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Ref: LON/00AG/LIS/2006/0135

LEASEHOLD VALUATION TRIBUNAL

LONDON RENT ASSESSMENT PANEL

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

Property: 18B Lymington Road, West Hampstead, London NW6 1HY

Applicants: Mr and Mrs M Goba

Respondent: The London Borough of Camden

Application Date: 8th November 2006

Hearing Date: 26th February 2007

Representatives: Mr and Mrs Goba (the Applicants, representing themselves)
Miss L Bush and Mrs E Howells (employed by and representing
the Respondent)

In Attendance: Mr J Hadji
Mr K Schooling
Ms A Murphy (Respondent's Project Manager)
Ms V Aldridge
Mr S Sorour
Mr R Bellord (Respondent's Contract Administrator)

Members of Tribunal

Mr PJ Korn (chairman)
Mr ML Jacobs FRICS
Mrs SE Baum

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. The Applicants dispute various items in respect of the service

charge years 26th September 2001 to 26th September 2006, as referred to in more detail below.

2. A Pre-Trial Review took place on 29th November 2006.

BACKGROUND

3. The Property is a first floor flat held under a lease dated 22nd May 2000 granted by the Respondent to the Applicants (together with Miss E Goba).
4. The Applicants had instructed a solicitor in connection with this application. It appears that the solicitor in question ceased to act for the Applicants a few days before the hearing date, and the Applicants applied to the LVT for a postponement but this was not granted.

THE HEARING

5. At the hearing, the unrepresented Applicants found it hard to put their case and appeared unclear as to what was expected of them. The Tribunal explored with the Applicants and the Respondent's representatives various options to enable the issues to be considered in a logical and an orderly manner. In due course the issues were teased out, the Tribunal acknowledging that it felt obliged to compensate for the fact that the Applicants were struggling to present their case in the usual manner.
6. The Applicants confirmed, despite the reference in their Application Form to the service charge years September 2001 to September 2006 inclusive, that the service charge items in dispute were limited to the specific items referred to in the Application Form, namely the invoice for refurbishment dated 26th September 2001 in the sum of £8,417.98, the supervision fee in respect of that work in the sum of £491.61, and the management fee in respect of the same work in the sum of £841.80. This totalled £9,751.39.
7. Miss Bush for the Respondent said that in fact only £9,400 was outstanding, the balance having been reduced by separate payments of £261.44 and £89.95. The Applicants did not disagree with this.
8. In the course of discussions between the Tribunal, the Respondent and the Applicants, a consensus appeared to emerge that the essence of the Applicants' case was to be found in paragraph 8 of the first Witness Statement of Mr Goba dated January 2007 (an exact date was not inserted in the Witness Statement). The points contained in that paragraph were examined in turn.

DRAINAGE

9. In relation to the drainage charges (paragraph 8(a) of Mr Goba's first Witness Statement), Miss Bush took the Tribunal through Mr Bellord's Witness Statement dated 30th January 2007 on behalf of the Respondent which states that the provisional sum of £2,000 for below ground drainage was omitted under Contract Instruction 1.49 and does not appear in the Final Account. The Tribunal put it to the Applicants that this did indeed appear to be the case, and the Applicants accepted this.
10. As for the sum of £1,759.50 which Miss Bush conceded was charged for drainage repairs, Miss Bush called Mr Bellord (the Respondent's Contract Administrator) as a witness to explain this. Mr Bellord referred to the survey report on the basis of which the works were carried out and to the brief description of the drainage works in the list of additions to and omissions from the original set of contract instructions. He confirmed his understanding that the work was indeed carried out (although he was not engaged by the Respondent at the time). Mr Bellord was unable to produce a specific detailed contract instruction nor any other supporting evidence such as invoices.
11. Mrs Goba disputed that the work had been carried out at all. She contended that if the work had been carried out she would have noticed, and that the Applicants in fact made their own arrangements for drainage works to be carried out by Dyno-rod to remove a bad smell. The Tribunal questioned whether Mrs Goba could be referring to a different section of drainage. It seemed that the Dyno-rod works were to the part of the drainage system immediately adjacent to the property connecting to the main drainage system in the road, and Mr Bellord's contention was that the works to which he was referring related to the sections around the building as shown on a plan in the case bundle. As to whether the works should have been visible, Mr Bellord expressed the view that the works could have been carried out without visibly breaking the ground. He estimated that the works would probably have taken one to two days and his opinion was that the amount charged seemed reasonable. The papers include a copy of a letter dated 3rd August 2000 addressed to the Applicants informing them about the proposed drainage works, but Mrs Goba said that they never received it.

WINDOWS, DOORS AND JOINERY

12. In relation to the windows, doors and joinery (paragraph 8(b) of Mr Goba's Witness Statement), the Applicants appeared to have various complaints as to the standard of work and as to whether certain work was carried out at all, but at the hearing the only item that they disputed was the cost of the draught excluders (on the ground that they did not believe them to be effective). In response, Mr Bellord in his capacity as witness for the Respondent said that he

had seen the draught excluders and thought them to be adequate for their purpose. Mrs Goba, whilst confirming that she believed the draught excluders to be inadequate, did concede that she did not report the problem for a year. When asked how much she believed that they should pay for the draught excluders Mrs Goba offered a figure of £1,200 but was not able to explain how she had arrived at this figure.

