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Ref: LON/00AC/LSC/2007/0372

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT
PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER
Section 27A LANDLORD AND TENANT ACT 1985 AS AMENDED**

Applicant(s): Mr Salim Modi & Mr Kantilal Modi (Leaseholders)

Respondent(s): Redendale Ltd. (Landlord)

**Re: 5 Brentview House North Circular Road, London NW11 9LE
("the Premises")**

Hearing Date: 7 February 2008

Appearances: For the Applicant

Mr Richard Kayser	College of Law
Mr Shouvick Saha	College of Law
Mr Craig Vickers	College of Law

For the Respondent

The Respondent did not appear and was not represented

**Members of Leasehold Valuation Tribunal: Mrs J S Pittaway LL.B
Mr C White FRICS
Mr L G Packer**

Date of Tribunal's Decision: 20 February 2008

INTRODUCTION

1. The Application is as to liability to pay service charge and reasonableness of costs/standard of service, identified in directions issued by the Tribunal on 29 October 2007 as relating to various heads of service charge for the service charge years 2003/4, 2004/5, 2005/6, 2006/7 and 2007/8.

2. The Applicants also seek an Order for the limitation of the Respondent's costs in the Proceedings under Section 20C of the Landlord and Tenant Act 1985 ("the Act")

THE HEARING

1. The Hearing took place on 7 February 2008

2. The Applicant was represented by Messrs Kayser, Saha and Vickers of the College of Law Legal Advice Centre.

3. No one appeared on behalf of the Respondent.

DETERMINATION

1. LIABILITY TO PAY SERVICE CHARGE

1.1 Schedule 3 Part 1 of the Lease under which the Applicants hold the Premises does not permit the Landlord to recover by way of Service Expenditure repayment of loans to it. Accordingly, the Respondents were not entitled to recover from the Applicants the sum of £4,708.06 demanded in the service charge year 2003-2004. The actual service charge payable for the service charge year 2003-2004 was therefore £11,296.54 of which 5.88% was payable by the Applicants in accordance with Clause 1.18 of the lease; namely, £664.24.

1.2 As there has been no communal gas supply at the blocks of flats of which the Premises forms part since 2002/2003 (when the communal central heating system was replaced with individual systems for the flats for which their occupiers paid separate gas bills) there should be no charge for gas in either the audited or estimated service charge demands.

1.3 While it was argued on behalf of the Applicants that there was no evidence that service charge had been demanded from the Applicants for the service charge year 2004/2005 and that no payment was therefore required, the Tribunal concluded that from the various payments made by the Applicants, set out below, some form of demand could reasonably be inferred.

2. REASONABLENESS OF SERVICE CHARGE YEAR

2.1 The only year for which the Tribunal had audited accounts was the year commencing 25 March 2003.

2.2 The failure by the Respondents to provide audited accounts for any other year meant that the only evidence before the Tribunal as to the reasonableness of the estimated service charge demanded was the audited service charge accounts together with the Applicants' evidence as to the limited level of repair works undertaken since 2003 by reason of the redevelopment work being carried out at the block of flats.

2.3 Of the items set out in the Audited Account for 2003-04 the Applicant did not dispute the reasonableness of any of the sums shown except for the management fees and the amount to be transferred to "Reserves".

Management charges Insofar as the management charges are concerned no evidence was provided as to what would be a reasonable level of management fee. In the absence of any such evidence the Tribunal considered that the management fee was reasonable.

Reserves As to the transfer to "Reserves" see paragraph 1.1 above.

2.4 Of the items set out in the estimated accounts for the various years

Cleaning repairs and maintenance The Tribunal consider that a prudent managing agent would allow a sum in an estimated service charge budget to allow for emergency repairs even in years when running repair was not anticipated by reason of on-going building work.

Management fees The Tribunal considered that an estimated fee level of £200 (exclusive of VAT) was appropriate, given the poor performance of the managing agents (e.g. failure to answer letters or produce audited accounts) when measured against their performance criteria.

Pest Control The Tribunal did not consider it reasonable to make provision for pest control in one year only out of four without any evidence that there was a problem with pest control.

2.5 Using the evidence before them the Tribunal have prepared the attached schedule which sets out the service charge for which the Applicants were liable for the service charge year 2003/2004 and what they determine to be a reasonable sum to be demanded on account of service charge in respect of each of the four service charge years from 25 March 2004.

Of the total sum for each year the Applicants are responsible for 5.88%, namely

2003-04	£ 664.24
2004-05	£ 648.00
2005-06	£ 629.16

2006-07	£ 620.26
2007-08	<u>£ 642.10</u>
Total	£3203.76

2.6 The Applicants' payments during the five service charge years exceed the amount reasonably payable by way of actual service charge and estimated service charge as follows

Total paid	£5,429.46
Total due	<u>£3,203.76</u>
Overpayment	£2,225.70

2.7 Paragraph 3 of Schedule 3, Part 1 of the Lease provides that overpayments on account of service charge should be carried forward to the next service charge period. However, as the Applicants have already paid the Respondents in excess of the service charge reasonably payable on account for the current service charge year, the Tribunal determine that £2,225.70 should be repaid by the Respondents to the Applicants immediately.

2.8 Section 20B does not relate to service charge payments on account, which are dealt with under section 19(2). Section 20B is however relevant where the actual service charge expended exceeds the amount reasonably demanded on account. In such circumstances the Landlord may only recover the additional sums to the extent that they are incurred within 18 months of the actual service charge demand being served on the Tenant.

