CHI-00LC-LSC-2008-0081

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

SPEMBLY WORKS, 13 NEW ROAD AVENUE, CHATHAM, KENT ME4 6AZ

Applicants:	Mr M Nicholson (Flat 17)
	K Edwards (Flats 1 and 4)
	D Johnson (Flat 2)
	P Kendrick (Flat 9)
	A Christie (Flat 5)
	Dr N Venkat (Flat 15)
	R Lancaster (Flat 21)
Respondent:	Construction Link Ltd
Date of hearing:	11 November 2008
Date of inspection:	11 November 2008
Appearances:	Mr Nicholson, Mr Edwards, Mrs Johnson in person.
	Mrs Birmingham for Mr Kendrick
	No appearance for respondent

Members of the Leasehold Valuation Tribunal:

Mr M Loveday BA(Hons) MCIArb
Mr R Athow FRICS MIRPM
Mrs L Farrier

BACKGROUND

1. This is an application under section 27A of the Landlord and Tenant Act 1985 ("LTA 1985") for a determination of liability to pay service charges. The applicants are the leasehold owners of a number of flats at Spembly Works, 13 New Road Avenue in Chatham. The respondent is the freehold owner of the block. The application was made by Mr M Nicholson (Flat 17) on 7 August 2008 in relation to the service charge years ending 25 March 2007, 25 March 2008 and 25 March 2009. Directions were given on 13 August 2008. By a letter dated 5 October 2008, six other leaseholders asked to be joined as applicants.

2. A hearing took place on 11 November 2008. At the start of the hearing, the Tribunal agreed to join K Edwards (Flats 1 and 4) D Johnson (Flat 2) P Kendrick (Flat 9) A Christie (Flat 5) Dr N Venkat (Flat 15) and R Lancaster (Flat 21) as second to sixth applicants.

3. Copies of the application and the directions have been served on the respondent. The respondent did not make any submissions or attend the hearing.

INSPECTION

4. The Tribunal inspected the property before the hearing. Spembly Works is a former commercial site in Central Chatham. Access to the grounds from the main road is through heavy access controlled metal gates. The main block is a 1960s flat roofed seven storey building which appears to have been converted from offices in the early part of this century. The building contains 33 flats with two hallways stairs landings and lifts. An unusual feature of the building is that the boiler for each flat is located in a cupboard on the landing outside the flat. Nearby is an older converted industrial building with a pitched roof containing other flats, but this is not covered by the present application. In the grounds there are ancillary buildings, parking and landscaped areas.

5. At the date of inspection the condition of the property was poor. There was no sign of any caretaker or staff on site. The main gates were not working. The windows were very dirty. The landscaped grounds were not tended. There were weeds on all

concrete, paved and tarmac areas. A blocked drain to the front appeared to have overflowed effluent onto the ground in the recent past. In the common parts, the carpets were dirty and there was some decorative disrepair to the walls and ceilings. In one entrance hallway, there were 2ft tall weeds growing between the stairs and the window. On a number of landings there were signs of water penetration and there were broken and cracked windows. Some of the boilers outside each flat had supplementary surface mounted pipework leading some distance along the wall of the landing in a variety of styles. The lifts were functioning but the fire control panel indicated that the fire alarm was broken. Some landings were lit, but some were not. The administration office on site was locked with no contact details and the caretakers' flat was empty. There was no discernable management taking place and the premises gave the distinct impression of having been abandoned by the landlord.

THE LEASE

6. The Tribunal was provided with a sample lease for flat 13 dated 14 May 2004. The Service Charge is defined in clause 1.10 as *"1/33rd of the expenditure incurred by the Landlord in performance of its obligations in this Lease."* By clause 5.1 the leaseholder is to pay to the landlord:

> *"on 25th March and 29th September in each year such sum as the Landlord shall consider is fair and reasonable on account of the Service Charge and forthwith upon receipt of the Certificate (as hereinafter defined) to pay to the Landlord any balance of the Service Charge then found to be owing..."*

By clause 6.2.2:

> *"the amount of the Service Charge shall be ascertained and certified annually by a certificate of the annual expenditure ("the Certificate") signed by the Landlord or the managing agents so soon after the end of the financial year of the Landlord as may be practicable..."*

7. The main obligations of the Landlord to repair and maintain and provide other services appear at clause 6.1.1 and the Fourth Schedule. The landlord's obligation to insure is at clause 6.5.