GARDEN AREA

13. In relation to the Garden Area (paragraph 8(c) of Mr Goba's Witness Statement), Miss Bush referred the Tribunal to the Final Account forming part of the bundle, which does not include a charge to the Applicants in respect of the Garden Area. The Tribunal put it to the Applicants that this did indeed appear to be the case, and the Applicants accepted this.

INTERNAL COMMUNAL AREA - SMOKE DETECTOR

14. In relation to the Internal Communal Area, one of the disputed amounts was the sum of £862.50 in respect of supplying, fixing and wiring a smoke detector (see paragraph 8(d) of Mr Goba's first Witness Statement). Miss Bush referred the Tribunal to Contract Instruction 1.56, which was an instruction to omit these works, and linked this to the total sum omitted from the Final Account under the category of Internal Communal Repairs. The Tribunal put it to the Applicants that this item did not in fact seem to have been charged, and the Applicants accepted this.

INTERNAL COMMUNAL AREA – VINYL FLOOR COVERINGS

15. The Applicants queried one item that had been added to the Final Account, namely £1,840 in respect of vinyl floor coverings and stair nosings (item 2.25 on the contract instruction dated 29th May 2001). It is referred to in paragraph 11 of Mr Goba's second Witness Statement dated 12th February 2007, and the Applicants' contention was that the non-slip flooring was ineffective. The Tribunal noted that there was no evidence of this having been raised as a concern prior to the Section 27A application being made, despite the fact that the work was carried out several years ago.

INTERNAL COMMUNAL AREA – INTERNAL DECORATION

16. Another disputed amount was the sum of £897 in respect of internal decoration (see paragraph 8(e) of Mr Goba's Witness Statement). The parties discussed this issue during the break for lunch, and the Respondent agreed to reduce the amount to £797 and the Applicants accepted this compromise.

CONTINGENCY SUM AND PROVISIONAL AMOUNT

17. Mr Goba's first Witness Statement (see paragraphs 8(f) and 8(g)) referred to a sum of £2,000 being allowed for additional works and a further £2,000 being allowed for as a Provisional Sum, and the Applicants were seeking clarification as to what these amounts related to. Miss Bush referred the Tribunal to the Final Account forming part of the bundle, which does not include a charge to the Applicants in respect of either of these sums. The Tribunal put it to the Applicants that this did indeed appear to be the case, and the Applicants accepted this.

ACCESS – SCAFFOLDING

18. The Applicants noted that the Final Account included a charge of £3,514.09 in respect of "Access – Scaffolding Etc" and wanted to dispute it. However, the Applicants had not raised this point before, had not brought any supporting evidence for their contention and were not offering any evidence even at this stage.

PRELIMINARIES

19. The Applicants also noted that the Final Account included a charge of £3,629.76 in respect of "Preliminaries" and appeared to want to dispute this element of cost as well. However, again, the Applicants had not raised this point before, had not brought any supporting evidence for their contention and were not offering any evidence at the hearing.

OTHER POINTS ARISING

20. In the course of the hearing the question was raised as to whether the Respondent had in its original offer letter to the Applicants given details of the improvement contributions of which it was aware at the time would be sought from the Applicants, as required by Section 125B of the Housing Act 1985. Miss Bush confirmed that it had and produced a copy of the relevant paperwork. Mr Goba said that he had not seen this paperwork before.
21. Mr and Mrs Goba also said that they had not received the Section 20 Notice dated 3rd August 2000 giving details of the major works proposed at that time (including drain surveys and repairs amongst other items), despite the copy in the Respondent's bundle being expressed as being delivered "by hand" and despite the Witness Statement dated 22nd February 2007 of Deborah John (Project Officer employed by the Respondent) as to its delivery.
22. In addition, the question of access was raised. The Respondent tried to make an appointment with the Applicants for Mr Bellord to inspect the items in

dispute. Miss Bush told the Tribunal that Mrs Goba had refused permission. Mrs Goba denied this.

NO INSPECTION

23. The members of the Tribunal did not inspect the Property. Neither party requested an inspection, and the Tribunal's view was that inspection was not necessary in order for it to make a determination in the circumstances of this particular case, nor likely to be useful given the passage of time since the various works had been carried out.

THE LAW

24. 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.”

25. “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”.
26. 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

27. Neither party made any submissions on the terms of the Lease, but it is appropriate nevertheless for the Tribunal to consider whether the cost of the relevant service charge items is recoverable as a matter of construction of the wording of the Lease itself. The service charge provisions in the Lease are quite widely drawn and the Tribunal is satisfied that in principle the Respondent is entitled to charge for all the heads of expenditure which are the subject of this application.

