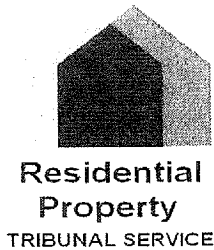


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## LEASEHOLD VALUATION TRIBUNAL

37 Langford Court, Abbey Road, London NW8 9DN  
Ref: LON/00BK/LSC/2009/0515

**Langford Court RTM Company Limited**

**Applicant**

**Fida Bobby Ayyub Syed**

**Respondent**

Tribunal: Mr M Martynski (Solicitor)  
Mr F L Coffey FRICS  
Mrs L Walter MA(Hons)

Representatives: Ms T Silva (Counsel for the Applicant)  
Mr Syed (in person)

Date of hearing: 11 February 2010

## **DECISION**

### **Summary of Decision**

1. All sums claimed in the County Court proceedings by the Applicant, save where they consist of claims for ground rent (in respect of which the Tribunal has no jurisdiction) are payable by the Respondent.
2. No order is made under section 20C Landlord and Tenant Act 1985.
3. No order is made in respect of costs pursuant to paragraph 10, Schedule 12 Commonhold and Leasehold Reform Act 2002.

### **Background**

4. The subject property is a large block containing approximately 110 flats. There is a main entrance door and vestibule containing a porter's desk. There are stairs and a lift to all floors. At the rear of the building is an emergency staircase

servicing all floors. Communal gardens surround the building on three sides, the fourth side being a driveway for commercial garage premises.

5. Proceedings in respect of unpaid service charges and rent arrears were issued in the County Court by the Applicant against the Respondent in May 2009. The Respondent filed a defence to those proceedings in very general terms. The proceedings were then transferred to this Tribunal by order of District Judge Gilchrist by order dated 6 August 2009.

6. In the Tribunal proceedings the Respondent filed a further statement of case. Much of this statement was also in quite general terms, however it did contain some specific issues regarding the reasonableness and payability of service charges. Those issues were further discussed at the outset of the hearing in order to ensure that all the Respondent's concerns regarding the service charges in question in the County Court proceedings were dealt with within the hearing.

7. During a break in the proceedings, the Tribunal visited the building in question. The Tribunal found the building to be in fair to good condition. The Tribunal particularly inspected the front entrance door and step, the vestibule and porter's desk, the emergency staircase and the communal gardens.

8. Given that the Respondent had paid a large sum of money to his account in May 2005 reducing the balance to almost zero, it can be established that the sum sued for in the County Court in 2009 cannot include any service charges predating May 2005.

### **The issues and the Tribunal's decision**

#### *Asbestos removal*

9. The Respondent had concerns about plans to carry out works concerning asbestos. It became apparent that notices were sent out regarding these works in May 2009 and that no charges had been incurred in respect of such works prior to the issue of the court proceedings. Any costs therefore associated with that work are not part of the County Court proceedings and therefore do not fall to be considered by the Tribunal.

#### *T.V. Aerial*

10. Again it became apparent that this concern, raised by the Respondent, could not be considered by the Tribunal as it related to costs incurred in 2003, long before the period dealt with by the County Court claim.

#### *Decorations to the fire escape stairs*

11. As described above, these stairs are situated at the rear of the building. The stairs are concrete. The Tribunal found the decorative condition of the stairway to be reasonable taking into account that these stairs are for emergency rather than regular use.

12. The Tribunal was told by Mr Parker, an employee of the managing agents, that the stairs had been decorated in or about 2003 and that the aim of the decoration was

simply to make the area look presentable. The cost of this work was therefore outside the reference period of the County Court claim.

13. For the record, the Respondent was concerned that the decoration was not carried out to a higher standard. The Tribunal considered the decorative standard of the stairway to be perfectly acceptable given the nature of that stairway. By the time the stairway was inspected by the Tribunal, the decorations were several years old. The decoration was in reasonably good order given the passage of time.

*Front entrance door and step*

14. Work was carried out to replace the front entrance door and step in April 2007. The original estimate for this was in the region of £25,950. Mr Parker for the Applicant explained that the contractor carrying out the work had left before the anticipated work (which included some work to the vestibule) was completed. That contractor had been paid in the region of £14,000. A further approximately £4,000 was paid to another contractor brought in to complete works to the step and door. This brought the total cost of the works to £18,048 plus some professional fees as per the accounts for 2007.

15. The Respondent's objections to this item of expenditure amounted to; (a) comments from other, unspecified residents, that the granite exterior step in front of the front entrance door was slippery in wet weather; (b) a comment that residents perhaps expected a better design; (c) a concern that in the past, on occasion, the door was noisy when it shut, and; (d) a concern that not all the work in the specification was carried out.

16. The Tribunal found the door and entrance step to be of a reasonable quality and to be in reasonable order.

17. Mr Parker for the Applicant explained that the noisy shutting complained of in the past was probably due to the grease on the door closing mechanism needing to be replenished. He was not aware of any complaint from any resident regarding the safety of the step. As to not all the work on the specification having been carried out, there was no suggestion that work not done had been paid for.

18. In the light of the evidence, the Tribunal could only conclude that the costs in respect of the door and step were reasonably incurred and those items were of a reasonable quality and standard. Accordingly the costs associated with those items are payable by the Respondent.

*Porter's desk*

19. At the side of the vestibule in the building is a purpose built porter's desk. The space behind the desk is rather narrow so that the chair behind the desk rubs against the wall when someone comes to sit in it. The desk was installed at a cost of £437.50, making the Respondent's share less than five pounds.