8. Unless otherwise indicated, figures given in relation to individual heads of expenditure refer to the leaseholder's individual liability under clause 1.10 of the lease (ie 1/33th) rather than the total relevant costs incurred by the landlord.

SUBMISSIONS AND EVIDENCE

9. The second applicant referred to a decision of an earlier Tribunal (no. CHI/00LC/LSC/2006/0038) in relation to Flat 26 Spembly Works dated 15 November 2006. The previous Tribunal found that the respondent failed to supply certificates for the service charge years ending 24 March 2005 and 24 March 2006 and that there was no estimate of service charges for the year ending 24 March 2006. The Tribunal allowed interim charges of £650.46 for the 2005/06 service charge year. It refused to allow another demand for £1,368 made part way through the 2005/06 service charge year. The Tribunal further considered the works and services provided in that year and found the standard of cleaning, repairs etc not to be reasonable under LTA 1985 s.19. Permission to appeal was refused on 20 December 2006.

10. The first applicant relied on written submissions dated 5 October 2008 supplemented by representations made at the hearing. He pointed out that the landlord had not provided proper end of year accounts, but invited the Tribunal to determine whether the sums demanded by the landlord in 2006/07 and 2007/08 were payable – and whether the sums paid without any demand in 2008/09 were payable. In respect of all three year's service charges, he also invited the Tribunal to say whether the relevant costs were reasonably incurred under LTA 1985 s.19(1)(a) and or whether the services were of a reasonable standard under s.19(1)(b).

11. 2006/07. On 19 October 2006, the respondent sent the first applicant an invoice numbered 06/07 for the sum of £1,100. This included a number of detailed heads of expenditure together with ground rent (£75) and admin charges (£86). The spreadsheet attached indicated that these costs derived from the landlord's expenditure in the previous service charge year. This invoice was issued after the LVT hearing in the case of Flat 26 but before the LVT decision was made.

12. The first applicant objected to a number of items of expenditure. He had made several requests for copies of the building insurance policy and was eventually given a copy of a brokers' letter. The windows had not been cleaned despite complaints. There was no security in the building apart from the main security gates, the cost of which was excessive. Cleaning was poor. Gardening consisted of a few pot plants. The lift did not work for much of the year and there was no TV for several weeks due to a broken communal aerial. The landlords' staff members on site (a part time administrator and a caretaker) were hard to get hold of and slow to respond to faults.

13. The first applicant submitted that the relevant costs were not reasonably incurred and/or that services were not of a reasonable standard under LTA 1985 s.19. He attached a schedule to his written submissions which accepted liability for a number of heads of relevant cost and made detailed comments on the lack of services provided, poor cleanliness etc. A summary appears in the Appendix to this decision. Generally, the security gates were jammed open, the lifts and communal aerial often broken and the on-site staff would take a long time to carry out minor repairs. Cleaning was very ad hoc and carried out by the caretaker. The fire alarm had intermittent faults but only the caretaker was able to re-set it. When he went on holiday the system was not re-set. The first applicant accepted liability for water rates (£83), electricity (£47), fire maintenance (£28), lift maintenance (£27) and bin hire (£60). As for window cleaning (£84), general cleaning (£111) and gardening (£31), he accepted these costs would be reasonable figures for cleaning had these service been provided properly. However, they had intermittent at best. He allowed half these costs as being reasonably incurred and/or reasonable in amount. The first applicant allowed nothing for gardening (£61) and security services (£179) because no such services were provided. He allowed nothing for insurance (£123) since he had been unable to claim against the policy as a result of the obstructive tactics of the landlord. He also allowed nothing for administration (£86) because the only administration was the sending of the annual service charge bill (and even this was done late). The first applicant therefore accepted liability for £410. He also referred to liability for ground rent (£75) but the Tribunal has no jurisdiction over this.

14. 2007/08. On 22 October 2007, the respondent sent the first applicant an invoice number SC/07/08/F17 for the sum of £1,180. The statement said it was for the period 23rd March 2007 to 22nd March 2008. The invoice again included a number of detailed heads of expenditure together with ground rent (£75) and administration charges (£86). There was no schedule of relevant costs for the building attached.

