

5087

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985 SECTION 27A

LON/00AR/LSC/2009/0241

Premises **24 Linton Court, Romford, RM1 4PA**

Applicant: **Mr Davide Moiso**

Represented by: **Ms H Procter**
 Mr A Nicklin
 Ms Adjei – all from the College of Law

Respondent: **Mr Samuel Margolin**

Represented by **Mr Azmon Rankohi**

Date of hearing: **29 March 2010**

Date of inspection **14 April 2010**

Tribunal: **Ms M Daley LLB (Hons)**
 Mr T Johnson FRICS
 Mrs J Clarke BA JP

Date of decision: **3 June 2010**

1. Background

(a) The property is a block of 6 Flats built in the 1970's. The Applicant is the leasehold owner of flat 24 Linton Court.

(b) The Respondent, Mr Margolin is the freehold owner of the property.

2. On the 24 April 2009 the applicant applied to the Tribunal for a determination of reasonableness and payability of service charges for 2004-2008.

On 16 June 2009, directions were given by the Tribunal and the issues were identified as follows: *"The reasonableness of the charges and whether the work charged for was done to a reasonable standard. In addition for the year 2005 the cost of the works to the balconies is challenged on the ground that the failure to maintain those balconies in earlier years resulted in extra work and repairs being done in the year in question. It is alleged that extra work would not have been required had the balconies been maintained as per the landlord's obligations."*

The law

Section 18(1) of the Landlord and Tenant Act 1985 ("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) 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 payable.

[Section 27A(3) of the Act provides that an application may be made to a Leasehold Valuation Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.]

The Inspection

3. The Tribunal inspected the property on 14 April 2010 Linton Court is a small private estate set in its own grounds comprising 38 flats plus garage blocks. The subject flat is in a block of six and is located on the 3rd and 4th floors. The blocks were built in the 1970s are of brick construction with a pitched tiled roof. The ground/first floor flats are accessed at ground floor level, with a side

staircase leading the 3rd/4th floor flats which have a balcony access, the balconies being protected with ranch style fencing. The Tribunal's general overall impression was that the estate was clean and tidy and generally well maintained apart from some defective chain link fencing on the rear boundary.

The Hearing

4. At the hearing the Applicant was represented by students from the College of Law (Ms Proctor, Ms Adjei and Mr Nicklin). The Respondent was represented by a solicitor Mr Rankohi. Mr Rankohi explained that the managing agent was not in attendance as he was abroad. The Tribunal noted that as there was no representation from the managing agent and given this, the Tribunal expressed the view that it may well have difficulty in establishing some of the facts which were in the managing agent's own knowledge and experience of managing the premises.
5. The Tribunal were referred by Ms Proctor to Mr Moiso's witness statement at page 245 of the bundle which set out the main issues in this case. The background was that Mr Moiso had purchased the property in January 2004. In his statement he set out that he had been dissatisfied with the quality and level of service from the outset and that his main areas of concern (which were set out in his application) were:
 - the maintenance of the garage
 - the upkeep of the estate in particular the gardens and
 - the reasonableness of works undertaken to the balconies.

The Garage

6. Ms Proctor indicated that she would be dealing with the garage whilst her colleagues would deal with the other two areas in turn. The Tribunal were referred to the terms of the lease, clause 4(ii) provided that the service charge contribution was "*one equal thirty-eighth part of the cost and expenses set out*

in the fourth schedule". The fourth schedule provided amongst other matters that the lessee should contribute to:-

- (a) the maintenance, repairing, redecorating and renewing the main structure.
 - (b) The cost of the upkeep of the paths and gardens on the estate
 - (c) The cost of decorating the exterior of the building
 - (d) part 2 of the fourth schedule placed obligations on the Applicant to pay for the expenses of repairing redecorating and renewing the garage.
7. The Tribunal were informed that although the lease provided that the lessee should contribute to the cost of redecorating the garages, this had not been the position adopted by the Landlord. The Tribunal were referred to a letter dated 7 March 2008 from Sinclair Property (the Landlord's managing agents) which stated " ... *Under the terms of the lease each leaseholder (that has a garage) is responsible for any repairs or maintenance to their own garage.*"
8. Mr Moiso informed the Tribunal that contrary to this assertion, the Landlord had written to the Leaseholders and informed them that arrangements had been made for the garages to be painted. This was optional, in that Leaseholders could opt out by writing to the managing agents indicating that they did not want this work to be carried out.
9. Mr Moiso stated that he had not received the letter and had been away when the work was carried out. He had returned to the property to find his garage door painted dark blue. He objected to this on the grounds that the quality of the work was poor and those doors painted blue had started to chip whilst the original doors were still in good condition.
10. Mr Moiso stated that the peeling started after a couple of weeks of the original painting. He had been informed by a friend of his, (a handyman by profession) that this was because of poor preparation. The doors should have been sanded off before painting. As a result the new paint would not adhere to the metal. In answer to questions put by Mr Rankohi, Mr Moiso admitted that he had not complained in person to the Respondent or the managing agents although he was aware of other leaseholders who had complained, including

Geraldine Silverman. He denied receiving the letters, and stated that if he had received the letters he would have remembered. He stated that he could have painted the door himself for less than the £48.00 which he had been charged.

