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**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985, section 27A

LON/-OOAE/LSC/2007/0417

Address: Flat 1, 65 Callcott Road, London, NW6 7EE

Applicant: Mr Philip Hartstein

tenant

Represented by: Miss C Kantor, solicitor of Housing & Property Law Partnership

Respondent: Ms M Bailey

landlord

Represented by: Mr R Tomlinson

Date of hearing: 12th February 2008

Tribunal:

Ms E Samupfonda LLB(Hons)

Mr F James FRICS

Mrs L Walter MA(Hons)

Date of decision: 3rd March 2008

**DECISION ON AN APPLICATION UNDER SECTION 27A OF THE
LANDLORD AND TENANT ACT 1985**

Introduction

This document records the tribunal's decision.

Background

- (a) The property which is the subject of this application is a ground floor and basement flat situated in a Victorian mid terrace house.
- (b) The applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
- (c) On 25th October 2007, the applicant made three applications to the tribunal; under section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination his liability to pay service charges, for an order under section 20C of the Act preventing the landlord from recovering the cost of these proceedings through the service charge and for the appointment of a new managing agent under section 24 of the Landlord and Tenant Act 1987.

An oral pre trial review was held on 19th November 2007 at which directions for the future conduct of this case were made. The applicant attended and Mr Tomlinson, chartered accountant represented the respondent. An inspection of the property was not ordered.

The hearing of this application took place on 12th February 2008. Ms Kantor, solicitor represented the applicant. Mr Tomlinson represented the respondent. Mr Hartstein and Ms Bailey attended.

Matters in dispute

(a) 2004	Stairway carpet	£500
	Administration charges	£75

(b)2005	Repairs to roof	£1,200
	Report on CCTV drain survey	£400
	Roof parapet wall repairs	£400
	Survey of roof parapet	£150
	Cleaning	£60
	Administration	£200
	Replace glazing in front door	£65
(c)2006	Cleaning	£104.00
	Administration	£200
(d)2007	Repair front door	£160
	Repair rear roof	£30.00
	Professional carpet clean	£50.00
	Repair fire alarm	£80.00
	Repair to guttering	£51.00
	Electricity supply	£200
	Administration	£200
	Repair to lead flashing	£497

Evidence

The parties agreed that the tribunal should include the service charge year 2007 in its determination although the service charge accounts have yet to be served. The parties also informed the tribunal that they are in the process of negotiating the appointment of a new manager and that in the circumstances the application under section 24 of the 1987 Act is withdrawn.

In summary, with regards to the year 2004, Ms Kantor stated that the cost of the carpet in the common parts was disputed on the basis that it is beige, unsuitable impractical and gets dirty very quickly, thus maintenance costs are higher. She added that the accounts were not produced in 2004 but served on the applicant's solicitors in 2007 and that formal demands for payment have not been made. In respect of the year 2005, Ms Kantor said that the applicant has not been provided with a copy of the roof and CCTV surveys. She added that the applicant was not formally consulted before the repairs were carried out. She confirmed that the applicant had paid £1200 despite being informed that the repairs would cost £950. The costs incurred in 2006 were in

respect of cleaning and administration. The cleaning costs in each year were disputed as being unreasonable. The administration charges in each year were challenged on the basis that no explanation as to how or why the costs were incurred has been given. In respect of 2007, the applicant considered that the cost of repair to the front door, electricity supply to common parts, guttering, carpet cleaning, roof repairs and fire alarm were either excessive or simply unreasonable.

In response, Mr Tomlinson explained that the administration charges are his costs for drawing up the accounts for which he charges £50 per hour inclusive of VAT. He said that he started with 2004 because in the preceeding years, the parties had an informal arrangement for the payment of the shared costs. In essence, he submitted that all the costs incurred were reasonable. The carpet was replaced as the original was 14 years old. There was no need to consult formally on the roof repairs and roof parapet wall as the cost fell below the consultation requirement threshold set by section 20 Landlord and Tenant Act 1985. The roof repair cost £1200 as evidenced by the invoice from Connaught Roofing dated 8th September 2005.

