

LON/00AH/LSC/2006/0047

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER SECTIONS 27A and 20C
OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Applicant: Miss Angela Gorman

Respondent: Basicland Registrars

Re: Flat 2, Lyndhurst Court, 297a Whitehorse Lane, South
Norwood, SE25 6UG

Application received on 15 February 2006

Hearing date: 5 & 6 June 2006

Appearances: Miss A Gorman (for Applicant)

Ms L Scott (for Respondent)

Members of the Leasehold Valuation Tribunal:

Miss I M Tagliavini BA(Hons) DipLaw LLM
Mr J M Power MSc FRICS FCI Arb
Ms J Dalal

1. This is an application by Ms Angela Gorman who in October 2004, became the long lessee of Flat 2, Lyndhurst Court, 297a Whitehorse Lane, London SE25 6UG, seeking a determination of her liability to pay service charges for additional works of external repair and redecoration in the sum of £1,092.30 representing a 10% share, for the service charge year 2004 in respect of the subject property. The Respondent landlords are WF (trustees) Limited and Mr. David Glass represented by its managing agents Basicland Registrars Limited ("BRL"). Specifically, The Tribunal was asked to determine (i) the standard of works and the reasonableness of the cost of the additional works carried out and (ii) whether the Respondent needed to comply with the section 20 L&T 1985 consultation procedures in respect of the additional works now claimed for.

2. Prior to the hearing of this application the Tribunal inspected the subject property, which is a large detached dwelling of three storeys plus attic rooms. The accommodation is divided into ten self contained flats, three of which are at lower ground floor level with direct access, and the other seven flats are entered through the main front door and located at ground and upper floor levels. The front garden is given over to parking and the rear garden laid to lawn. The building is late Victorian and of typical construction for the era. It is built with rendered and painted brick walls under a tiled roof. In recent times external repairs and decorations have been carried out but significant movement to boundary walls,

probably caused by tree root damage, is evident. Internally, the common parts are in poor condition and urgently require modernization and redecoration.

3. At the hearing, Ms Gorman appeared in person. Ms Scott, legal support manager from BRL, represented the Respondent. It was said by Ms Gorman, both in her written and oral evidence that she felt that she should have been consulted separately in respect of the extra works required, particularly in respect of the additional specialist paint treatment that was said to be needed once the works had started. Ms Gorman stated that she did not feel that any of the 10% contribution to the services charges she was under the terms of the lease required to pay, were due because of the way she had been treated by the Respondents as she had not been given a copy of the original specification; had not been contacted by the surveyor although she was told she would be and did not feel the extra works were necessary or had not been done, particularly the "burning off" referred to by the Respondent. Ms Gorman made no other specific observations of the reasonableness or otherwise on the remaining additional works included in the Draft Final Account (*page 192 of bundle*) except to state her objection to paying any more monies because of the poor way she had been treated by the Respondent's managing agents.

4. Ms Scott for the Respondent showed the Tribunal the section 20 notices, which were sent out to the lessees on 6th October 2003 by Baxter and Company, the appointed surveyors to BRL and a further letter inviting the lessees to attend a pre-contract site meeting on 27/1/04. This meeting however, had to be cancelled

due to the sub-contractor unexpectedly going out of business and the work re-rendered and the original contractor to whom the contract was awarded, Canon Construction Croydon Limited was still the most competitive even at an increased price of £41747.00 instead of the original £34505.00. Despite this extra work of re-rendering, Ms Scott told the Tribunal that no extra charge was made to the lessees.

5. A letter dated 15/11/04 was sent to Ms Gorman together with supporting documentation of the need to carry out extra works. It was said that the “extra overspend” (EO), was necessitated by the discovery that filler had been used extensively in the past on the exterior of the building and could not simply be patched over. Ms Scott stated that as the works were already ongoing it would not have made economic sense to stop the works to consult further with the lessees, although had the works concerned a new roof, consultation procedures would have taken place. Ms Scott stated that the lessees had been informed of the overspend and that the Respondent’s managing agents tried hard to be pro-active in communicating with the lessees. Ms Scott referred the Tribunal to various letters in the bundle of documents in support of this assertion. In her evidence Ms Scott relied on a Draft Final Account statement, which appeared at page 182 of the bundle of documents. This set out items numbered 1 to 18 (inclusive), which totaled £11,009 in respect of the charges for the additional works now the subject matter of this application.

The Tribunal's Decision

6. Of the additional costs sought from the Applicant in the sum of £1092.30 the Tribunal decides as follow. The **£516.00** that appears as item 11 on the Draft Final Account of extra expenditure has been left blank. When asked by the Tribunal, Ms Scott referred to a corresponding item 11 on an earlier account, which stated, "Take down defective BWR rear steps and re-build etc." Ms Scott was unable to enlighten the Tribunal as to what BWR referred to, nor could the chartered surveyor member of the Tribunal assist. Consequently, as it is not known to what this sum relates the Tribunal finds that it is not reasonable to allow it and the Tribunal disallows the % payable by the Applicant of £51.60 plus VAT and 10% fees totaling a credit adjustment in favour of the Applicant of £67.75.
7. The **£4133** claimed in respect of extra painting works. This appears as item 15 on the Draft Final account. This sum was broken down into four items (*see page 129 of bundle*) and it is to this work that the Applicant has most strongly objected. Taking a broad view of the painting specification it can be said that at least some of the works set out in the letter of 18/10/04 to the contract administrator falls within the contract specification. The Tribunal is of the opinion that after having given this matter detailed consideration that the proper approach is to allow the extra costs of preparation of (£2125.00) and the change in paint materials (£312) as being variations to the original contract. The Tribunal, however, takes the opposite view with regard to the application of an anti-fungicidal solution (£834.00) and the application of a stabilizing solution (£862.00), which were

already provided for, in the original specification. Accordingly, taking into account surveyors fees and VAT the Tribunal find that a credit adjustment of £219.21 is required to be made by the Respondent in favour of the Applicant. The Tribunal notes that much has been made by the Applicant of the “burning off” which she has stated did not seem to have been carried out. The Tribunal notes that this work would have been localised and would not have been as obvious to the causal observer as has been suggested by Ms Gorman. The Tribunal finds accepts the Respondent’s evidence on this point and finds that that this work carried out as stated.

8. In the absence of any particularised challenge to the remaining costs of additional works, the Tribunal accepts the evidence of Ms Scott and also relies on its own knowledge and expertise in reaching its decision. The Tribunal finds, therefore, that the remaining additional costs as set out on page 182 of the bundle have been reasonably incurred and are payable by the Applicant. For the sake of clarity, the Tribunal also finds that the standard of works carried by the Respondent was reasonable and that there is no evidence to the contrary. Further, the Tribunal finds that no further section 20 consultation procedure was necessary and the additional works carried out are payable subject to a credit adjustment of £286.96 in favour of the Applicant.

9. The Tribunal was asked to consider a section 20C application by the Applicant. Ms Scott made no representation on this matter having received no instructions. Having regard to the al the circumstances of this case and particularly in view of

the breakdown of communication between the parties at which the Respondent's managing agents could have tried harder to repair by responding more clearly to the Applicant's genuine enquiries and concerns, the Tribunal finds that it would not be reasonable to permit the Respondent to add the cost of the Tribunal to the service charge account. However, in view of the findings made, the Tribunal does not regard it a proper exercise of his discretion to order a reimbursement of the Applicant's fees.

Chairman:.....

Dated:.....24/7/06.....