

**THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL**

**Landlord and Tenant Act 1985 (as amended), section 27A and 20C**

**Ref: LON/00AC/LSC/2005/0254**

**Premises: 37 Burnham Court, Brent Street, London NW4 2RE**

**Applicant: City and County Properties Limited**

**Respondent: Mr Ivor Fersht**

**Appearances:**

**Mr Peters of Counsel, instructed by Messrs. Bude Nathan Iwanier, Solicitors**

**For the Applicant**

**Ms Bicarregui of Counsel, instructed by Messrs. Saul Marine & Co.**

**For the Respondent**

**Members of the Leasehold Valuation Tribunal:**

- Miss A Seifert FCI Arb**
- Mr F Coffey FRICS**
- Mrs S S Friend MBE JP**

**Date of Decision: 3<sup>rd</sup> August 2006**

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**Decision of the Leasehold Valuation Tribunal**

1. This matter was transferred for determination by the Leasehold Valuation Tribunal by order of the Willesden County Court in Claim Number 5BT02769. That action is between City & County Properties Limited, the Applicant landlord, and Mr Ivor Fersht, the Respondent. Mr Fersht is the lessee of Flat 37 Burnham Court, Brent Street, London NW4 2RE under a lease dated 3<sup>rd</sup> August 1979 between the Applicant and the Respondent. A copy of this lease, which contains provisions for recovery of a service charge by the landlord, was produced to the Tribunal.
2. In that action City and County Properties Limited claim a total of £8,801.33 ground rent, service charges plus statutory interest under section 69 of the County Courts Act 1984. The issue for determination is the reasonableness and recoverability of the service charges.
3. A hearing was held on 28<sup>th</sup> March 2006. The Tribunal inspected Flat 37 and Burnham Court on 16<sup>th</sup> May 2006.
4. At the hearing the Applicant was represented by Mr Peters of Counsel instructed by Messrs Bude Nathan Iwanier. Ms Bicarregui of Counsel instructed by Messrs Saul Marine & Co., represented the Respondent, Mr Fersht, who attended the hearing and gave oral evidence.
5. The Tribunal inspected Burnham Court externally, flat 37 and some of the common parts internally on 16<sup>th</sup> May 2006. The subject property comprises a block of 40 flats erected in the 1930's. The block is of brick and reinforced concrete construction under a flat roof, covered in mastic asphalt and enclosed by a parapet. The windows, which were previously un-galvanized steel casement type, were replaced by Upvc casements set forward in the reveals and without sub sills. The block is situated in landscaped grounds of fair quality and the block itself encloses an inner courtyard with staircases leading from the upper levels to the ground within this area.
6. Details of the service charges claimed are attached to the Claim Form. In paragraph 5 of Mr Fersht's witness statement dated 24<sup>th</sup> August 2005 in the County Court, the amounts disputed by the Respondent were:

Period	Amount	£
Excess service charge	01/01/01 to 31/12/01	5563.73

Excess service charge	01/01/02 to 31/12/02	851.62
(Less excess service charge adjustment for same period)		(-219.66)
Major works	17/11/03	3122.82
Excess service charge	01/01/03 to 31/12/03	334.96

7. At the hearing Ms Bicarregui provided a schedule, which she confirmed set out all the service charge items which were now disputed by the Respondent. These items are referred to below.

Major Works - 2001

External works, repairs and decorations.

8. Scaffolding

Total Charge: £60,874.40 (including VAT)

Charge to Respondent: £636.75

Ms Bickeregui said that the Mr Fersht was no longer challenging the need for the scaffolding. However, Mr Fersht contended that the price was excessive but provided no details of this assertion. Mr Terence Brian Dimmer ACIOB gave evidence on behalf of the Applicant. Mr Dimmer was the contract administrator at the time that the major works were carried out. Mr Dimmer stated that all elevations of the block including the internal courtyard were fully scaffolded and had to comply with all current Health and Safety regulations, which was part of the competitive tendering process.

The Tribunal's decision:

The Tribunal finds that the scaffolding was in accordance with good practice. There was no evidence, such as alternative prices, produced to support the contention that the cost of the scaffolding was excessive. The cost to the scaffolding was reasonable and reasonably incurred.

£636.75 is due from the Respondent to the Applicant in respect of this item.

9. Brickwork repairs

Total Charge: £56,285.79 (including VAT)

Charge to Respondent: £588.75

Mr Fersht contended that a small amount of work was done on the building's brickwork but it seemed to be only a token gesture. Most of the defective bricks remained after the work was done. Mr Fersht said he witnessed the workmen spending a day or thereabouts on the brickwork.

