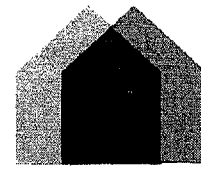


LON/00AW/LSC/2006/0129



Residential
Property
TRIBUNAL SERVICE

**DECISION BY THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE AT
THE LEASEHOLD VALUATION TRIBUNAL LONDON RENT ASSESSMENT
PANEL
LANDLORD AND TENANT ACT 1985 Section 27A**

Property: Ground Floor Flat 47A Ossington Street, London, W2

Applicant: Ms Beardsell, Mr de Carro, Mr Pollard, Mr Pym

Respondent: Mr Swoboda, Ms Wojciechowska

The Tribunal: Mrs. C A Lewis FCI Arb,
Mr. M L Jacobs FRICS,
Ms S Wilby

Date of Hearing: 23rd October and 6th December 2006

Date of Decision: 29th January 2007

Preliminary.

1. This was an application under Section 27A of the Landlord and Tenant Act 1985, as amended, relating to the service charges in the years ending 23 June 2000, 2001, 2002 and 2003.
2. The matter had been referred to the Leasehold Valuation Tribunal by Order of the Central London County Court dated 6 April 2006.
3. An oral pre-trial review had been held on 24 May 2006, when two of the applicants, Mr. Carro and Mr. Pym, and one of the respondents, Ms. Wojciechowska had appeared in person. Directions had been issued dated 26th May 2006.

The Hearing

4. At the hearing before the Tribunal on 23rd November 2006, Mr. Carro, Mr. Pym and Ms Wojciechowska were again present. It was agreed by all present that an inspection of the property would not be necessary.
5. The Tribunal was told that the Mr Swoboda and Ms Wojciechowska , hold the property under a lease dated 3rd March 1986. The provisions relating to the service charge are contained in the lease, and originally the leaseholders of 4 flats in the building had been responsible for the service charge which had been apportioned at 25% each. Following the addition of a 5th leaseholder in the property, the lease had been varied by the Court on 4th June 2001. From that date the lessees of the ground floor flat had been responsible for 20.45%.

6. Mr. Carro said that of the five flats, three were occupied by the joint freeholders.
The subject flat had always been sub-let.

7. The provisions for the payment of the service charge are contained in Clause 2
(3) of the lease which states :

To pay to the Lessor on the twenty fourth of June in the year one thousand nine hundred and eighty and in each succeeding calendar year the sum of Seventy five Pounds (75) as a contribution towards the expenses incurred by the Lessor in performing the covenants on the part of the Lessor set forth in Clause 3 hereof including the reasonable remuneration of a Managing Agent to be appointed by the Lessor for the purpose of managing the building provided nevertheless that if one quarter part of the said expenses reasonably and properly incurred by the Lessor in any one year (as certified by the Lessors Surveyor hereinafter called "the Surveyor whose certificate shall be final.....shall exceed seventy five pounds then the Lessee shall pay to the Lessor the amount of the excess

8. ***The Tribunal had before them a Statement of Service Charge for the Four Years ended 23 June 2003, which detailed all the items in dispute. The attached Appendix A shows the sums found reasonable and payable by the Tribunal compared with the sums claimed by the Applicant***

(a) Buildings Insurance.

(i) For the years in question, the insurance had been provided by Royal and Sun Alliance, through the Abbots Consultants Agency an associate company of the

managing agent, which had provided this service since 1985. The commission rate was stated to be 20% and the cost of the policy had been index linked.

- (ii) The lessee said that she had not obtained alternative quotations, but when she had queried the figures claimed, the Insurers had stated that the building was over insured.
- (iii) The lessors said it had been reasonable for them to delegate the responsibility for the insurance cover to their managing agents. The insurance company had been used for a number of years and the lessors considered it valuable to maintain relations with a reputable company to ensure speedy resolution of claims. They acknowledged that they had not tested the market, and said that the uplift in premiums had been done on the basis of inflation applied by the insurer. They did not consider the building was over-insured and had taken some preliminary advice on likely re-building costs.
- (iv) **The Tribunal** have noted the provisions in the lease which refer to the insurance which state “..... at all times during the said term.....to insure and keep insured the Building.....in some insurance office of repute,” and consider that the Royal and Sun Alliance fall within that definition, and that with the exception of the commission rate the amounts claimed for insurance cover are both reasonable and payable. With regard to the commission rate they find that 10 % is reasonable, accordingly have made a deduction of 10%, and find the resultant sums both reasonable and payable..

