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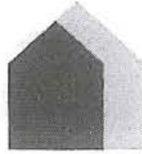

Ref: LON/00AG/LSC/2010/0079

LEASEHOLD VALUATION TRIBUNAL

LONDON RENT ASSESSMENT PANEL

DECISION ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Property:	Flat 3, 25 Priory Road, London NW6 4NN
Applicant:	Mr VJ Amourgam
Respondent:	Valepark Properties Ltd
Hearing Date:	7th June 2010
In attendance:	Mr Amourgam (the Applicant) Mrs Amourgam Mr A Levy (director of Respondent company, and a solicitor)

Members of Tribunal

Mr P Korn (chairman)
Mr P Casey MRICS
Mrs R Turner JP BA

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 reasonableness of and liability to pay service charges under the Applicant's lease.

2. The Applicant is the leaseholder of the Property pursuant to a lease ("**the Lease**") dated 19th October 1987 and originally made between Shield Builders Limited (1) and the Applicant (2). The Respondent is the Applicant's current landlord. The Property is one of four flats in a large semi-detached Victorian building ("**the Building**").

3. The application relates to a large number of service charge items since 2002, being all 53 items listed in the Applicant's document at pages 45 to 55 of the hearing bundle ("**the Applicant's List**"). There are currently proceedings in the Central London County Court in which the Applicant is claiming against the Respondent for alleged breaches of repairing and other covenants. The Applicant confirmed that he wished to keep the LVT and County Court claims completely separate and that therefore his LVT application did not cover any alleged disrepair, sub-standard work, or lack of value for money of work carried out.

4. The issues before the LVT can be summarised as follows:-

   - Whether certain service charge items should be disallowed by virtue of Section 20(B) of the 1985 Act
   - Whether certain service charge items should be disallowed by virtue of Section 21(B) of the 1985 Act
   - Clarification as to the Applicant's obligations in respect of the Able Roofing and Party Wall payments (items 1 and 2 of the Applicant's List)
   - A query in relation to certain inspection fees (items 13, 19, 25, 26 and 27 of the Applicant's List)
   - Whether the Applicant should have to contribute towards the cost of certain flat roof repairs (item 39 of the Applicant's List) and/or to repairs to the chimney and front parapet (item 49 of the Applicant's List)
   - Whether the Applicant should have to contribute towards the cost of the P Spence Interim Payment (item 40 of the Applicant's List) or the cost of the Enfield Construction Ltd payment (item 41 of the Applicant's List)

8. "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".*

9. Section 20(B) of the 1985 Act provides as follows:-

   (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

   (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

10. The relevant parts of section 21B of the 1985 Act provide as follows:-

   (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

   (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

11. Section 27A of the 1985 Act gives a leasehold valuation tribunal jurisdiction to determine (on an application made to it) *"whether a service charge is payable and, if it is, as to...the amount which is payable...".*

SECTION 20(B) OF THE 1985 ACT

12. The Applicant argued that, in respect of a large number of service charge items (items 3-12, 14-18, 20-24 and 28-33 of the Applicant's List), he had not received a service charge demand within 18 months from the date on which those items were incurred and that therefore under Section 20(B)(1) of the 1985 Act he was not liable for any of these items. He acknowledged that Section 20(B)(2) contained an exception to the rule set out in Section 20(B)(1)

and that therefore a landlord who did not serve a demand within the relevant 18 month period could nevertheless render its tenant liable to pay the amount in question if the landlord notified its tenant in a way that complied with Section 20(B)(2).

13. When issuing forfeiture proceedings in the County Court in March 2006 the Respondent attached a "Schedule of Sums which would have been Payable to the Claimant but for the Forfeiture of the Lease of Flat 3". Noting that the Respondent was seeking to argue that this Schedule satisfied the requirements of Section 20(B)(2), the Applicant argued that it did not do so because Section 20(B)(2) referred to a landlord notifying its tenant that the relevant costs had been incurred and that the tenant ***"would subsequently be required under the terms of his lease to contribute to them"***. In the Applicant's view this meant that the landlord's notification had to include the words "under the terms of [your] lease" in order to be valid under Section 20(B)(2).

14. The Applicant also argued that even if the Schedule attached to the March 2006 claim did comply with Section 20(B)(2) it could not be relevant to **future** service charge demands as the Respondent did not regard the Lease as being in existence when it provided that Schedule.

15. As regards the date on which service charge demands were sent out, the Applicant's position was that a demand was not sent out until 11th August 2008 in respect of each item on the Applicant's List with the exception of three items, two of which were no longer disputed items.