Mr Dimmer said that the amounts of work carried out were shown in Contract Instruction No. 3 (21<sup>st</sup> November 2002).

The Tribunal's decision:

From the Tribunal's inspection of the block it is clear that there is some defective brickwork to the block, and it did not appear from the inspection that much brickwork had been carried out. However, it appears from contract Instruction No. 3 that the actual pointing carried out was measured on site amounting to a charge of £42,060.80. It also appears from Contract Instruction No. 3 that £4198.16 was chargeable for facing up of bricks and £1643.84 for cutting out and making good brickwork. Together these sums amount to £47,902.80 plus VAT. The Tribunal finds that the charges for brickwork repairs were reasonable and reasonably incurred.

£588.75 is due from the Respondent to the Applicant in respect of this item.

10. Rear stairs and landing areas

Total charge: £7050.00 (including VAT)

Charge to Respondent: £73.74

Mr Fersht contended that there was not a thorough overhauling of these areas as required by paragraph 3.29 of the specification. He submitted that the workmen rubbed down the 'odd bit' of metal work. He considered that the charge was excessive.

Mr Dimmer stated that the charge related to the overhauling of six external metal staircases. The work carried out was required to make the staircases safe and serviceable. Mr Dimmer considered that the charge of £1000 per staircase was not excessive.

The Tribunal's decision:

The Tribunal notes from item 3.29 of the specification that the sum of £6000 is described as 'Provisional'. This was a qualification by the contractor. This provisional sum should have been replaced by the actual cost. However, having inspected the external metal staircases and landing areas the Tribunal considers that the charge of £6000 was reasonable and reasonably incurred for the works.

£73.74 is due from the Respondent to the Applicant in respect of this item.

11. Plumbing repairs

Total cost: £10,967.69 (including VAT)

Charge to Respondent: £114.72

Mr Fersht submitted that the plumbing works were not necessary. He submitted that no plumbing work was done.

Mr Dimmer stated that all the external and cast iron pipe work was overhauled, re-fixed and refurbished. Mr Dimmer said that he had been to the block recently and noted 5 leaking joints. However, the works had been carried out 5 years ago.

The Tribunal's decision:

The Tribunal notes that the plumbing repairs, items 3.31 and 3.32 on the specification are described as "provisional". Under item 3.33 the Contractor qualified the plumbing works as provisional. Item 3.34 of the specification (£4,600) was not a provisional sum.

Item 3.32 was omitted by Contract Instruction No. 2 dated 17<sup>th</sup> October 2002, and the sum of £239.20 added back in Contract Instruction No. 3. The Tribunal has been supplied with 3 of the 4 Contract Instructions. There is no evidence before the Tribunal that the provisional quantities for item 3.31 or 3.33 were adjusted. The amounts claimed are the provisional amounts. The Tribunal would have expected the removal of the provisional status and further Contract Instructions adding in the actual cost of the works measured by the contract administrator.

The Tribunal was concerned to note that no adjustment had been made in this regard. Nevertheless, Mr Fersht produced no evidence in support of his contention that the provisional sums were unreasonable. In the view of the Tribunal therefore the provisional items are considered to be both reasonable and reasonably incurred.

£114.72 is due from the Respondent to the Applicant in respect of this item.

12. Decorations, elevations, approval of works, metal works, metal surfaces

Total cost: £34,838.75 (including VAT)

Charge to the Respondent: £364.41

Mr Fersht submitted that the work that involved painting was carried out terribly. He contended that in the main only one coat of paint was used not two or three as required in the specification. To compensate the paint was applied very thickly and came off in big flakes. The surfaces were not rubbed down properly. Workmen returned on a number of occasions to repaint areas where the paint had flaked off but did not prepare the surfaces before repainting and the problem reoccurred.

Mr Dimmer considered that the external decorations were carried out in accordance with the specification. Any chips in the paintwork were due to wear and tear since the works were carried out.

The Tribunal's decision:

From the Tribunal's inspection and the evidence available, the Tribunal finds that the standard of the works comprising this item were reasonable and the costs reasonably incurred.

£364.41 is due from the Respondent to the Applicant in respect of this item.

13. Brickwork / rendered surfacing

Total cost: £14,452.50 (including VAT)

Charge to Respondent: £151.17

Mr Fersht contended that the charge was excessive and the work only partially carried out.

