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LON/00AN/LSC/2006/0117

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTIONS 27A & 20C OF THE LANDLORD & TENANT ACT 1985

Applicant:	**MS BRIGITTE LARDIER**
Respondents:	**CONCERTO PROPERTIES LTD**
Represented by:	
Re:	**FLAT 2, 139 HURLINGHAM ROAD, LONDON SW6**
Hearing date:	**10th July 2006**
Appearances:	**MISS B LARDIER**
	For the Applicant
	MR F PHILLIP
	For the Respondent

Members of the Residential Property Tribunal Service:

MR ADRIAN JACK
MR P CASEY MRICS
MS J DALAL

London Leasehold Valuation Tribunal File Ref No.	LON/00AN/LSC/2006/0117

Leasehold Valuation Tribunal: Full reasons for decision.

Landlord and Tenant Act 1985

Address of Premises	The Committee members were
Flat 2, 139 Hurlingham Rd London SW6 3NH	Mr Adrian Jack Mr P Casey MRICS Ms J Dalal

The Landlord: **Concerto Properties Ltd**

The Tenant: **Ms Brigitte Lardier**

Background

1. By an application received by the Tribunal on 4th April 2006 the tenant applied for a determination of the service charges payable by her in respect of Flat 2, 139 Hurlingham Road, London SW6. The past years in respect of which she complained were:

    a. 29th September 2001 to 28th September 2002,

    b. 29th September 2002 to 28th September 2003,

    c. 29th September 2003 to 28th September 2004 and

    d. 29th September 2004 to 28th September 2005.

    She also complains about the current service charge year 29th September 2005 to 28th September 2006.

Hearing and description of the property

2. The Tribunal held a hearing on 10th July 2006. The landlord was represented by Mr F A Phillip, the brother of the managing agent, Mr N D Phillip, who trades as The Avenue Agency. The tenant appeared in person. She gave her evidence in a courteous and restrained manner.

3. For reasons which we shall explain in relation to the relevant items of dispute, the Tribunal did not consider that an inspection was likely to assist in making its decision. Neither party ultimately wished to insist on an inspection, so the Tribunal decided to dispense with an inspection.

4. The description of the property is therefore taken from the documents in the bundle prepared for the hearing. 139 Hurlingham Road is a three storey house comprising four flats. The applicant's flat is a studio at the rear of the first floor. There is a large tree in the front yard. There is a bin area in the front yard, with four compartments, one for each flat. At the back there is a small garden with access solely from the ground floor flat. Entry to the flats is obtained through the front door, which leads onto a common hallway and stairs. At the rear there is an area of flat roof.

History

5. The tenant purchased her flat in 1975. The current agents took over the management of the block in 1994. In 2000 the current landlord took proceedings in this Tribunal for the determination of the reasonableness of service charges between 1991 and 2000. Various other issues were raised by both parties. At that time the jurisdiction of the Leasehold Valuation Tribunal was smaller than it is now.

6. On 26th March 2001 this Tribunal under the chairmanship of Mr Nicol determined so far as relevant to the current proceedings:

    a. that it was reasonable for the managing agents to make up the tenant's service charge accounts to 28th September rather than to 24th March as the lease provided;

    b. that it was not unreasonable that the tenant pay the 17 per cent apportionment of the total service charges as specified in the lease;

    c. that the tenant was obliged to pay 17 per cent of the managing agents' fees for the block as a whole; and

    d. that the 10 per cent charged by the managing agents in respect of substantial repair works was reasonable.

7. The tenant failed to pay the service charges as determined by the Tribunal and the landlord commenced proceedings in the West London County Court under action number HI002651. It appears that the tenant failed to comply with an order of the Court which resulted in her being debarred from defending the action. On 6th February 2002 District Judge Madge (as he then was) gave judgment for the landlord in the sum of £4,695.60, interest of £300 and costs of £285, a total of £5,280.60.

8. The sum of £4,695.60 comprised the amounts determined by the Tribunal for the service charge years 1991 to 28th September 2000, the final amounts claimed for the service charge year 2000-2001, and the interim service charges claimed for the service charge year 2001-2002.

9. Substantial works were done in 2001-2002 and the interim service charge for that year raised against Ms Lardier included £1,679.36 as a payment on account of the proposed works.

10. On 9th May 2002 District Judge Madge made an interim charging order over the tenant's flat to secure the judgment debt of £5,280.60. At the return date on the interim charging order on 14th June 2002 His Honour Judge Cowell made the charging order final. By this time, the tenant had been able to pay off a substantial part of the judgment debt, so the amount charged was limited to £1,583.27. The costs of the charging order application were assessed at £285 and added to the amount charged.

