

LON/00BK/LSC/2005/0255

## **London Rent Assessment Panel**

### **Leasehold Valuation Tribunal**

#### **Determination of an application under Section 27A of the Landlord and Tenant Act 1985**

**Applicant: Shanterton Second Management Company Ltd**

**Respondent: Julian L Fernandez**

**Premises: 123a Gloucester Terrace, London, WC2 3HB.**

#### **1. Background and Application**

- 1.1 This is an application under the Landlord and Tenant Act 1985 (as amended) ('The Act') for a determination of reasonableness of specific items of service charge for the years ending 30<sup>th</sup> June 2004.
- 1.2 This case arises out of an application in the Central London County Court which has been stayed pending the determination of this Application.
- 1.3 The Freehold is owned by the lessees of Flat No's 1, 2, 3, 4 and 5 123 Gloucester Terrace.
- 1.4 The application, dated 7<sup>th</sup> September 2005, is made by Shanterton Second Management Company Ltd (The Applicant) who have responsibility for managing the services at 123a Gloucester Road, London, WC2 3HB in accordance with the terms of 4<sup>th</sup> Schedule paragraph 7 of the undated underlease to Mr Julian Fernandez (The Respondent) . All under lessees are shareholders of the Applicant Company (which is a party to the underlease) holding shares in direct proportion to their contribution to the cost of services.

1.5 The 3<sup>rd</sup> Schedule to the lease requires each lessee to pay a sum equivalent to their percentage shareholding. The shareholdings were orally agreed at the Hearing as follows

Flat 123a	22%
Flat 1	8%
Flat 2	12%
Flat 3	23%
Flat 4	18%
Flat 5	17%

1.6 Directions were issued by the Tribunal on 11<sup>th</sup> January 2006 and the Hearing commenced on 16<sup>th</sup> March 2006. At the end of the first day it became apparent that the original directions had not been followed in full and in order that the reconvened Hearing could properly identify the issues Directions Order No2 was issued on 20<sup>th</sup> March 2006. The Hearing reconvened on 22<sup>nd</sup> June 2006.

1.7 The property comprises a substantial house converted into self contained flats in the late 1960s. The Respondent occupies the basement flat and although entitled under the lease does not use the common entrance hall.

## 2. The Hearing

2.1 The Chairman explained to the parties that because the amounts in dispute fell due for payment before the 31<sup>st</sup> October 2003 the matters referred would be dealt with under statute and regulation in force at that time and not as subsequently amended by regulation following the introduction of the Commonhold and Leasehold Reform Act 2002.

The Chairman further explained that the duty of the Tribunal was to determine the amount which should reasonably be paid in respect of service provided and not to determine whether or not it had been paid.

The Parties advised the Tribunal that in order to consider the matter fully it was necessary to consider items of expenditure occurring in years prior to that ending 30<sup>th</sup> June 2004. For expediency and in order to make a complete determination the Tribunal agreed to proceed on this basis. A schedule of the matters in dispute is attached in the form of a Scott Schedule covering the period 1993 to 2004 (**Appendix 1**). Those items marked by the Applicants as written off, reversed, credited or removed are not in dispute and are therefore not matters to be determined by this Tribunal.

2.2 The Applicants employ CK Corporate Services Ltd to carry out part of the administration of the Service Charge and Mr. D Strangeways Booth appeared on their behalf with Mr. P Harris, one of the directors.

2.3 The Respondent represented himself and was supported by Mr P Williams.

2.4 Notwithstanding the terms of the lease the Applicant's case is that the amounts charged to the Service Charge Account are properly due. Contributions to the service charge account had been varied by verbal agreement of all the lessees although no formal deed of variation had been executed.

2.5 The 3rd Schedule to the lease requires the Respondent to contribute 22% of the 'cost incurred by the management company' the Applicants had, in an endeavour to reduce the matters in dispute, 'written off' certain items even though on a strict interpretation they might be recoverable.

