HM Courts & Tribunals Service

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Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON A MATTER UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00BE/LSC/2011/0634
Premises:	Flat 3, Hanworth House, John Ruskin Street, London SE5 0XF
Applicant(s):	London Borough of Southwark
Respondent(s):	Mr Barber and Ms Harris
Date of hearing:	21 and 22 February 2012
Appearance for Applicant(s):	Mr O Strauss, Legal Officer
Appearance for Respondent(s):	In person
Leasehold Valuation Tribunal:	Ms F Dickie, Barrister, Chairman Mr K M Cartwright, FRICS Mr Alan Ring
Date of decision:	30 March 2012

Decisions of the Tribunal

(1) All of the estimated annual service charges claimed (as set out in paragraph 9 below) are reasonable and payable.

(2) The summary of the tribunals' determination regarding major works service charges is contained in paragraph 18 of the decision.

(3) The Tribunal determines that the Respondents shall pay the Applicant £150 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.

(4) This matter may now be referred back to the Lambeth County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondents in respect of the service charge years 2010/11 and 2011/12. Proceedings were originally issued in the Lambeth County Court under claim no. 1UD07505. The claim was transferred to the Leasehold Valuation Tribunal, by order of District Judge Zimmels made on 2 September 2011. The relevant legal provisions are set out in the Appendix to this decision. At the hearing on 21 and 22 February 2012 the Applicant landlord was represented at the hearing by Mr Strauss, Legal Officer, and the Respondents appeared in person.

The background

2. The subject premises are a flat within a purpose built block with lift on a larger estate. The tribunal did not consider that an inspection was necessary, nor would it have been proportionate to the issues in dispute.

3. The Respondents hold a long lease of the premises which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. A copy of the lease was produced to the tribunal, which had considers its terms. There was no dispute that all of the charges in dispute were items of expenditure recoverable from the Respondents under the lease. It is not necessary to set out its terms in this decision.

The issues

4. The relevant issues for determination were as follows:

   (i) What service charges are payable / reasonable for the years ending 31 March 2011 and 2012, including two sets of major works.

   (ii) Whether there had been compliance with the statutory consultation procedures in respect of the second set of major works.

Annual Service Charges

5. The tenants believed they had paid the annual service charges for the years 2010/11 and 2011/12 in full. However, the Council had applied part of their payment to alleged arrears in respect of previous years' service charges. The tribunal advised the parties that it had no jurisdiction in the present proceedings in respect of those previous years, since they did not form part of the claim issued in the County Court and transferred to the LVT.

6. The amounts claimed by the Council for both of the years in dispute were for estimated on account service charges only (which were recoverable under the terms of the lease). Little challenge had been raised to the annual service charges in the Respondents' statement of case or any documentary evidence before the tribunal. At the hearing they clarified the items they agreed and those they disputed. Mr Dudhia, from the Applicant's Accounts department, explained that the Council based the annual service charge estimates on the previous year's actual expenditure, except that boiler repairs and TV aerial repairs were an average of the previous 3 years' expenditure.

7. The tribunal determines that all of the annual estimated service charges claimed by the Applicants in the County Court claim are reasonable and payable. The Respondents may consider whether they have grounds to challenge any actual expenditure once it is demanded, and to bring an application to this tribunal in respect of it.

8. It is not a matter for this tribunal to determine whether the Council has properly accounted for the payments in respect of annual service charges. The Respondents did not substantiate any challenges and their complaints about previous service charge expenditure within years not the subject of this dispute would have had minimal effect on the estimated charges for these two years.

9. The amounts demanded, and allowed by the tribunal in full, are set out in the schedule below with a summary of the parties' evidence on the items in dispute and the tribunal's reasons.

Item	Cost 2010/11	Cost 2011/12	
Insurance	251.34	253.73	Agreed
Heating/hot water	1009.95	803.15	Disputed as the Respondents said at they had not had heating and hot water for some time. They produced no evidence of this and it was not mentioned in their statement of case. Since the Respondents failed to make a substantive case on this issue, the tribunal finds the service charges reasonable and payable.
Care and upkeep	337.76	366.93	The Respondents disputed this cost as they considered the cleaning and upkeep of the building was poor. The Council's case was that it obtained an estimate from its in-house provider (Environmental Services) for cleaning the estate and the block. It calculated an hourly rate for the work based on an assumption of 70% of staff time being spent cleaning (as opposed to time for holiday, sickness and other duties).

