



**Residential  
Property**  
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
(LONDON PANEL)**

LANDLORD AND TENANT ACT 1985 Section 27A

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**Property:** Flat 4, 127 Sulgrave Road, London W6 7QH  
**Applicant-tenant:** Mr Visambar Mehrotra  
**Respondent-landlord:** Grovetam Ltd

**Tribunal Member:**  
**Mr Adrian Jack (Chairman)**

Ref :LON/00AN/LSC/2007/0366

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1. This is an application by Mr Visambar Mehrotra for the determination of certain service charges due in the half year ended 24th June 2007.

**Procedural**

2. The tenant's application is dated 20th September 2007. Directions were given providing for the matter to be determined on the basis of paper representations. Both parties complied with the directions given and neither requested an oral hearing.

**Facts**

3. 127 Sulgrave Road is a Victorian house converted, possibly in the mid-1980's, into seven flats. Outside flats 3 and 7 there are flat roofs, which the tenants of those flats are entitled to and do use as roof terraces. Each of these terraces is paved.
4. The current tenant's lease of flat 4 was granted on 23rd January 1985 for a term of 99 years from 24th June 1984. It contains provisions for the tenant to pay service charges in respect of the landlord's expenditure (Fourth Schedule para 2 and Seventh Schedule). No issue as to apportionment arises.
5. The expenses to which the tenant must contribute include (Seventh Schedule):
  - "1. The expenses of maintaining repairing redecorating and renewing:

- (a) the main structure and in particular the foundations roofs chimney stacks external walls gutters and rainwater pipes of the building and the refuse store
  - (b) the gas and water pipes tanks drains and electric cables and wires television and radio aerials and entry telephone system in under or upon the Mansion and enjoyed or used by the Lessee in common with the owners and lessees of other flats
  - (c) the entrance lobby passages landings and staircases of the Building enjoyed or used by the Lessee in common as aforesaid...
2. The cost of clearing [*sic*] lighting and carpeting the passages landings staircases and other parts of the Mansion so enjoyed or used by the Lessee in common as aforesaid...
8. The fees and disbursements paid to any Managing Agents..."
6. In the six month period the landlord claims service charges from the tenant, which the tenant challenges as follows:
- |  |          |
|--|----------|
| Portage invoice for replacing flat roof timbers                          | £750.00  |
| Portage invoice for redecoration of hallway ceiling following roof works | 290.00   |
| Invoice for Romford Flat Roofing for replacement flat roof               | 1,740.00 |
| Management fee for extraordinary items                                   | 269.40   |
| Portage invoice for works to drain                                       | 690.00   |
| Lamington invoice for contacting flat 7 about the drains                 | 35.00    |
| Cost re breaches of lease (including VAT)                                | 50.00    |

### The law

7. Section 19(1) of the Landlord and Tenant Act 1985 provides that:  
 "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 payable shall be limited accordingly."
8. Section 20 of the Act (in conjunction with regulation 6 of the Service Charges (Consultation etc) (England) Regulations 2003) provides that a landlord should consult on any "qualifying works" where an individual tenant is liable for more than £250. Since there are seven flats in this block the relevant threshold is £1,750. If a landlord carries out works in excess of this sum, the excess is irrecoverable, unless the Leasehold Valuation Tribunal grants a dispensation.
9. Section 20ZA(2) defines "qualifying works" as meaning "works on a building or any other premises".
10. Section 27A of the Act gives this Tribunal jurisdiction to determine by whom, to whom, how much, when and how service charges are payable.

### **Cost re breaches of lease**

11. The tenant's complaint in relation to this item was a result of a misreading of the service charge demand made on him. In fact the £50 is the ground rent due. This is not a matter for the Tribunal.

### **The flat roof**

12. The major part of the tenant's complaint concerned the cost of the replacement of the flat roof beside flat 3 and repairing the damage to the hallway beneath. The tenant's primary submission was that, since the roof terrace only benefited the tenant of flat 3, it should be flat 3 which bears the cost of the roof replacement. He pointed out that the use of the flat roof as a sun terrace increases the wear and tear on the asphalt roof service (although this strength of this point is somewhat reduced by the fact that the tenant of flat 3 had paved the flat roof).
13. In the Tribunal's judgment the liability of the applicant tenant depends on the terms of his lease. The flat roof beside flat 3 forms part of the "the main structure" of the building and falls squarely within the category of "roofs" particularised in paragraph 1 of the Seventh Schedule to the lease. As such the cost of roof repairs is one of the expenses to which this tenant must contribute.
14. The Tribunal entirely appreciates the tenant's point that it would be much fairer if the tenant of flat 3 had to contribute all, or at least a greater part, of the cost of maintenance of the flat roof outside that flat. However, as a matter of construction of the lease, that is not a possible interpretation.
15. Thus in principle, the costs associated with the roof repair and renewal are recoverable under the lease.
16. The landlord obtained two quotations before letting the contract for the roof repair to Romford. In the Tribunal's judgment the sum claimed is reasonable in amount.
17. So far as the invoices from Portage are concerned, the landlord did not obtain two quotations. Portage were, however, contractors whom the landlord had used before; there was urgency in getting men on the job; and the amounts are comparatively small. The tenant makes no detailed case that the work could be done cheaper. In the Tribunal's judgment the amount charged by Portage in respect of the work to the roof and the hallway below are reasonable in amount.
18. No criticism is made of the quality of any of the work.
19. This leaves the question of consultation. The original work to be done by Romford did not require consultation, because the amount involved was less than £1,750.
20. If the works done by Portage on the roof and hallway amounting to £1,040 are part of the same "qualifying works", then the £1,750 threshold is exceeded. On the other hand, if the Portage invoices are for discrete works, then the landlord has the advantage of two £1,750 thresholds.
21. Whether works constitute one or two sets of works is a matter of degree, where it is not possible to draw a clear line. To an extent a decision must be a matter of impression.
22. Here Romford were due to replace the asphalt roof. When they removed the existing roof, they discovered that the timber and plasterboard underneath the roof was rotten and required replacement. This was not the type of work they

