



LONDON RENT ASSESSMENT PANEL FOR THE  
RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 (as amended) Section 27A

LON/00AW/LSC/2006/0334

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**Property:** Flat 2, 6-8 Hans Crescent, London SW1X 0LJ

**Applicant:** Hans Property Management Limited

**Respondent:** Mr Arsalan Zarbafi

**Represented by:** Mr N J Winkfield

**Date of Paper Consideration:** 29 November 2006

**Date of Decision:** 29 November 2006

**Member of the Tribunal:** Mr J C Avery B Sc FRICS

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**Introduction**

1. The Applicant applied on 23 August 2006 for a determination under section 27A of the Landlord and Tenant Act 1985 as amended (the Act) of the liability of the Respondent to pay specified sums as "Reserve Fund Provision". At a pre-trial review on 10 October 2006 it was directed that the parties should submit representations for the Tribunal to determine the application in the week commencing 27 November 2006.
2. Representations were received – on 22 November from the Applicant's solicitors and on 24 November from Mr Winkfield on behalf of the Respondent.

**Determination**

3. On 29 November the Tribunal considered the papers submitted and, for the following reasons, **determined that £115,000 is an appropriate sum** on which to base the Reserve Fund Provision for the proposed external works.

## Reasons for the decision

4. It is not disputed that the lease provides for the lessee to pay to the Management Company a percentage of the Reserve Fund Provision, which is defined in clause 1.11 of the lease by reference to Clause 14 (a) (ii) of Schedule 4:

*“To meet anticipated Reserve Fund expenditure for that year and to make provision for maintaining the Reserve Fund at a reasonable level to the intent (so far as practicable) all such expenditure (save that for which the landlord is liable) shall be covered by the quarterly payments from Tenants of Flats in the Building (other than the Landlord) as provided in Clause (1) (a) and (b) of Schedule 5 and such payments shall be of a similar amount in each year.”*

5. Clause 14 requires the Reserve Fund Provision to be certified of by the Management Company's Surveyor, or if the Landlord agrees, by the Management Company itself.
6. The dispute is about the estimate of the cost of future works that has been used in assessing the lessees' contributions to the Reserve Fund. The Applicants estimate the cost of a major project in 2009 to be £115,000; the Respondent originally estimated £61,544 but by the date of determination estimated it to be £97,750.
7. In addition to the major project the Applicant has added £20,000 for further sums (which are not challenged in these proceedings) on the replacement of cold water tanks, the lift, carpets and internal decoration in later years. The Applicant has spread the £135,000 over the three years, and asked the Respondent for £5365 in 2005, £5365 in 2006 and £3756 in 2007.
8. The amount of the contributions has been assessed by Mr P T Flynn of Douglas & Gordon Property Management, who in turn obtained the estimate of £115,000 from Robert Edward Associates, Chartered Building Surveyors. In a letter dated 22 August 2006 Mr J Davis of Robert Edward calculated the total of the work planned to be “say £90,000 excluding VAT and fees”. This included £20,000 for replacement of a flat roof.
9. A schedule dated 20 September prepared by Mr Winkfield has a total of his understanding of the proposed work of £61,544 including management fees.
10. Mr Flynn and Mr Winkfield corresponded between June and 9 October, when Mr Winkfield identified a misunderstanding relating to the inclusion of roof works. As a result he increased his estimate from £61,544 to £97,750.
11. The Tribunal is not asked to determine the reasonableness of the estimated cost of £115,000. A decision on this would limit the sum the Managing Company could recover from the Respondent when the work is done; the evidence required to make such a determination would include detailed specifications and competitive quotations. The Tribunal is asked to determine whether the amount included for the reserve fund is reasonable, having regard to the fact that it is proposed to commission the work in two or three years time, when such technical work will be done in preparation for the statutory consultation process. Both Mr Flynn and Mr Winkfield refer to “ballpark” figures.
12. The test is therefore not whether the estimated cost is supported by that level of investigation, but whether the Management Company has acted reasonably in assessing the likely cost.

13. The sum proposed by Mr Winkfield is lower than Mr Davis's but not by such a large amount that it casts doubt on the estimating process Mr Davis followed. Mr Davis's firm, Robert Edward, Building Surveyors, were asked for a professional "preliminary assessment" of the "budget costs" and the fact that Mr Winkfield, another professional in the construction industry, arrived at a different figure is not surprising. The accuracy of the figure will be tested in the tendering process and the eventual cost to the Respondent will be based on that sum, not on the budget figure.
14. If anything, the closeness of Mr Winkfield's figure of £97,750, supports the reasonableness of Mr Davis's assessment.
15. The dispute appears to be limited to the assessment of the total sum and the Tribunal may not be required to determine in which years the contributions should be made. It is noted that the Applicant says (paragraph 5) that the work is proposed in 2009 but Mr Flynn's Cash Flow Forecast shows the expenditure occurring in 2007. In a paper determination this cannot be resolved. If they cannot agree the parties may seek a further determination but contributions for this project should be sought in conjunction with those for other Reserve Fund Expenditure so that, in accordance with Clause 14 (a) (ii) of Schedule 4 of the lease, the lessees' total charges are smoothed as far as possible.

Signed



Chairman

Date

29 November 2006