			The Respondents produced no evidence to demonstrate poor cleaning or complaints, and in any event the amounts in dispute are estimates only. On the available evidence the tribunal is satisfied that the service charges are reasonable and payable.
Communal TV	7.84	5.30	The Respondents said the TV aerial had never worked. However, this was not mentioned in their statement of case and no supporting evidence was produced. The Council's case was that work was done on a reactive basis. The charge was an estimated amount only and the tribunal finds it is reasonable and payable
Door Entry Phone	12.75	0.00	The Respondents complained that instead of a metal framed toughened glass panel to the outer entry door, there was only a plastic panel held in place by 3 pieces of wood, which constantly had to be replaced after damage when the door entry system was not working. However, these issues did not relate to the estimated costs for door entry phone maintenance, which the tribunal found were modest and reasonable.
Ground Maintenance	16.90	19.07	Agreed
Lifts	187.64	158.69	The tribunal heard evidence that the lift contractor provides an estimate for reactive maintenance, and that the service charge is a mixture of the contract cost, a supervisory cost, and a reactive maintenance cost. The contract cost is for inspection 3 or 4 times a year, and any work carried out is charged for. The Respondents dissatisfaction with the lift major works and subsequent replacement of the lift heater was not relevant to these estimated charges, which the tribunal finds are reasonable.
Unitemised Repairs	149.62	153.29	Agreed
Estate Lighting / Electricity	107.83	63.51	Agreed
Administration cost	208.16	182.37	Agreed

Major Works

10. The first set of major works had been lift refurbishment, carried out under a Qualifying Long Term Agreement. The second had been external refurbishment, including concrete repairs, repointing, works to railings, metalwork, painting, repairs to refuse chutes, walls, and masonry, concrete and pavement works.

11. Section 125 and the Sixth Schedule to the Housing Act 1985 set out limitations upon service charges payable under leases granted under the right to buy. There was ultimately no dispute between the parties as to the effect of the s.125 notice served on the Respondents in this case, and accordingly it is not necessary to set out the relevant legislation or explain its provisions in more detail.

12. At the time of the major works, the Respondents were within the limitation period as provided for by section 125. The reference period in the section 125 notice had expired, but they remained within the initial period during which, in addition to items listed in the section 125 notice, the leaseholders were liable to make a contribution towards other works on the basis of the average annual charge specified on the notice adjusted for inflation by statutory formula.

13. The Council's position in its statement of case was that the Respondents' full apportioned contribution to the refurbishment works would have been £24,758.83 if the contract had not fallen within that limitation period. The section 125 notice was produced in evidence.

14. There had been a dispute between the parties as to the correct calculation of the limits imposed by the s.125 notice. This dispute related to whether or not an additional Appendix had been served on the Respondents with that notice. The tribunal heard evidence from Miss Dawn, the Applicant's Final Account Manager, about an additional section 125 Appendix and the Council's practice in the late 1980s regarding its service.

15. The Council conceded during the hearing that the additional Appendix might not have been served, and agreed with the Respondents' contention that their service charge contributions to major works should be limited according to the documents comprising the s.125 notice which they acknowledged they had received. The parties reached an agreement as to the proper calculation of those limits (subject to the charges being reasonable) and the Council produced a new schedule of those calculations showing the amount limited by s.125, which replaced the amounts claimed in the County Court proceedings. Mr Dudhia explained the Council's apportionment method, which was not in dispute.

16. The tenants disputed service of the section 20 notice of intention for the lift refurbishment works. Mr Barber gave evidence he had been in all day on the day the Council said it had been served. Evidence of the statutory consultation procedure was given by Mr Mowatt, who was employed by the Council and was personally responsible for the preparation, printing and delivery of the consultation notices, produced using a database holding addresses (including

correspondence addresses) of all the leaseholders. He produced a statement of delivery and a copy of the list of those to whom he had delivered the notices and confirmed he had physically delivered all the notices to the flats, including to that of the Respondents.

17. The tribunal considered that the Applicant's evidence was likely to be more reliable than the Respondents' on this issue, and that it had produced robust and credible evidence of the reliability of its arrangements for the issue of s.20 notices, and of the service of the particular notice in question. The tribunal is satisfied on the balance of probabilities that the relevant notices had been delivered to the subject premises. No other issue was raised with regard to compliance with the statutory consultation requirements.

18. In the headings to the paragraphs below appear the charges claimed by the Applicant before and after application of the inflation adjusted s.125 limit. The tribunal finds that (subject to the concessions made by the Applicants) all of the costs demanded from the Respondents are reasonable and payable, and its reasons are set out in the following paragraphs.

Major works – Lift –charge £1096 (£450.19 after s.125 limit)

19. The tenants complained that a proper inspection had not taken place prior to specifying these works, because the heater to the lift motor room in the Respondents' block had not been identified for replacement, and had subsequently broken down (causing lift failure) during two consecutive winters. The tenants believed that the lift refurbishment had been partly necessitated by the misuse of the lifts by contractors during the previous major works, when they had been observed being used for transporting heavy goods.