11. In the mean time the tenant had sought to appeal against the original order of District Judge Madge of 6th February 2002. An order was made on 14th June 2002, with which the tenant failed to comply. On 8th August 2002 Judge Cowell made an order that unless the tenant complied with the order of 14th June 2002 her appeal should stand dismissed with costs to be assessed in detail on the standard basis if not agreed. Ms Lardier did not comply with the Order and her appeal was accordingly dismissed.

12. The costs were not agreed, so the landlord commenced proceedings for a detailed assessment of the costs. These proceeded under the action number WL306184. On 26th April 2005, District Judge Wright ordered that the tenant pay the landlord's costs in the sum of £3,725.30, plus the costs of the detailed assessment in the sum of £1,172.50 and the costs of a hearing on 4th April 2005 in the sum of £658.47.

13. In the mean time on 15th March 2003 the tenant paid off the balance of the £5,280.60 judgment debt under the order of 6th February 2002 and obtained a certificate of discharge.

Lease and law

14. The lease makes provision for the tenant to pay a maintenance charge calculated as 17 per cent of the relevant expenditure in the service charge year. As noted above this lease provides for a service charge year ending on 24th March, however, in the light of the earlier Tribunal decision the parties have proceeded on the basis that the service charge year should be treated as being to 28th September instead.

15. The lease provides in para 12 of the Eighth Schedule for the landlord's legal and other costs to be part of the costs and expenses charge upon the maintenance fund. There is no other provision allowing the landlord to recover legal fees against an individual tenant. The effect of this is that a landlord involved in litigation (whether in Court or before the Tribunal) with the tenant does not have a contractual right to recover legal costs

against that particular tenant. The only way of recovering costs against an individual tenant is if the Court (or, where it has such a jurisdiction, the Tribunal) makes an order to that effect. Otherwise the landlord's legal costs are a charge on the maintenance fund, which is payable by the tenants of all four flats in accordance with the percentages specified in their leases.

16. Para 2 of the Fifth Schedule provides for the tenant to pay service charges on account half yearly on 29th September and 25th March. The amount is specified as the £15 or one half of the amount of the maintenance charge for the immediately preceding maintenance year, whichever shall be greater.

17. Section 19 of the Landlord and Tenant Act 1985 provides:

> "(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period:
>
> (a) only to the extent that they are reasonably incurred, and
>
> (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;
>
> and the amount payable shall be limited accordingly.
>
> (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction of subsequent charges or otherwise."

Section 27A of the 1985 Act gives the Tribunal jurisdiction to determine the amount of service charge payable and by whom, to whom, when and in what manner.

Service charge accounts and running account

18. The landlord provides three types of statement. Firstly there is an annual service charge account showing (a) the actual outturn for the old service charge year with any adjustments to be made (b) any adjustments to be made between the amounts raised on an interim basis in the old year and the actual outgoings and (c) the payments to be requested on account in respect of the new service charge year. Secondly there are six monthly statements of account, showing the amount brought forward from the previous statement and amounts subsequently due and paid. Thirdly there is a running account showing all debits and credits.

19. There are in the current case discrepencies between the first type of account on the one hand and the second and third documents on the other. The second and third documents correspond exactly. We will consider

first the tenant's complaints on the annual service charge account and then her complaints on the running accounts.

Management fees

20. The tenant disputed a number of specific items in respect of the service charge years which are before us. In relation to all of the years, however, she disputed the amount charged by the managing agents. The amount charged to her was £130.24 for 2001-02, £137.36 for 2002-03, £141.42 for 2004-05, £147.73 for 2004-05 and £167.79 for 2005-06.

21. In the Tribunal's judgment these are reasonable sums for the work involved. This is a small block of flats, so the work relatively heavier per flat than in a larger block. Although (as will be seen) we make some criticisms particularly of accounting matters, the agents are in general providing a reasonable service. There can be no doubt, as Mr Phillip told us at the hearing, that dealing with Ms Lardier has been time consuming. The tenant adduced no evidence that another agent might be willing to take over the block at a cheaper price. From the Tribunal's own knowledge it is unlikely that a cheaper firm could be found for this block. Accordingly we make no disallowance in respect of the management fees.

Service charges 2001-02

22. The tenant's only challenge in the 2001-02 service charge year was to the figure for repairs. The amount claimed in respect of the whole block was £10,669.11, of which the repairs constituted £9,841.11. It will be recalled that judgment was given in respect of a sum for the 2001-02 service charge year in the Order of District Judge Madge of 6th February 2002. However, the sum awarded at that time was solely in respect of interim service charges. The parties agreed before us that the Tribunal retained jurisdiction to determine the final service charge figure.

23. The amount demanded by way of interim service charge was in fact £267.68 more than the cost in fact incurred, so the landlord gave a credit. Ms Lardier's share to be refunded was £45.34.