2.6 The lease was poorly drawn in respect of the service charge and historically the Respondent along with the other lessees had agreed to an amended contribution. The Respondent contributed on this basis until the dispute in 1995 after which he insisted that his contributions be paid strictly in accordance with terms of the lease. His case is that not only are some of the amounts due unreasonable but also that he does not owe the amounts claimed if the service charge was collected in the manner prescribed by the lease.

2.7 There remain a number of significant items in dispute and the parties addressed each item as follows:

2.8 Conservatory roof repair (part of the Respondents flat) (1995). The conservatory roof was damaged by workmen carrying out redecorating in 1995. The Applicant, apparently after advice from a surveyor, withheld the sum of £430.00 from the contractors invoice. This money was subsequently paid to the Respondent by way of compensation.

The Respondent claims that when he carried out the work in 1998 the cost was actually £808.40 and as a result the sum of £378.40 is due from the Applicant. No invoice was produced in evidence. There was also a dispute as to whether the repair should be included in the service charge.

2.9 Locks and repairs (1999). The lock to the main entrance door lock was replaced at a cost of £434.75 and this sum was 'written off' by the Applicant.

The Respondent claims the total cost amounted to £569.88. No invoice was produced although the Applicants claim that this was a total for repairs for the year of which the sum of £434.75 relates to the lock change and the balance of £135.13 in respect of other repairs to the common parts.

2.10 In 2000 a sum of £428.88 for 'door locks' was claimed but £329.00 subsequently written off the balance of £99.88 being attributed to other repairs to common parts.

2.11 Legal costs and additional secretarial fees. In 1999 these totalled £1597.00.

The Respondent disputes the Applicants right to recover these costs under the lease and in particular considers they were incurred in attempting to recover amounts which were not in fact due. The Tribunal established with the benefit of the invoices that this amount was made up of additional fees to CK Secretarial Services in the sum of £172.32 and legal costs of £705.18 in respect of the recovery of service charge from another lessee and £719.50 in respect advice in connection with a dispute between three lessees (including the Respondent).

In 2000 these totalled £351.00. The same arguments were put forward. The Tribunal established that these costs were incurred in relation to the dispute between three of the lessees.

In 2001, 2002, and 2003 legal costs totalled £318.00, £359.00 and £530.00 respectively The Tribunal established that these costs were incurred in respect of unpaid service charge from the Respondent.

The Respondent claims they were not reasonable because the Applicant's were trying to recover charges that were not in fact due under the terms of the lease.

2.12 Entry phone and fire extinguishers. The Applicants had recharged only the element relating to the fire extinguishers as follows: 2000 - £300.29, 2001 - £95.50, 2002 - £249.83, 2003 - £nil, 2004 - £185.76 and 42.48.

The Applicants had credited that portion of the charge in respect of the entry phone on the basis that the Respondent no longer had access to the common hallway and derived no benefit from the entry phone.

The Respondent considered that he should not have to contribute to the fire extinguishers either stating that there were no extinguishers on his floor of the building, a fact not disputed by the Applicants.

The Applicant considered that the fire extinguishers were a benefit to all residents and the cost should be applied to each flat in accordance with the provisions of the lease.

2.13 Emergency General Meeting (2001) to discuss the removal of certain directors.

The Applicant explained that the meeting had been called at the request of the Respondent to discuss the removal of certain directors. The costs incurred related to the hire of the room and the Company Secretary's out of contract time in attending calculated at £68.00 per hour attendance and £34.00 per hour whilst travelling.

The Respondent considered that the charges were excessive and that the cost of hiring a room could have been saved by meeting in one of the flats. The Applicants did not consider it appropriate to hold this type of formal meeting on the premises and in any event the cost was reasonable.

2.14 Water damage to Flat 3 (2002). The Applicants explained the total cost incurred was £902.30 of which the sum of £533.00 was recovered from the insurers by way of an offset against the premiums in 2002 of £443.75 and in 2003 of £89.45. The Applicants further explained that the amount not recovered from insurers related to repairs carried out to the plumbing that were not covered by the policy. The difference between £1303 and £902.30 related to other repairs not disputed by the Respondent.

