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LON/00AG/LSC/2006/0395

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON APPLICATIONS UNDER SECTION 27A  
OF THE LANDLORD AND TENANT ACT 1985 SECTION 27 &  
20C**

Applicant: Ms Pamela Dua  
Miss S Singh

Respondent: Mr & Mrs Donnabella

Re: First Floor flat 98 West End Lane London NW6 2LU

Application received: 9 November 2006

Hearing date: 13 September 2007

Appearances: Mrs P Dua (Applicant)  
Miss Shipra Singh

Ms Cassandra Gilbert DentonWilde Sapte LLP  
Ms Sara Beecham Counsel  
Mr Eric Stanley Salter Rex

Members of the Leasehold Valuation Tribunal:

Ms M W Daley  
Mr F L Coffey FRICS  
Mr D Wilson JP

## **The Application**

1. On 9 November 2006 The Applicant applied for a determination of the Reasonableness of the service charges and her liability to pay the charges which included a reserve fund, under section 27A of the Landlord and Tenant Act 1985.
2. At the pre-trial review held on 29.11.06, Miss Shipra Singh of the first floor flat at 98 West End Lane asked to be joined as a party. Miss Singh's application was granted.
3. The issues identified as in dispute were:-
  - (a) Whether the Respondent's had the authority to set up a reserve fund.
  - (b) That the Respondent's had, due to poor accounting systems failed to properly account for service charge payments made.
  - (c) That the service charges were unreasonable due to the Respondent's failure to properly maintain the property.
  - (d) That the management of the property was poor in that the managing agents did not respond to requests for information.

## **Documents Received**

- (i) Applicants Bundle of Documents
- (ii) Respondents Bundle of Documents

## **The Law**

4. Section 27A Landlord and Tenant Act 1985
  - (i) An application may be made to a leasehold valuation Tribunal for a
  - (ii) Determination whether a service charge is payable.
  - (iii) Section 19 of Landlord and Tenant Act 1985

**Limitation of service charges: reasonableness.**

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) Where they are incurred in connection with 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.

(3) An agreement by the tenant of a flat (other than an arbitration agreement within the meaning of section 32 of the Arbitration Act 1950 is void in so far as it purports to provide for a determination in a particular manner, or on particular evidence, of any question—

(a) whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred

(b) whether services or works for which costs were incurred are of a reasonable standard, or

(b) whether an amount payable before costs are incurred is reasonable.

Section 20 C.

### **The Lease**

5. The Tribunal were provided with a copy of the original lease dated 8th May 1979 between Meadow Crown Ltd and Tom Monks; the first applicant, Mrs Dua predecessor in title. The Lease of the Second Applicant Miss Singh was insofar as the relevant terms are concerned identical.

6. Where terms of the lease are referred to they are set out below

### **Description of the Premises**

7. A description of the premises as set out in the lease is as follows:-

*“(2) The building (hereinafter called “the building”) comprises three flats (one of which is on two floors) and a restaurant on the ground floor and basement (which is self contained)”*

### **The Hearing**

8. At the Hearing the Respondents produced The Respondent’s bundle which contained a witness statement from Edward Stanley (pages 78-80 together with exhibits) a chartered surveyor, who was a partner of Salter Rex, the Respondent’s managing agents. At page 79 of the Respondent’s bundle paragraph 3 A1 of his witness statement he stated, *“The Respondent’s are no longer seeking payment into a reserve fund and any monies so paid have been refunded.”*
9. The Tribunal asked the Respondent to confirm this. Counsel for the Respondent confirmed that this was now the Respondent’s position on the matter. Given this the Tribunal decided that this matter was no longer in issue and that no finding would be made on this issue.

### *The Applicants claim*

10. Mrs Dua statement of case was set out in correspondence at pages 1-42 and Miss Singh’s statement of case was at pages 43-57 of the Respondents bundle.
11. The Tribunal considered that the issues as set out in Mrs Dua’s statement of case were difficult to follow and accordingly asked the Applicants to identify the remaining issues on which they were seeking a determination. These were:
  - (a) The fact that Mrs Dua considered that not all of the payments made by her on account of the service charges were properly recorded.
  - (b) There was a query concerning the insurance premiums collected by the Respondents for insuring the building, given that the Applicants had not been provided with details of cover for 2002 and 2003 as requested by the Applicants.