(b) Electricity to common parts

The total sum for electricity to the common parts over the four year period was £297, with no charge claimed for the year ending 2001. The average

for each of the four years was therefore £74.25, and bills were provided to support the amount. The Tribunal accept the evidence from the lessors that electricity to the common parts is separately metered, and find the sums claimed reasonable for common parts of a building of this size, and therefore payable.

(c) Repairs

The total cost over the period in question was £965 and related to three of the four years.

The lessee said that the sinking fund should be used for the cost of repairs. She suggested that 4.45% of the service charge should go to the sinking fund.

Referring to an invoice dated 31.1.2000 relating to water leakage, she said that this should be covered by insurance.

The lessors said that there had been a relatively small number of repairs and that the invoices showed that the amounts were reasonable. The lessors said that there was no sinking fund as the sums had not been collected from the lessee and the costs incurred had been shared by the other lessors.

The Tribunal have had regard to the invoices produced by the landlords, and the relatively modest sums claimed over the four year period. They concluded that the sums claimed for repairs were reasonable and payable.

(d) Cleaning

- (i) The lessee acknowledged that she sub-let her flat, and that she normally lived elsewhere, but she told the Tribunal that last summer she had stayed at the flat and had never seen a cleaner at the property.

- (ii) The lessors said the amounts claimed were reasonable for Central London and pointed out that over the four year period the cleaning had amounted to an average of £5.46 p.w., a nominal sum. They said that they had received no complaints from the lessees' sub tenants regarding the standard of cleaning at any time.
- (iii) **The Tribunal** were satisfied with the invoices produced to them and find the amount claimed for cleaning costs reasonable and payable.

(e) Miscellaneous

The only sum shown for the four years was £40 in 2001. The lessors gave evidence that this was in respect of Land Registry documents which were required after the re-apportionment of the service charge percentages.

The Tribunal saw no reason to disallow this item and find the amount claimed for miscellaneous cost both reasonable and payable.

(f) Surveyors Fees

Only one amount was claimed and that was for the year ending 2002 of £1,175 including £100 + VAT for certifying the service charge account. The surveyors fees were stated to be for inspecting and reporting on repair works including the joists and also Richard Burchall Associates fee of £587.50 for inspecting dampness apparent within the basement flat and preparation of a subsequent report. Clause 3 of the lease provides –

The Lessor HEREBY COVENANTS with the Lessee as follows:

(1) At all times during the said term to keepwalls and ceilings and floors rafters and joists of the Building (other than those included in this demise or in the demise of any other flat or garage in the Building).

The First Schedule to the Lease says:

The DEMISED PREMISES

Firstly.....the said flat shall include but shall not otherwise include any part of the external walls roofs or foundations of the building or main timbers or joists separating the said flat in the building or the main drains therefrom.

The Tribunal was satisfied that the repair work carried out by the lessors was within their responsibilities under the terms of the lease, and that the associated surveyor's fee was reasonable and payable, but not the amount of £117.50 shown for certification of service charge accounts as no documentary evidence was provided to support this amount.

(g) Accountancy Charges

This charge of £100 was shown for one service charge year only, the year ended 23.6.2000.

The lessors said that the lessee would only pay if the accounts were certified by the Surveyor specified in the lease. She had then demanded that an accountant should be employed together with the managing agents.

The lessors stated that they had tried to be reasonable, but the lessee required everything to be done by the letter of the lease. The provision of an auditor would be an additional expense.

The lessee said that it was recommended in the RICS guidelines, that where there were more than four flats then an auditor should be used. In the present case an auditor had never been used.

The Tribunal found the cost claimed under accountancy charges both reasonable and payable, noting that the RICS provide guidelines to managing agents which are not mandatory.

(h) Management Fee

The lessors gave evidence that a previous manager who had been appointed under the terms of the lease, and had provided a reasonable service, had resigned. The lessors stated that this was partly because of the amount of work generated by the lessee. She had submitted at least one letter a week to the agent, and had used up a lot of his time. Three agents had been employed in all and all had found the job difficult.