The Respondents' case is not that these expenditures are unreasonable but that they are not clearly identified.

2.15 Water tank repairs (2003). The Applicants explained that these 'first works' costing £781.50 had arisen as a result of a dead pigeon being found in the tank. Instructions had been issued to a contractor without reference to lessees as it was considered to be an emergency. It appeared to the Tribunal that the first works could have been an emergency. No consultation is required as the cost of the work falls below statutory limits.

The Respondent considered the cost to be excessive and the work unwarranted. He also questioned why it was necessary to use a firm with an office in Cardiff. The Applicants responded that they were satisfied the cost was reasonable given the circumstances. The Respondent put forward no alternative costing apart from a reference to a firm called 'Mark' who had estimated £200.00 for replacing the sides of the tank.

The Applicants pointed out that this price was based on the contractor being on site to do other works.

The Applicants went on to explain that following the emergency repairs it became apparent that more extensive maintenance and repair was required. These works were undertaken at an additional cost of £1716.25. The Tribunal noted that although all the work was carried out in 2003 the cost for the second part of the work appears in the 2004 accounts.

As to the 'additional works' the Applicants considered the cost to be reasonable and reasonably incurred and sought a waiver of the requirements of Section 20. The Respondents considered the cost to be unreasonable and that the Section 20 procedure had not been followed

2.16 External redecoration (2004). The Applicants case is that this was essential maintenance work carried out to preserve the building. Three estimates were obtained Lex Décor at £19,234.00, Hart Decorators at £12,380.00 and G and P at

£10,370.00. Lex Décor and G and P had quoted at the same time on the same specification in 2003. Hart had quoted in 2002. All quotes were exclusive of VAT. The Applicants explained they were not professional property managers and acknowledged that although the Respondent was notified before the works commenced this notice was not in accordance with the provisions of Section 20 of 'The Act' operative at the time. The Applicants seek confirmation of reasonableness of the amount incurred and waiver from the Section 20(9) procedure. The Applicant stated the decision was taken to proceed as a matter of urgency in order that the work would be completed before the weather deteriorated for the winter. The Applicants considered that the deteriorating state of the property, which had not been decorated for 7 years, meant that to leave the work for another winter would mean an increased cost. Furthermore urgent repairs were required to the stucco work and windows which could not be left. To carry out these works on their own would increase the cost considerably as access plant costs would be doubled. The Applicants whilst admitting formal notice was not served confirmed a letter was sent to all residents on the 5<sup>th</sup> September 2003 advising that work would commence on the 10<sup>th</sup> or 11<sup>th</sup> of September. Diary records of telephone conversations with the Respondent were produced. 5 out of 6 residents were happy to proceed.

The Respondent acknowledges that he was notified of the proposed work but not until after the contract had been awarded and that proper notice under Section 20 had not been served. He considered the specification was insufficient and not professionally prepared. A fourth estimate had been provided by the Respondent from 'Mark' a local decorator in the sum of £9788.00 no VAT payable.

The Applicants explained that the company did not employ Managing Agents simply on the grounds of cost; however 5 out of 6 lessees were happy to proceed.

2.17 The Respondent seeks an order under Section 20(c) of 'The Act' preventing the Applicant recovering the costs of this application through the Service Charge on the grounds that the action is unwarranted. The Applicant indicates their cost will be at least £500.00.

2.18 The Respondent claims compensation in the sum of £500.00.

### **3. Inspection**

3.1 In view of the historic nature of the dispute the Tribunal did not consider an inspection would be of assistance in determining the issues before them.

