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Residential Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL FOR THE
RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 (as amended) Section 27A

LON/00AY/LSC/2006/0182

Property:	39 Dolland House, Newburn Street, London SE11 5LS
Applicant:	London Borough of Lambeth
Represented by:	Mr N Islam
Respondent:	Miss Julia Amanshia
Date of Hearing:	18 September 2006
Date of Decision:	22 September 2006
Members of the Tribunal:	Mr J C Avery B Sc FRICS Mr L Jarero B Sc FRICS Mrs L M Farrier

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Introduction

1. A claim by the Applicant for unpaid service charges of £2002 plus interest and costs was transferred on 10 May 2006 from Lambeth County Court to the Tribunal. At a pre-trial review on 21 June 2006, although a number of matters were aired (including the Respondent's wish to counterclaim for damages) a Tribunal determined that the only issue within its jurisdiction was the Respondent's liability for the sum claimed - £2002 - in respect of lift renewal work in the building of which the premises are part.

2. Following the pre-trial review the Tribunal issued directions which included that the Applicant Borough should serve a statement of case by 21 July and the Respondent should serve a statement in reply by 18 August. The Respondent was also invited to make an application under section 20C by that date.

3. The Applicant complied with the directions, albeit on 25 July, but no statement was served by the Respondent and no application for a section 20C order was received. However, on 29 August the Respondent sent to the Applicant copies of correspondence she wished to have included in the bundle to be prepared by the Applicant.

4. That correspondence contained letters and emails in which the Respondent queried the cost and fees, and contained the following assertions in relation to the work to some or all of the lifts numbered 383, 384 and 385:

   - That the Borough had not followed proper consultation procedures
   - That Leaseholders had been refused access to view documents
   - That lift 384 had been shut off without warning
   - That the Borough had refused an extension of time
   - That section 20 notices were not sent in relation to some or all the lifts and the lessees had no opportunity to select a contractor.

5. The Applicant provided in the bundle a copy of a section 20 notice dated 30 October 2002 (but unsigned) which advised that:
   - The proposed work was the renewal of lift L384
   - The Borough proposed to accept a tender of £77,239, the lowest of the three received
   - The total cost would be £81,873
   - The Respondent's contribution would be £1187
   - Lessees were invited to make observations on the works and the estimate within one month of receiving the notice (the copy provided did not indicate the date it was served but in her witness statement Mrs Vernon-Ellington said that it was hand delivered on 4 December 2002).
   - Lessees were invited to inspect the documents at the Neighbourhood Housing Office during normal working hours.

6. In its statement of case the Applicants said that as a result of reviewing their claim they were of the opinion that the Respondent was not liable for the sum of £918 originally claimed (as it related to costs incurred to lift 386 "prior to commencement of the reference period") so that she was only liable for the lower sum of £1,084, the cost of lift 384 alone.

The issues to be determined

7. The two potential issues for the Tribunal were therefore:

   - Whether the Respondent's liability was limited because the Applicant had not complied with the consultation requirements of the Landlord and Tenant Act 1985
   - If her liability was not so limited, whether the sum of £81,873, on which her liability was based, was reasonable.

   However, the Respondent had not served a statement in accordance with the directions and has said nothing to support any allegation that the costs were too high. The Tribunal accordingly decided that **the only issue to be determined was whether the Borough had complied with the consultation requirements of the Act**.

The Law

8. Section 20 of the Landlord and Tenant Act 1985, as it stood in December 2002 provided (in summary) that a tenant's service charge contribution is limited to an amount (determined by regulation) unless the landlord has followed the procedure specified in the Act and the Regulations for consulting the tenants. The procedure involves giving the tenants a notice which gives information about the work, invites observations and gives an address at which documents can be seen.

The Hearing

9. At the time fixed for the hearing to commence it was learned that Mrs Vernon-Ellington, who had provided a witness statement, was indisposed and was to be replaced by Mr Islam, a Team Leader in Leasehold Management. He arrived at 10.30 but the start of the hearing was further delayed to enable the Respondent to arrive by 11.0. The hearing started at 11.0 am and Miss Amanshia arrived at 11.30.

10. During the half hour in the Respondent's absence Mr Islam confirmed that the consultation requirements were those applying before the Service Charges (Consultation Requirements) (England) Regulations 2003 came into force on 31 October 2003, and he considered that the Borough had complied with the requirements as they stood at that time.

11. Miss Amanshia, on her arrival, was not aware of the existence of the Applicant's bundle of papers. She said that the only documentation on behalf of the Applicant she had received was an index to the bundle (which she had had to retrieve from the post office as postage had not been paid); she had not received the bundle itself. Accordingly the bundle was copied for her and the hearing was adjourned for 45 minutes to allow her to read the Applicant's statement and supporting documents.

12. On resuming Miss Amanshia stated that she had not received the section 20 notice on the date asserted by Mrs Vernon-Ellington's witness statement (4 December 2002) but had become aware of the proposals from her attendance at "forum meetings". In August 2003 she had made arrangements to inspect documents at the Vauxhall Office but had been told that Ms Johnson (a surveyor responsible for the project) was not there, and since no one else could explain the technical documents to her she could not see them.

13. Miss Amanshia produced a letter she had written to Ms Johnson dated 18 July 2003 in which she said she was clarifying "your admittance to leaseholders in the forum meeting of your office failure to issue proper section 20 notices.....", to which she had received no reply. Mr Islam suggested that the letter had borne a reference number which applied to the other two lifts but Miss Amanshia said that it was the only reference she knew for lift 384. In any event the numbering used for the lifts had changed. Mr Islam could find no reply in his file.

