Residential Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985, section 27A

LON/00AJ/LSC/2007/0496

Address:	**11 & 13 Canada Crescent, London W3 0NJ**
Applicant(s):	**Ms K Seabrook & Ms L Baptiste (tenants)**
Represented by:	**both in person**
Respondent(s):	**London Borough of Ealing (landlords)**
Represented by:	**Mr D Harris, legal officer, of Ealing Homes Ltd (managing agents)**
Date of hearing:	**25 March 2008**
Appearances:	**Applicants in person;** **For the Respondents: Mr D Harris, Mr Cieran Maguire (chargeable works manager), Mr J Cowen (surveyor, Consul Chartered Surveyors), Mr P O'Brian (Consul).**
Tribunal:	**Mr T Powell LLB** **Mr M Cairns MCIEH** **Mr E Goss**
Date of decision:	**31 March 2008**

DECISION ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

Introduction

This document records the Tribunal's decision. Any party may request a full statement of reasons for all or any part of this decision[1]. Any such request must be made to the Tribunal in writing within 21 days of receipt of this document, and the Tribunal will try to issue its full reasons within 6 weeks of receiving the request.

Background

(a) The properties which are the subject of this application are two 3-bedroom maisonettes on the first and ground floor of a 2-storey block on an estate owned by the Respondent.

(b) The Applicants hold long leases of the properties which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

(c) On 4th and 5th December 2007 the Applicants applied to the Tribunal under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine their liability to pay service charges.

Inspection

None of the parties asked the Tribunal to inspect the properties, and the Tribunal did not consider that an inspection was necessary.

Matters in dispute

The Applicants disputed the reasonableness of the cost of cyclical redecorations and minor repairs incurred in the 2004/2005 service charge year, as follows:

(a) the Applicants were charged differing amounts, but the charges should have been identical;

(b) cost of rainwater goods;

[1]. Full statement of reasons will be required for an appeal to the Lands Tribunal.

(c) cost of scaffolding, included in the preliminaries figure;

(d) cost of re-pointing brickwork & other minor works;

(e) the amount of management charge.

Matters agreed

The Applicants admitted at the pre-trial review and again at the hearing that the following matters were not in dispute:

(a) the reasonableness or the standard of work;

(b) the landlord's section 20 notice (the consultation procedure).

The Respondent in its Statement of Case admitted that it had incorrectly under-charged Ms Seabrook for the work, charging her £2,335.27 (before the addition of any management charge), rather than £2,532.20 charged to Ms Baptiste. The Respondent agreed to limit its claim against Ms Seabrook to the lower sum; the only reason given being the limitation of the 18 month rule in section 20B(1) of the Act.

Evidence

Each of the Applicants gave evidence. For the Respondent, evidence was given by Mr Cowen, Mr Maguire and Mr Harris. The letters contained in the trial bundle prepared by the Respondent were not in chronological order, which caused additional work for the Tribunal. In addition, under cross examination by the Tribunal, Mr Harris admitted that two letters contained in the Respondent's bundle dated and addressed to both Applicants had not been sent to them: this was misleading and added to the confusion of the Respondent's documents.

The law

Section 18(1) of the Act provides that, for the purposes of the relevant parts of the Act, "service charge" means 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 costs of management, and
>
> (b) the whole or part of which varies or may vary according to the relevant costs.

Section 19(1) of the Act 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.

Section 19(2) of the Act provides that, 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.

Section 27A(1) of the Act provides that that an application may be made to a leasehold valuation Tribunal for a determination whether a service charge is payable and, if it is, as to –

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

The Tribunal's decision

The Tribunal determines that the following charges/costs are payable under the lease and were reasonably incurred and reasonable in amount:

(b) the cost of rainwater goods - £952.50 for each dwelling;

(c) the cost of scaffolding, included in the preliminaries figure - £827.50 for each dwelling;

The Tribunal determines that the following charges/costs are not payable under the lease, were not reasonably incurred and not considered by the Tribunal to be reasonable in amount:

(d) the cost of £191.25 for re-pointing brickwork & other minor works - after considering the evidence, the Tribunal determines that only £93.12 per dwelling is reasonable and allowable for this item;

(e) the 10% management charge - after considering the evidence, the Tribunal determines that a maximum of 5% of the per dwelling charge is reasonable in the circumstances of this case, bearing in mind the distress and confusion caused by the Respondent's charging error and its failure properly or clearly to communicate with the Applicants, or to address their reasonable concerns.

Summary

The following sums are payable by the Applicants (subject to any payments already made by them):

	Ms Seabrook No.11	**Ms Baptiste No.13**
Costs claimed by Ealing Homes	2,335.27	2,532.20
Less deduction for re-pointing & minor works	98.13	98.13
Adjusted cost of re-chargeable works	2,237.59	2,434.07
Plus management charge @ 5%	111.88	121.70
Sums payable by the Applicants	**£2,349.47**	**£2,555.77**

The deduction of £98.13 takes into account the fact that the re-pointing covered a much smaller area than was provided for in the specification, and includes a deduction of £37.50 per dwelling, which had been charged for the cost of removal of a tree (which the Respondent admitted was not in the communal garden of the block). In addition, the Tribunal noted the assurance by Mr Maguire on behalf of the Respondent that the property would be re-visited to check whether or not a water butt

junction had been installed in a down pipe and, if so, whether it is available to the Applicants and, if not, that a further £12.50 per dwelling deduction from the above sums payable would be made.

Section 20C of the Act (limitation of service charges relating to the costs of the proceedings)

The tenants have applied under Section 20C of the Act for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a Leasehold Valuation Tribunal, are not to be regarded as relevant costs in determining the amount of any service charge payable by the tenant or any other person specified in the application.

The Tribunal determines that such an order should be made and the costs incurred by the landlord in connection with these proceedings may not be taken into account in determining the amount of any service charge.

Reimbursement of fees[2]

The Applicants have applied for the reimbursement of the fees they have paid, namely £250 for the application and hearing. The Tribunal determines that the Respondent shall reimburse the Applicants the sum of £250 in respect of these fees.

Chairman: T.Powell

Timothy Powell

Date: 31 March 2008

[2] See Regulations 4(1) and 9(1) of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.