To the extent that there are any actual service charge demands in excess of those which we have determined are reasonable, and the demand is served on the Applicant more than 18 months after the relevant costs were incurred, such excess will not be recoverable from the Applicants.

2.9 Recovery of Landlord's costs under section 20B is not an issue as the Respondents did not appear at the Hearing.

2.10 The Tribunal require the Respondents to reimburse the Applicants for the whole of the fees paid by them in respect of the proceedings.

EVIDENCE

1. Neither the Respondent nor their managing agents attended the Hearing. There was no reply from the Respondents before the Tribunal as directed in the Directions of 29 October 2007.

2. The Tribunal had before it the Applicants' Statement of Case provided to the Tribunal on 15 January 2008, which included

2.1 A copy of the Lease of the Premises dated 24 October 2001

2.2 The schedule of estimated service charge for the service charge year commencing 25 March 2003 sent by the Respondent's managing agents to Mr K Modi, the then leaseholder of the Premises, and the audited service charge accounts for that year which had been delivered to Mr S Modi, the present leaseholder of the premises by the managing agents in June 2007. This showed an actual service charge expenditure for the year of £16,004.60 (including an amount of £4,708.06 transferred to Reserves) as against the estimated expenditure of £23,750.00.

2.3 Schedules Of Service Charge Expenditure for the years commencing 25 March 2005, 2006 and 2007, each of which was stated to be a "Schedule of estimated service charge expenditure" representing "expenditure to be incurred". These were all delivered to the Applicant in June 2007, at the same time as the actual service charge account for the year commencing 25 March 2003 referred to above.

2.4 A schedule of the service charge account for the Premises for the years from 25 March 2003 to 23 June 2007, showing the sums demanded and paid by the leaseholders during that period supplied by the managing agents, H M L Mandells to Mr Modi on 11 June 2007.

3. No budget and no audited service charge account had been provided to the Applicant for the service charge year commencing 25 March 2004.

4. The Applicants provided evidence of the following sums having been paid by them by way of "Interim Payments" of service charge

4.1	4 November 2003	£1,002.69
4.2	16 August 2005	£2,093.89
4.3	6 October 2005	£ 286.61
4.4	30 July 2007	<u>£2,046.27</u>
	Total	£5,429.46

5. On behalf of the Applicants it was argued that section 20B of the Act might apply to the payments on account; that demands on account of service charge should be supported by estimates, which had not been the case here.

6. It was also argued that the Respondents should not be entitled to recover costs under section 20C and that the Applicants should be entitled to be reimbursed for the fee that they had paid in connection with the application to the leasehold valuation tribunal by reason of the Respondents' persistent failure to respond to the Applicants' requests for information and their failure to attend at the Hearing.

INSPECTION

There was no inspection of the Premises. At the Hearing the Applicant confirmed that an inspection would not assist the Tribunal.

THE LAW

Section 27A Landlord and Tenant Act 1985 as amended by **Commonhold and Leasehold Reform Act 2002** provides

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-

- (a) the person by whom it is payable
- (b) the person to whom it is payable
- (c) the amount which is payable
- (d) the date by which it is payable; and
- (e) the manner in which it is payable

(2) Subsection (1) applies whether or not payment has been made

Section 19 Landlord and Tenant Act 1985 provides

(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) when 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.

Section 20B Landlord and Tenant Act 1985 provides

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date the relevant costs were incurred, the tenant was notified in writing that these costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by payment of service charge.

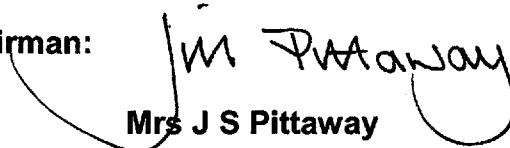
Section 20C Landlord and Tenant Act 1985 provides

(1) A tenant may make an application for an order that all or any of the costs incurred or to be incurred, by the landlord in connection with proceedings before a..... leasehold valuation tribunal.....are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Under paragraph 9 a tribunal may require any party to the proceedings to reimburse any other party to the proceedings the whole or any part of any fees paid by him in respect of the proceedings.

Chairman:

A handwritten signature in black ink, appearing to read 'Mrs J S Pittaway', written over a printed name.

Mrs J S Pittaway

Date:

20 February 2008

Schedule of Reasonable Service Charge

	2003-04	2004-05	2005-06	2006-07	2007-08
Gardening	£ 455.38	£ 450.00	£ 450.00		
Electricity/gas		£ 300.00		£ 298.70	£ 300.00
Bank charges	£ 247.83				
Insurance	£ 5,463.52	£ 6,000.00	£ 6,000.00	£ 6,000.00	£ 6,000.00
Cleaning, repairs, maintenance	£ 1,740.00	£ 1,000.00 £ 500.00	£ 1,000.00 £ 500.00	£ 1,000.00 £ 500.00	£ 1,000.00 £ 500.00
Management fees	£ 3,674.76	£ 2,450.00	£ 2,450.00	£ 2,450.00	£ 2,820.00
Audit fees	£ 300.00	£ 300.00	£ 300.00	£ 300.00	£ 300.00
Reserves					
Pest Control					
TOTAL	£11,296.54	£11,000.00	£10,700.00	£10,548.70	£10,920.00