14. The Tribunal observed that the Borough's Claim in the County Court had referred to two invoices: the first dated 11 March 1998 for £918 (which claim had been withdrawn), the second dated 18 May 2000 for the sum claimed £1084. The Applicant's statement, in referring to a project in 2003, and first consulted on in December 2002, did not appear to provide support for an invoice dated in 2000. The hearing was again adjourned to allow Mr Islam to find an explanation.

15. On resuming Mr Islam explained that both dates in the claim were mistakes (due to computer involvement) and he produced copies of two invoices, one dated 12 March 2002 for £918, and the other dated 19 May 2004 for £1084. Miss Amanshia did not accept the explanation; she thought that there had been an earlier project also priced at £1084.

16. There was conflicting evidence relating to the alleged service of notice under section 20 of the Act. Mrs Vernon-Ellington in her witness statement had stated that it had been delivered by hand on 4 December 2002. She had enclosed a copy of a form bearing that date that had been signed "Bev Johnson" and which contained in the section headed "Delivered to leaseholders by (Print)" the word *"Caretakers"*.

17. The obvious meaning of the form was that Ms Johnson had authorised the caretakers of the building to hand deliver the notices. Mr Islam however contended that Ms Johnson would have delivered such important documents herself and, in the letter dated 8 October 2004, Ms Nunn St-John said that a notice had been hand delivered by Ms Johnson. However, in further documents provided by Mr Islam after the latest adjournment were two similar forms, one of which, dated 4 October 2000, contained Ms Johnson's name in both sections, indicating that she had, in that case, indeed delivered the document herself.

18. Miss Amanshia asserted that in 2000 Ms Johnson would have delivered by her own hand, but by 2002 contractors had been appointed and she no longer did so.

19. In answer to the Tribunal's question as to whether any of the six signatories accompanying Miss Amanshia's letter of 20 August 2003 (which purported to refuse on behalf of all six to pay for works that had not been properly consulted), Miss Amanshia replied that some had only paid so that they could sell their flats. Mr Islam found (after a further short adjournment) that three had paid, one was unknown and the other non payer was the subject of a claim in the County Court.

The Tribunal's determination

20. The Tribunal found the lateness of the parties' arrival, the quality of the evidence and the constant need for adjournments, to be most unsatisfactory. On the one hand Miss Amanshia had little evidence to support her contention that she had not received a notice on December 2002 or that Ms Johnson had admitted that the Borough had failed to comply with the procedures. It would have been helpful to see minutes of the Forum meeting at which she alleged that the statement had been made.

21. However, the Respondent was adamant that she had not received a notice; she had been at the flat on 4 December 2002 and would have received it if it had been delivered. She was also sure that her letter confirming Ms Johnson's admission that the procedure had not been followed had been sent, and no reply had been received. She had written again on 23 May 2004 stating that notices had not been served, had received no reply and written again on 27 September 2004. A reply was then received from Denise Nunn St-John refuting that the notice had not been served.

22. There were also many unsatisfactory aspects of the Borough's case. The status and meaning of the form recording the hand delivery was not at all clear and there was considerable doubt about who was believed to have hand delivered the notices on 4 December 2002. The copy notice in the bundle was not signed or dated and Mr Islam confirmed that no covering explanatory letter would have been sent with it. Ms Johnson did not attend or provide a witness statement, even though (albeit in the absence of a statement by the Respondent) the Applicant knew from the correspondence submitted by the Respondent that the section 20 notice procedure was the issue.

23. A number of mistakes had been made by the Borough and its solicitors. The dates on the Court Claim were wrong; the Borough had wrongly included in the claim the sum of £918 as well as the sum of £1084; the document sent to the Respondent had not been stamped and the Respondent had not received her copy of the bundle. There was inconsistency in the meaning of the form recording hand delivery, and who was believed to have delivered anything. It is surprising that no immediate reply, with either a denial or an explanation, was sent to Miss Amanshia's letter which contained the potentially serious allegation that section 20 notices had not been served.

24. The evidence before the Tribunal was not convincing from either of the parties but, in the face of the Respondent's repeated statements that no notice had been received, and the errors made by the Applicant, the Tribunal is prepared to believe that mistakes could have been made in the service of notices. From the evidence adduced and on the balance of probabilities, **the Tribunal determines that the Respondent did not receive a notice consulting her on the Borough's proposals in relation to lift 384 so as to conform to the requirements of the Act.** Accordingly the sum the Borough can claim in service charges for the work is limited to £1000 and the Respondent's contribution is accordingly reduced to the appropriate proportion of that sum provided in her lease.

25. The Tribunal believes that the Respondent could have made greater efforts to inspect the documents when she became aware of the proposals but, in view of the above determination, no finding is required as to whether the Borough denied her access to an extent sufficient to constitute non-compliance with the procedures.

Section 20C

26. Mr Islam was not able to say whether there might be any costs added to a future service charge resulting from the proceedings and Miss Amanshia, in answer to the Tribunal's question, said that she wished to apply for an order under section 20C.

27. Miss Amanshia has succeeded in resisting the Borough's claim, and could not have done so without a hearing by the Tribunal. **The Tribunal accordingly orders** that any costs incurred by the Borough in connection with these 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.

Signed J C Avery Chairman Date 22 September 2006