15. In 2007/08 there was a "rapid and severe deterioration" in the state of the property and the first applicant objected to a number of items in the invoice. Windows had not been cleaned for 18 months. Water damage and other defects were not repaired. There was no security, cleaning or gardening. The fire alarm system was frequently broken. The lift often broke down. It was only repaired because a lift engineer happened to live on site and he managed to get the lift working again. The part time administrator left in late 2007 and was not replaced. The caretaker was still hard to get hold of and it took several weeks for the caretaker to repair the first applicant's boiler when it broke. The caretaker left in early 2008 and was not replaced. There was a letter from insurance brokers Jardine Lloyd Thompson dated 30 January 2007 which suggested the property was on cover during the period 21 November 2006 to 20 November 2007 – but a telephone call to the broker shortly afterwards confirmed that the cover was cancelled due to non-payment of any premium.

16. The alleged deterioration was reflected in the schedule to the first applicant's written submissions. He allowed nothing for window cleaning (£84), repairs (£136) security (£179), cleaning (£111), gardening (£61), insurance (£123) and administration (£86). He accepted liability for water rates (£83), electricity (£47), fire maintenance (£28), lift maintenance (£27) and bin hire (£60).

17. 2008/09. The first applicant had not received any kind of demand or statement for 2008/09. However, the landlord continued to accept payments by standing order.

18. The property had not really been managed at all after the start of the service charge year. When the first applicant's boiler again broke down, he tried to contact the

landlord. All telephone lines had been disconnected and they did not reply to emails. When he called a plumber, he was told his boiler did not comply with health and safety regulations. No maintenance cleaning or services at all were provided after April 2008. In May 2008, the landlord confirmed no "*property keeper*" would be at the premises. Two boilers burst in August and an enquiry by the leaseholders resulted in an email from an ex-member of staff to say that all the respondent's staff had been made redundant. A Dr Issa visited in August and promised that everything would be sorted out, but nothing was done. On another occasion Dr Issa visited and requested a fee of £250 to be shown a copy of the insurance policy. A long list of neglected features of the block was provided.

DECISION

19. We shall first deal with the 2006/07 and 2007/08 service charge years. The demands dated 19 October 2006 and 22 October 2007 appear to be estimates of what "*the Landlord shall consider is fair and reasonable on account of the Service Charge*". There is some evidence from the breakdown of expenditure for 2005/06 attached to the former that the landlords based the demand on the previous year's expenditure. Although made late, these interim service charge demands do comply with the fairly basic requirements of clause 5.1 of the lease. However, it is equally clear that no certified statements of service charges were produced in either year. The landlord has not therefore met the requirements of clause 5.1 and 6.2.2 of the lease.

20. A similar situation arose with the previous Tribunal and it determined the service charges before it as best it could. Since then, the Lands Tribunal has given guidance on the approach to be adopted where a landlord simply makes interim service charge demands without ever issuing end of year balancing accounts. In ***Warrior Quay v Joachim*** (2007) Lands Tribunal (unreported) LRX/42/2006. The Lands Tribunal stated as follows:

> *"It is clearly unsatisfactory that [the landlord] has failed to comply with its obligations under the [the lease to provide certified annual accounts]. However, I am unable to read the lease as meaning that if [the landlord] has failed to comply with this provision then this automatically thereby proclaims that in respect of the service charge year to which the failure relates [the landlord] had*

lost the right to be paid any service charge whatever, such that the entirety of any sum paid on account must be dealt with on the basis that the leaseholder is either entitled to credit for this sum or to be re-paid (as to which see below) the whole of the amount paid on account. I agree with [the landlord] that for this dramatic result to ensue from a failure to comply in proper time with the obligation [the lease] would require clear words. However, I also conclude that [the landlord] cannot take advantage from its own breach of covenant and cannot unilaterally put off into the future the ability of a tenant to obtain finality of decision as to how much is payable for a particular year. Section 27A of the 1985 Act clearly contemplates that a tenant can apply to an LVT to obtain a binding decision on this point. I therefore also agree with [the landlord's] submissions that, if in such circumstances a leaseholder does make an application to the LVT for a decision (as happened in the present case), the LVT must reach the best informed decision it can upon the material available to it. The absence of any proper certificate is a matter which may weigh against [the landlord] and may result in the LVT deciding that a lesser sum than hoped for by [the landlord] may be decided to be the amount payable. Also the absence of the certificate should result in the position being that the amount which is decided by the LVT to be payable by way of shortfall will not be payable until a proper certificate (certifying that at least this amount is payable) is provided by [the landlord's] auditors or accountants. However, if the LVT's decision is that the service charge payable for the relevant year is less than the sum paid on account, then the leaseholder is entitled to the benefit of that decision immediately (and without waiting for a certificate from the relevant auditor or accountant).