20. Mr Kallagher, Fire Safety Manager who had overseen the lift contract, gave evidence that on his own inspection in February 2009 the lift heater had been operational and, having had regard to reported lift faults during the previous 5 years, it was not deemed necessary to replace it. He said in the event of overloading the lift would simply stop, and that he was not aware of any such incidents. The lift improvements had been carried out to any lifts with less than 90% reliability over the last 5 years. Mr Kallagher said that prior to the works the lift in Hanworth House had a reliability of 83.56% and since the work it had been 94.84% reliable.

21. Though not a lift engineer, Mr Kallagher said he was aware that if the lift heater was not working the oil solidifies and the system will trip itself to protect against damage. After the works the heater failed in a cold snap, he explained.

Lift Works - Tribunal's decision and reasons

22. Given the Council's concession as to the s.125 limit, and the Respondents' payments, it was noted at the hearing that they are now in credit in respect of the invoice for the lift works. There is no sum due and claimable by the Council in respect of this invoice, but to the extent that in these circumstances

the tribunal has any jurisdiction in respect of the costs of the lift works it would consider them reasonable, having been competitively tendered

23. There was no evidence that the maximum lift load of 875 kilos had been exceeded or that this necessitated additional repair costs. The tribunal therefore rejects this aspect of the Respondents' claim. Whether the cost of subsequent replacement of the heater was reasonably incurred is not relevant to the invoice in dispute in these proceedings. The scope of the works was reasonable at the time given that there is no evidence that the heater was faulty.

External Refurbishments –Charge £24,758 (£3621 after s.125 limit)

24. No specific challenge was raised to the cost of the roof works (£1935 before s.125 limit, £108.23 thereafter), to the external walls (£3794 before the s.125 limit and £33.67 thereafter) or to the Flooring work (£276.12 before s.125 limit and £18.04 thereafter). These negligible costs are plainly reasonable. Items grouped under Remaining Work (a charge of £6749 limited as a result of the s.125 notice to £450.19) were not contested.

25. The Respondents challenged the quality of the windows and their installation on other flats. Their charge but for the s.125 limit would have been £8363, but their contribution was capped at only £33.67. No new windows were installed in the Respondents' own flat. They gave anecdotal evidence about faulty installation and drafts in other flats, and of dissatisfaction from other leaseholders, who they said had written emails, though none appeared as witnesses.

26. Photographs were produced which had been taken by the Respondents during the installation, showing how gaps around the frames had been filled with foam, and the use of inadequate and insufficient fixings to the existing wooden frames which had been left in place. It was acknowledged by the tenants that all of this had now been covered in cladding and was not visible for inspection.

27. The windows had been manufactured too small in the Respondents' view, leaving excessive gaps to be filled with foam, presenting a hazard in the event of fire. The glazed area was reduced, including in the kitchen where a previously glazed door was replaced with a solid one. Curtain battens at the top of all of the windows had further reduced the size of the glazing from that which the tenants had seen in the pilot flat. They considered the work of such poor quality that it had devalued the block.

28. Such was the tenants' concern about the quality of the windows and their installation in other flats that they confirmed they would have refused to have them installed in their own. There was some dispute however as to whether access had indeed been refused or whether they had simply been unable for personal reasons to arrange it.

29. The Respondents were concerned about the manner in which they had witnessed the removal of asbestos panels within the old window frames. They

said they had seen them being kicked out and not bagged and disposed of in accordance with safe procedures.

30. In the period since the completion of the work, the Project Manager, Clerk of Works and all other people closely connected with their management had left the employment of Southwark Council. Mr Emakpose, who had been Project Manager for the major works, gave evidence based on access to his own electronic files. He said that the works were certified as complete in accordance with the contract on 25 July 2008. The defects liability period was extended while reported defects were attended to and the Certificate of Making Good Defects was signed on 16 March 2010.

31. The Respondents considered that the new entryphone system is inferior, and too expensive. For at least 3 months after installation it was not working, they said, though they had keys. In 2009 the fob keys were replaced. The Applicant's case was that break-ins by unauthorised occupiers had meant a reissue of fobs was necessary. It was explained that the cost of the front door was charged under the Windows and Doors head, not Entryphone installation costs – which had all been for electronic work.

32. Mr Emakpose produced a note on the referral of the asbestos removal complaint to the Health and Safety Executive, who had been satisfied with the contractors' explanations and records. They found no grounds to prosecute. He also referred to air quality tests conducted during the removal in accordance with appropriate procedures, specialist consultants having been appointed for this purpose. Those contractors, he said, could have been asked for comment on the Respondents' concerns if they had been made clear in their statement of case. The test to flat 3 had been external, he understood.