16. The Respondent in its statement of case produced various copy invoices as proof that some of the items on the Applicant's List were demanded within 18 months after they were incurred. Mr Levy accepted that no demands were sent out in respect of certain other items until 11th August 2008 but argued (i) that the Schedule served in March 2006 complied with either Section 20(B)(1) or (2), (ii) that the issuing of forfeiture proceedings meant that, as a matter of general law, the Lease became forfeited as at the date of issue of proceedings and therefore effectively time was 'frozen' and the time limits under Section 20(B)(1) ceased to run and (iii) that the reason why the Respondent had not issued demands **prior** to issuing proceedings was that it did not wish to risk waiving the breach of covenant that had given rise to the right (or alleged right) to forfeit the Lease and that therefore it was effectively unable to issue service charge demands for the whole period during which it was seeking to forfeit the Lease.

SECTIOM 21B OF THE 1985 ACT

17. The Applicant acknowledged that Section 21B did not come into force until 1st October 2007. He argued that in relation to any service charge demands made after 1st October 2007 (items 3-12, 14-18, 20-24, 28-33, 34-38, 42-43,

45-48 and 50-51 of the Applicant's List), those demands were not valid if unaccompanied by a summary of the rights and obligations of tenants. He accepted that it was in principle open to the Respondent to 'cure' a defective demand by serving a further demand that did comply with Section 21B. However, if that further demand was served more than 18 months after the relevant costs were incurred it would still not be valid as it would then fall foul of Section 20B.

18. Mr Levy for the Respondent accepted that the demands served after 1st October 2007 did not comply with Section 21B. However, he contended that the demands served did constitute notifications complying with Section 20(B)(2). Therefore it remained open to the Respondent to serve fresh demands which did comply with Section 21B whereupon the Applicant would then become liable to pay the relevant costs.

FLAT ROOF REPAIRS (ITEM 39 OF APPLICANT'S LIST) AND TEMPORARY REPAIRS TO CHIMNEY AND FRONT PARAPET (ITEM 49 OF APPLICANT'S LIST)

19. The Applicant expressed concern that the lessee of Flat 4 had carried out repairs without consulting anyone and the cost had then been put through the service charge. Also, in the Applicant's view the Lease only allowed the Respondent to recover from the Applicant the cost of work carried out by the Respondent and did not extend to work carried out by one of the other leaseholders. He also advanced the argument that by allowing another leaseholder to carry out works the Respondent was infringing the Applicant's human rights under Article 8 of the Human Rights Act.

20. In response, Mr Levy said that the work to the flat roof was urgent as it was needed to prevent water ingress. The Respondent had to make a decision and decided that it was appropriate to authorise the work retrospectively. The other repairs were also authorised by the Respondent and Mr Levy was not aware of there being any other instances of the lessee of Flat 4 having sought to carry out works.

UNDATED ITEMS

21. In relation to items 50 and 51 (one quarter of the account of Tree-care and one quarter of M. Brown Associates' fee re dry rot), the Applicant questioned how they could even be payable given that they were undated, although after some discussion he conceded that the point that he was making was simply a variation on the Section 20B and Section 21B argument made in respect of other items.

INSPECTION

22. The Tribunal members did not inspect the Building. The Applicant expressly confirmed that he was not raising any issues of disrepair, sub-standard work or value for money of work carried out as part of **these proceedings** and it was agreed in the circumstances that it was unnecessary to carry out an inspection.

APPLICATION OF LAW TO FACTS

23. This has not been an easy case on which to make a determination. There are (or, at least, were to begin with) 53 separate disputed items an there is a long and tortuous history to this case. Much information has been supplied, but not in a very organised manner, and some of the submissions made at the hearing have lacked precision and/or focus.

24. The Respondent has provided some evidence (including copy invoices) to show that items 3-11 of the Applicant's List were demanded within 18 months of their having been incurred. The Applicant disputes this, but on the balance of probabilities the Tribunal considers that Section 20B was complied with in relation to these items. Section 21B does not apply to these items as this Section was not yet in force when those sums were demanded. There being no other challenge to them they are all properly payable in full.

25. As regards items 12, 14-18, 20-24 and 50 of the Applicant's List, although Mr Levy did not take the Tribunal through these items individually at the hearing, it appears from the Respondent's statement of case that no actual service charge demands were sent to the Applicant and that the Respondent is relying on the "Schedule of Sums which would have been Payable to the Claimant but for the Forfeiture of the Lease of Flat 3" attached to its March 2006 forfeiture claim together with the arguments advanced by Mr Levy regarding the status of the Lease once forfeiture proceedings had been issued and the difficulties inherent in serving service charge demands prior to issuing proceedings whilst preserving the Respondent's right to forfeit the Lease.