The law

Section 18(1) of the Act provides that, for the purposes of the relevant parts of the Act, “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.

Section 19(1) of the Act provides that 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) where 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.

Section 19(2) of the Act provides that, 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 27A(1) of the Act provides that that 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 at or by which it is payable, and
- (e) the manner in which it is payable.

Section 20(1) of the Act provides that where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited unless the consultation requirements have been either

- (a) complied with in relation to the works or agreement, or
- (b) dispensed within relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

Section 20(2) provides in this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

Section 20(3) this section applies to qualifying works if relevant costs incurred on carrying out the works exceed the appropriate amount.

The appropriate amount is currently £250

Section 20B provides if any of he 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 erved on the tenant, hen subject to subsection (2) the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

The tribunal's decision

The effect of section 20 of the Act is that where the consultation requirements are applicable and they have neither been complied with nor dispensed with, then the recoverable costs are limited to £250 from each service charge payer in respect of qualifying works. In this context qualifying works are defined as "works on a building or any other premises"

In evidence Mr Tomlinson admitted that the tenant was not consulted with regards to any of the work carried out. An application to dispense with the consultation requirements was not made.

The tribunal found that the landlord was required to consult the tenant with respect to the costs incurred for the survey of the roof parapet (£150, repair to the roof parapet wall £400 and repairs to the roof £1,200) as the relevant costs recoverable from each service charge payer exceeded £250.

The tribunal determines that the following charges/costs are payable under the lease and were reasonably incurred

(a) 2005	Repair to the roof	£250
	Repair to roof parapet wall and survey	£250

The applicant's contribution is limited to the appropriate amount as the respondent failed to comply with the consultation requirements.

Cleaning	£60
Administration	£200

The tribunal found that cleaning and administration costs have been reasonably incurred.

CCTV drain survey	£400
Replace glazing to front door	£65

The tribunal found that these costs was not challenged and therefore was reasonably incurred.

(b)2006	Cleaning	£104.00
	Administration	£100

The tribunal reduced the cost recoverable for administration because it was not satisfied that the cost had been reasonably incurred as there was little evidence of work actually done. The cleaning costs have been reasonably incurred, the landlord has employed a cleaning lady to clean her own flat and the same lady also cleans the hallway and stairs once a fortnight.

(c) 2007 All of the costs claimed in this year as set out above are fully recoverable as there was insufficient evidence upon which the tribunal could determine that the costs had not been reasonably incurred.

The tribunal determines that the following charges/costs are not payable under the lease,

2004	Carpet	£500
	Administration	£75

The applicant is not liable to contribute towards these costs by virtue of section 20B above. There is no evidence to show that a demand for payment was made within 18 months of the costs being incurred.

Section 20C of the Act (limitation of service charges relating to the costs of the proceedings)

The applicant has applied under Section 20C of the Act 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 in determining the amount of any service charge payable by the tenant or any other person specified in the application.

The tribunal determines that such an order should be made and the costs incurred by the landlord in connection with these proceedings may not be taken into account in determining the amount of any service charge.

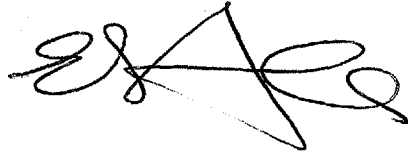
Reimbursement of fees

The applicant has applied for the reimbursement of the fees. They have paid £300 for the application and hearing. The tribunal determines that the respondent shall reimburse the applicant the sum of £300 in respect of these fees as the application was properly made.

Costs

The tribunal does not have a general power to award costs except in the limited circumstances outlined by Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002. The tribunal is not satisfied that there are sufficient grounds upon which it can order either party to pay the other's costs.

CHAIRMAN Ms Evis Samupfonda



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