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Residential
Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A AND 20C OF THE LANDLORD AND TENANT ACT 1985

Ref: LON/00AH/LIS/2005/0086

Property:	Flats 1, 2 & 9, 1 Tennison Road, SE25 5SA
Applicants:	1) Miss A Mason and Mr R Dookiesingh 2) Miss A Tobin 3) Mr S Stephens
Respondents:	Mr D M Poulter Mrs E Poulter
Tribunal:	Mr J M Deaner LLB MPhil Mrs H Bowers MRICS Mr A Ring

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BACKGROUND

The Applicants applied to the Tribunal on 30 September 2005 for a determination in respect of the years 2003, 2004 and 2005 following on order from Croydon County Court by District Judge Mills dated 30 September 2005. The order resulted from proceedings taken by the Respondents following the issue of a notice under Section 146 of the Law of Property Act 1925 against Mr Dookiesingh and Miss Mason.

Number 1 Tennison Road is a large Victorian house comprising 9 flats in the main building and a detached single storey house (referred to by the parties as the coach house) in the grounds at the rear of the main property. Leases were granted for a term of 99 years from 25 March 1981. A copy of a lease of Flat 1 was produced to the Tribunal and it was assumed that the leases were all in the same format. The Third Schedule to the leases provides for maintenance of the main structure and common points of the building, decoration, lighting, and insurance obligations on the part of the landlord. Clause 2(11) provides for a maintenance obligation on the part of the tenants. The extent of the individual flats is defined to include windows and windows frames.

THE MATTERS IN DISPUTE

These are as follows:-

(a) The Applicants claimed that in 2001 they received a demand for £11,000 for exterior decoration without quotations which they queried and delayed payment until 2002. Works were carried out in 2002 but never completed. Delay caused deterioration in the condition of the building. The quotation which was accepted was from R Cooper in the sum of £4,800.

The work carried out was unsatisfactory in that no undercoat was applied, loose flaky paint was not removed, no repairs were made to wood, and the paint was of poor quality. They were charged for scaffolding which was not used and for an additional window which had not been quoted for. The invoice from R Cooper included additional hiring charges for labour and equipment due to bad weather.

In response the Respondents stated that as the lessees of the flats were in financial difficulties, they had tried to keep costs down to a minimum. They confirmed that an undercoat had been applied and flaky paint removed – no complaints had been made at the time. The contractor had used a cherry-picker and had not quoted for the extra windows as they had not been given access previously. The account included a sinking fund contribution and funds were absorbed by non-payments, shortfall and payments for rotten timbers (for which photographs were provided). It emerged in evidence that the actual cost was £7,120 made up of two invoices for £4,730 and £1,350 plus an element from another invoice of £1,305. The Applicants accepted that £7,000 was a reasonable cost for works of this scope and nature but not for the standard actually achieved. The Respondents argued that the state of repair of the window frames was the Applicants' responsibility.

(b) The Applicants complained that service charges for 2004/2005 had doubled since September 2003. The Respondents justified the increase as representing the lessees' contribution to the sinking fund. The Respondents argued that the sinking fund had needed to be increased to deal with a shortfall in funds and to ensure that there were adequate funds for future maintenance. It emerged in evidence that the £11,000 demanded of the Applicants had been used to carry out the major works, and replenish the sinking fund.

(c) The Applicants stated that maintenance had been suspended in 2004 but they were still charged for works which had not been carried out. During the relevant period the lessees of Flats 6 and 9 had carried out cleaning and maintenance work. This was not accepted by the Respondents.

(d) General inadequate and poor maintenance were alleged by the Applicants. Garden maintenance was irregular and had to be dealt with by resident flat owners. Interior cleaning was inadequate. The cost of "supposedly" tidying the garden in 2004 was unnecessarily high. The Respondents stated that they relied on the flat owners to notify them of any problems and they would

respond appropriately. They explained in detail the work carried out to a blocked drain. Cleaning was carried out regularly and again any shortcoming should be brought to their attention. As to the suspension of maintenance, the Respondents stated that the cleaning was only suspended for one week and the gardening during the winter months. Costs of cleaning were £14-50 per week and grass cutting £25 per cut. The Applicants had argued for £10 per week for cleaning. Mr Stephens argued that the cost of skips and work carried out in 2004 was too high and the work shall not have cost more than £300 plus VAT for both the subject block and the adjoining Pebworth Court. The Respondents explained the cost with detailed figures. As to management charges the Applicants complained that the Respondents' management was minimal and ineffective, the Respondents arguing that they were trying to minimise costs. Particular objection was raised to the cost of Section 146 Notices.