The Tribunal's Decision

11. The Tribunal find that the cost of the work to the doors in the sum of £48.00 is reasonable and payable. The Tribunal are satisfied that the terms of the lease enable the Respondent to undertake the work and to recoup the expense as a service charge. The Tribunal on inspected the premises and the estate, noted that the paint on the door was flaking, which the Tribunal considered was reflective of the length of time that had passed since the redecoration was carried out. The Tribunal noted that the area of peeling was generally at the bottom of the door. It was, in the Tribunal's view, entirely consistent with the fact that the doors were up and over doors, and were the subject of frequent use.
12. The Tribunal in considering this service charge item find on a balance of probabilities, that the cost of this work was reasonable, and that albeit a basic re-paint job, it had at the time been carried out to a reasonable standard. The Tribunal find the cost of this charge to be reasonable and payable.

The Maintenance of the Estate

13. Ms Adedeji stated that the issues concerning the garden and estate maintenance were the same for all of the years in question. The Tribunal were referred to Mr Moiso's witness statement at paragraph 5 & 6 statement, which stated-: *"There is a gardener who is employed by the landlord to attend the estate regularly to keep the gardens in good order."*

As far as I am aware, there is no formal contract which sets out his precise duties beyond his regular attendance. There have been a number of occasions on which the gardener has failed to attend and no substitute gardener was provided during his absence. The residents were still charged for this period of work. Further, when the gardener has been in regular attendance the work carried out has not been satisfactory”.

14. The Tribunal were referred to page 94 of the bundle. This was an invoice in the sum of £480, from B Clark Gardening and Cleaning Services. The work specified in the invoice was for “1 months cleaning and 1 months gardening in the sum of £440”. The invoice included a sum for extras of £40 for rubbish clearance.
15. On the Applicant’s behalf Ms Adedeji referred to the fact that given the lack of contract, the Applicant and other leaseholders were unsure of the remit of the gardening/ cleaning services provided, and why some items such as cutting back the hedges and litter picking were considered to be “extras”.
16. The Applicant also considered that the management of the estate was poor, for example there were broken bin stalls and as a result of this there had been a lot of dumping on and around the estate. Mr Moiso considered that there had been a failure to manage this on the part of the managing agent. In support of these contentions, the Applicant’s representative referred to a copy of a note of a meeting, which had taken place in 2003 at page 72, when Mr Margolin had been taken around the estate and residents concerns such as broken drains had been pointed out to him.
17. Mr Moiso also stated that, although Mr Clark was suppose to attend every two weeks, there was doubt as to whether this occurred, as one of the elderly residents had kept a log to show when Mr Clark attended and this revealed that there were gaps in his attendance. The Applicant also felt that there was a lack of pro-activity and any problems that occurred at the property were left in the interim. Mr Moiso cited problems with broken pipes and gutters that were not repaired and various bollards which were broken and in a poor state of repair. Mr Moiso stated that a section of the fence was broken and that this encouraged youths to step over the fence.

18. The Tribunal noted in the absence of the managing agent to give evidence, there was difficulty in establishing the level of repairs. This was not assisted due to the lack of detailed supporting invoices.
19. On behalf of the landlord, Mr Rankohi stated that it was not within the remit of any landlord to prevent dumping and when this occurred rubbish was removed on a regular basis, and letters were sent to all leaseholders about the problem in a bid to prevent leaseholders dumping. There had also been some discussion about the possibility of CCTV, however whilst this could be fitted and security could be improved there was a cost to these items which would increase the service charge liability to the leaseholders.
20. Mr Rankohi also stated that the smaller jobs were attended to by the gardener, as part of the maintenance of the estate/common parts but there was understandably a separate charge for larger one off items. The Gardener had been carrying out the work since 2003 and this work was subject to routine inspections from the managing agent.
21. He also cited that the work that Mr Maiso complained about in particular the fence was approximately 3 ft high. Given this the youth that were alleged to be hanging around the estate were more than capable of stepping over the fence even without the dip in the fence.
22. Mr Rankohi accepted that bollards needed to be replaced and cited that there was an issue with a lack of funds to undertaken work and that the applicant amongst others did not always pay on time. This contributed to the lack of funding. Given the financial position the bollards were seen as low priority.

