must be delivered within the relevant period; and
(iii) the date on which the relevant period ends.

Duty to have regard to observations in relation to estimates
12. Where, within the relevant period, observations are made in relation to the estimates by... any tenant, the landlord shall have regard to those observations."

21. Section 27A insofar as relevant to this case is as follows:

> "(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."

The Applicant's Case

22. Miss Van Den Bossche stated that the case was not brought because of the money involved but because of the way that she had been treated by the Respondent. The Applicant said that she had not been treated in a respectful manner by the Respondent nor consulted about the works.

23. The Applicant also submitted that there was an inconsistency in the chronology in that the works were said to have been started in May 2010 in an email from Mr Maxwood Latif although the consultation notices were dated 5 January and 5 February 2011.

24. The Applicant did not consider that the work carried out was very good. The Applicant also asserted that the Respondents had deliberately set up photographs of the property to show it in a bad light before the works were undertaken and had also caused damage to the paintwork on the exterior front of her flat.

25. Miss Van Den Bossche said that all she knew was that a new roof was needed but she had not been made aware of wiring or hall works. The Applicant strongly asserted that she had never received any consultation notices in China. She stated that the address she had given the landlord was the business address of her employers. All overseas letters received in China were logged by the authorities. There was no record of any such letter having been received. As to notices sent to her at the subject premises, the Applicant said that she had not received any. Further, no cards had been left by Royal Mail indicating that a recorded delivery letter was available for collection from the post office.

26. With regard to the pest control invoice, the Applicant considered that because the relevant infestation had began in the adjoining property, she should not have to pay for the works to be carried out at number 13 Elgin Road.

The Landlord's Case

27. For Mr Maxwood Latif, Mr Latif's case was as follows. Mr Maxwood Latif had owned the property for the past ten years. The Applicant had never paid any service charges. She had always been informed about the works and was in May 2010. There had been a lot of emails but these had not been fruitful. Solicitors had been instructed on both side and had written letters. Letters had been sent both to China and Flat 13C by recorded delivery post. In answer to a question from the Tribunal Mr Latif said that the proof of posting and tracking slips had been misplaced which is why they were not in the hearing bundle. The track and trace facility had not been used to establish whether the letters had been delivered.

28. Mr Latif could not tell the Tribunal exactly when the work started or the specification of the felt roof repair. He denied that the work had been started before the consultation process and said that that work related to the hedge and driveway.

29. Mr Latif in answer to a question from the Tribunal accepted that he had not emailed the consultation documents to the Applicant in China and said that with hindsight it would have been better if he had done so.

30. He also stated that the Respondent was unconnected with either of the companies that had issued quotations.

31. An email from Mr Maxwood Latif to the Respondent dated 10 April 2011 described the major works as follows.

Repair of window seals and external painting	£650
New felt on flat roof to rear	£1890
Gutter cleaning repair and painting	£470
Main roof repair	£320
Restoring bin area	£50
New wiring plaster boards new lighting skimming new skirting boards and painting of communal hallway	£700
Laminate flooring in hallway	£80
Repair of light switch in hallway	112.59
Repair of broken lock and new Chubb style lock	£140
	£4412.59
One quarter contribution claimed from Applicant including 15% administration fee	**£1268.63**

Findings

Whether the Section 20 Consultation was carried out

32. The lease does not contain any provisions enabling the landlord to serve section 20 notices by leaving them at the demised premises. Nor does the Landlord and Tenant Act 1985 contain any provisions authorising notices thereunder to be sent by post. As a consequence, section 7 of the Interpretation Act 1978 which contains a qualified deeming provision does not apply. That provision is as follows:

> "Where an Act authorises or requires any document to be served by post (whether the expression 'served' or the expression 'give' or 'send' or any other expression is used) then, unless the contrary intention appears, the service is deemed to be effected by properly addressing, prepaying and posting a letter containing the document and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

33. Consequently, the Respondents must prove on the balance of probabilities that each of the requisite notices was given in writing to the Applicant. The Act does not prescribe the means by which this must be done so the question is whether, as a matter of fact, the Applicant did receive the notices.

34. The Notices themselves were technically incorrect because they are described as "Notices to Enter into a long term agreement" and that description is continued is repeated in the body of each letter. However, the Tribunal considers that the sense of each notice would nevertheless have been sufficiently clear to a reasonable recipient if received.

