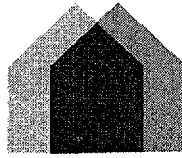


3494



**Residential  
Property**  
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/00AG/LSC/2007/0152**

**ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND  
TENANT ACT 1985**

<b>Applicant:</b>	London borough of Camden
<b>Respondent:</b>	Florence and John Davies
<b>Premises:</b>	5 Beauvale, Ferdinand Street NW1 8EY
<b>Date of Hearing:</b>	11 September 2007 & 3 October 2007
<b>Appearances for Applicant:</b>	Ms Lauren Bush
<b>Appearances for Respondent:</b>	Mr John Davis
<b>The Leasehold Valuation Tribunal:</b>	Ms M Daley (LLB Hons) Mr D Edge (FRICS) Dr A. Fox
<b>Date of Tribunal's Decision:</b>	22 November 2007

## **The Application**

1. This application was transferred from the Central London County Court by order of District Judge Fine dated 23 November 2006 for a determination under section 27 A of The Landlord and Tenant Act 1985 of the reasonableness and liability to pay service charges amounting to £20348.98 ( this included interest and court cotst) which was the subject of a claim to the Central London County Court on 24.4.06.
2. A pre-trial review was held on 22 May 2007 at which the Tribunal established that the only issue to be determined was the Respondent's liability to pay service charges of £16,474.53 for major works carried out in 2002. Mr Davies informed the Tribunal that he would pay when satisfied that the works had been carried out to a satisfactory standard.
3. The works in issue were set out in the final account.

## **The Documents received by the Tribunal**

- (a) The Tribunal was provided with a copy of a joint hearing bundle.

## **The Law**

4. Section 27A (3) Landlord and Tenant Act 1985 provides that  
An application may be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -  
the personby whom it would be payable,  
the personto whom it would be payable,

the amount which would be payable,  
the date at or by which it would be payable, and  
the manner in which it would be payable.

5. Section 18 of the Act defines service charge as  
“(1)...service charge means an amount payable by a tenant...as part of or in addition to the rent –  
which is payable, directly or indirectly, for services, repairs, maintenance or insurance or the landlord’s costs of management, and the whole or part of which varies or may vary according to the relevant costs.  
(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with matters for which the service charge is payable...”
6. Section 19 of the Act provides for the limitation of service charges on the grounds of reasonableness as follows:
  - (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 or subsequent charges or otherwise.

An agreement by the tenant of a flat (other than an arbitration agreement within the meaning of section 32 of the Arbitration Act 1950) is void in so far as it purports to provide for a determination in a particular manner, or on particular evidence, of any question—

whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred

whether services or works for which costs were incurred are of a reasonable standard, or

whether an amount payable before costs are incurred is reasonable.

## **The Lease**

7. The Applicant supplied the Tribunal with a copy of the lease between The Mayor and Burgesses of the London Borough of Camden and Ralph Davies, Florence Davies and John Davies dated 22<sup>th</sup> July 1991. Relevant terms of the lease are set out where appropriate below.

## **Description of the Property and Inspection**

8. Beauvale comprises a medium rise block of 32 flats originally constructed in the 1920's and forming part of large development on both sides of Ferdinand Street consisting of 8 broadly similar blocks – in total 273 flats. Flat 5 is on the first floor, and is accessed by a door entry system on the ground floor and a part tiled communal concrete staircase which serves all upper floors. The Tribunal noted the replacement windows to all of the flats, internal redecoration of common parts, and detail items to Flat 5, such as the lack of ventilation within the kitchen and bathroom windows.

The works proposed to all 8 blocks included: window and door replacement, roof renewal, brick and concrete repairs, external decoration, internal decoration to communal areas, fencing repairs, ventilation and lighting works, repairs to asphalt on communal and private balconies, upgrading door entry systems and overhauling lighting protection system. Gmessrs Gleeson's estimate of £3,552,509.96 (the lowest of 8 tenders) was accepted, with the cost attributed to the 32 flats in Beauvale amounting to £487,167.03, with a 'rechargeable cost' of £439,735.44 which resulted in the amount for Flat 5, based on a proportion of GV and to include fees, as given in the Section 20 Notice being £16,474.53.

## **The Hearing**

### *The Applicant's case*

9. At the hearing the Tribunal informed the parties that it had considered the documents. In particular the Statement at page 44 of the bundle provided by John Davies stated, *"The breakdown of costs for works carried out does not add up. Judge Fine- County Court Judge has looked at these figures and noticed this as well. When asked about the figures, Mr Schooling could not give a reasonable explanation.*  
*Out of 18 items included in the breakdown 8 have been removed and not been addressed. Despite this, we are still expected to cover the full cost of £16,000+.*  
*This simply can not be right!*
10. The Tribunal indicated that it wished to know which items were included in the service charge now demanded and why, given that some items had been removed, from the specification, the demand to the Respondent had not decreased?
11. Lauren Bush, on behalf of the Applicant, referred the Tribunal to the statement of case set out at page 58 of the bundle. She said that although as the Tribunal had indicated a number of items in the original specification had been omitted, there

had also been additions to the major works. Details of all variations were set out in the final account.

