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Residential Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00AY/LSC/2011/0545

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON A MATTER UNDER SECTION 27A LANDLORD AND TENANT ACT 1985

Applicant/Freeholder:	London Borough of Lambeth, Home Ownership Services
Applicant's Representative:	Judge and Priestly solicitors
Respondent/Leaseholder:	Mr F Boother
Premises:	Flat 7 Rydal House, Union Road, London SW8 2SD
Date of Hearing:	7 November 2011
Leasehold Valuation Tribunal:	Ms F Dickie, Barrister, Chairman Ms A Flynn, MRICS Ms S Wilby
Date of Decision:	14 November 2011

Summary of Decision

Major works service charges claimed of £1533.58 are reasonable and payable by the Respondent.

Evidence and Decision

1. By a County Court Claim issued on 21 April 2011 the landlord London Borough of Lambeth sought recovery of unpaid service charges for major works of £1533.58 plus statutory interest, solicitors' costs and court fee. A Defence was filed dated 5 May 2011

and the matter was transferred to the Leasehold Valuation Tribunal by order of District Judge Zimmels sitting at Lambeth County Court dated 5 July 2011. Directions were issued by the tribunal for a determination under s.27A of the Landlord and Tenant Act 1985 ("the Act") after an oral pre trial that took place on 30 August 2011 at which the Applicant Local Authority was represented and Mr I Anderson attended on behalf of Mr Boother. Mr Anderson is the son of Mrs V Anderson, the leaseholder of Flat 3 Rydal House and Mr Boother's neighbour. The matter was listed for an oral hearing that took place on 7 November 2011. At that hearing the Applicant was represented by Ms Witherington of counsel and Mr Anderson appeared on behalf of Mr Boother with his written authority.

2. The subject premises are a self contained flat within a purpose built block of 12 flats within an estate of 243 dwellings in total. By a lease dated 14 July 1997 between the Mayor and Burgesses of the London Borough of Lambeth and Frederick George Boother, the premises were demised for a term of 125 years from 28 May 1990. No issue was raised as to the recoverability of the major works service charges under the terms of the lease, which are accordingly not set out in this decision.

3. The major works in question were the complete rewiring of the landlord's services together with rising and lateral mains serving flats 1-12 Rydal House, and were part of a scheme that affected 270 dwellings in total. The issue in dispute was whether the Applicant had complied with the provisions of section 20 of the Act and the Service Charge (Consultation Requirements) (England) Regulations 2003. His case was that he did not receive any statutory consultation notices required to be given to him under Schedule 4 Part 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations"). He disputed receipt of the notice of intention dated 6 April 2007, the landlord's proposal notice for qualifying works dated 23 October 2007 (which proposed the acceptance of the lowest tender from Lighting Electrical Ltd.), and the final payment demand dated 12 February 2010. Copies of all of these documents were produced by the Council at the hearing. No issue was taken as to the form of any notice or demand. The Respondent also disputed receipt of a notice of appointment of a contractor, but it was not the Applicant's case that it had issued one. We observe that the requirement to give notice under Paragraph 13(1) of Part 2 to the Regulations on entering into the contract does not apply where the contractor appointed submitted the lowest estimate.

4. Counsel for the Applicant referred us to clause 4.8 of the lease which incorporates section 196 of the Law of Property Act 1925 into the lease terms for the purpose of service of all notices. Section 196 provides for sufficient service by leaving the notice at the last known place of abode in the United Kingdom of the lessee, or leaving it for him on the land or any house or building comprised in the lease (subsection (3)) and by registered post (subsection (4)).

witness statement because a number of cases of non payment had been referred to the legal department, though she could not specify how many or confirm whether service of the notices was disputed in any of those cases.

9. Nevertheless, having heard the direct evidence of Ms Akinde, we consider it is safe to find that the majority of leaseholders on the Springfield Estate have not disputed service of the consultation notices. The Council produced her oral evidence as the individual responsible for issuing all of the notices, and the system she described was reasonably robust. It did not involve the creation of a certificate of service, but the test we must apply is the balance of probabilities. On the evidence presented we are satisfied Ms Akinde's account is likely to be reliable and that the notices and demand were properly posted.

10. There is insufficient evidence of a systematic failure to serve the documentation. Mrs Anderson gave evidence on behalf of the Respondent, and reported that the leaseholders of Flats 11 and 12 told her that they had not received their consultation notices. However, notwithstanding that this is merely hearsay evidence of which no substantive proof was produced, we are satisfied on the evidence of Ms Akinde that Flat 11 was not subject to a long lease until the right to buy was exercised after the service of these notices, and that ownership of Flat 12 had changed since service of the notices. Furthermore, on Mrs Anderson's own account her evidence of an exchange with the leaseholder of Flat 1 fell short of even a hearsay assertion that this leaseholder (a Mrs Craig) had not received the consultation notices – since she was merely said to have promised to contact Mrs Anderson if, on checking her documents, she had received the notices. We find in the circumstances that the Respondent's case was not aided by Mrs Anderson's account of her conversations with neighbours.

11. Since we are satisfied on the balance of probabilities that the notices and demand were posted, unless the contrary is proved they are deemed to have been delivered. The Respondent invited us to conclude that Mrs Anderson's evidence that she did not receive them was evidence also that he had not. However, we reject the argument that it would be proper to draw such a conclusion. We must look at the evidence that Mr Boother in particular did not receive the notices and demand. The question of whether Mrs. Anderson did or not may be a matter for future determination in any proceedings to which she is a party, and we make no comment about the strength of her own particular case.

12. Regarding Mr Boother, there was no direct evidence at all that he did not receive the documentation sent. He did not provide a witness statement, or give oral evidence that could be tested by the Applicant on cross examination. There is an unsigned statement of truth in his County Court Defence, but that on its own is far from sufficient to make out his case. Mr Boother is understood to be disabled and may be housebound, but medical

evidence of this was not available. However, he was by letter dated 31 August 2011 offered a domiciliary hearing. Mr Anderson confirmed that letter had been received by Mr Boother and that he had not responded to it. In all the circumstances we find Mr Boother has failed to demonstrate on evidence that he did not receive the notices, and the assertion of his neighbour that neither of them adds negligible weight. Essentially, the Respondent's case lacked any direct evidence at all.

13. The claim was made on behalf of Mr Boother that the Springfield Tenants' Association is a registered tenants' association for the purposes of section 29 of the Landlord and Tenant Act 1985 and that therefore the landlord had a duty to give the statutory consultation notices to it. However, the Applicant denied this was the case and no evidence was produced by the Respondent of a landlord's notice under section 29(1)(a) or the certification of the rent assessment committee under section 29(1)(b). Accordingly we conclude that there was no registered tenants' association under section 29 with which the landlord had a duty to consult over the major works in question.

14. There was no other issue raised by the Respondent as to the payability or reasonableness of the major works sum claimed. Mr Anderson did seek clarification of the means by which it was calculated, but did not challenge the explanation provided that the contractor's estimate included a cost for each block, which was apportioned according to the rateable value for each flat expressed as a percentage of the combined rateable values of all the flats in the block.

15. The tribunal accordingly finds the service charge sum claimed in the County Court of £1533.58, exclusive of statutory interest, court fee and solicitor's costs, is reasonable and payable by the Respondent in full.

16. There was no application by the tenant under section 20C of the Act, and it was confirmed on behalf of the landlord that no attempt would be made to recover the costs of these proceedings from the Respondent through the service charge.

Signed .....

Chairman

Dated 14 November 2011