35. Mr Maxwood Latif stated that recorded delivery had been used to send the notices both to the Respondents address in China and also at the demised premises. The only evidence before the Tribunal of the notices being given to the Applicant were file copies of letters addressed to the Applicant at each of those addresses. However, there was no documentary evidence of proof of posting to either address and no postal tracking information showing that the notices had actually been received by the Applicant. Mr Maxwood Latif told the Tribunal that the proof of posting documents had been mislaid.

36. The Tribunal considers that if recorded delivery had been used to send the letters of 5 January and 5 February, such evidence of proof of posting would have been available to the Tribunal. Neither letter states that it was being sent by recorded delivery. The Tribunal also finds it odd that the notices were not sent by email because Mr Maxwood Latif had been communicating with the Applicant by email beforehand. The Tribunal therefore rejects the Respondent's case that notices were given to the Applicant.

37. Even if the Tribunal was wrong about that, having heard her give evidence, it accepts the evidence of Miss Van Den Bossche that she had not received the notice in China nor had any delivery card been left at the 13 Elgin Road.

38. For the above reasons the Tribunal finds on the balance of probabilities that the section 20 notices were not given to the Applicant.

39. The effect of this finding is that the Respondent is entitled to claim a maximum of £250 in respect of the major works.

40. The Tribunal finds that the value of the work carried out was not less than £250 and it is therefore unnecessary for the Tribunal to make any further findings in relation to the quality of the work.

The Costs of Pest Control Services and New Front Door Lock

41. The Tribunal finds that once an infestation had occurred within the building of 13 Elgin Road, the landlords were entitled to incur the cost of remedying the problem irrespective of whether it started in the subject property or elsewhere. The Tribunal notes that the Applicant was informed about this work in an email of 20 May 2010 and notice was therefore given of the landlord's intention to carry out this work. The Tribunal considers that this cost of £87 was reasonably incurred and finds that this sum is payable.

42. The Tribunal also finds that the landlord was entitled to repair the front door lock of the property following a burglary. It calculates the tenant's proportion as being £40.25. It considers that this cost was reasonably incurred and is payable by the Applicant.

The Application for an Order under section 20C of the 1985 Act

43. Section 20C of the Landlord and Tenant Act 1985 (inserted by the Landlord and Tenant Act 1987) provides:

> "(1) A tenant may make an application for an order that all or any of the costs incurred ... by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal ... 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."

44. The sole guidance as to how such application is to be determined is contained in sub-section (3) as follows:

> "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."

45. In the Tribunal's judgment this is the only principle upon which the discretion should be exercised. This will include the degree of success of the tenant and the conduct of the parties.

46. The Tribunal considers that the landlord has no right to recharge its costs (if any) in connection with proceedings before the Tribunal via the service charge.

47. However, the Tribunal has nevertheless considered that it should make a determination in respect of this application.

48. Save for the two small items totalling £127.40, the Applicant has been largely successful in this litigation. For that reason the Tribunal considers it just and equitable to make an Order under section 20C in favour of the Applicant.

Application by the Applicant for Costs for Unreasonable Conduct

49. The Applicant made this application at the hearing of 1 August 2011. The powers of the Tribunal are set out at Para 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002. This provides:

> "(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 ..."

50. The Respondent did not attend the hearing of 1 August 2011 and gave an explanation of his absence only the day before. The Respondent should have realised that his surgery might have prevented him attending. The Respondent also knew that the Applicant was working in China.

51. However, the Respondent did indicate that he was content for the hearing to proceed and did not himself seek an adjournment. He would not have realised that the Tribunal was required to raise the matter of dispensation with him. Subsequently, the Respondent provided a medical certificate indicating that he was unfit for work.

52. Balancing all these factors the Tribunal does not consider that it could be said that the Respondent acted unreasonably in not attending the hearing of 1 August 2011. For that reason the Applicant's request is refused.

Formal Determinations

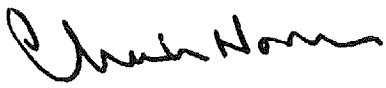
53. The service charge cost recoverable from the Applicant in respect of the major works is limited to £250.

54. The cost of the pest control for flat 13c of £87 is payable in full.

55. The cost of the Applicant's contribution to the replacement of the front door lock of £40.25 is payable in full.

56. The Tribunal **ORDERS** that none of the costs incurred by the Respondent in connection with proceedings before the Leasehold Valuation Tribunal under case no LON/00BC/LSC/2011/0315 are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant to this action.

57. There will be no Order for costs against the Respondent under Para 10 of Schedule 12 of the 2002 Act.



C Norman FRICS
Chairman

27 November 2011