

2708

LON/00AY/LSC/2006/0174

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR
THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE,
ON AN APPLICATION UNDER SECTION 27A & 20C OF THE
LANDLORD AND TENANT ACT 1985, AS AMENDED**

APPLICANT: Miss Sharon Moses

RESPONDENTS: Christchurch House SW2 LTD

REPRESENTED BY: Ms E Gibbons (Counsel)

ADDRESS: 69 Christchurch House, Christchurch Road,
London SW2 3UD

APPLICATION DATE: 05 May 2006

HEARING DATE: 11 September 2006

APPEARANCES: Ms Sharon Moses

For the Applicant.

Ms E Gibbons (Counsel)
Mr D Haines (Director)
Mr F Dobson (Director)
Mr D Tosan (Property Manager)
Mr D Haines (Solicitor)
Mr S Lines (Expert Witness)

For the Respondent

TRIBUNAL MEMBERS: Mrs C Lewis FCI Arb
Mr C Kane FRICS
Mr C Piarroux JP

69 CHRISTCHURCH HOUSE, CHRISTCHURCH ROAD, LONDON SW2

1. This was an application under Section 27A of the Landlord and Tenant Act 1985, as amended, relating to the service charge years ending September 2005 and September 2006, and consideration of future expenditure for the year ending 2007.
2. At the hearing, after hearing the parties, and by agreement, the issues were narrowed to consideration of the tenant's contribution to the Reserve Fund in the year to September 2005, and in the sum £2,581.59.
3. The Applicant, Ms S Moses, holds the premises under the terms of a lease dated 6 October 1977 for a period of 99 years from 15 January 1976.
4. The provisions for the payment of the service charge are contained in Clause 4(4) and the Fifth Schedule of the lease.
5. A pre-trial review had been held on 16 June 2006, when the Applicant had appeared in person and the Respondent was represented by Ms E Gibbons of Counsel.

INSPECTION

6. The Tribunal inspected the property with Ms Moses, Ms Gibbons, Mr Haines and Mr and Mrs Dobson. Christchurch House is a six-storey block of 110 flats completed in 1939 and is situated on Brixton Hill at the junction of Christchurch Road. The accommodation is planned around three sides of the corner of Christchurch Road and has a wide archway in the centre of the main elevation forming the entrance for pedestrians and cars. The main entrance to the various blocks are from the central courtyard at the rear, which is laid out as a well maintained garden.
7. It is a steel-framed, concrete-encased building with decorative brickwork to the walls, and exposed concrete to the floors, beams, columns and balconies and a flat roof covered in asphalt.
8. There is evidence of extensive corrosion in the reinforcement to the concrete, and also some cracking to the brickwork. Windows throughout the block are steel framed "Crittall" type windows, many of which show signs of rusting and corrosion.
9. The internal common parts although fairly basic were clean and carpeted. The upper floors are accessed both by staircases and three electrically operated passenger lifts which appear to be original and in need of upgrading. One lift motor room was inspected internally. The Tribunal was concerned to note that the electrical lift control unit immediately inside the door was unguarded.
10. The Tribunal also inspected the basement boiler room which was partially flooded with leakage possibly coming from the adjoining premises.

The Hearing

11. At the hearing Ms Moses, the Applicant, appeared in person, and Ms E Gibbons of Counsel represented the Respondent. Both sides submitted written submissions in support of their case.
12. Ms Moses, had purchased the lease of the flat in 2001, but was currently subletting the property. When she had first purchased the flat, she had considered that the service charges were reasonable and had always paid the charges promptly. She had received a demand from Scotts, the then managing agents, for the sum of £4,446.82 including an amount of £2,582.59 which was in respect of the reserve fund to finance further major works and this was the sum she was now contesting. She had received a Notice of Intention to carry out works dated 31 March 2006 from Scotts, which had invited her to a consultation meeting on 19 April 2005 about further refurbishment works under a framework agreement. She was also invited to make written observations in relation to the proposed works by 30 April 2006. She was unable to attend the meeting, had expected to have been advised of the outcome of the meeting and was shocked to receive the demand for service charges in October. She voiced her concerns in a letter to the Agents on 23 November 2005.
13. In her opinion, the amount charged was unreasonable because:-
 - (1) There had been no meaningful consultation, which was unlawful;
 - (2) The costs should be spread over a longer period, and the work un-prioritised;
 - (3) The service charge should be kept within amounts that reflected previous service charge years and within the RPI;
 - (4) Other means of raising the amount required should have been explored;
 - (5) There was no evidence that the proposed work represented good value, as no other quotes had been obtained;
 - (6) The need for work had arisen as a result of earlier neglect and mismanagement.
14. Ms Moses said she had asked the Managing Agents to send all correspondence to her home address, not to the flat which was sublet, but claimed that apart from the original notification letter of 31 March 2006, and service charge demands she had received no other consultation documentation.
15. Ms Gibbons, for the Respondent, called Ms Tosan of Douglas and Gordon, the current Managing Agents, Mr S Lines of Scotts, the former managing agents, and Mrs F Dobson, Secretary, Director and Shareholder of the Residents Freehold Company.