### **4. Findings of fact on the evidence adduced**

4.1 Notwithstanding the terms of the lease the Applicants, in an endeavour to run the services on a practical basis, had collected contributions to the service monthly in advance. Historically all lessees paid on this basis until sometime in 1996 when the Respondent stopped paying by monthly standing order seeking that the Headlessee demand service charge in accordance with the lease. This followed a dispute between the lessees resulting in the lock being changed to the main entrance hall and the Respondent being denied access.

4.2 Notwithstanding the provisions of the third schedule to the lease requiring the Respondent to contribute 22% of the 'cost incurred by the management company' the Applicants had, in an endeavour to reduce the matters in dispute, 'written off' certain items and these are marked on the Scott Schedule attached to this decision (**Appendix 1**). This resulted in certain items of service charge due under the terms of the lease from the Respondent being 'written off'.

4.2 The lease is poorly drawn by virtue of the fact that a small fixed amount is payable in advance with the balance only becoming due after the year end account has been audited thus making it very difficult to actually manage the cash flow without the co-operation of lessees.

### **5. Applicable law**

- 5.1 Sections 18 to 30 of the Landlord and Tenant Act 1985 as amended by the Landlord and Tenant Act 1987 and further amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002.
- 5.2 Consultation procedures for major works under Section 20 were significantly amended by the Commonhold and Leasehold Reform Act 2002 but did not come into force until after the 31<sup>st</sup> October 2003 and do not therefore apply to this determination.
- 5.3 At the time the works were carried out the Tribunal did not have jurisdiction to grant dispensation in respect of the consultation requirements under Section 20(9) of 'The Act'. This jurisdiction lies with the County Court.
- 5.4 The Tribunal has jurisdiction to determine whether or not costs of this hearing may be recovered through the service charge under the provisions of Section 20(c) of 'The Act' following amendment by the Housing Act 1996.
- 5.5 The Tribunal does not have the power to award compensation in the circumstances of this application.

## **6. Reasons for the Decision**

- 6.1 Conservatory Roof Repair. There was a paucity of evidence. These repairs were considered in 1995, apparently at an acceptable cost of £430.00. No evidence was adduced as to why the repairs were not undertaken until 3 years later at a cost of £808.40. The Tribunal makes no determination as to the balance of £378.40.
- 6.2 Locks and repairs (1999 and 2000). The Applicants had removed the costs of the lock from the dispute. The Tribunal makes a determination that the balances of £135.13 (1999) and £99.88 (2000) are reasonable.
- 6.3 Legal costs. The Tribunal interprets the phrase 'and the collection of payments due to the management company' in the 5<sup>th</sup> Schedule paragraph 7 of the lease is wide enough to incorporate legal costs in the collection of unpaid service charge. The paragraph as a whole is not considered wide enough to incorporate seeking legal advice in the resolution of a dispute between lessees.  
The reasonable legal fees for the years in question are determined as follows:



1999: £705.18.  
2000: £000.00  
2001: £318.00  
2002: £359.00  
2003: £530.00

- 6.4 Additional secretarial fees in attending meeting with solicitors in connection with the dispute and collection of service charges. This meeting involved both matters which are properly recoverable and which are not. In the absence of more definitive evidence the Tribunal determines that 50% of this charge is reasonable: £86.16.
- 6.5 Entry phones and fire extinguishers. The Applicants had removed the entryphone issue from the dispute. The Tribunal determines that the costs relating to the fire extinguishers are reasonable and reasonably incurred.
- 6.6 Emergency General Meeting. This had been called at the request of the Respondent and the Tribunal determines that the costs incurred are reasonable.
- 6.7 Water damage to Flat 3 (2002). The Tribunal is satisfied that the amount is not in dispute between the parties merely the explanation as to how the payments are shown in the accounts. The Respondent was satisfied on this point.
- 6.8 Water tank repairs (2003). It appeared to the Tribunal that the 'first works' might be considered to be an emergency and no consultation was required as the cost of the work fell below statutory limits.  
Although the additional works followed on from the 'first works' and the costs might have been reasonable the Tribunal was not satisfied that they were an emergency in view of the time elapsed. Furthermore the Section 20 procedure had not been followed and the Tribunal therefore limit the amount recoverable to the statutory limit in force at the time namely £1000.00. The Tribunal's jurisdiction, at the time, did not extend to granting a waiver under Section 20(9).
- 6.9 External redecoration (2003). The Tribunal noted that a simple specification had been drawn and that 2 of the 3 contractors asked to quote had been provided with a copy. The Respondent had provided an alternative quote from 'Mark' a contractor he had seen working locally. The directors had made their decision before Mark's quote had been given to them. The Tribunal noted that Mark was not registered for VAT and did appear to have an address.

