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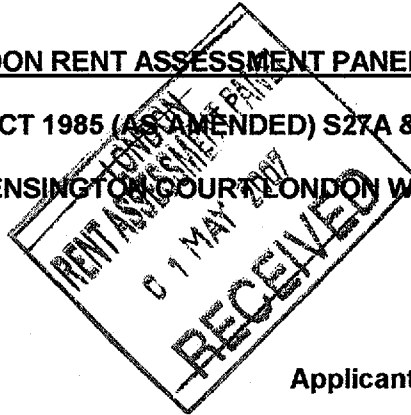
RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

IN THE MATTER OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED) S27A & S20C

IN THE MATTER OF : GROUND FLOOR FLAT 4 26 KENSINGTON COURT LONDON W8 5DH

CASE NUMBER LON/00AW/LSC/2006/0426



Parties	Mr H S Alhaider	Applicant
	Mrs Afsaneh Abel-Yearsley Mrs M Adel- Berardo	Respondents

Appearances:

For the Applicant	Miss S Lewis (from the College of Law) Mr Alhaider
For the Respondent	Mr & Mrs Abel -Yearsley Mr A Chandler of C A Daw & Son Ltd (Managing Agents)

Date of Application **11 December 2006**

Date of Hearing **12 April 2007**

Tribunal	Mr A A Dutton	Chair
	Mr B Collins	BSc FRICS
	Mr A D Ring	

Date of Decision **30 April 2007**

DECISION

A. BACKGROUND:

1. This application was made by Mr H S Alhaider (the Applicant) under s27A of the Landlord and Tenant Act 1985 (the Act) for a determination as to the liability for the payment of service charges in respect of his flat, the address of which is Flat D, 26 Kensington Court, London. The service charge year in question was that which ended 25 March 2005.
2. Following the submission of the Applicant's written response to the Respondents' Statement of Case it became clear that the following items were in dispute:-
 - Internal cleaning of the property @ £2,225.
 - Cleaning of the garden @ £1,650.
 - General cleaning and unblocking of manholes @ £500.
 - Varnish and polishing of woodwork both internal and external @ £550.
 - Cleaning and removal of rubbish in the communal rubbish areas @ £600.
 - Steam cleaning all stone tiles in the garden and tiles on the entrance walkway @ £900.
 - Cleaning of rain gutters, repairing of stonework on the front façade of the building @ £1,000.
 - Repairing and welding of iron railings in the garden @ £1,300.
 - Supplying and planting of laurel bushes in the garden @ £1,250.
 - Supplying and planting flowers and soil in flower boxes both internal and external @ £700.

B. EVIDENCE

3. We had before us two bundles of documents, one prepared by the Applicant and one by the Respondent. There was some degree of duplication. However it became clear during the course of the hearing that the concerns expressed by Mr Alhaider related to the lack of documentary evidence to support the figures that were claimed in the accounts and for which payment was being sought. In particular concern was raised as the existence of a company called "Doggy Biscuits Limited" which it appeared from the paperwork before us to be a company run by Mr Yearsley, the husband of one of the Respondents and through which the various works and associated costs appear to have been channelled.
4. The submissions made by Miss Lewis indicated that Mr Alhaider had not seen evidence that the works were being done, had no evidence that the works had incurred the costs for which he was being asked to pay and that such works as may have been carried out and for which he may be liable had not been to a reasonable standard. The maintenance

charge for the year showed that there was some £26,492.32 spent on various service charge items. This gave him a liability of some £5,298.46 of which it appeared from the accounts he had already paid £4,800.