The lessee said that her complaints had arisen because of the agents non-compliance with the RICS code.

The Tribunal considered that the managing agent's fee claimed was not unreasonable for a property of this size but their role had not been performed to an entirely satisfactory standard. . To reflect some unsatisfactory matters the Tribunal have made a deduction of 10%, and find the resultant sums both reasonable and payable.

(i) Interest

The payment of interest is not included in the terms of the lease and cannot be claimed under the service charge provisions.

9. Application under Section 20C

At the conclusion of the hearing the lessors acknowledged that there was no provision within the terms of the lease to allow them to recover the fees and costs of the matter through the service charge account.

10. Reimbursement of Tribunal Fees

In the light of their findings The Tribunal considers that the Applicant should be reimbursed with the cost of fees by the Respondents.

11. The Lessees Counterclaim

The Tribunal have noted the Judgement of District Judge Lightman dated 25 July 2005 where it is stated

1. “ The defendant concede that the sum of £178.49 is to be offset against service charges for the year to 23 June 2001 for £881.79 so that year to 23 June 2001 the revised claimed is £703.30 “.

The Tribunal, acknowledge that this sum of £178.49 shall be offset against the service charge years under review.

All issues which were in dispute were given a full and thorough investigation at the hearing before the Tribunal.

The Tribunal have found that despite the lessee' reference to a sinking fund at the Tribunal hearing, there is no provision for a sinking fund in the terms of the lease for the period in question. The lessors had given evidence that there was no money for a sinking fund in any event as the lessee had not paid her service charges. This had meant that the other flat owners in the building, in paying their service charges had subsidised the lessee.

The matter of insurance has already been dealt with at 8 (a) of this determination.

The further matter raised in the counterclaim relating to Richard Burchall Associates fee of £587.50 is dealt with at paragraph 8 (f) of this decision.

The Tribunal considers that the Applicants failure to produce the surveyors report did not prejudice the issue of payability.

Chairman

Date

MRS Cherry A Lewis

29th January 2007

47A Ossington Street, Notting Hill W2 4LY

Service Charges

Year ending 23 June

		<u>2000</u>		<u>2001</u>		<u>2002</u>		<u>2003</u>	
	<u>LVT ref.</u>	<u>Applicant's claim</u>	<u>LVT decision</u>	<u>Applicant's claim</u>	<u>LVT decision</u>	<u>Applicant's claim</u>	<u>LVT decision</u>	<u>Applicant's claim</u>	<u>LVT decision</u>
		£	£	£	£	£	£	£	£
Building Insurance	8 (a)	1,875.00	1,687.50	1,962.00	1,765.80	2,068.00	1,861.20	2,271.00	2,043.90
Electricity to common parts	8 (b)	72.00	72.00	72.00	72.00	153.00	153.00	-	-
Repairs	8 (c)	320.00	320.00	-	-	245.00	245.00	400.00	400.00
Cleaning	8 (d)	271.00	271.00	278.00	278.00	278.00	278.00	308.00	308.00
Miscellaneous	8 (e)	-	-	40.00	40.00	-	-	-	-
Surveyors fees	8 (f)	-	-	-	-	1,175.00	1,057.50	-	-
Accountancy charges	8 (g)	100.00	100.00	-	-	-	-	-	-
Management fee	8 (h)	1,175.00	1,175.00	1,175.00	1,175.00	1,230.00	1,107.00	1,293.00	1,163.70
Total		3,813.00	3,625.50	3,527.00	3,330.80	5,149.00	4,701.70	4,272.00	3,915.60

Flat 1

	<u>25.00%</u>		<u>25.00%</u>		<u>20.45%</u>		<u>20.45%</u>	
Apportionment								
Sum reasonable & payable	£953.15	£906.38	£881.79	£832.70	£1,050.90	£961.50	£873.54	£800.74
<u>Less</u> set off conceded by Applicants at Central London Crown Court on 25 July 2005						-£178.49		
		<u>£906.38</u>		<u>£832.70</u>		<u>£783.01</u>		<u>£800.74</u>
					Total for four years		£	3,322.82