12. Ms Bush confirmed that the Respondent's original estimate was £16,474.53.

The items omitted were :

- (a) The masonry cleaning of the front elevation, costing £6,528
- (b) The chemical cleaning of the stairwells costing £2,168. A mild detergent wash had been substituted adding back £2,028
- (c) Cleaning of concrete edge to the beam this item was disputed by the Respondent. The Applicant submitted that the item was reasonable.
- (d) Inspection showed the roof to be in better condition than anticipated. The work had been modified giving a saving of £12,109.68 against the original budget estimate of £30,134.94.
- (e) the cost of replacement of the front entrance doors, which had not been charged to the Respondent.
- (f) The communal floor finish estimated at £14,207.44 had not been undertaken..
- (g) Draining, cleaning and refilling the cold water storage tank at a cost of £494.
- (h) Work on the extract and ventilation fans in the sum of £12,709.76, had not been charged to the Respondent, as it related to tenanted properties only.

13. Some items had been accepted by the Applicant as reasonable, as follows:

- (a) External decoration to all previously painted surfaces in the sum of £13,564.25.
- (b) Rainwater pipe work in the sum of £2,196.33.
- © Above ground drainage in the sum of £3,017.42.

14 Ms Bush then took the Tribunal through the additions, which included works to the estate, and works to the block, as follows:-

*The Estate*

- (a) The Ironmongery which was at point 64.02 page 9 of 12 of the additional document in the total sum of £574.49

(b) Asphalt repairs to two private balconies (set out at page 10 of the additional document) in the sum of £489 X 2 flats = £978.00 and recorded as an Estate cost.

© Replacement of external floodlights at a cost of £815.56

(d) . because of additional instructions, the contract period had been extended by 20 weeks, causing an increase in the Preliminaries of £599.75. The obligation to pay this sum arose from Clause 14 of the lease and the Fifth Schedule

15. In response to a question from the Tribunal Ms Bush explained that the contract period had been extended for an additional 20 weeks because of disruption to the programme from the local Tenants Management Organisation,(CFHG). 3.21% of the extra estate cost of £36,167.53 had been allocated to the block.

#### *The Block*

16. Ms Bush informed the Tribunal that the following additional costs had been incurred specifically for Beauvale House:

(a) additional charges of £19,536.45 for the windows detailed at points  
27.04 total

(b) refuse chutes - £17,467.84

(c) concrete repairs - £3,824.37

(d) re-pointing of the brickwork - £928.16

(e) crack repairs - £12,023.02

(f) external decorations - £1,116.27

(g) additional security fencing - £2,615.20

(h) completely recovering the balconies, including waterproofing works -  
£15,363

(i) masonry cleaning (detergent wash) - £6,528,

17. In respect of the various challenges made by the Respondent, Ms Bush informed the Tribunal that he had not been supplied with ventilation fans because the configuration of his kitchen did not allow this. He had not been charged for the supply or fitting of a fan. The Respondent's flat had not been supplied with a more

secure door like the Council's tenants because the front door was within his demise.

*The Respondent's Case*

18. Mr Davies said that he was unhappy with the way that the work had been undertaken because there were still problems at the block. , In particular the concrete paving was damaged creating a trip hazard as a result of the positioning of the scaffolding. The masonry cleaning had actually caused damage to the tiling.(which the applicants had agreed to reinstate) and the jet washing had caused damage to the concrete.
- 19.Mr Davies also complained that the windows in his property had been installed without ventilation fans and that he had not been supplied with one of the new front doors that he considered to be more durable than his current door. There were gaps between the sections of re-asphalting, which were both unsightly and a trip hazard.. (
20. The Respondent also produced photographs of the front of his flat, and asked the Tribunal to look at the gas flue, which he stated had been damaged by the Applicant during the progress of the works. Ms Bush stated that the Applicants had not been made aware of this damage, and that there was a Residential Leasehold Officer, to whom the Respondent should have reported this damage.
21. In response to a question from the Tribunal Ms Bush explained that the 20 week delay was very largely due to issues that had arisen concerning the windows at the block. Mr Gerald Eades (a Consultant engaged by the Applicant) informed the Tribunal that the issue concerned the construction of the windows. Pilot work had shown a difference in configuration of the windows to the mansard compared with those on the drawings, which had resulted in a six week delay. There had also been an underestimate of the number of windows required and as a result the Applicant had to approach the manufacturer and accept a delay in the manufacturing process of approximately 15 days.
22. The Tribunal had queried why the percentage additions for supervision and management had increased. Ms Bush explained that this was due to various problems encountered on site which had resulted in the need for extra security..



