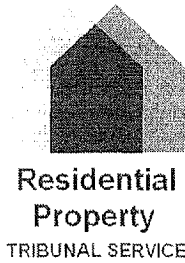


7298



**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AY/LSC/2011/0579

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

Applicant: London Borough of Lambeth
Respondent: Mr S Uddin
Property: 5 Dunsford House, Roupell Park Estate, London,
SW2 3LW
Date of application: 22 August 2011
Date of determination: 15 November 2011

Leasehold Valuation Tribunal
Mr I Mohabir LLB (Hons)
Mrs S Redmond B Sc(Econ) MRICS

Introduction

1. This is an application made by the Applicant under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) for a determination of the his liability to pay and/or the reasonableness of the various service charge costs in respect of the property known as 5 Dunsford House, Roupell Park Estate, London, SW2 3LW (“the property”).
2. The service costs in issue are:
 - (a) the Applicant’s contribution of £3,912.86 for the cost of renewing the lift as major works carried out during 2008 to 2011.
 - (b) the estimated block maintenance charge of £631.10 that forms part of the on account payment of £2,261.86 demanded from the Applicant for 2011/12.
3. The Applicant is the present lessee of the property by virtue of a lease dated 10 June 2002 granted by the Applicant to John Williams and Carmen Williams for a term of 125 years from 20 November 1989 (“the lease”). As will become apparent, the Applicant does not challenge his contractual liability *per se* to pay a service charge contribution under his lease nor the method used by the Respondent to calculate this. It is, therefore, not necessary to set out the relevant lease terms that give rise to this liability.
4. On 24 August 2011 the Applicant issued this application seeking a determination of his liability to pay and/or the reasonableness of the service charge costs in issue.
5. On 24 August 2011 the Tribunal issued Directions in this matter which, *inter alia*, directed that the matter would proceed as a paper determination.

The Issues

6. In his statement of case dated 28 October 2011, the Applicant withdrew his challenge regarding the estimated block maintenance charge of £631.10 for 2011/12. The only issue that remained for the Tribunal to determine was his contractual liability to pay a contribution of £3,912.86 for the cost of renewing the lift as part of the major works. The Applicant did not challenge the reasonableness of the costs. Equally, the Applicant did not contend that the work was not reasonably incurred.

The Relevant Law

7. The Tribunal's determination takes place pursuant to section 27A of the Act. Where appropriate, the statutory test of reasonableness that must be satisfied is set out in section 19 of the Act.

Decision

8. The Tribunal's determination took place on 29 March 2011. There was no oral hearing and the Tribunal's determination is based entirely on the respective statements of case and other documentary evidence filed by the parties.

Liability for Lift Works

12. The Applicant simply contended in his statement of case that it was unfair for him to pay the same service charge contribution towards the lift works as someone who lives on the top floor who would be required to use this facility on a daily basis. In other words, the Applicant submitted, in terms, that he should have a lesser liability for the cost of the lift works on the basis that he derived little or no benefit from its use.
13. In reply, the Respondent relied on paragraph 2 of the Fourth Schedule of the lease, which sets out the heads of expenditure that may be recovered by it as part of the overall service charge expenditure. Paragraph 2 provides that "*the cost of periodically inspecting,*

maintaining, overhauling, improving, repairing, renewing and where necessary replacing the whole of the.....lift shafts and machinery therein (if any)" may be recovered as relevant service charge expenditure. Clause 3.2.4 obliges the Respondent to repair, maintain, renew and in its absolute discretion to improve the passenger lift, lift shafts and machinery.

14. The Respondent submitted that the lease terms did not exempt the lessee, partially or otherwise, from his liability to pay a service charge for the lift works even though the property was a ground floor flat. Therefore, the Applicant remained fully liable to pay the service charge contribution demanded for the lift works.

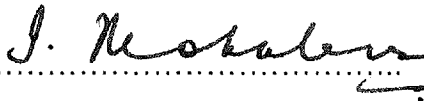
15. The Tribunal accepted the submission made by the Respondent as being correct. The express lease terms set out above do not make the Applicant's liability to pay a service charge contribution for the lift works contingent upon either the floor level of the property and any use or benefit (or not) the Applicant derived from the lift. Equally, no such construction can be placed or implied on the lease terms. It was clear that the intention of the contracting parties when the lease was granted was that the lessee would be liable to contribute towards the cost of repairing, renewing, maintaining and, where necessary, replacing the lift and associated machinery. Accordingly, the Tribunal found that the Applicant was liable under the terms of his lease to pay the service charge contribution demanded by the Respondent for the lift works. Given that he did not challenge the reasonableness of the cost of the works, his liability is £3,912.86.

Costs & Fees

16. No application was made by the Applicant under section 20C of the Act. However, this does not prevent the Applicant from subsequently making such an application in the event that the Respondent seeks to recover any costs it may have incurred in these proceedings through the service charge account.

17. Paragraph 6 of the Directions requires the Tribunal to consider whether it should make an order requiring the Respondent to reimburse the Applicant the fee paid to the Tribunal to issue this application. On the basis that the application has been wholly unsuccessful, the Tribunal concluded that no order should be made because it would be unjust and inequitable to do so.

Dated the 15 day of November 2011

CHAIRMAN..... 
Mr I Mohabir LLB (Hons)