26. Based on information supplied on behalf of the Respondent, items 12, 14, 15, 16 and 18 were incurred more than 18 months prior to the date on which the Respondent served on the Applicant a Schedule including these sums as part of the issuing of forfeiture proceedings. Even if this Schedule – supplied in the context of forfeiture proceedings – does constitute sufficient notification to comply with the requirements of Section 20(B)(2) of the 1985 Act it was not served within the necessary time period.

    As the Tribunal understands Mr Levy's argument, his submission is that the Respondent was simply not in a position to notify the Applicant earlier of the service charge amounts payable as this might have prejudiced its claim for

forfeiture. It is arguable that it would have been possible for the Respondent to notify the Applicant in such a way that did not risk waiving any subsisting breach of covenant, but in any event the Tribunal does not accept that the requirements of Section 20(B) can be interpreted to mean that the time limit contained therein is suspended whenever a landlord has a tactical reason for not wishing to notify its tenant as to the sums due by way of service charge. There is nothing in the wording of the Section that seems to support this interpretation and Mr Levy was unable to offer a general law principle in respect of the period **prior** to the commencement of forfeiture proceedings to assist the Respondent's case on this point. Accordingly, the Tribunal considers that items 12, 14, 15, 16 and 18 are not payable as the Respondent has failed to comply with Section 20(B) of the 1985 Act.

27. In relation to items 17, 20-24 and 50, it appears that the "Schedule of sums which would have been Payable to the Claimant but for the Forfeiture of the Lease of Flat 3" was served within 18 months after each of these items was incurred. Does this Schedule constitute either a 'demand' that does not fall foul of Section 20(B)(1) or a notification that satisfies the requirements of Section 20(B)(2)? In the Tribunal's view it does not. The Schedule is clearly not a 'demand for payment' satisfying Section 20(B)(1). As regards Section 20(B)(2), whilst the Tribunal does not accept the Applicant's argument that it should be interpreted to require a landlord to include the words "under the terms of [your] lease" when notifying a tenant of service charge sums due, nevertheless the Schedule falls short of what Section 20(B)(2) seems to envisage.

    Section 20(B)(2) requires the landlord to notify the tenant in writing *"that [the relevant] costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge"*. The Schedule attached to the claim for possession is not really a notification to the Applicant of sums payable; rather it is a statement to the County Court of sums not being claimed but which might later be sought if the possession/forfeiture claim were to fail, with the possession/forfeiture claim itself being very much the main focus. We would expect a notification that complied with Section 20(B)(2) to be a notification direct to the tenant independent of any other proceedings (particularly where the claim in those proceedings is considered to **contradict** the landlord's ability to claim service charges from the tenant) and which would be clearly understood by a reasonable tenant as notification that particular sums had been incurred and that they would be the subject of later service charge demands.

28. In relation to those service charge items in respect of which less than 18 months elapsed from the date on which they were incurred to the date on which forfeiture proceedings were issued, Mr Levy argues in the alternative that Section 20(B) does not apply to those items because as from the point at which forfeiture proceedings were issued the Lease ceased to exist, albeit that

it was 'revived' later when forfeiture proceedings were withdrawn. Mr Levy has not explained in any detail how this argument works in practice in relation to the specific dates on which the sums were first incurred, the date on which the Lease temporarily ceased to exist and the date or dates on which it was revived and he has not cited any cases or other authority. Whilst the Tribunal accepts the basic proposition that a lease ceases to exist – particularly from the point of view of the landlord and its ability to enforce covenants – from the date on which forfeiture proceedings are issued until the date on which the lease is revived (if indeed it is), the Respondent has simply not done sufficient to demonstrate in relation to any particular service charge item when the 18 month period under Section 20(B)(1) was or was not running and nor has it done sufficient to show that time is effectively frozen under Section 20(B)(1) by the issue of forfeiture proceedings. Mr Levy argued that it is implicit, but the Tribunal is not persuaded that this is the case and does not consider that it is at all obvious that this is what Parliament intended.

29. Therefore, the Tribunal considers that items 17, 20-24 and 50 are not payable as, again, the Respondent has failed to comply with Section 20(B) of the 1985 Act.

30. Items 28-32 were all demanded more than 18 months after the date on which they were incurred. Therefore, Section 20(B)(1) applies and these items are not payable.

31. Items 33 and 51 were the subject of a Section 20 consultation notice dated 25th October 2005 and the information in that notice together with the accompanying paperwork is considered by the Tribunal to constitute at least a notification under Section 20(B)(2) and these sums will therefore be properly payable on the Respondent making a demand for payment if it has not done so already.

32. Items 34-36 were all demanded within 18 months of their having been incurred and were all incurred before the date on which Section 21B of the 1985 Act came into force. As they do not fall foul of Section 20B and Section 21B does not apply to them and there is no other relevant challenge to them they are all properly payable in full.