The decision of the Tribunal

23. Mr Rankohi stated at the hearing that the log relied upon by the Applicant was supportive of the Respondent's contention that the gardener attended twice a month as this was broadly what was shown by the log. The Tribunal noted when on its inspection that the Linton Court and the estate appeared to be well maintained. There was evidence that the grass and shrubs were maintained. Although some bollards needed changing there was evidence that other bollards had been changed. It appeared to the Tribunal that the leaseholder had difficulty distinguishing between the maintenance of the grounds and routine maintenance around the property. This was due in part to the fact that one

contractor undertook both areas of work and did not separately invoice for these works.

24. The Tribunal noted that the cost of the gardening over the period in question was as follows -:

- 2004 -£6008.00
- 2005-£5161.00
- 2006- £5825.00
- 2007-£5604.00
- 2008-£5716.00

25. Whilst on inspection the Tribunal did not see anything to suggest that the standard of the work was poor, the Tribunal are concerned about the lack of contractual documents and a written schedule defining the duties undertaken by the Gardener/handyman which should be to the benefit of all parties concerned.

26. The Respondent's solicitor provided the Tribunal with sight of the garden maintenance specification. Although this sets out the main tasks undertaken, there should be a separate schedule of work setting out the charges for the maintenance items, this will enable the leaseholders to be aware of the cost of the additional work undertaken.

27. In the Tribunal's knowledge and experience the amount paid for gardening is above the norm of what would be expected for 2 visits a month, as there would be some seasonal variation during the winter months. Given this the Tribunal are satisfied that the cost ought to be reduced as the sums set out are not reasonable. The Tribunal consider that such reduction should not exceed 10% and have determined that the cost of the gardening for each of the years should be reduced by 10% to provide a more reasonable cost for the service required..

28. The Tribunal noted that the Applicant had not complained about the "odd jobs" that have been undertaken at the property, and has not asked the Tribunal to determine the reasonableness and payability of the items. The Tribunal accordingly find that small items of maintenance such as clearing

blocked drains and removing rubbish were undertaken by Mr Clarke on behalf of the Respondent and that the cost of these items are reasonable and payable.

29. The Respondent shall within 28 days of this decision produce a schedule separating the gardening from the general maintenance and should provide a separate breakdown for the maintenance and for the gardening, the cost of the gardening should be reduced by 10%. **If the Respondent is unable to provide separate costing for the gardening and maintenance, then the total amount invoiced by Mr B Clark for these combined services should be reduced by 10%.**
30. In order to enable the Leaseholders to identify those items which are inclusive in the fees for gardening, and those which incur a separate charge a schedule of maintenance duties and the charges agreed for this regular items should be prepared and made available to the leaseholders upon request.
31. The Tribunal also noted that the Gardener/cleaner was based in Carshalton. The Tribunal considered that this may have implications for the cost of the gardening services, and it may well be that the Respondent may wish to benchmark the charges against those paid to a local company in order to ensure that the cost is competitive.

The Repair to the Balconies.

32. At the outset the Respondent accepted that they had not complied with section 20 of the Landlord and Tenant Act 1985, in that they had not consulted in accordance with the consultation regulations, and accordingly at the hearing sought a dispensation in accordance with section 20ZA of the 1985 Act. The Applicant opposed this application.
33. Mr Nicklin dealt with this issue on the Applicant's behalf. He informed the Tribunal that each of the properties had either a covered section of walkway, or balcony attached to their premises. They were described as 'ranch style balconies' and the Tribunal were provided with photographs.

34. On 30 September 2003 the Respondent had a meeting with two of the leaseholders Ms Carole Chattey and Mr Robin Smylie which took place at Ms Chattey's flat. . The Tribunal were referred to the minutes of this meeting. From these minutes it was clear that the various options concerning the replacement/ redecoration renewal of the balcony were discussed.
35. Mr Nicklin stated that although there was no doubt in the Respondent's mind the purpose of consulting with these leaseholders was an attempt to represent the interest of the leaseholder. This was not good enough and did not comply with the legislation.
36. There was also a letter sent to the leaseholders dated 9 December 2003 which was headed, " Notice Of Intention". This letter set out the background leading to the works being undertaken and then concluded with a paragraph which invited the Leaseholders to express a colour preference. This did not comply with the Act.. Mr Nicklin stated, that notwithstanding this, the Applicant had not received this letter, and was therefore at the time 'completely in the dark' about the major work being undertaken.
37. Mr Moiso also complained about the standard of the work. The Tribunal were informed that once the wood had been removed it was clear that many of the metal post were corroding and in need of replacement. The Tribunal were referred to an invoice for metal post in the sum of £11707. The same letter also set out that the Health and Safety Executive had inspected the premises and had informed the Respondent that scaffolding should be erected. As a result of a compromise, it was decided that harnesses could be worn by the builders which would be attached to permanent ring fixings.
38. The additional cost of this was £2256 for the ring fixings, £806 for the equipment and £734 for the training in the use of the equipment. The cost per leaseholder was £400. Mr Moiso objected to these charges, and details of his objections were set out at page 122 of the bundle.
39. Mr Nicklin informed the Tribunal that there was also an issue of the standard of the work. He stated that the Applicant was aware that during the course of the work, the wood used for the balcony was left unprotected in the garden area and as a result the wood surfaces were separating slightly. It was also stated that the veneer was inadequate, and that the overseeing of the work had been poor. The contractors had nailed across the external doors that led to the

balcony to prevent the residents accessing the unfinished balconies. This had been the position for a month, which was in the Applicant's view too long, and indicative of poor supervision.

