



**Residential
Property**
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION BY LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985 Sections 27A(1) and 20C

Ref :LON/00BE/LSC/2006/0400

Address: Flat 83, Northfield House, Peckham Park Road, London SE15 6TN

Applicant: Mr C B S Hanoman

Respondent: London Borough of Southwark

Background

1. On 5 November 2006 the Tribunal received an application from the Lessee, Mr Hanoman, concerning his liability to pay a service charge of £191.86. This charge relates to the electrical component only of a major works contract at Northfield House completed in 2004 at a rechargeable block cost of some £2.6m. Mr Hanoman acquired his Lease in 2005 and his contribution was limited by virtue of the Housing Act 1985.

2. Directions were issued by the Tribunal on 23 November 2006 and representations were subsequently received from both Applicant and Respondent.

The Lease

3. The Applicant holds a Lease of the premises, a first floor flat within a purpose built 1930s block. The Lease is dated 13 June 2005, and is held for a term of 125 years from the London Borough of Southwark at a ground rent of £10 p.a. Under clause 2(3)(a) of the Lease the Lessee covenants to pay the service charge

contributions set out in the Third Schedule. This charge is specified under clause 3(2)(i)(b) of the Third Schedule as including "the cost of any works of repair renewal and improvement... being for 2005 itemised repairs included in Appendix B of the Offer Notice in respect of the flat served pursuant to Section 125 of the Housing Act 1985...".

4. Under clause 6(1) of the Third Schedule the service charge payable by the Lessee is stated to be a fair proportion of the costs incurred.

5. Under clause 2 (vii) of his Lease the Applicant is liable to pay a service charge of a specified proportion for items as set out in sub clauses (a) to (i) of clause 2 (vii).

6. Under clause 2 (i) (b) the Lessee covenants to pay interest at 4% over the base rate of Midland Bank PLC on any payments due.

The Case for the Applicant

7. Mr Hanoman had not paid for his proportion of the cost of the electrical work because he considered the work had not been done properly and also because he believed he should be compensated for the inconvenience of a fractured soil pipe. In particular:

- the communal lights were faulty
- a soil pipe was ruptured when a mains cable was run through his flat.

This leak was reported orally on 24 March 2006 and in writing on 27 March 2006. An inspection by the Respondent on 3 April found no leak. A further inspection on 21 April 2006 identified a leak which was repaired on 24 April. Inconvenience was caused as a result of this leak.

Further

- the installation of electrical vents into the block's windows has upset the symmetry of the fenestration
- electrical panels painted white have been installed on communal staircases where they are easily marked
- New wooden cable boxes have not been painted
- Cement render has been left on the external brickwork
- As a result of these shortcomings the value of the Applicant's flat has been reduced.

The Case for the Respondent

8. Under the terms of his Lease the Applicant had the right to use the cables or other installations serving the flat for the supply of electricity. In order to comply with their obligations under the Lease the Respondent entered into a major works contract over a five year period. All statutory consultation procedures were complied with, the contract was competitively tendered and the lowest priced consultant and

contractor were selected. It was reasonable to carry out the works and the cost of the works was reasonable.

9. The Respondent stated, in reply to the Applicant's detailed points:

- The existing communal lights were not included in the contract: any fault would be attended to
- The mains cable was run inside the Applicant's flat at his request: any necessary repairs to the waste pipe adjoining this cable were carried out
- It is accepted that where extractor fans have been installed in existing windows the external appearance has been affected. For technical and cost reasons any alternative approach would not have been feasible; there is no impact on value.
- Whatever colour the stairway ducts were painted marks would always be visible
- The wooden cable boxes were not included in the contract
- Any seepage of rendering on to neighbouring brickwork would be attended to.

10. Finally, the Respondent pointed out that the Applicant's contribution to the major works, but for the limitation under the s 125 Offer Notice, would have been £2,091.92.

Decision

11 The Tribunal noted that prior to his application to the LVT the Applicant had already submitted a complaint to the Local Government Ombudsman which had been declined on the basis that the Local Government Act 1974 provides that the Ombudsman may not investigate complaints where the complainant has or had an alternative right of appeal which is reasonable. His office had also emphasised that the Ombudsman must also be satisfied that maladministration has caused significant injustice to the complainant. In the present case the Applicant had, in the view of the Ombudsman's office, alternative avenues through which to pursue his complaints, i.e. through the Council's own complaints procedure and through the Leasehold Valuation Tribunal's procedures for resolving disputes between Lessors and Lessees, and that these provided reasonable alternative rights of appeal. They further considered some of the Appellant's complaints, such as the cement disfiguring the brickwork which in the Council's evidence they say they will address, of too trivial a nature for the Ombudsman to investigate when the Council's complaints procedure was available for rectification of such defects, although it appeared from correspondence on the file that the Applicant's objection to pursuing his complaint through these avenues was because neither could award him compensation whereas the Local Government Ombudsman does have that power. They also considered that the Council's manner of dealing with the fractured pipe did not amount to significant delay.

11. Having carefully considered the evidence on the file, the Tribunal is of

the view that there is clear liability on the part of the Applicant to pay through his service charges the small balance of £191.86 outstanding for the major works concerned and that this sum is reasonably incurred and reasonable in itself. It is not the Tribunal's view that the trivial defects still to be rectified (if they have not already successfully been addressed) in any way nullifies the obligation on the Applicant to pay the outstanding sum.

The s 20C application

12. With regard to the Applicant's application for a s 20C Order, namely to preclude any charge to the service charge account of the Respondent's costs of defending the Applicant's application to the LVT, the Tribunal is not of the view that such an order should be made. No representations on this point have been received from the Respondent Council but in any event (i) the Council's costs in the preparation of their defence in this case are not likely to be large since the matter has been disposed of by a paper determination, and (ii) the Council is in any case the Respondent to an application which appears to be somewhat disproportionate. The Applicant's obligations under the Lease are clear, the Council's explanations of his obligations were prompt and unequivocal and their response to his complaints not untimely. It would therefore be unfair to make such an order against the Council. Having said this the Applicant is lucky not to have an order for costs made against him pursuant to the LVT's powers under the Commonhold and Leasehold Reform Act 2002, since his own action in bringing a dispute in relation to such a trivial cost to the LVT when it appeared to be in process of being addressed by the Council was certainly disproportionate and verging on an abuse of the LVT's processes. His references to the technicalities of the Civil Procedure Rules (which do not apply in the LVT which is master of its own procedure) suggest a litigious approach which is inappropriate in the contemporary context of proportionate dispute resolution.

13. The Tribunal determines accordingly.

Tribunal: Mrs F R Burton LLB LLM MA
Mrs J McGrandle BSc (Est Man) MRICS MRTPI

Chairman:.....

Dated: 9/01/07