5. Mr Alhaider gave evidence as to the various items in dispute. For example he said the cleaning seemed to be carried out by a lady whom he had known for some time and who did not appear to be employed by Doggy Biscuit Limited ("the Company"). He produced alternative quotes. However he did concede that he travelled a lot, particularly to Jordan, and that he also had accommodation in the North East of England and he was not therefore at the property on a daily basis. As to the gardening he thought that was carried out by the Respondent's father and saw little evidence of any other gardening work. As with the gardening he produced alternative quotes.
6. On the question of the cleaning and the manholes, again he was concerned that this was another example of a round figure being sought, in this case £600 being claimed and he had no evidence that drains were in fact cleaned. As to the varnishing he felt that was still sticky and had not been done properly. He saw no evidence of any steam cleaning or the cleaning of the guttering and the repairing to the stone work.
7. As to the repairs and the welding of the iron railings, he produced documentation purporting to show that he could have obtained the works more cheaply elsewhere, or if not cheaper, with new metal railings rather than repairing the existing ones. He disputed the costs of the gardening works both internally and externally.
8. Mr Yearsley and his wife gave evidence on behalf of the Respondents. He told us that the Company was set up on behalf of the family. He explained that he occupied one flat in the property, his wife's parents and sister another and that they had been living there for some 30 years. The introduction of the Company was intended to represent a better way of managing the property. It was not intended to produce a profit. He accepted however that this had backfired as it had caused the problems which had brought the matter before the Tribunal. They addressed the Applicant's specific complaints.
9. On the question of the cleaning, we were told that this was paid at the rate of £187.50 per month to a lady who had been carrying out the work for some time. As with the majority of the items in dispute the costs were paid on a cash basis without a receipt. Mr and Mrs Yearsley were able to confirm however that the cleaning was undertaken as both his Mrs

Yearsley's family and Mrs Yearsley were in the property on a daily basis and were able to supervise the cleaning.

10. On the question of the garden works they again confirmed that they employed people on a cash basis. The workmen apparently attend once a fortnight in the winter and once a week in the summer. The property had a number of plane trees at the borders and there were problems with leaf droppage. A quote from a company called Daquatic was produced, who carried out the gardening works to the next door property, which indicated that the cost of gardening for the subject premises was not unreasonable.
11. As to the cleaning of the manholes, they confirmed this was done on a regular basis to ensure there were no blockages and that the figure paid was reasonable. Again it was a cash payment.
12. As to the varnish work we were told this was carried out over a three day period by two painters who did all the panelling in the communal ground floor hall area together with the entrance door, the frame and the windows. Apparently the wood had been washed down, the varnish stripped, sanded and then re-varnished. There had been no previous complaint that this was sticky and the Respondents were satisfied that the price of £550 was reasonable for the work.
13. On the question of the cleaning of the common refuse areas we were told that this was the site where people left their domestic rubbish. Whilst the Local Authority removed the bags they did not clean the area and as this was adjacent to a flat it was felt reasonable and necessary to clean the area, on average once every fortnight. This gave rise to a charge of around £50 per month. In relation to the steam cleaning, photographs were shown to us indicating the before and after picture and that it had been necessary to clean the walkway as it had become slippery and dangerous. As with so many of these matters, the contractor had been paid in cash.
14. In relation to the guttering and façade repair works we were told that Mrs Yearsley's father had organised a professional company utilising climbing equipment who had been able not only to repair the façade which had apparently been broken by a tree but also to clean the guttering without the need for scaffolding. The cost of £1000 was thought to be particularly good value.

15. The Respondents then moved on to deal with the repairing and the welding of the iron railings. There was some dispute as to the extent of the railings that had been dealt with but it appeared to be the whole of the northern boundary and there were photographs showing the area in question. A company had been contracted to repair the bottom sections of the railings and they had been replaced by contractors who had also dealt with the planting of the laurel bushes. It was felt that the costs associated with this were reasonable.
16. Finally on the question of the plants and flowers, we were told there was a large communal area given over to this at the first floor level and that there were further potted plants on landings to the upper floors of the property.
17. Mr Chandler from C A Daw & Son Limited also gave some brief evidence. He confirmed the management tasks that he undertook although there was no claim that the management costs were excessive. He was however able to indicate that in his view the costs incurred were reasonable and that whilst he might have saved some costs on some matters, on others, the costs would have been more expensive. He told us he had given advice to the Respondents about the cash payments and that he was now taking over the management of the property and that hopefully these problems would not arise again.
18. Submissions were made both by Mrs Yearsley and by Miss Lewis. On behalf of the Applicant, Miss Lewis submitted that there was no evidence before us that the invoices had been paid. She submitted that the charges were unreasonable and we were invited to consider the estimates that Mr Alhaider had obtained for items such as the cleaning of the property and the gardens as well as the railings.
19. For the Respondent Mrs Yearsley told us that there had never been any complaints about the property and rejected any suggestion that there might have been a profit made from the work. She stressed that the family had been living at the property for many years. Indeed she had been resident since she was eight years of age.
20. The Respondents did indicate that they would consider seeking to recover the cost of the proceedings under the service charge regime. However it was not clear what costs they had incurred as they had no legal representation and it was not something that was pursued with any vigour. For the Applicant Miss Lewis asked that the fees that had been paid by Mr Alhaider should be returned to him. They included the application fee of £200 and the hearing fee of £150.