23. Ms Bush then stated that Applicant was entitled to charge on the basis of the estimate, and the estimated amount, together with the arrangements for making payment were set out in the Section 20 Notice.

### **The Decision of the Tribunal**

- (f) The Tribunal determines that the amount of service charges owed by the Respondent for the major works is £15,992.07. The reasons for the determination are set out below:-
- (g) The Tribunal considered the following issues in reaching this determination.-:
  - (i) Whether the works carried out were within the scope of the Lease
  - (ii) Whether the works carried out were within the Section 20 Notice that had been served.
- (h) The Tribunal noted that the service of the Section 20 Notice and the scope of the consultation process were not raised by the Respondent as being in dispute. Accordingly the Tribunal have accepted that a valid Section 20 Notice was served on the Respondent, and that the Respondent was adequately consulted about the scope of the work.
- (i) In determining whether the scope of the work was covered by the Lease, the Tribunal noted that at page 5 ( page 9 of the hearing bundle) it defines service charge as follows:- *“All those costs and expenses incurred or to be incurred by the landlord in connection with the management and maintenance of the Estate and carrying out the Landlord obligations and duties and providing all such services as required to be provided by the Landlord under the terms of the lease including where relevant the following:*
  - Category A Services
  - Category B Repairs

*-Category C Improvements*

*And without prejudice to the generality thereof all such matters set out in the Fifth Schedule.”*

- (j) Included within the Fifth Schedule are a number of cost headings, for example in Clause 11 as an estate related cost
  - (i) *The upkeep of the gardens forecourts roadways pathways (if any) used in connection with the Estate or adjoining or adjacent thereto.*
- (k) The Section 20 Notice served on 17<sup>th</sup> July 2002 set out the blocks on the Ferdinand Estate to be covered by the work as Mead Close, Rugmere, Totenhall, Beauvale, Broomfield, Ferdinand, Powlett, and Harmood. The work to be carried out was set out as follows:

*“The proposed works includes: window and door replacement/repairs, roof renewal work, brick and concrete repairs, external decoration, internal decoration to communal areas, fencing repairs, ventilation and lighting works, and repairs to asphalt on communal and private balconies, upgrading door systems and overhauling lighting protection system.”*
- (l) The proposed percentage charges of the management and supervision of the scheme was set out as 6.66% of total costs for supervision and 10% for management.. The Applicant also included a helpful definition of what was included in the management and supervision charges.
- (m) At the hearing the Applicant’s representative informed the Tribunal that the supervision fee had been increased to 9.81% as a result of difficulties with the contracted work. The Tribunal heard the evidence concerning this, but consider that, although the problems encountered may have increased the overall cost of the contract, there was no reason to depart from the percentage set out in the Section 20 Notice, and accordingly consider that the appropriate supervision fee should remain as 6.66%. The Tribunal has applied this figure in its determination.
- (n) By a post hearing letter dated 17 September 2007, the Applicant informed the Tribunal, that it would not be seeking a contribution from the Respondent for the cost of Ironmongery.

- (o) The Tribunal also found that the Section 20 Notice was insufficient to put the Respondent on notice that the cost of replacing the Neighbourhood Housing Office's windows would be included, and determined that it should be excluded from the service charge.
- (p) The Tribunal also find that the expense incurred, in engaging an out of office assistant were not set out in the notice. The Tribunal further consider that security issues and any associated costs should have been included in the Section 20 Notice.. As it did not do so, the Tribunal find that the cost of £658,772 should be excluded from the Respondent's service charge.
- (q) The Tribunal find that the cost of the work to Beauvale House which included the roof work and the replacement windows was reasonably incurred, and that the items of work for the chemical cleaning and repairs to the asphalt of the balconies. were covered by the Section 20 Notice.
- (r) The Applicant did not fit ventilation fans or new front doors for leaseholder tenants and no charge was made to the Respondent for these items.
- (s) On inspection of the subject property, the Tribunal noted that the handle of the casement door in the living room had come loose and that the Respondent had been informed by the Applicant that this would be adjusted and renewed if necessary.
- (t) The total percentage payable by the Respondent for the estate work was 1/273. In adjusting his service charge account to exclude the sums that the Tribunal did not find to be reasonably incurred. The Tribunal find that the sum of £15,992.07 is due on account of the service charges for the major work carried out in 2002.

Chairman.....

Date.....22-11-07