Mr Dimmer submitted that the works were carried out in accordance with the specification and were completely satisfactory.

The Tribunal's decision:

The Tribunal finds that the works were of a reasonable standard and the cost was both reasonable and reasonably incurred.

£151.17 is due from the Respondent to the Applicant in respect of this item.

14. Windows

Total cost: £195,637.50 (including VAT)

Charge to the Respondent: £2046.37

In his witness statement Mr Fersht contended that the windows did not need replacing. He contended that the windows had been replaced a couple of years earlier and worked well. No details of were provided of previous replacement of the windows. However, in oral evidence Mr Fersht said that the window works might have taken place before 1992. The Respondent contended that the replacement windows do not fit properly and stick when he tries to open and shut them. He contended that the windows were not properly sealed, that several bricks were cracked or knocked out of place when the windows were taken out and replaced without cement and that his window sill was broken. The Respondent made a number of other criticisms of the window replacement including that the work was poorly carried out in a rushed and careless manner, that dust had entered his flat and that the ventilation did not work. It was submitted that the replacement of the windows was not properly chargeable under the terms of the lease as it comprised improvement whereas the lease covered 'repairing, redecorating and renewing'.

Mr Dimmer commented that the windows in the block were the original metal casement windows and were not galvanised. He had inspected the windows and confirmed that the windows were in extremely poor condition. An exercise had been carried out before the commencement of the contract that determined that it was less expensive to replace the windows with UPVc windows than to repair and decorate them. This was discussed with the residents association at the time. The new windows would require very little maintenance. He denied that the windows had been replaced a couple of years earlier. He submitted that the replacement of

the windows was properly chargeable under the lease as the windows were 'renewed' and it was a cheaper option than redecorating and repairing the existing windows. He stated that there were no complaints about dust and debris at the time. The windows were carefully removed and no damage to the Respondent's internal sill was reported at the time.

Mr Alan Eugene Solomon FRICS, who had been the Area Manager for Freshwater Property Management from 1992, told the Tribunal that he did not recall any works to the windows until 2002.

The Tribunal's decision:

The Tribunal finds that the works were recoverable under the terms of the lease as falling within the provisions of clause 2(2) (a) (ii) as part of "The cost of maintaining repairing redecorating and renewing: - (a) the structure of the said Buildings including the main drains foundations roofs chimney stacks external doors and windows (including frames) gutters and rainwater pipes....."

The Tribunal from its inspection of the windows in the subject flat found that the windows opened and shut adequately and that the works were of a reasonable standard. No evidence was produced relating to the previous window replacement. The Tribunal is satisfied that the window replacement work was or a reasonable standard and that the cost was reasonable and reasonably incurred.

£2046.37 is due from the Respondent to the Applicant in respect of the window replacement works.

15. Additional charge – Building Regulations

Total cost: £34,075.00 (including VAT)

Charge to the Respondent: £356.42

Mr Dimmer stated that the additional expenditure of £29,000 became necessary in order to comply with Part L of the Building Regulations which had recently been introduced and which dealt with the upgrading of thermal requirements relating to windows. Delay had occurred in starting the contract due to extended consultation with the lessees.

The Tribunal's decision:

The Tribunal finds that the cost of the additional charge in respect of compliance with the Building Regulations was reasonable and reasonably incurred.

£356.42 is due from the Respondent to the Applicant in respect of this item.

16. Surveyor's fee

Total cost: £37,694.00 (including VAT)

Charge to the Respondent: £394.28

The Respondent contended that the charge was unreasonable but gave no details in support.

Mr Solomon stated that the surveyor's fee of 8% plus VAT covered the preparation of the specification, obtaining of tenders, analysis of tenders received, appointment of the successful contractor, Mr Dimmer acting as contract administrator during the course of the works, and arranging for "snagging" work to be carried out. He considered that 8% was about the norm for projects of this nature.

The Tribunal's decision:

The Tribunal finds that the charge for the surveyor's fee was reasonable and reasonably incurred.

£394.28 is due from the Respondent to the Applicant in respect of this item.

17. Administration fee

The Administration fees for both 2001 and 2003 are referred to under paragraph 36 below.

18. Contract Supervisor's fee

Total cost: £2356.00 (including VAT)

Charge to the Respondent: £24.64

Mr Fersht contended that this was an unreasonable and unexplained charge.

