

LEASEHOLD VALUATION TRIBUNAL**LONDON RENT ASSESSMENT PANEL****DECISION ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD
AND TENANT ACT 1985 (AS AMENDED)**

Property: 10 Ormonde Mansions, 106 Southampton Row, London WC1B
4BP

Applicants: Mr G and Mrs D Pelly

Respondent: Lapid Developments Limited

Application Date: 23rd May 2007

Members of Tribunal

Mr P Korn (chairman)
Mr C White
Mr D Wills

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.
2. The Applicants are disputing their liability to pay sinking fund contributions of £1,041.68 and £1,541.68 for the service charge years 2002 and 2003 respectively.
3. On 8th June 2007 the Leasehold Valuation Tribunal directed that the application be allocated in the first instance to the paper track and neither party has since requested an oral hearing.

THE ISSUES

4. The Applicants occupy the Property by virtue of a lease dated 10th February 2004 and made between the Respondent (1) and the Applicants (2). The term of the lease commenced on 10th February 2004.
5. The bundle contains a copy of the completion statement in respect of the Applicants' acquisition of the Property. The Respondent does not dispute that this was indeed the completion statement nor that payment was made in full. It includes an amount for apportionment of service charge.
6. The Applicants' case is that they paid all service charge contributions requested by the Respondent until September 2005 when the Respondent added an extra £2,583.36 on to their regular bill without explanation. Eventually, in January 2007, after a long drawn-out correspondence, the Respondent's managing agents wrote to the Applicants to explain that this sum represented the total of the sinking fund charged to other flats in 2002 and 2003.
7. The Respondent's case appears to be that the Applicants have a responsibility under the terms of their lease to pay "any reasonable reserve fund charges (reflecting the anticipated apportioned expenditure) the landlord may make" and that the Applicants' solicitors were aware of the existence of a sinking fund and of the fact that the Respondent had not contributed to it in previous years.

THE LEASE

8. The lease contains provision for the tenant to pay a service charge in respect of various services specified in the lease. In addition, clause 4(2)(1) refers to the landlord covenanting to set aside sums to meet future costs and such sums being deemed to be items of expenditure for the purposes of the service charge.

THE LAW

9. 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."

10. "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".

APPLICATION OF LAW TO FACTS

11. Clause 4(2)(1) refers to the landlord covenanting to set aside sums to meet future costs and such sums being deemed to be items of expenditure for the purposes of the service charge. This is a somewhat unusual way of expressing a tenant's obligation to contribute towards a sinking fund and it is open to debate as to whether such a clause is sufficient to create such obligation. In any event, the Tribunal does not accept that this clause entitles the Respondent to require the Applicants to contribute towards a sinking fund in respect of the service charge years 2002 and 2003, prior to the grant of the lease.
12. Furthermore, the Respondent does not dispute that the Applicants paid in full the amount requested on completion of the lease (including an apportionment of service charge). The Respondent has failed to demonstrate that all or any of the amount in dispute relates to services provided during the term of the lease and that they fall to be considered as potentially payable under sections 18 and 19 of the 1985 Act. The argument put forward by the Respondent appears to be that because the Applicants allegedly knew about the existence of a sinking fund this somehow rendered them automatically liable to pay towards that fund in respect of the years prior to the start of the lease. This is despite the fact that it was not referred to in the completion statement and despite the Respondent's failure to demonstrate any connection between the amounts demanded and actual services provided during the term of the Applicants' lease.

DETERMINATION

13. The Tribunal determines that the sinking fund contributions of £1,041.68 and £1,541.68 sought by the Respondent are not payable.
14. The Applicants have applied for an order under Section 20C of the 1985 Act that the Respondent should not be allowed to recover the costs incurred by it in connection with the proceedings before this Tribunal from the

Respondent under the lease. As the Tribunal has found very firmly in favour of the Applicants the order is hereby granted.

15. No other cost applications were made.

CHAIRMAN.....
Mr P Korn

A handwritten signature in black ink, appearing to be 'P/K' followed by a long horizontal flourish.

Date: 20th July 2007