

LON/00AZ/LSC/2007/0191
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER SECTIONS 27A and 20C OF THE
LANDLORD AND TENANT ACT 1985,

Address 22 Denham Court, 114-118 Kirkdale, Sydenham, SE26 4BE

Applicant Mr. J.M. Lundy

Respondent Mr. and Mrs. J.S. Englander

Hearing date Wednesday 8th August 2007

Appearances Mr J.M. Lundy For the Applicant

Ms Soupe of Chainbow Ltd. For the Respondents

The Tribunal Mrs C Lewis FCI Arb (Chairman)
Mrs. A. Flynn FRICS
Mrs J. Clark JP

22 Denham Court, Kirkdale, Sydenham, London, SE26 4BE

Background

1. This is an application by Mr. J. Lundy, the Lessee, under section 27A of the Landlord and Tenant Act 1985, as amended (the "Act"), for a determination of the service charge claimed in the year 2005 to 2006 for painting under the maintenance contract and carpeting of the common parts.
2. At the time this work had been carried out the property had been managed by Countrywide Management. On 1st October 2006, Chainbow Ltd. had taken over the management of the property. The Landlords at all times were Mr. and Mrs. J.S. Englander.
3. A hearing had been arranged by the Tribunal following Directions dated 4th June 2007 which had named Countrywide Property Management as representing the Respondents.
4. In a letter received on the 7th August, Countrywide Property Management applied to the Tribunal for postponement of the hearing arranged on the 8th August. In support of this they stated that a combination of staff sickness and the holiday season prevented a representative from Countrywide from attending. They also stated that they would be happy for the Tribunal to proceed by written representations only, or a further hearing date arranged. The request for postponement was refused by the Tribunal.

The Hearing

5. At the hearing Mr. Lundy appeared in person. Countrywide Property Management was not represented, and following a telephone call to Chainbow Ltd who had been Managing Agents since 1st October 2006, their representative Ms Soupe appeared on their behalf at very short notice.

6. Mr. Lundy said that the re-carpeting of the three common stairways and entrances at the property had been authorised by Countrywide in 2004 at a cost of £12,000. He had paid his share of this cost through his contribution to the reserve fund. Following complaints by other tenants about the quality of the work, the staircases and entrance to nos. 9-17 had been completely replaced. He had then been asked for a further contribution of £166.46 for that work. He had been debited for this sum on 1st June 2006 under the heading of "Repairs" and had paid it on 4th August 2006.

7. Ms Soupe said that her company now provided the management service and that there were accounts for carpeting and painting, but she was unable to produce receipts to show that this work had been carried out. She agreed that re-carpeting to the hallway of no 9-11 would normally have been done free of charge if the original work was to a poor standard. Chainbow had paid for the carpets and painting under threats of legal action for non payment. The carpet company concerned had now gone onto liquidation.

The Inspection

8. The property was inspected on the morning of 15th August and the Tribunal was accompanied by Mr Lundy.

Denham Court is a four-storey block of brick construction comprising 24 flats in three sections, each section having its own entrance.

The particular purpose of the inspection was to view the common parts and accordingly these were inspected on all four floors in two of the sections – namely :

The end section comprising flats 1-8 and

The centre section comprising flats 9-17.

It was noted that the paintwork on the walls was adequate, although marked in places, however no more so than would be commensurate with the passage of time. There was some bubbling to the surface paintwork, particularly in the top floor of the centre block.

The nosings to the stairs were even and well- fitted.

The quality of the carpet was standard and it did show some staining. Given the size of the floor area, it had been necessary to fit the carpet in two parts, one of which was no more than a narrow supplementary strip. This was also the case in other parts of the block.

It had been understood that in the centre block, the carpet had been re-placed in order to facilitate the correct opening of doors and this appeared to be the case. However in the end block , any defect in fitting had been remedied merely by cutting away the carpet from the opening arc of the entrance door.

The Tribunal's Decision

9. The painting work had been part of a major contract carried out on behalf of the landlord following service of a section 20 notice under the Act in 2002. From the evidence provided by Ms Soupe the then managing agents, Countrywide appeared to have withheld some part of the payment of the total contract price of £5,786.00, during the 5 year contract period. Inspection by the Tribunal confirmed that the work was to a reasonable standard. The amount now claimed from Mr. Lundy was £115.81. It was clear to the Tribunal that some funds had been withheld by Countrywide as referred to in a letter dated 5th April 2005, and that Mr. Lundy has been debited for certain amounts which he had then paid. There is no evidence of any refunds to Mr. Lundy. From the somewhat limited evidence before them the Tribunal have concluded the sum in dispute appeared to have already been paid by Mr. Lundy in the budget for maintenance and repair. The sum of £115.81 claimed is therefore neither reasonable nor payable.

10. The amount claimed of £163.80 was in respect of the re-carpeting of one of the entrance halls and stairways which had been initially carpeted to an unsatisfactory standard. The Tribunal consider that it would be unreasonable to charge Mr. Lundy for this and therefore find the amount of £ £163.80 neither reasonable nor payable.

Application under Section 20C of the Landlord and Tenant Act 1985

11. In the light of their findings as set out above the Tribunal **Order** that the costs of proceeding shall not be added to the service charge in the event that the Respondent Landlord is entitled to add the costs of these present proceedings to the service charge under the terms of the lease .

Re-imbusement of Fees, Regulation 9

12. Similarly the Tribunal find that the Respondent Landlord shall reimburse the Applicant Lessee £200, the cost of the application fee and hearing.

Chairman

C. A Lewis

Date

6th September 2007