33. Items 37-38, 42-43 and 45-48 were all demanded within 18 months of their having been incurred but were all incurred after the date on which Section 21B of the 1985 Act came into force. None of the demands in respect of these items complied with the requirements of Section 21B (the Respondent concedes this point) and therefore a fresh demand needs to be served. The Applicant argues that it is now too late for a fresh demand to be served because more than 18 months have now elapsed since the original demands were served. As the original demands were defective, the Applicant argues that they were not 'demands' at all for the purposes of Section 20(B)(1). On

balance the Tribunal agrees with the Applicant on this point but considers that the defective demands were sufficient to constitute notification for the purposes of Section 20(B)(2). Therefore these amounts will become payable after the Respondent has served a fresh demand on the Applicant as long as that demand complies with Section 21B of the 1985 Act.

34. In relation to items 39 and 49 the Tribunal is reasonably satisfied with the Respondent's explanation of the circumstances in which these costs were incurred and does not accept the Applicant's argument that the costs were not incurred by the landlord and therefore he should not have to pay, and nor does the Tribunal accept the Applicant's argument that the Respondent has allowed the Applicant's human rights to be infringed. Item 39 is therefore properly payable in full. In relation to item 49, the actual amount of this charge has not been fully clarified, and therefore whilst the Tribunal can confirm that it will be payable if the amount is reasonable it does not have sufficient information to make a full determination as to the payability of this item.

DETERMINATION

35. Items 1, 2, 13, 19, 25, 26, 27, 40, 41, 44, 52 and 53 on the Applicant's List are either no longer being challenged by the Applicant or are not service charge items and therefore the Tribunal makes no determination in respect of these items.

36. The following service charge amounts are payable in full by the Applicant:-

Item No. on Applicant's List	*Description*	*Amount*
3	*Electricity charges*	*£4.18*
4	*Electricity charges*	*£4.13*
5	*Electricity charges*	*£4.15*
6	*Insurance charges*	*£818.96*
7	*Electricity charges*	*£4.29*
8	*Electricity charges*	*£4.48*
9	*Electricity charges*	*£4.06*
10	*Electricity charges*	*£4.29*
11	*Insurance charges*	*£835.53*
34	*Electricity charges*	*£3.92*
35	*Electricity charges*	*£6.19*
36	*Electricity charges*	*£4.43*
39	*Flat roof repairs*	*£120.00*

37. The following service charge amounts are not yet payable but will become payable in full by the Applicant once the Respondent has served fresh demands which comply with Section 21B of the 1985 Act:-

Item No. on Applicant's List	*Description*	*Amount*
37	*Electricity charges*	*£4.31*
38	*Insurance charges*	*£771.48*
42	*P. Spence interim payment*	*£465.45*
43	*Enfield Construction Ltd*	*£4,654.74*
45	*Electricity charges*	*£5.86*
46	*Insurance charges*	*£810.35*
47	*Electricity charges*	*£4.78*
48	*Electricity charges*	*£5.61*

38. In respect of the following items the Applicant was notified in accordance with Section 20(B)(2) and therefore these sums will became payable on the Respondent making a demand for payment if it has not done so already:-

Item No. on Applicant's List	*Description*	*Amount*
33	*Mervyn Brown Associates*	*£426.21*
51	*One quarter of fee of M. Brown Associates re dry rot*	*£218.68*

39. Item 49 on the Applicant's List (repairs to chimney and front parapet) may well be properly payable, but the Tribunal does not have sufficient information on the **amount** of the charge to make a full determination.

40. The following service charge amounts are not payable at all by the Applicant:-

Item No. on Applicant's List	*Description*	*Amount*
12	*LVT costs (2003)*	*£9,172.82*
14	*Electricity charges*	*£4.52*
15	*Electricity charges*	*£3.46*
16	*Electricity charges*	*£3.42*
17	*Electricity charges*	*£3.39*
18	*Insurance charges*	*£894.19*
20	*Electricity charges*	*£3.38*
21	*Electricity charges*	*£3.77*
22	*Electricity charges*	*£3.66*
23	*Electricity charges*	*£4.07*
24	*Insurance charges*	*£782.77*
28	*Electricity charges*	*£4.76*
29	*Electricity charges*	*£4.35*

30	*Electricity charges*	*£4.29*
31	*Electricity charges*	*£4.58*
32	*Insurance charges*	*£692.02*
50	*One-quarter of account of Tree-care*	*£127.78*

41. No cost applications were made by either party. The application form did not contain any Section 20C cost application and both parties expressly confirmed at the hearing that they did not wish to make any cost applications.

CHAIRMAN..
Mr P Korn

24th June 2010