20. The Respondent's objection to this item concerned the fact that the space behind the desk was narrow. There was clear damage to the wall where the chair had rubbed against it over the years.

21. The Tribunal was told by Mr Parker that there are plans to replace the desk. It was clear to the Tribunal from their inspection that the options regarding the siting of the desk are limited given the width of the vestibule. If the desk were any wider, that may not leave sufficient space in the rest of the vestibule.

22. Taking all matters into consideration, it was impossible to say that, at the very modest cost involved, the cost was unreasonably incurred. It is accordingly payable by the Respondent.

#### *Gardening*

23. The Respondent was concerned that the communal gardens looked shabby up until very recently. He was also concerned that whenever work was done to the garden, it was done very slowly. There were lovely flower beds which had been removed. There had been, until recently bare patches on the grassed areas.

24. The Tribunal noted on its inspection that a lot of work was in the process of being carried in retaining the garden so that it did not collapse towards the main building (a problem that had occurred before). The gardens appeared to be well maintained.

25. In the Tribunal's experience, there was nothing particularly unusual in the level of costs for gardening over the years 2005 to 2009, given the size of the area in question. There was no evidence upon which the Tribunal could conclude that the costs of gardening were unreasonable. They are therefore payable.

#### *Inspection of documents*

26. The Respondent was very concerned that he had not, despite many requests, been able to inspect the accounts and invoices for the costs in the service charge. The Respondent, in protracted correspondence with the Applicant, appeared to say that he would only be prepared to pay service charges if given the opportunity to inspect all service charge documentation.

27. The Tribunal rejects the Respondent's complaints. First, under the terms of his lease, the Respondent is under an obligation to pay sums on account of service charge. This obligation is not dependent on the Respondent first being shown all receipts and vouchers. Second, the Tribunal is content, on looking at the correspondence between the parties that the Respondent was given the reasonable opportunity to inspect documents but failed to take up that offer. The last correspondence on this issue is a good example of the kind of correspondence between the parties and of the way in which the Respondent failed to take up offers made to him. A letter was sent by the Applicant's solicitors to the Respondent dated 14 September 2009, the relevant part of that letter reads as follows;

Further to your letter to me of 21 July, which was only received by me on 1<sup>st</sup> September 2009, I have now received further instructions from my client and they have confirmed that they have no objection to you attending at their offices in order to see the invoices, but could you please confirm in advance the date and

time when you will be attending in order that such invoices can be made ready for inspection.

The reply to this letter from the Applicant is dated 17 September 2009 and the relevant parts read as follows;

As for you finally referring to the documents to be inspected as invoices, and not vouchers, as sadly mentioned in your previous correspondence alongside Mr Brian Parker many correspondence in the past. I have always requested a clear clarification on what would be available to my officials (accountants), so as not to increase any of my cost further, as experienced with legal fees etc.

.....  
I am saddened, as you know regarding your unwillingness to give me access, with at least a clear definition of term 'invoice' and not 'voucher' is available for inspection. It would have been better for both parties, if you had clearly mentioned this term earlier in our many correspondences, so as to avoid any costly legal procedure by both parties.....

I look forward to hearing from you, so that we can maximise the LVT Pre-Trial for both parties.....

28. The Tribunal is very clear from this and other correspondence between the parties that; (a) clear offers were made to the Respondent to inspect documents, and; (b) the Respondent was unreasonable in his reasons as to not taking up these offers. The Tribunal is also satisfied that there were other ways in which the Respondent could make enquires of the managing agents. Mr Parker for the managing agents described a meeting with the Respondent in the Respondent's home and the Tribunal is satisfied that Mr Parker was willing to have other meetings with the Respondent.

### **Costs**

29. The Tribunal, pursuant to section 20C Landlord and Tenant Act 1985 has the power to make an order preventing a landlord from placing the costs of proceedings before it on the service charge (this would pre-suppose that the lease in question allowed that to be done in the first place).

30. The Respondent requested that the Tribunal make such an order in this case. The Tribunal does not make that order given that the Respondent has been wholly unsuccessful in these proceedings.

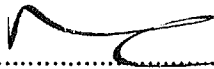
31. The Tribunal also has the power to order that one party directly pays costs to the other subject to a limit of £500.00. In order to make such an order, the Tribunal has to find that one party has behaved in such a way that can be described as; frivolous, vexatious, abusive, disruptive or otherwise unreasonable - in connection with the proceedings

32. So far as the Respondent is concerned, although the Tribunal has rejected every concern that he raised in respect of the service charges, that fact does not mean that he has behaved in a way that would justify a costs order being made against him. He is entitled to raise objections to the service charge and the Tribunal is of the view that his objections, although misconceived, were in the main, heartfelt concerns

genuinely held. The Respondent could be criticised for the non-payment of service charges over a long period of time given that, even if the Respondent was successful on some or all of his objections, this was never going to mean that he was not going to be liable for *some* charges. That conduct is however not a course of conduct directly related to the conduct of these proceedings and so cannot lead to a costs order.

33. So far as the Applicant is concerned, it has been entirely successful in the proceedings and there has been no behaviour within the proceedings on its part to justify a costs order. The Respondent criticised the Applicant for its use of lawyers in the process. The Applicant is entitled to use lawyers to conduct legal proceedings.

34. No order is made for either party in respect of costs.



.....  
Mark Martynski, Tribunal Chairman  
26 February 2010