

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

**Property:** 11 Stanesgate House, Friary Estate, London SE15 1SF

**Applicant:** London Borough of Southwark

**Respondent:** Miss J.L. Dykstra

**Application Date:** Transferred from Lambeth County Court by Order dated 19<sup>th</sup>  
March 2007

**Date of Oral Pre-  
Trial Review:** 25<sup>th</sup> April 2007

**Hearing Date:** 11<sup>th</sup> July 2007

**Representatives:** Mr J Joseph (Home Ownership Unit) for the Applicant  
The Respondent was unrepresented and was not in attendance

**In Attendance:** Ms A Wallington (Housing Office)  
Mr J Plant (Brodie Plant Goddard Surveyors)  
Mr B Pawsey (Investment Unit, London Borough of Southwark)  
Mr J Wallis (Apollo)  
Ms E Sorvjan (Home Ownership Unit)

**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 application arises out of a Claim for recovery of service charge and interest dated 24<sup>th</sup> January 2007 (Claim Number 7LB00340) made by the Applicant to Lambeth County Court. By an Order dated 23<sup>rd</sup> March 2007, the case was transferred to the Leasehold Valuation Tribunal to determine the reasonableness of the service charge raised.
3. A Pre-Trial Review at the Leasehold Valuation Tribunal took place on 25<sup>th</sup> April 2007 at which the Applicant was represented by Mr Joseph and the Respondent was present.

## **BACKGROUND**

4. The Respondent occupies the Property by virtue of a lease (the "Lease") dated 1<sup>st</sup> December 2003 and made between the Applicant (1) and the Respondent (2).
5. The amount being claimed by the Applicant as unpaid service charge is £9,736.84. This represents the total sum invoiced to the Respondent by the Applicant by an invoice dated 31<sup>st</sup> October 2005, being an estimate of the cost of the Phase 2 Friary Package 1 Refurbishment Works, including a supervision fee and management fee.
6. Pursuant to the consultation requirements of Section 20 of the 1985 Act the Applicant sent notice of the proposed works to the Respondent and invited her to make representations. The Respondent has not claimed in her defence that the Applicant failed to comply with the consultation requirements of Section 20 and it appears to the Tribunal from the evidence presented that the Applicant did so comply.

## **THE APPLICANT'S CASE**

7. Mr Joseph for the Applicant referred the Tribunal to clause 2(3)(a) of the Lease containing the tenant's covenant to pay the service charge, clause 4(2) containing the landlord's covenant to keep the structure and exterior of the building in repair and clause 7(1) containing the tenant's covenant to pay a proportion of the cost to the landlord of complying with its repairing covenant.
8. The work to which the service charge demand relates consists of external decorations together with works to a defective roof, defective windows and

refuse chambers. The invoice also included a supervision fee, and a separate management fee equal to 10% of the cost of the works.

9. Mr Joseph referred the Tribunal to clause 7(1) of the Third Schedule to the Lease in which the tenant covenants to pay "all costs and expenses of or incidental to the carrying out of [the works that the landlord covenants to perform]" and argued that this was wide enough to cover the supervision fee. He also referred the Tribunal to clause 7(7) of that Schedule, the relevant part of which states "...if no managing agents are...employed then the [landlord] may add the sum of 10% to any of the above items [of service charge] for administration", and he argued that this was wide enough to cover the 10% management fee.
10. Mr Joseph conceded that the amount that the Applicant was entitled to charge for major works in the first five years of the term of the Lease was limited to the amounts specified in the Appendix to its original Section 125 Offer Notice, as increased by inflation. Mr Joseph confirmed that the Respondent's contribution had been capped as a result of this limitation and stated that if it were not for the cap the Respondent's contribution would have been £21,217.61 instead of £9,736.84.
11. Mr Joseph invited Mr J Plant of Brodie Plant Goddard Surveyors to provide the Tribunal with a brief explanation as to why and how the various works were carried out. Mr Plant explained why it was decided to overhaul the roof rather than replace it and why it was felt that the single-glazed steel-framed windows should be replaced by double-glazed PVCu-framed windows. In relation to the refuse chutes he spoke about the need to replace cracked hoppers and the need to repair or replace certain doors and frames. In relation to the external decorations Mr Plant spoke about the need to redecorate front door entrances and window sills and the need to treat certain surfaces with a special coating.
12. In response to a question from the Tribunal Ms Wallington (of the Applicant) said that Apollo had been chosen as contractor based on a combination of price and quality. In response to another question from the Tribunal Mr Plant explained that there was no final account as yet in respect of the works as the defects liability period had not yet expired, and therefore the estimated figure was still the relevant figure to charge.
13. The Tribunal noted the Applicant's acknowledgement that it was not entitled to charge the Respondent more than the amounts specified in the Appendix to its original Section 125 Offer Notice, as increased by inflation. The Tribunal then asked Mr Joseph to explain how each item of charge had been calculated. In relation to most of the items Mr Joseph was able to show a correlation between the figure in the Appendix to the Section 125 Offer Notice and the amount actually charged. However, in relation to the