24. The Tribunal has difficulty understanding the basis on which the landlord obtained the judgment it did in the County Court for the interim service charges in this service charge year. The lease provides that the payment on account of service charge should be the same as the actual amount incurred in the previous year. There is no provision for estimated demands. Mr Phillip said that the landlord refused to do the work unless it had the money up-front. That may well be a reasonable position to adopt, but it is not what the lease provides. However, the Tribunal has no jurisdiction in relation to the County Court decision.

25. The tenant's first complaint is that a figure had been included for repairing the roof, but that no repairs had been done, notwithstanding that she said there were missing or lose slates. However, it appeared that the builder had in fact charged nothing for the roof. Accordingly there was nothing to disallow.

26. Her second complaint was in relation to the bin store. Originally when giving evidence the tenant said that the bin store had not been touched, so that the figure of £385 claimed in respect of that should not be recoverable. However, later in her evidence she accepted that the builders had in fact replaced the doors to the bin store. This was all the builder contracted to do and no evidence was adduced that the sum charged for this was unreasonable. The tenant did not contend that the doors themselves were defective. Her complaint (as it was ultimately formulated) was that the frame for the bins area should have been replaced as well.

27. In our judgment, the amount for the doors is a reasonable figure. If the frame had been replaced as well this would have cost more and the tenant would have been charged more. It is not for this Tribunal to decide if the landlord should have carried out more extensive works.

28. The tenant's third complaint concerned the replacement of a gate post. Her objection here seemed to be based on the misapprehension that a fence post had been replaced. The fence posts are currently being held up by ropes. The estimate for works in 2001-02 included the replacement of the gate. It is readily understandable that at the same time the opportunity should be taken to replace the gate post. We did not consider that at this stage we would be able to tell from inspecting the gate post whether it had been replaced in 2001-02 or whether it was older. On the evidence we considered that the gate post was replaced and the figure of £50 charged for it was reasonable.

29. The fourth complaint concerned the lining paper used in the common parts. This was a claim for £18 for the provision of chip wall-paper. Again the tenant said that the landlord would have done better to install more expensive paper, which was less likely to be damaged by the families with small children who live in the block. Again, however, it is not for the Tribunal to decide whether more expensive work should have been carried out. The sums claimed for the work actually done are in our judgment reasonable.

30. The tenant originally made a complaint about sums expended on air vents at the property, but this was abandoned at the hearing.

31. Accordingly we make no disallowance in respect of this service charge year. The judgment debt has been paid in full. The tenant is entitled to a credit of £45.34 on the preparation of final accounts for this service charge year over the amount payable on the interim accounts in respect of which the County Court judgment was given..

Service charges 2002-03

32. The tenant complained solely of the amount of £546.36 charged to the block in respect of work done on the tree at the front of the property. Ms Lardier's case was that it would have been better to cut the tree down. Again in our judgment it is not for the Tribunal to decide whether the tree should be cut down or managed instead. No evidence was adduced that the sum claimed by the tree surgeon was unreasonable. Accordingly we disallow nothing in this service charge year.

Service charges 2003-04

33. The only complaint made by the tenant in this service charge year is in respect of the roof. Mr Phillip's evidence, which was not disputed by the tenant, was that there was an emergency. The flat roof at the back of the property had cracked and water was pouring into the building. In addition to a repair of the flat roof, it was possible that the sky-light was letting in water and that needed to be investigated.

34. The tenant's chief complaint was that the roof should have been done in 2001-02, however this complaint is based on a misapprehension. The estimate given as part of the 2001-02 works provided an allowance of £250 in respect of the replacement of slates (which in fact was not carried out). Nothing was said in 2001-02 about the flat roof or the skylight.

35. The Tribunal knows from its own experience that flat roofs and skylights can fail at short notice. No evidence was adduced that the amount claimed was unreasonable. In these circumstances the Tribunal makes no disallowance.

36. There may be an issue as to whether technically the landlord was required to carry out a consultation under section 20 of the Landlord and Tenant Act 1985 in respect of the works to the roof. If the landlord asks for a dispensation then the Tribunal would have no hesitation (if it be required) in granting a dispensation under that section. This was an emergency situation, where a comparatively modest cost was being incurred. No possible criticism can in our judgment be made of the landlord's actions.

Service charges 2004-05 and 2005-06

37. There were no disputes in relation to 2004-05 and 2005-06 other than the management agents' fees, in respect of which we have made not adjustment.

Maintenance reserve account

38. The Tribunal draws the parties' attention to one matter which causes us concern. The service charge accounts show the maintenance reserve fund as comprising the amount shown in the previous year's accounts, the amounts added to it, the amounts spent, the interest accumulated, so as to give the balance carried forward. This account is accompanied by the explanation that when "the contributions to the maintenance reserve fund.. are received the amount held in the fund will be" as is then set out.