28. The next point to consider is whether the service charge is variable such that it falls to be limited under Section 19 of the 1985 Act if not reasonably incurred and/or if incurred in respect of services or works which are not of a reasonable standard. The Tribunal considers that the service charge is indeed variable.
29. The Tribunal also considers that none of the exceptions set out in Section 27A of the 1985 Act apply and that it therefore has jurisdiction to make a determination in respect of the disputed items.
30. As noted above, the Applicant is no longer disputing the costs relating to the garden area, the smoke detector, the contingency sum and the provisional sum.
31. Re the internal decoration, the parties have agreed that this item shall be reduced from £897 to £797.
32. Re the scaffolding and the preliminaries, the Applicants' challenge to these amounts did not form part of their application and in any event no credible evidence was presented at the hearing as to why they should be disallowed in whole or in part.
33. Re the vinyl floor coverings, no credible explanation was given by the Applicants as to why there was no evidence of this issue having been raised several years ago when the coverings were laid. Whilst the Respondent was not in a position to prove that the coverings had been laid in a satisfactory manner, this was hardly surprising given the passage of time, and the Applicants had provided no hard evidence on which the Tribunal could make a finding that the works were not of a reasonable standard. They had called no independent witnesses nor produced letters from anyone who had slipped on the floor coverings. The Tribunal therefore finds that there is insufficient basis to determine that a lower sum would be reasonable.
34. Re the draught excluders (referred to above under the heading "Windows, Doors and Joinery"), no credible evidence was provided by the Applicants as to why the cost should be reduced, nor as to why it took the Applicants a year to raise the issue originally.
35. Re the drainage charges, the issues here are less straightforward. The Respondent's paperwork is poor on this point, in that no proper contract instruction or invoice was provided, and it is difficult to judge how long the work took (if indeed it was carried out) and whether it was value for money. On the other hand, it is not so surprising that the paperwork is less than perfect, given how long ago these works are supposed to have been carried out. More importantly, the Tribunal is sceptical as to why it took the Applicants so long to challenge the cost of these works. They have been unable to produce correspondence demonstrating objections and unanswered

questions in relation to these charges at the time that they were originally invoiced and have offered no expert evidence. Whilst the Applicants' comments about the work carried out by Dyno-rod are noted, it seems most likely that these works related to a different section of drainage. On balance, the Tribunal's view is that the works for which the Applicants were invoiced were indeed carried out and the Tribunal does not feel that it has sufficient evidential basis to determine that a lower sum would be reasonable.

36. As a general point, the Tribunal notes the Applicants' contentions that they did not receive details of forthcoming works with the original offer and did not receive the Section 20 notice, but the Tribunal is of the view that on the balance of probabilities the Applicants did receive both of these items. However, it should also be noted that the Tribunal did find some of the Respondent's paperwork to be unnecessarily confusing, and it is the view of the Tribunal that the Respondent should make more effort in future to provide the Applicants with clearer information.

DETERMINATION

37. The Tribunal determines that the Applicants have failed to demonstrate that any of the costs referred to in their application and/or at the hearing were unreasonably incurred. The parties have agreed between them that the cost of the internal decoration works should be reduced from £897 to £797, but otherwise the balance outstanding is properly payable by the Applicants. On the basis of the Respondent's statement (not contested by the Applicants) that the amount outstanding at the start of the hearing was £9,400, the amount payable by the Applicants by way of outstanding service charge is £9,300.
38. The Applicants were asked if they wanted to apply under regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for reimbursement by the Respondent of their application and hearing fee. The Applicants said that they would be guided by the Tribunal. In the circumstances of this Tribunal having found in favour of the Respondent, then to the extent that this constituted an application for reimbursement of these fees the Tribunal refuses such application.
39. When asked whether the Respondent would be seeking to recover the costs incurred by it in connection with the proceedings before this Tribunal through the service charge, Miss Bush said that the Respondent would not be seeking to recover its own direct costs but did wish to recover Mr Bellord's consultancy costs through the service charge. Asked by the Tribunal to show which clause or paragraph of the Lease would entitle the Respondent to recover such costs under the service charge, Mrs Howells for the Respondent referred the Tribunal to paragraph 12 of The Fifth Schedule, which lists as recoverable items of expenditure:-

“The cost of taking all steps deemed desirable or expedient by the Landlord for complying with making representations against or otherwise contesting the incidence of the provisions of any legislation or orders or statutory requirements thereunder concerning town planning public health highways streets drainage or other matters relating to or alleged to relate to the Estate for which the Tenant is not directly liable hereunder”

In the view of the Tribunal the costs which the Respondent is seeking to recover are not at all of a type contemplated by this paragraph 12. Accordingly, the Tribunal determines that these costs cannot be recovered under paragraph 12 of the Fifth Schedule and that therefore it is unnecessary to determine whether an order should be made under Section 20C of the 1985 Act.

40. In conclusion, the amount payable by the Applicants by way of outstanding service charge is £9,300. The Respondent is not entitled to recover Mr Bellord's costs.

CHAIRMAN.....
Mr P Korn

Date: 12th March 2007