defective windows the amount specified in the Appendix was £3,673.47 plus an allowance for inflation, and yet the amount actually charged was £5,970.55. This seemed to the Tribunal to be too high. Mr Joseph then produced a copy of the Repair and Management Cost Index from which it could be seen that the index figure for the date of the Appendix was 147 and the index figure for the contract end date was 198. Multiplying the figure of £3,673.47 by 198 divided by 147 produced a total of £4,947.94, not £5,970.55. Mr Joseph conceded that £4,947.94 appeared to be the correct figure.

### **RESPONDENT'S CASE**

14. The Respondent was neither present nor represented at the hearing and had not provided a response to the Applicant's statement of case, despite having been directed to do so at the Pre-Trial Review. The defence filed with the County Court was essentially that the Respondent did not feel that the work was worth the amount requested and that the tenant of No. 15 had been allowed to retain his/her windows. In relation to this latter point, the Applicant's response in its statement of case was that it only replaces windows where necessary and that therefore if the windows at No. 15 were inspected and found to be adequate then no works would have been carried out.

### **NO INSPECTION**

15. The members of the Tribunal did not inspect the Property. The Applicant did not request an inspection and the Respondent was neither present nor represented and had not previously 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.

### **THE LAW**

16. 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.”

17. Section 19(2) of the 1985 Act provides:

“Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.”

18. “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**

19. The Tribunal accepts that the provisions of the Lease quoted by the Applicant and referred to earlier are sufficiently wide to entitle the landlord thereunder to charge for the cost of the works which are the subject of this application. The Tribunal also accepts that the 10% management charge is covered by clause 7(7) of the Third Schedule and that the wording in clause 7(1) of that Schedule referred to by the Applicant is wide enough to cover the supervision fee.
20. The Applicant has explained how it chose its contractor and how it decided what works should be carried out and in what manner. It appears to have complied with the Section 20 consultation process and (subject to the point below about the cost of the works to the defective windows) the sums charged appear to the Tribunal to be reasonably incurred and reasonable in amount in accordance with Section 19 of the 1985 Act.
21. The Respondent did not provide any compelling evidence prior to the date of the hearing to justify her refusal to pay the outstanding service charge. Indeed she has not provided a defence at all beyond her brief comments in response to the County Court claim, despite being required to do so by the Directions issued following on from the Pre-Trial Review. Neither has she attended the hearing to offer any evidence on which she could be cross-examined. The specific point raised about the windows at No. 15 has been addressed by the Applicant in its statement of case.
22. Due to what appears to be a mathematical error, the Applicant has miscalculated the maximum amount that it is entitled to charge the Respondent in respect of the defective windows, charging £5,970.55 instead of £4,947.94.

## DETERMINATION

23. The Tribunal determines that the amount payable by the Respondent in respect of the work to the defective windows is £4,974.94 and not £5,970.55. The Tribunal finds that the balance of the £9,736.84 claimed by the Applicant (namely £3,766.29) is properly payable, and therefore the total amount payable by the Respondent is  $£4,974.94 + £3,766.29 = \mathbf{£8,741.23}$ .
24. Mr Joseph stated that the Applicant would not be seeking to recover the costs incurred by it in connection with the proceedings before this Tribunal through the service charge, and therefore it is unnecessary for the Tribunal to determine whether an order should be made under Section 20C of the 1985 Act.
25. Mr Joseph also stated that the Applicant did not wish to make any other applications for costs.

CHAIRMAN.....

Mr P Korn

Date: 20<sup>th</sup> July 2007