- did. The landlord instructed separate contractors, Portage, to come in and do this separate work.
23. The tenant would no doubt urge the Tribunal that really there was only one set of works: the replacement of the asphalt and ancillary matters. Certainly, had the problem been foreseen at the outset, it might have been possible to let one contract for both the replacement of the decking as well as the asphalt overlay. In such a case, there would be a strong case for saying that there was only one set of works.
  24. However, in this case, in fact, the two aspects – replacing the timber and laying fresh asphalt – were dealt with differently, with different contractors, instructed at different times, without any overall plan. In the Tribunal's judgment, although the case is close to the line, this is sufficient to mean that there are two different sets of works, so that the landlord is entitled to two £1,750 thresholds.
  25. The Tribunal adds that it reaches this conclusion without regret. Once the problem with the rotten timber was discovered, it was urgent that remedial steps be taken, because the old (albeit failing) covering had been removed. The flat roof was protected only by temporary measures. If there was only one set of works, then the landlord would need to apply under section 20ZA for a dispensation from the consultation requirements, but in view of the urgency it is very likely that the Tribunal would have granted a dispensation.
  26. The cost of supervision of the works is not separately challenged. The amount claimed of £269.40 is in the Tribunal's judgment reasonable.

#### **Drains**

27. There are two invoices in respect of drains. The larger invoice from Portage concerns the drain running from flat 3 down through flat 2. The problem with the drain is not fully explained in the papers. What seems to be said is that waste water from flat 3 ran too fast down the pipe through flat 2, so as to cause repeated problems of blockages further down the drainage system. The hydraulics of this are unclear.
28. There is no dispute that Portage did go into flat 2 and remove the casing around the pipes. Portage then installed new piping, which had the effect of removing the cause of the repeated blockages.
29. The tenant does not criticise the cost or the quality of these works. Rather he says that under the terms of the lease, he says he is not responsible for the cost of these works. These particular pipes, he says, were not used by him, whether in common with other tenants or at all. Only pipes "enjoyed or used by [him] in common with the owners and lessees of other flats" can be the subject of expenses charged to him.
30. In the Tribunal's judgment this is too narrow a reading of the lease. It is usual in leases to distinguish between on the one hand pipes which are within a particular tenant's demise and which are only used by that tenant and on the other hand pipes which go through other flats and the common parts as part of the communal system.
31. The Tribunal accepts that theoretically it might be possible to say that the pipe in flat 2 only served, say flats 2 and 3, so that this tenant's flat 4 was not obliged to contribute to the cost of repairing the pipe in flat 2. In practice, though, this would be unworkable. Take this very case. The blockages were not in flat 2, but further down the drainage system. However, changing the

32. piping in flat 2 remedied the problem downstream. It is likely that the downstream system carried waste water from flat 4.
32. In the Tribunal's judgment the drains in issue here were part of a comprehensive building-wide drainage system which this tenant used in common with the other tenants. Accordingly the landlord is entitled to recover a contribution from this tenant for this work. The amount is reasonable. No issue is raised as to the quality of the work. Accordingly nothing is disallowed.
33. The other invoice was raised by the managing agents for their work in corresponding with a tenant who had an overflowing overflow pipe. The tenant in this application says that those costs should be recovered from the tenant responsible for the overflows.
34. The Tribunal agrees that in an ideal world the tenant responsible would pay those costs. The amount in question is, however, small, so that the cost of enforcement would be wholly disproportionate. In these circumstances it is reasonable for the landlord to recover these costs as part of the costs of management.
35. Often such costs would be part of the general management fee which a managing agent charges. It seems, however, to be common ground that this was a long-running problem which required much more work than would ordinarily be the case. In the Tribunal's judgment, on the limited material before it, the amount charged was reasonable in amount. The work does seem to have resulted in the overflow problem being solved, at least ultimately. Accordingly no disallowance is made of this sum.

#### **Conclusion**

36. Accordingly the Tribunal disallows none of the items challenged by the tenant in this application.

#### **Costs**

37. In this matter the tenant has lost comprehensively. The Tribunal therefore makes no order in respect of any fees paid by the tenant to the Tribunal.

#### **DECISION**

- a. The Tribunal disallows none of the items disputed by the tenant.**
- b. The Tribunal makes no order for costs in respect of the fees payable to the Tribunal.**



Adrian Jack, chairman

9th November 2007