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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LANDLORD AND TENANT ACT 1985

LON/00AP/LSC/2007/0502

Premises:	Birkbeck Mansions Birkbeck Road London N8 7PG
Applicant/Freeholder:	Tidescope Ltd
Represented by:	Sandrove Brahams, managing agents
Respondents:	All lessees of Birkbeck Mansions
Tribunal:	Mr NK Nicol Mr J Power Mrs R Turner
Date of Hearing:	13/03/08
Date of Decision:	13/03/08

REASONS FOR DECISION

1. The freeholder of Birkbeck Mansions, Tidescope Ltd, intends to carry out extensive works to the roofs of the six blocks that make up the property. They have applied to this Tribunal for a determination under s.27A of the Landlord and Tenant Act 1985 that the resulting service charges are payable by the lessees at Birkbeck Mansions. Two lessees responded, Ms Anna Maria Raco (Flat 27) and Ms Jane Goble (Flat 25).

2. The application was heard on 13th March 2008. Ms Raco attended on behalf of herself and Ms Goble, assisted by a friend, Mr Piers Tarrant Wills. Mr Simon Hildebrand, one of the directors of Sandrove Brahams, the Applicant's managing agents, eventually attended three-quarters of an hour late after his office had failed to diarise the hearing – he apologised and undertook to ensure there was no repetition.

3. None of the lessees have challenged the necessity of the roof works. Some unspecified time ago, the roofs were covered with concrete tiles for which the support was inadequate. That support bowed over the years, permitting water to penetrate. The proposal is now to re-cover the roofs with slates.

4. The leases contain a standard clause (at clause 5(2)(i)) requiring the lessor to maintain the roof. By letter dated 17th August 2006, Sandrove Brahams sent to all the lessees the notice of intention to carry out the roof works in accordance with s.20 of the Landlord and Tenant Act 1985 and paragraph 8 of Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) Regulations 2003. One lessee (Amy Tabiner of Flat 17) responded, suggesting two contractors, one of whom, A&T Roofing, was ultimately successful in securing the contract.

5. By letter dated 3rd October 2006, Sandrove Brahams sent to all the lessees a statement of the tenders received from five contractors, enclosing an analysis of the tenders, and invited comments. None of the lessees responded and, by letter dated 9th January 2007, Sandrove Brahams notified the lessees that A&T Roofing had been appointed as the roofing contractors because they had submitted the most competitive quote. Further letters updating lessees were sent on 27th February, 28th March and 15th June 2007. They notified the lessees that their

service charge accounts had been debited with the charges for the work but that the work would not commence until full payment had been made. It is not a matter for this Tribunal whether the freeholder is entitled to delay works to this extent.

6. Mr Hildebrand failed to supply a copy of any service charge demands or a written breakdown of the costs but the evidence did show as follows. The total cost of the works is £238,117.28. Although the works have yet to start, the tender apparently remains good and contains sufficient contingency to allow for inflation. A&T Roofing are charging £184,230 plus VAT, with the balance made up of professional fees plus VAT, being 10% of the contracted amount. Sixteen of the flats, including those of Ms Raco and Ms Goble, have each been charged 1.97% of the total, namely £4,690.91. The remaining 32 flats have each been charged 2.14%, namely £5,095.71.

7. As well as agreeing that the roof works are needed, Ms Raco and Ms Goble do not object to the total cost (although Ms Raco pointed out it is a lot of money) and accept that proper consultation was carried out. Their objection is that they cannot afford to pay in one sum, as demanded, and Sandrove Brahams have acted unreasonably in not accepting their proposals for alternative payment plans.

8. However, the lease entitles the freeholder to levy the charge in one sum. Sandrove Brahams demanded payment almost a month early (in May 2007, rather than in June in accordance with clause 4(2)(b)) but there is no obligation to consider affordability or payment in stages. The Tribunal's power is limited to a consideration of payability, i.e. whether the lessees are liable, irrespective of affordability. Unlike the county court, the Tribunal has no power to consider the reasonableness of alternative payment arrangements or the financial ability to pay of any lessees.

9. The Applicant's case could and should have been better prepared. Even though none of the lessees raised a justiciable objection to the actions of the agents, Sandrove Brahams, the Tribunal still needs to be satisfied that the charges in question are reasonable and payable. Having said that, the evidence has ultimately been sufficient to establish to the Tribunal's satisfaction that the

aforementioned charges for the roof works are payable and the application, therefore, succeeds.

Chairman.....

Date 13th March 2008