(e) The collapse of the garden wall in January 2005 caused particular concern. A number of shrubs were destroyed and garden maintenance made difficult. This was not denied by the Respondents who were endeavouring to ensure that the Housing Association who owned the wall would remove it. Other complaints related to the inability of the lessees to turn off the main water supply when necessary, the potential hazard of the tree in front of the property, the use of the bin area as a dumping ground for the neighbourhood, and the deterioration in the general condition of the building. These were not denied by the Respondents. They referred to the age of the building and accepted that the woodwork at the property was rotten but that the lessees were reluctant to pay for replacement.

(f) The Applicants alleged that there were discrepancies in the accounts which did not appear to have been verified by an accountant. The Respondents accepted that there had been some errors. They explained that the accounts were audited but specific items not verified – to do so would increase administration costs.

(g) The Applicants stated that notices in accordance with Section 20 of the Landlord and Tenant Act 1985 had not been issued except in the case of exterior painting. The Respondents produced a copy of a Section 20 Notice dated 26 March 2002 and stated that charges for general maintenance had been agreed in the past and the Section 20 procedure would not apply to emergency repairs.

(h) Referring to specific disputes Miss Mason and Mr Dookiesingh reiterated complaints referred to above with reference to the exterior, the bin sheds, and the window sills. The Respondents claimed they could do nothing further without replacement of the sill and window. Miss Tobin of Flat 2 queried the doubling of service charges.

The Applicants in addition alleged unethical conduct and exorbitant figures quoted for lease extensions.

INSPECTION

The Tribunal inspected the exterior of the building and common parts. Number 1, Tennison Road is a nineteenth century house adjoining a modern block, Pebworth Court, which is also managed by the Respondents. There is a large grassed area adjoining both blocks and a car park at the rear. The exterior was generally in poor condition. Some roof tiles had slipped and paintwork was peeling in several areas. Rotten woodwork and window sills in need of attention were noted. The internal common parts were in fair condition only. The collapsed wall was clearly a potential safety hazard.

DECISION

The Tribunal considered from their inspection that the overall maintenance of the building was unsatisfactory but the Respondents had generally kept their expenses to a minimum. However, there was no planned maintenance and the Respondents were unsure of the RICS code.

They decided that although the responsibility for the window repairs was that of the leaseholders the Respondents should not have allowed the main decoration contract to include the rotten woodwork. It was obvious from inspection that while some minor repair work had been carried out, some of the painting should not have taken place. The Tribunal determined that a reduction of 20% shall be made from the figure of £7,120, reducing it to £5,896.

The Tribunal, noting that the property was in poor repair and a long term maintenance plan necessary, accepted the need for an increase in the sinking fund. The Respondents argued that they were trying to minimise the expenditure in the interest of the leaseholders but that the lack of investment in the building resulted in its poor condition.

The increase in service charges for 2004/5 was considered to be justified and charges were not levied for the period during which maintenance was suspended. The regular charges for gardening and internal cleaning were acceptable. They were in line with the cost of employing someone to attend the property to provide a very basic cleaning and gardening service. The charges of £1600 for work carried out in 2004 were allowed and the Respondents' evidence of costs involved accepted. The administration charge of 12½% was reasonable and in line with normal practice. The Tribunal determined that although the Respondents were not managing the property well, their charges were fairly low and some management was taking place. The only charges considered "excessive" was the charge for Section 146 Notices for which £100 plus VAT only was allowed.

The Applicants complained about the condition of the building and the failure of the Respondents to deal with outstanding problems of which the collapsed wall was particularly evident were noted. However, the Tribunals remit is to determine liability to pay service charge and the reasonableness of service charges and the allegations of breaches of a landlord's repairing obligations under a lease are matters for the Courts and not the Tribunal. The Respondents were entitled to serve Section 146 notices if they considered they were justified and these could be challenged by the

Respondents. However, the Applicants had acted reasonably in requesting the Tribunal to consider the service charges claimed as in view of the poor state of repair of the building and the Tribunal, exercising its powers under Section 20 of the Landlord and Tenant Act 1985, determined that the landlord would not be entitled to recover costs involved in the Tribunal proceedings from the Applicants.

Chairman JULIAN DEANER

Date 18 APRIL 2006

JG