Mr Solomon explained that there had been an error in the section 20 notice which should have read a 'Planning Supervisor instead of 'Contract Supervisor'. The Planning Supervisor was necessary for compliance with the Health and Safety procedures, and in particular with the Construction (Design and Management) Regulations 1994 ('CDM').

The Tribunal's decision:

The Tribunal accepts that a Planning Supervisor was necessary and finds the charge reasonable and reasonably incurred.

£24.64 is due from the Respondent to the Applicant in respect of this item.

19. Additional costs – widen roadway towards flower bed

Total cost: £7430.70 (including VAT)

Charge to the Respondent: £77.73



Mr Fersht said that this charge was not payable under the terms of the lease. No consultation took place before the work was carried out and it was not related to the major works.

Mr Dimmer said that the reasons for the works were set out in Mr Solomon's letter to the lessees dated 20<sup>th</sup> June 2003 a copy of which was provided to the Tribunal. This stated that the opportunity was taken during the progress of the Major Works of (a) widening the roadway at the northern end of the block to ease the previously restricted parking space and to provide easier access for the oil tankers and the Council's refuse vehicles, and (b) installing a 'bell mouth' detail at the base of the main walls, to direct water away from the lower part of the walls on all elevations.

Mr Dimmer said that the road surface was badly broken and constituted a trip hazard and a health and safety issue.

The Tribunal's decision:

The Tribunal finds that the costs are recoverable within the terms of the lease. The Tribunal inspected the works that had been carried out and consider that the costs were reasonable and reasonably incurred.

£77.73 is due from the Respondent to the Applicant in respect of this item.

20. Additional costs – widen and make good existing bell mouth

Total cost: £3658.95 (including VAT)

Charge to the Respondent: £38.27

Mr Fersht said that no consultation had taken place and that it was uncertain why the works were necessary.

Mr Dimmer said that the reasons were set out in Mr Solomon's letter to the lessees dated 20<sup>th</sup> June 2003.

The Tribunal's decision:

The Tribunal finds that the cost is reasonable and reasonably incurred.

£38.27 is due from the Respondent to the Applicant in respect of this item.

21. Carry out decorations to all internal recess rooms off main staircase

Total cost: £8153.38 (including VAT)

Charge to the Respondent: £85.32

Mr Fersht submitted that this item was not payable under the terms of the lease.

Mr Dimmer stated that the storerooms were open to the elements on the courtyard side and the opportunity was taken to access them via the standing scaffolding.

The Tribunal's decision:

The Tribunal finds that the costs are recoverable under the terms of the lease and that the costs are reasonable and reasonably incurred.

£85.32 is due from the Respondent to the Applicant in respect of this item.

22. Refurbish ironmongery to all communal entrance doors and replace as necessary, re-paint internal face of doors

Total cost: £6839.48 (including VAT)

Charge to the Respondent: £71.54

Mr Fersht contended that this work was covered under items 3.35 to 3.47 of the Specification.

Mr Dimmer stated that this work was not included in 3.35 to 3.47, and was deemed desirable at the time.

The Tribunal's decision:

The Tribunal agrees with Mr Dimmer and finds that the cost was reasonable and reasonably incurred.

£71.54 is due from the Respondent to the Applicant in respect of this item.

Major works – 2003

Internal works, repairs and redecorations to the common parts.

23. Ceiling repairs

Total cost: £2549.75

Charge to the Respondent: £26.67

Mr Fersht stated that the work described in item 3.1 of the Specification did not take place. He stated that one man painted over patches of ceiling in his block and that there was no plastering. The results were patchy. The work to his block took one afternoon.

Mr Dimmer said that the area of ceiling repairs was reduced from the figure in the Specification to that shown in the Contract Instruction. The charge of £217 per staircase plus VAT was reasonable. The assertion that the work took one man one afternoon was hypothetical.

The Tribunal's decision:

At the inspection the Tribunal observed that the ceilings were in good condition. The Tribunal finds that the works were of a reasonable standard and that the cost was reasonable and reasonably incurred.

£26.67 is due from the Respondent to the Applicant in respect of this item.

24. Plastering of walls

Total cost: £11,139.00

Charge to the Respondent: £116.51

Mr Fersht stated that very little work had been carried out. The workmen did odd patches of plastering on the walls, and in a shoddy fashion. The work was of a poor quality and although workmen returned to patch it up the result remained very poor. The work on the Respondent's block occupied one or two days by one man.

Mr Dimmer said that the plastering was re-measured on completion and subject to a rate set out in the Specification. The amount of time taken to carry out the work was not recorded but is irrelevant.