39. This treatment of the maintenance reserve fund in our judgment is misleading. Mr Phillip told us candidly at the hearing that there was in fact no money in the reserve account, because it was overdrawn, as a result of Ms Lardier not paying her maintenance contribution. No one reading these accounts would realise that this was the position. The true position should be shown on the accounts.

Accounting

40. It follows that the Tribunal has made no deductions at all in the amounts demanded in the service charge accounts in the relevant service charge years. This is not, however, the end of the matter, because the landlord's running accounts are in the Tribunal's judgment wholly misleading and contain various items which cannot be justified.

41. On 6th February 2002 the landlord obtained judgment for all sums due up to then by the tenant. These amounted to £4,695.60, deducting the refund for 2001-02 of £45.34, gave a sum due of £4,650.26. The account proceeded to add to this £50 described as "judgment on legal costs", £300 "judgment on interest" and £285 "judgment on costs".

42. These last two figures were awarded by the County Court, but the figure of £50 was not. Mr Phillip was unable to provide an explanation for how the £50 appeared in the account or how it was justified. He accepted that the figure needed to come out.

43. On 19th March 2002 a figure of £2,900 was put in the account with the explanation "County Court hearings". Again, no costs order in this amount had ever been made. Again Mr Phillip accepted that this substantial sum should come out of the account.

44. Then on 22nd September 2003 the account shows a payment made by the tenant of £4,444.83. It will be recalled that on 15th March 2003 the tenant obtained a certificate of satisfaction of the judgment debt from the Court. The Court appears to have held on to the money which Ms Lardier had

paid into Court. It was only paid out to the landlord's solicitors in September 2003 with £23.93 interest. Instead of the full £5,280.60 plus £23.93 being credited to the tenant's account, Mr Phillip says that the solicitors deducted various monies which (as between them and the landlord) were owed to them and paid the rest over to the managing agents. The agents credited the actual amount received by them to the tenant's account rather than the full amount.

45. There is no basis in our judgment for this treatment of the monies received. Once the tenant paid off the judgment debt, the sums representing the judgment debt should have been shown as paid off.

46. Once the payment made on 22nd September 2003 is shown as £5280.60 plus £23.93 interest, instead of £4,444.83, the amounts which stand to be altered in the running account as it appears at page 105 of the bundle are as follows:

27.3.06	Amount claimed due		£4,968.65
LESS			
23.1.02	Legal costs	50.00	
25.3.02	County Court hearings	2,900.00	2,950.00
			2,018.65
22.9.03	Credit due	5,304.53	
LESS	Credit given	4,444.83	860.70
	TOTAL DUE		£1,157.95

47. No further charges have fallen due since 27th March 2006. It is common ground between the parties that the tenant is up-to-date with her payments of ground rent. The amount of service charge payable by the tenant to the landlord as at today's date is therefore £1,157.95.

48. It order that there be no misunderstanding, this decision on our part does not affect the sums owed by the tenant to the landlord under the Order of District Judge Wright made on 26th April 2005. That Order is a separate Order of the County Court. We have no jurisdiction in relation to it. Any question as to the amount outstanding under it or as to its enforcement is a matter for the County Court.

Costs

49. At the hearing Mr Phillip indicated that the landlord did not intend to raise any sum against the maintenance fund in respect of the costs of these proceedings before this Tribunal. Since this is the only way in which the

landlord can recover the costs of these proceedings, we do not, in the light of Mr Phillip's statesmanlike concession, consider that there is a need to make an order under section 20C of the Landlord and Tenant Act 1985.

50. So far as the fees payable to the Tribunal are concerned, the amounts in question are the £100 fee for making the application and the £150 hearing fee.

51. In respect of the specific items in respect of which she complained, the tenant has lost comprehensively. However, in relation to the running account she has had a large measure of success. The amount due has been reduced from the £4,968.65 shown in the running account to £1,157.95.

52. We consider it likely that, if the landlord had provided a proper account showing what was properly due by way of service charge, without putting illegitimate figures in the account, a hearing could have been avoided. We note in this regard that the tenant requested that this application be dealt with on paper.

53. Putting these considerations together, we consider that a fair outcome is that the tenant should pay the cost of the application, but that the landlord should pay the cost of the hearing. There will therefore be an order that the landlord pay the tenant £150 in respect of the costs of the hearing. In practice this will involve the landlord giving the tenant a credit for that sum in the running account, as altered in accordance with this decision.

DECISION

54. The Tribunal accordingly determines:

a. **that the outstanding service charges payable by the applicant tenant to the respondent landlord as at 11th July 2006 are £1,157.95; and**

b. **that the respondent landlord do pay the applicant tenant the hearing fee in the sum of £150.00.**

Adrian Jack, chairman July 2006