The Tribunal considers that the director's decision to proceed with G and P was based on the best information available at the time. The final cost amounted to £12,567.00. The Section 20 procedure had not been followed and the Tribunal therefore limit the amount recoverable to the statutory limit in force at the time namely £1000.00. The Tribunal's jurisdiction, at the time, did not extend to granting a waiver under Section 20(9).

6.10 The Tribunal noted that the Applicants had 'written off' certain items properly due under the terms of the underlease. The decision by the Applicant not to collect in respect of these items is not a matter falling within the jurisdiction of the Tribunal. The Tribunal's jurisdiction is limited to those matters in dispute.

6.11 The Tribunal determines that the Applicant can recover the costs of the Hearing under the terms of the lease but having due regard to the determination reached limit those costs to £250.00.

## 7. The Tribunal's Determination

7.1 The Tribunal determines that the reasonable amounts for the individual items of service charge in the years 1996 to 2004 are as detailed in **Appendix 2**.

7.2 In accordance with the terms of the lease the Tribunal determines that the Respondent is responsible for 22% of the sums determined.

  
Robert T Brown FRICS

Chairman

Dated... 24/7/06 .....

**Appendix 1 - Scott Schedule: 123a Gloucester Terrace, London, WC2 3HB- LON/00BK/LSC/2005/0255**

ACCOUNT YEAR	ACCOUNT REF.No	ACCOUNT CONTESTED ITEM	ACCOUNT AMOUNT	ACCOUNT RESPONDENT'S COMMENT	ACCOUNT APPLICANT'S COMMENT	Matters Agreed
			IN DISPUTE			by Parties
1993		Insurance excess	*250.00	WD93/6401/PGC water damage ins. Policy excess	Written off	Agreed
1995		Conservatory roof repair	**378.40	balance of cost to be repaid to JF	Not accepted as payable	
1996		Legal item on co. accounts	**160.00	unwarranted service charge demands	Surveyor's fees - reversed in 1997	Agreed
		Aerial invoice unpaid	*110.00	replacement of communal TV amp.distribution box	Written off	Agreed
1997		TV aerial replacement	**440.00	unwarranted removal of my services	Written off	Agreed
1999		Door lock replaced	**569.88	unwarranted, unnecessary, excessive cost	Actually £434.75 - written off	
		Legal plus sec.fee	**1,597.00	unwarranted demands for service charges and unwarranted personal costs incurred by C & K	All these costs were incurred by the company as a result of problems created by Mr Fernandez himself and are regarded as valid	
		Insurance excess	*250.00	AUP1827/RH re. water damage claim	Credited to service charge account 1/7/01	Agreed
2000		TV aerial	**75.00	reinstatement of unwarranted removal of my service	Credited	Agreed
		Door locks	**428.88	unwarranted, unnecessary, excessive	Actually £329, written off	
		Entry phone and Extinguishers	**432.00	directors agreed would be removed	Entryphone portion £131.71 already credited	
		Electricity	**38.00	directors agreed would be removed	Already credited	Agreed
		Legal	**351.00	unwarranted demands for service charges	Solicitors' charges re Mr Fernandez' behaviour as above	
2001		Entry phone and Extinguishers	**258.00	directors agreed would be removed	Entryphone portion £162.50 already credited	
		Electricity	**48.00	directors agreed would be removed	Already credited	Agreed
		Legal	**318.00	unwarranted demands for service charges	Solicitors' fees re attempt to recover service charge debt	