21. This is the approach we take in the present instance. Happily, it is also the approach the applicants urged upon the Tribunal.

DECISION

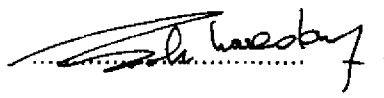
22. This is modern conversion, but it has evidently suffered a very long period of neglect. The landlord has not responded to the application or submitted any evidence. We therefore rely on the evidence given by the applicants, our own observations and the very limited documentation available. These all suggest that for some time the landlord has effectively abandoned the leaseholders to their own fate and has wholly disregarded its obligations under the lease.

23. In respect of the **2005/06** service charges demanded on 19 October 2006, the Tribunal considers that (with one exception) the recoverable sums should be limited to the figures proposed by the first applicant. None of the individual items of relevant costs referred to in the invoice are in the experience of the Tribunal excessive, and the first

applicant accepted that that was the case. However, many of these services were simply not provided during the 2005/06 service charge year. Those that were provided were frequently not of a reasonable standard. The exception relates to the contribution to the insurance premium. The first applicant accepts that he saw evidence of cover and this implies that a premium was paid during the 2005/06 service charge year. Although a failure to provide a copy of the insurance policy may well give rise to remedies under other statutory provisions, such a failure does not in itself make it unreasonable to incur the cost of the insurance premium. We therefore allow a figure of £123 for each leaseholder's contribution to insurance in 2004/05. The total contribution by each leaseholder is therefore limited to **£533.00**.

24. Similarly, In respect of the **2007/08** charges in the invoice dated 22 October 2007, the Tribunal considers that recoverable charges are limited to the sums proposed by the first applicant. The unchallenged evidence is that the standard of service declined and that on site staff ceased to be employed. In respect of insurance, there is no letter similar to the broker's letter, and some evidence that insurance eventually ceased. Absent any evidence that the landlord incurred any costs of insurance premiums, we find that the relevant cost was not "incurred" and it is therefore not recoverable. The total contribution by each leaseholder is therefore limited to **£245.00**.

25. As for 2008/09, there is no evidence that the landlord has ever made a decision as to what is *"fair and reasonable on account of the Service Charge"*. This is a condition precedent to payment and unless and until any such decision is communicated to the leaseholders, nothing is payable under clause 5.1 of the lease. We therefore determine that **no charges were payable on 25 March 2008 and 25 September 2008**.



Mark Loveday BA(Hons) MCIArb

Chairman

11 December 2008

APPENDIX: SPEMBLY WORKS CHATHAM - SUMMARY OF RELEVANT COSTS*

	invoice	offer	determination	invoice	offer	determination
	2006/07	**2006/07**	**2006/07**	**2007/08**	**2007/08**	**2007/08**
quarterly window cleaning	£84.00	£42.00	£42.00	£84.00	£0.00	£0.00
general running repairs	£136.00	£36.00	£36.00	£136.00	£0.00	£0.00
security services	£179.00	£0.00	£0.00	£179.00	£0.00	£0.00
water rates	£83.00	£83.00	£83.00	£163.00	£83.00	£83.00
cleaning lobbies and stairwells	£111.00	£56.00	£56.00	£111.00	£0.00	£0.00
electricity	£47.00	£47.00	£47.00	£47.00	£47.00	£47.00
gardening	£61.00	£31.00	£31.00	£61.00	£0.00	£0.00
building insurance	£123.00	£0.00	£123.00	£123.00	£0.00	£0.00
fire alarm maintenance	£28.00	£28.00	£28.00	£28.00	£28.00	£28.00
lift maintenance	£27.00	£27.00	£27.00	£27.00	£27.00	£27.00
bin hire	£60.00	£60.00	£60.00	£60.00	£60.00	£60.00
admin charges	£86.00	£0.00	£0.00	£86.00	£0.00	0
ground rent	*£75.00*	*£75.00*		*£75.00*	*£75.00*	
total	£1,025.00	£410.00	£533.00	£1,105.00	£245.00	£245.00

** Note that each figure above is 1/33 of total relevant costs for block*