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**HM COURTS AND TRIBUNALS SERVICE
LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00BE/LSC/2011/0736

**DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT
ACT 1985**

Applicant: London Borough of Southwark

Respondents: Li Hau Fan

Premises: 1, Chatham House, McNeil Road, London,
SE5 8PN

Date of Transfer from Court 10th October 2011

Leasehold Valuation Tribunal: Mr J C Avery BSc FRICS
Mr C P Gowman MCIEH MCMi BSc
Miss R I Emblin JP

Date of Hearing : 10 February 2012

Preliminary

1. This case was transferred from Lambeth County Court by order of District Judge Wakem dated 10th October 2011. The Applicant had applied for an order that the Respondent pay outstanding service charges totalling £7,773.75 in respect of the four years 2008-09 to 2011-12
2. The service charge periods and amounts in dispute particularised in the claim to the county court are as follows:

Period	Date	Amount	Amount Outstanding
2008/9	1.1.2009	£2,893.80	£2,318.32
2009/10	1.1.2010	£2,633.34	£2,633.34
2010/11	1.1.2011	£2,273.50	£2,273.50
2010/11	1.4.2011	£2,194.37	£548.59
TOTAL			£7,773.75

3. The Respondent lodged a defence and counterclaim in the County Court and made reference to the Applicant's breach of repair and maintenance obligations. However, it was decided that the issues to be considered by the Tribunal at the substantive hearing should be limited to the service charge and that any issues in respect of a claim for set off should be dealt with in the County Court.
4. In submissions made by the Respondent in accordance with Directions it was conceded that the only service charge issue to be determined by the Tribunal related to the charges for heating and hot water.
5. The Respondent disputed the reasonableness of the charges going back to 2004-05 but the Tribunal's jurisdiction is limited to the years specified in the court application. In respect of those years the Respondent proposed that the following reductions should be made:

	Charge	Reduction
2008-09	£1,657.15	£1,657.15
2009-10	£1,450.97	£1,450.97
2010-11	£1,163.85	£581.92

6. No application to the court was made in respect of years 2005-06 to 2007-08.

7. The hearing of the application took place at 10.00am on 10th January 2012 at 10 Alfred Place, London, WC1E 7LR. The Applicant was represented by Mr O Strauss, solicitor for the Borough. The Respondent attended and was assisted by Mr H Tingle.
8. Mr Strauss called as witnesses Mr G Dudhia, Accountant and Mr K Arnold, Heating Engineer, both employees of the Applicant Council.
9. Mrs Fan wished to call Mrs S Liu as a witness but since no witness statement had been submitted and it transpired that Mrs Liu would do no more than repeat Mrs Fan's own evidence, she was not called.
10. Both parties had submitted their respective cases. The Applicant had summarised the contractual responsibilities and the method of allocation adopted, and described the ground rent payment and the insurance liabilities. None of these was contested by the Respondent.

Applicant's case

11. The Applicant's statement also described the way the way heating and hot water were charged, and said that the subject premises received both full central heating and hot water, and for the purpose of the "bed weighting" method of allocation, had four bedrooms. The costs chargeable consisted of gas supply, maintenance of the boiler house and pipe work, and call out service organised by the contractor OCO.
12. Mr Dudhia's evidence covered the same matters and confirmed that the Respondent's liability by the bed weighting method was 36/12407. He said that the proportion could vary from year to year as the elements of which the fraction is composed changed, for example by combining bedrooms.
13. At the Tribunal's request he obtained a comparison of the costs incurred on the subject premises with the average costs in the block and found them to be close.
14. Mr Arnold described the arrangements made for repairs and provided a schedule of attendances at the subject premises between January 2006 and August 2010. He also said in oral evidence that pipe work had been renewed in two phases in 2009 and 2010.

Decision

23. The Tribunal finds that the heating service has been defective in the way described by the Respondent. It is understandable that an old system would be more troublesome than a modern one but it appears that the numerous repairs that were carried out were futile in the face of the real reason for the problem - the pipework – the replacement of which appears to have resolved the situation. The Borough's offers of compensation lend weight to the argument that the service has been below a reasonable standard.
24. However the Tribunal observes that the separate hot water system did not suffer in the same way as the central heating.
25. Accordingly the Tribunal determines that Mrs Fan is liable for her share of the costs of hot water for the years in question but is not liable for the costs incurred of central heating. Mrs Fan asserted that in 2010-11 there were two months without heating. However the Tribunal makes no adjustment to this year on the basis that it is likely that there will have been some short periods in the years in question when a repair will have been effective and these periods will balance one another.
26. Mrs Fan's proportion of the costs is calculated at 4.52 for each of her eight rooms, of which 1 represents hot water. The factor for heating is therefore 3.52 – and accordingly 28 units for heating rather than 36. The amounts to be deducted from Mrs Fan's liability are as follows:

	Charge	Reduction
2008-09	£1,657.15	£1,290.00
2009-10	£1,450.97	£1,130.00
2010-11	£1,163.85	0
Total		£2,420.00

Chairman:-

J C Avery Date