40. Mr Nicklin also queried whether the work to the balcony was within the repairing covenant in the lease, as in his view the balcony was part of the demise.
41. In reply Mr Rankohi stated that the balconies also provided access to the flats and in his view this confirmed the fact that they should be considered to be communal areas and therefore part of the structure of the building. The balconies could not be considered private because at least three leaseholders shared a balcony. In his submission the work fell securely within the ambit of the fourth schedule
42. Mr Rankohi also did not accept that there was an issue concerning the quality of the work. He stated that it was not uncommon for wood to weather and age and even the rusting of the metal post was due to the fact that the metal would rust where adjoined by wood.
43. He stated that although there had been problems with the contractor which had led to the Health and Safety Executives involvement, his client had trusted the contractor, and that this had been his only mistake. However if the contractor had properly appreciated the requirements of the job the tender would have been higher with an attended higher price to the leaseholders. Given this in his submission the cost of the work was reasonable.

The Application under section 20ZA of the landlord and Tenant Act 1985

44. The Law provides that where an application is made for a determination to dispense with some or all of the qualifying work the Tribunal may do so, if "*it is satisfied that it is reasonable to dispense with the requirements.*"
45. Mr Rankohi stated that the Respondent had consulted. In support of this contention, he referred to the meeting which took place between the Respondent and two of the leaseholders. There had been notification of the meeting, although only two leaseholders had attended.. Mr Rankohi stated that the letters that had been sent out prior to Mr Moiso's purchase of the property and he was unaware of any obligation to notify a new owner.

46. Mr Rankohi submitted that the Respondent had complied with the “Spirit of the law” although the Respondent was not at that stage entirely up to speed with what had to be done. Given the circumstances as he understood them Mr Rankohi asked the Tribunal to dispense with the consultation requirements under section 20 of the Landlord and Tenant Act 1985.
47. In reply, Mr Nicklin referred the Tribunal to his written submissions. In his submission the Tribunal ought not to dispense with the Requirements as no good reason had been put forward and the works were not urgent. He also stated that the Respondent had a managing agent who was charging a fee for professional services, given this he ought to “have been up to speed.” He submitted that the meeting with two of the residents did not comply with the requirements and stated that the cost should be limited

The Decision of the Tribunal

48. The Tribunal had two issues which required a decision-: firstly the reasonableness of standard and cost of the work. And secondly whether it was reasonable to dispense with the section 20 of the Landlord and Tenant Act 1985 and the consultation requirements as set out in the 2003 consultation regulations.
49. The Tribunal having inspected the premises consider that the work was carried out to a reasonable standard. It was noted that there was some weathering of the wood; however this was not inconsistent with the age of the repair. Given this the Tribunal find the cost and standard of work to be reasonable.
50. The Tribunal noted that part of the overall cost included the training of the operatives in the use of the harness. In the Tribunal’s view this is not a cost in consequence of the major works and ought not to be charged as a service charge item. This amount is not recoverable.
51. The Tribunal have been asked to dispense with the section 20 consultation requirements. The Tribunal declines to do so as no good reason has been given as to why the Respondent was unable to comply with the requirements. The Tribunal noted that the Respondent has engaged and charged the leaseholders for a managing agent. It is the Tribunal’s view that given this, it is the responsibility of the managing agent to be up to date with the requirements and any failure will not constitute good grounds for dispensing with the notice. The recoverable cost for the work to the balcony is limited to £250.

The Section 20 C Application

52. At the hearing Mr Nicklin submitted that the legal cost associated with the Tribunal hearing should only be recoverable if the lease provided for recovery and in his view the lease did not provide for recovery of legal expenses and accordingly in his submission the cost were not recoverable.
53. Mr Rankohi was content that cost should follow the event and that if the Tribunal substantially found in favour of the Respondent, cost should be recoverable.
54. The Tribunal preferred Mr Nicklin's submissions. The Tribunal find that the lease does not provide for the recovery of the legal cost and given the partial finding in Mr Moiso favour the Tribunal find that it is just and equitable to grant the section 20 C application sought.

CHAIRMAN..........

DATE.....3rd June 2010.....