C. INSPECTION

21. Because the items in dispute related to matters that took place in the year ending March 2005 it was agreed that there was no point in inspecting. In addition we have been provided with some helpful photographs both by the Applicant and by the Respondent and in those circumstances it seemed to us that nothing would be gained by visiting the property.

D. THE LAW

22. We have borne in mind the provisions of s27A and 20C of the Act and applied those in reaching our decision in this case.

E. DECISION

23. The real issue in this matter was the transparency on the part of the Respondents caused by the lack of invoices and receipts for the not insubstantial sums which are alleged to have been spent. In addition, from the paperwork it appeared that at the time Mr Alhaider made his application both Respondents were in arrears with their service charge contributions. Whilst it was argued by Mr Chandler that he would only be seeking to recover monies from the Respondents to repay it to them it did cause Mr Alhaider concern to be sure that he was not being over charged for services and that those services were in fact being rendered. It is quite clear to us that the Respondents cannot continue to manage this property as their own fiefdom. Whilst we accept that it is the family home, it is also of course the family home for a number of other lessees. We are pleased to hear that Mr Chandler will be taking over the management of the property in future and that expenses will be properly recorded. It may be that this will result in increased service charges. It is impossible to tell at this stage. What it will however result in is transparency and comfort to Mr Alhaider that the costs he is being asked to contribute towards have been properly and reasonably incurred. It should be recorded that it does not appear that Mr Alhaider has questioned the service charge demands in previous years and has, until the year in dispute, always made his contribution on time and in full.
24. We will now deal with the particular items in dispute starting firstly with the internal cleaning of the property. The costs claimed of £2,225 are consistent with previous years which have not been challenged by Mr Alhaider. Although Miss Lewis indicated that we could not rely on previous years service charges we disagree with her. If they have not been challenged then they stand and they seem to us to give a reasonable indication as to the pattern of service charges over the years. In a helpful letter written by Mr Chandler on the

13 November 2006 to solicitors instructed by Mr Alhaider he had indicated how various sums had been reached. The monthly cleaning bill of £187.50 gave the annual sum. We were told by Mrs Yearsley that she was able to ensure that the cleaning was carried out correctly. There is no suggestion that the property is not cleaned and we are satisfied from the evidence given that the costs are reasonable and we therefore allow that sum in full.

25. We then turn to the question of the cleaning of the garden. This involved a regular sum of £137.50 for carrying out the works that were set out on what purported to be a Schedule of Works from Doggy Biscuit Limited. The garden is a fairly substantial paved area and it seemed to us that the charges are not unreasonable. Whether it is necessary for there to be as many visits as is apparently claimed, is a matter that no doubt Mr Chandler will review in future years. We noted the estimate that had been obtained by Mr Alhaider from Rowan Landscapes which was headed up "Estimate for maintenance of Front Garden" which left us in doubt whether it was comparable and also the quote from Katie Evans which was £80 per month on the basis of twice monthly visits of two hours. This was not inconsistent with the costs presently being charged by the Respondents which we found to be reasonable. We should perhaps make the point at this stage that Mr Alhaider in putting forward alternative estimates appears in all cases not to have provided the company giving the estimate with details of the works to be carried out nor, in some cases, did those people who quoted visit the property.
26. As for the general cleaning and unblocking of manholes it appears this was undertaken on a regular basis. Whilst the sums involved are not insignificant, namely £550, it seems to us it is preferable that preventative work is undertaken of this nature particularly with regard to the number of trees in the locality which could cause leaves to find their way into the drainage system and cause problems. We therefore allow that sum.
27. On the question of the cleaning of the communal rubbish area we find this sum perfectly reasonable. Mr Alhaider seemed to be suggesting that this was the communal area and that there should be no additional charge as the rubbish would be removed by the Local Authority. Of course that is not the case. We have no doubt that other items will have been left there which may not be removed and in addition there would undoubtedly be spillage and potential smells and vermin. The cleaning of the area is therefore important and £50 per month is not unreasonable. We therefore allow that sum.
28. On the basis of the photographic evidence before us it appears that the steam cleaning of the stone tiles and the walkway appears to have been carried out. If the walkway was