33. A 100mm packer had been fitted above the windows after the design of those in the pilot flat revealed there was insufficient space to fix curtains. The work had been supervised by a quantity surveyor and also on a daily basis by a clerk of works, and by a contract manager on site about once a day. The size of the gaps around the windows had been raised with the contract administrator and he said the work was within acceptable tolerances.

34. Though the Respondents felt that the lightning conductor installation work had been substandard because it was not grounded until 2011, Mr Emakpose gave evidence that the copper for the lightning conductor had been installed but then stolen, being replaced and then finally tested in April 2011.

35. The Exterior Redecorations element of the contract was charged at £1944.83 – the s.125 limit being of no effect. The Respondents considered that the cost was unreasonably high, and only an amount of up to 50% was reasonable. These concerns had not been raised in the Respondents' statement of case. The tenants gave oral evidence of shortcomings in the execution of the painting, but accepted that these had been made good during the defects liability period. Mr Emakpose pointed to the Bill of Quantities and to the fact that the decorating was more than just to the concrete, and included the internal common parts, garage doors, railings and other items

36. It is for the tribunal to determine whether the service charges actually demanded are reasonable. The sum demanded in this case for window replacement at £33.67 is minimal. This figure, according to the calculation in accordance with s.125, is not affected by the actual cost of these works. On any view this cost is reasonable for the extensive works carried out. The tribunal entirely rejects the assertion of the tenants that these works can have no or negative value because of their concerns regarding quality. The tenants evidently felt very strongly about this issue but, given the negligible cost to them, it is difficult to see what purpose they thought would be achieved by pursuing this challenge before the tribunal.

37. As acknowledged by the tenants at the hearing, their liability under Clause 4(2) and Schedule 7 of the lease extends to contributing to the landlord's costs in the repair and improvement of the windows to the building, which is defined as 1-140 Hanworth House. The fact no work was carried out at flat 3 is therefore not relevant to the Respondents' liability to contribute to the costs as a whole.

38. Concern about the quality of window work was not supported by expert evidence. Given that the Respondents' contribution is minimal it was not necessary for the tribunal to reach a determination as to the reasonable amount payable in respect of those works where not limited by s.125.

39. The tribunal is satisfied that the Council demonstrated to the HSE that the asbestos work had been properly planned and certificated. On the unsupported anecdotal evidence the tribunal is not persuaded on the balance of probabilities that there was inappropriate handling. This negligible cost limited by s.125 was plainly reasonable.

40. The estate and grounds charge, being limited to £16.84 from an original charge of £678.60, is plainly reasonable. The cost of the work was competitively tendered, and there was no evidence to suggest that the cost of the entryphone installation was too high or that the new system was inferior. The tribunal is satisfied that actions of unauthorised occupants were the cause of any teething problems with the system, and not relevant to the reasonableness of the installation cost. The full charge of £1563.49 is recoverable from the Respondents (since it was below the inflation adjusted s.125 limit).

41. The tribunal found no evidence that by the end of the defects liability period the work, including the external redecorations, was substandard. The cost, being the result of competitive tendering, and in the absence of evidence to the contrary was reasonable for the range of work included.

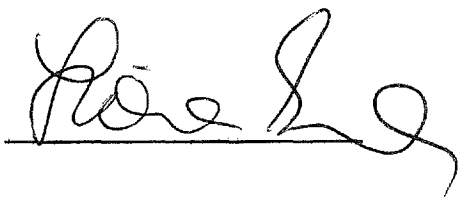
Costs and fees

42. The Applicant made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of

the fees of £150 that it had paid in respect of the hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondents to refund the fee paid by the Applicant within 28 days of the date of this decision.

43. Notwithstanding the concessions made at the hearing by the Applicant, the tribunal is of the view that the proceedings, and the hearing, could not have been avoided. The tenants were clearly concerned with principle in respect of the administration of the major works in spite of the fact that the actual cost to them in respect of many items was negligible. In defending even the items of work for which their financial contribution would be negligible when compared to the cost of the works, the tenants did not appear to have sufficient objectivity regarding the issues. The Council produced hearing bundles running to nearly 800 pages. All of the relevant documentation was available for inspection according to the tenants' statutory right, but it does not appear that the tenants comprehended all the information that was available to them. The Council declined mediation at the pre trial review since Mr Strauss did not consider it would have been worthwhile. The tribunal believes the Council was correct in the assessment that this would not avoid a hearing.

44. The tenants made no application under s.20C of the Act in respect of the landlord's costs of the proceedings. Mr Strauss confirmed in any event that the Council would not be seeking to recover the costs through the service charge account.

Chairman: 

Date:

30 March 2012

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.