16. Mr Tosan said her company had been appointed Managing Agents on 1 August 2006 and they were reconsidering the method of dealing with the major works. They would use independent surveyors rather than entering into a framework arranged, while making use of the existing reports. Residents at the block generally wanted the work done, but wanted to know the exact cost involved.
17. Mr Lines said his company had managing the property from January 1999 to January 2006. He had issued the initial Section 20 Notice of Intention in January 2005, and the second Notice in March 2005 setting out the proposed works to be undertaken and inviting leaseholders to a consultation meeting. He confirmed that Ms Moses did not respond to either Notice with any comments or objections. A second consultation took place on 14 September 2006 and all leaseholders had been notified. He said that two of the leaseholders who were non-resident had attended this meeting, which indicated that Notices were sent to residents and non-residents. A further circular was issued on 18 October 2006 to all leaseholders which provided a comprehensive breakdown, explanation of the reserve found, and information on the major works. He had received a letter from the Applicant dated 23 November 2006 objecting to the works on the basis that she could not afford the level of charges and requesting details, to which he had responded. He had investigated an alternative funding method for the works, including a meeting at Barclays Bank, without success. In his experience and knowledge of the building the major works were necessary and the demands reasonable.
18. Mrs Dobson referred to her two witness statements. She said that the Respondent had acquired the freehold of Christchurch House in 1997 and it was a non-profit making company. All the leaseholders had been invited to become shareholders of the company and the Applicant had chosen not to.
19. In 1998, Directors of the Respondent company had commissioned a report from Avanti Architects relating to the condition of the building. This was presented in December 1998 and set out a programme of works required.
20. Some essential works on asbestos removal and electrical works to the common areas had already been carried out. She said that the estimate for the costs of the major works at that time had been prepared by Sprunts Architects. In her view, reasonable consultation had taken place with the leaseholders and the proposed works were essential.

Determination

21. The Tribunal had appreciated the orderly presentation of the bundle which was of assistance at the hearing, and the way in which the parties presented their case.

Referring to the items raised by Ms Moses listed on page 2, paragraph 13, the Tribunal finds as follows:-

- (1) It appears from the evidence that every reasonable means had been adopted by the Respondent to consult with the lessees, and that the procedure was within the requirements of the current legislation;

- (2) The Tribunal accept the consultant's expert recommendation to carry out certain works within the 5 year period, which was further confirmed by their inspection. The Tribunal was particularly concerned about the apparent dangerous condition of the lift motor room and the flooding of the boiler room both of which appear to need immediate attention;
- (3) The Tribunal was satisfied that the general service charge is reasonable and that the Reserve Fund is reasonable and within the expert consultant's recommendations. In our opinion these costs cannot reasonably be constrained within the Retail Price Index;
- (4) The Tribunal was satisfied that the Respondent did explore alternative funding but had a bank loan refused;
- (5) The Notice of Intention is a preliminary procedure without requirement to provide alternative quotations at this stage. Future costs once more will be subject to the test of reasonableness;
- (6) The Tribunal was not convinced that major works were due to earlier neglect or mismanagement, the condition of the building is as a result of ageing process and they are satisfied that the Respondent Management Company have taken correct steps since purchase of property to identify and establish a programme of works to restore property to a suitable condition;
- (7) **The Tribunal therefore find that the sum of £2,581.59 is both reasonably incurred and payable by the Applicant.**

Reimbursement of Fees

- (8) In the light of their findings, the Tribunal find that the Applicant shall not be reimbursed for all or part of her fees by the Respondent.

Chairman *CA Lewis* Date *9 October 2006*

JG