		EGM inc. sec fee	**247.00	unwarranted/excessive cost	Company Secretary's fee for EGM outside fixed fee structure	
2002		Repairs and Maintenance	1303.00	£902.30 water damage to flat 3 and plumbing - £533 recovered from ins. - 'where' and 'how' is this shown in the accounts?	Insurance payment of £443.75 credited to insurance premium account in 2002. £89.45 credited to repairs & maintenance 03/04	
				Why is the balance of £369.30 on the accounts?	Please clarify	
		Entry phone and Extinguishers	**392.00	directors agreed would be removed	Entryphone portion £142.17 written off	
		Electricity	14.00	directors agreed would be removed	Written off	Agreed
		Legal	**359.00	unwarranted demands for service charges	Further solicitors' charges re debt collection	
2003		Repairs and Maintenance	1292.00	£781.50 water tank - excessive and unwarranted	Not accepted as either unwarranted or excessive	
				**£25.99 mat and lock - unwarranted/not my liability	Written off	Agreed
				**£484.10 decorators damage - not my liability	Written off	Agreed
		Entry phone and Extinguishers	**325.00	directors agreed would be removed	Not included in service charge invoice for 2002/3	Agreed
		Legal	**530.00	unwarranted demands for service charges	Solicitors' & Co secretary's fees re County Court action	
		Cleaning	**106.00	directors agreed would be removed	Not included in service charge invoice for 2002/3	Agreed
2004		Repairs and Maintenance	1,875.93) 1,786.48	£1,716.25 Water tank - No consultation, excessive cost, substandard work. S.20 L&T Act 85/87	Excessive cost denied	
				**£42.48 Fire extinguisher replacement - Not my liability	Fire extinguishers are chargeable	
				**£117.20 Decorators damage - not my liability	Written off	Agreed
		External redecoration	12,467.00	No consultation. Damaged property s.20 L & T Act 85/87	Already discussed at length at last tribunal hearing Tribunal requested to waive requirement for s20 notice	
		Entry phone and Extinguishers	**336.00	directors agreed would be removed	£185.76 only charged re extinguishers	
		Electricity	**16.00	directors agreed would be removed	Not charged in 2003/4 service charge invoice	Agreed
		Cleaning	**129.00	directors agreed would be removed	-ditto-	Agreed
		Bad debts written off	657.00	explanation previously requested	£575.83 of this write-off relates to 123A and was credited in 03/04	
2005		Meetings cost	**187.00	explanation previously requested	Cost of Secretaries' attendance at EGM not included in fixed fee	
		Legal and Professional	**167.00	explanation previously requested	£120 County Court fee, £47.47 Secretaries' expenses related to summons	
				* denotes full amount due to JF		
				** denotes 22% of amount listed due to JF		

**Appendix 2 - Tribunal's Determination: 123a Gloucester Terrace, London, WC2 3HB -  
LON/00BK/LSC/2005/0255**

ACCOUNT YEAR	ITEM	AMOUNT IN DISPUTE £	Determined by the LVT	£
1999	Door lock and other repairs	135.13	Other repairs	135.13
	Legal plus sec. fee	1597.00	Legal Fees Company Secretary	705.18 86.16
2000	Door locks	99.88		99.88
	Extinguishers	300.29		300.29
	Legal	351.00		0.00
2001	Extinguishers	95.50		95.50
	Legal	318.00		318.00
	EGM inc. sec fee	247.00		247.00
2002	Repairs and Maintenance	1303.00		1303.00
	Extinguishers	249.83		249.83
	Legal	359.00		359.00
2003	Repair water tank	781.50		781.50
	Legal	530.00		530.00
2004	Repair water tank	1716.25		1000.00
	External decorating	12467.00		1000.00
	Extinguishers	185.76		185.76