The Tribunal's decision:

The Tribunal noted that the amounts of plastering as measured appear on the Contract Instruction dated 19<sup>th</sup> October 2003. The Tribunal finds that the works were of a reasonable standard and that the cost was reasonable and reasonably incurred.

£116.51 is due from the Respondent to the Applicant in respect of this item.

25. Floor finishes

Total cost: £587.50 (including VAT)

Charge to the Respondent: £6.15

Mr Fersht contended that there were no previous floors coverings to strip as envisaged in the specification, as the floor were concrete. Further there were no cracks in the floor. He contended that these were works of improvement and not recoverable under the lease. He denied that the floors had been slippery prior to the works. Mr Dimmer stated that the work was partly undertaken for health and safety reasons.

The Tribunal's decision:

The Tribunal finds that the costs were reasonable and reasonably incurred and are recoverable under the terms of the lease.

£6.15 is due from the Respondent to the Claimant in respect of this item.

26. Joinery repairs

Total cost: £8812.50 (including VAT)

Charge to the Respondent: £92.18

Mr Fersht stated that there is very little joinery in the blocks. He stated that the only wood is around the door frames. The windows were set in concrete and were new as he said that they had been replaced in 2000. There are only 3 windows in the internal common staircases. A 'thorough overhauling' did not take place. The doors to the flats were varnished in a quick and shoddy fashion. The cost of the work to the one electrical intake cupboard in each block was high.

Mr Dimmer stated that there are a total of 100 doors (80 entrance doors to individual flats and 10 doors to the main entrances). All these required inspection and an overhaul as necessary. Re-glazing was carried out to certain doors including the metal framed doors to the internal communal storeroom. £250 per door, frame, mortise lock and closer is reasonable.

The Tribunal's decision:

The Tribunal notes that in the Contract Instruction dated 19<sup>th</sup> August 2004 the provisional sum of £5000 for joinery repairs has been omitted and the sum of £5000 to 'Form timber casing around electrical risers' has been added. The Tribunal considers that the standard of the work was reasonable and that the cost was reasonable and reasonably incurred.

£92.18 is due from the Respondent to the Applicant in respect of this item.

27. Ceilings and soffits

Total cost: £2932.80

Charge to the Respondent: £30.68

Mr Fersht contended that item 3.1 on the Specification related to taking down defective ceiling plaster and re-plastering to achieve a smooth surface. Item 3.11 referred to making good all cracks to ceilings, preparing for and painting. However the only work that was done to the ceiling was painting over patches. Mr Dimmer stated that there was no duplication. The work described in 3.1 referred to the replacement of defective ceiling plaster. Item 3.11 referred to the making good of cracks and blemishes in the remaining areas and soffits and for the redecoration of all these areas. He considered that the cost was not excessive.

The Tribunal's decision:

The Tribunal finds that there was no duplication. The cost was reasonable and reasonably incurred.

£30.68 is due from the Respondent to the Applicant in respect of this item.

28. Walls

Total cost: £18,177.25 (including VAT) and £4700.00 (including VAT)

Total charge to Respondent: £190.13 and £49.16

Mr Fersht contended that there was duplication. He also contended that the painting and plastering were done by the same people and that the work was of a very poor quality. The paintwork was patchy and although workmen returned to remedy the situation the problem remains. Mr Fersht only saw one coat of paint being applied. Eggshell paint was charged for without justification.

Mr Dimmer stated that there had been no duplication. The works charged for were works to those areas remaining after the plaster had been repaired and were included in the redecoration of the walls. He denied that only one coat of paint had been applied. Eggshell finish had been specifically requested by the lessees.

The Tribunal's decision:

Having inspected and considered the evidence the Tribunal finds that the work was of a reasonable standard and that the cost was reasonable and reasonably incurred.

£190.13 and £49.16 is due from the Respondent to the Applicant in respect of this item.

29. Joinery

Total cost: £9893.00 (including VAT)

Charge to the Respondent: £121.59

Mr Fersht contended that there was an element of duplication in this charge. He also contended that the work was of a poor quality. He stated that there was only one set of communal doors in each block and each had been worked on for a maximum of 4 hours.

Mr Dimmer stated that there was no duplication and gave reasons. He considered that the work and cost were reasonable.

The Tribunal's decision:

The Tribunal finds that the joinery works were of a reasonable standard and that the costs were reasonable and reasonably incurred. There was no duplication.

£121.59 is due from the Respondent to the Applicant in respect of this item.