proving slippery then it seemed sensible for that to be cleaned before injury was done and the figure of £900 does not seem unreasonable and indeed was not in truth challenged.

29. As for the cleaning of the guttering and the repair work to the stone façade we find the sum of £1000 is very reasonable. In our experience, work of this nature would either have required a "cherry picking" device or scaffolding and certainly costs in excess of £1000 would have been incurred.
30. On the question of the repairing and the welding of the iron railings we have compared these to the quotes obtained by Mr Alhaider, albeit somewhat late in the day. These were for similar railings but at a price of £85 plus VAT per metre. He had worked on a reduced metreage which had proved to be incorrect and taking the matter in the round it seemed to us that the difference between the figures claimed by the Respondent for these works and the comparable quotes put forward by Mr Alhaider were inconsequential. It was not clear from the quotes obtained by Mr Alhaider whether the railings came painted or whether further decorative work would be required. In those circumstances we find the charge of £1,300 for the repairing and the welding of the railings and the replacing of same, reasonable.
31. The supplying and planting of the 80 laurel bushes at £1,250 seems to us to be reasonable. It would appear that just under £600 was spent obtaining the bushes and compost, the remainder having been spent on labour costs. It is not an insignificant sum but the work was carried out, we believe, at the same time as the railings were installed and taking the two together it seems to us that the costs are acceptable. Certainly from the photographs supplied the laurel bushes appear to be healthy.
32. The last matter we need to deal with is the question of the flowers both internally and externally. From our point of view we cannot see that Mr Alhaider benefits from the flowers in the property itself as these are on the floors above his flat. The flowers in the garden are limited and we believe should be covered in the monthly charge. They do not in our finding form a service charge expense and in those circumstances we disallow this sum in full.
33. To sum up therefore we allow all the items the Respondents have sought to recover save for the flowers which totalled £700. According to the account that was produced in the papers before us it appears that the percentage due for the year in question from Mr Alhaider was 20% giving a sum of £5,298.46. We understand from the accounts that some £4,800.00 had been paid leaving £498.46 due. As we have in fact reduced the liability in

respect of the flowers by some £140 that should be deducted from the amount still outstanding.

34. We are not prepared to sanction any claim for costs on the part of the Respondent to be recoverable under the service charge regime. We find it just and equitable to make an Order under s20C preventing any costs of these proceedings being added to the service charge. Our reason is that we are satisfied that this case has largely been caused by the Respondents' somewhat cavalier attitude towards the service charge regime. As we indicated earlier whilst we appreciate this is the family home they do have to take into account that there are other individuals living in the building who are entitled to full and complete documentary evidence as to service charge costs that have been incurred, which has not been forthcoming. We do not suggest for one minute that the Respondents have acted in an illegal fashion and we are satisfied that the costs have, save for the one item, been properly incurred and that the block is well looked after. They cannot however continue in this vein and it is for that reason that we will not allow any costs to be recovered under the service charge regime.
35. Insofar as reimbursement of the fees are concerned we have considered the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 regulation 9. This enables us to require any party to the proceedings to reimburse another party for the whole or part of any fees paid. In this case we believe it is reasonable for the Respondents to reimburse Mr Alhaider, the Application fee of £200 but not the hearing fee. It seems to us that the documentation that was eventually produced should have satisfied Mr Alhaider that all was in order and that there was not a need to come before the Tribunal to deal with the matter.
36. We hope the closer involvement of Mr Chandler and his company will prevent further problems of this nature arising. The parties appear to have had a good relationship in the past and we trust that can now be resurrected.

Chairman.....

Dated.....30 April.....2007