- (c) The Applicants were dissatisfied with the standard of cleaning and considered that they were being charged for a period when no cleaning had been provided. (The Applicants cited a two month period in 2005-2006 when they claimed that no cleaning had been undertaken.
  - (d) Complaints were made about poor service and the Applicants cited as examples, problems with getting the managing agents to attend to water leaks that had caused damage to living room (in flat 2-3), and problems with repairs to a front door lock.
  - (e) The Applicants also considered that the Respondents should have claimed for the water damage under the insurance.
  - (f) The Applicants also cited problems with the lighting which had led to the premises being without lighting in the common parts in December 2006 and July 2007.
  - (g) In addition in her written submissions Mrs Dua claimed that the Respondent failed to provide full details of the breakdown of the service charges and annual accounts.
12. Both of the Applicants set out the details of the complaints that they had, and Mrs Dua referred to letters that she had written, whilst Miss Singh referred to handwritten minutes of a meeting between the Applicants and Mr Taha which took place on 18 February 2005 in which issues concerning the Insurance, and the standard of cleaning were raised.
13. Mrs Dua was also asked to provide details of payments of service charges which had not been accounted for by the Respondents. Counsel on behalf of the Respondent, provided details of the payments in issue. Counsel was able to produce information to show Mrs Dua where these payments were recorded on her service charge account.
14. Miss Singh set out that she was also concerned about the management fee, she did not consider that it was reasonable, and cited the fact that the managing agents had not dealt with queries properly, and where they had, had taken a long time to respond. Miss Singh referred the Tribunal to the leaks at the property and to the lack of lighting in the common parts.

*The Respondent's claim*

15. The Respondent's reply to the claim was set out by way of the Witness Statement of Mr Edward Stanley (referred to at paragraph 8 above). In his statement Mr Stanley denied that the problems with water leaking were caused by a burst pipe in the flat above Miss Singh. Mr Stanley stated that they were due to the need for repairs to a cast iron rain water pipe and as such this was routine maintenance; not an insured risk, and could not be claimed from the insurance. This was disputed by Ms Dua, who claimed that the roof was not directly above her sitting-room, and claimed that there was a flat above hers. Ms Singh stated that this flat was occupied by a lessee a Mr Davidson, and that an old water heater had leaked causing damage.
16. Mr Stanley in his statement at paragraph A3 and B2 gave details of service charge statements and budgets that he stated had been provided to the Applicants. He also stated that they were entitled to come to his office to inspect receipts, and he cited that Mrs Dua had done so on a number of occasions. These documents were at page 83 and page 253. Mrs Dua accepted that she had seen these documents. However Miss Singh denied that she had received demands in the format set out at page 257.
17. The Respondent though their managing agents, in the witness statement of Mr Stanley denied that the cleaning was not being provided to a satisfactory standard. Neither party provided the Tribunal with photographic evidence. However, Mr Stanley provided a copy of the current cleaning specification. The Specification from Superior Ltd set out the range of duties undertaken by the cleaners, and provided for the work to be undertaken fortnightly, at a cost of £15 per visit plus vat. The Tribunal asked the Respondent's agent to confirm that the contractors had written the specification. This was confirmed by Mr Stanley. It was also confirmed that there was no call sheet which the cleaners were required to sign.
18. Mr Stanley in his witness statement dealt with the issue concerning the insurance. At paragraph 4 B2 he confirmed that his firm had undertaken responsibility for providing insurance since 2004. Prior to 2004 the insurance had been dealt with directly by the Respondents. Mr Stanley referred the Tribunal to copies of the

policies that had been provided at pages 296-306. The first policy at pages 296-297 was for the period that the Respondent had had direct responsibility.

19. The Tribunal queried several of the details set out in the policy:-
- (i) The fact that the name and address of the insured was listed as Traders shop and Restaurant
  - (ii) The business/occupancy cited on the policy was listed as Restaurant
  - (iii) The Schedule of the policy which set out the items covered included items such as stock in trade, money and wines and spirits.
  - (iv) The only cover for reinstating the buildings was in the sum of £361,056 in 2002/03 and in the same sum for 2003-2004.
20. Counsel argued that as the policy specified buildings then this related to the building which included the Applicants demises. Mr Stanley stated in his witness statement and at the hearing that he had tried to obtain further information concerning what was covered, from the Respondents. At the date of the hearing no further information had been provided.
21. Ms Singh in response to the matters set out in Mr Stanley witness statement confirmed that there was a three month period in which no cleaning had been provided (in May- July 2005) and that there had been no lighting in the hallway between September 2006-July 2007. Mr Stanley refuted this, he stated that the lighting switch had been repaired in December 2006, and that further but unrelated problems had arisen which had been repaired on 31/7/07 at a cost of £313.72. Mr Stanley accepted that there had been a 5 week delay in carrying out the repairs.

#### *Closing Submissions*

22. Counsel for the Respondent stated, that The Tribunal had heard the evidence of the parties concerning the insurance, and that the policy did specify buildings. She accepted that it was a matter for the Tribunal to decide whether this covered the Applicants interest. The Cover for that period was £1,500. The appropriate percentages contributions were 10% for Mrs Dua (£300) and 25% for Miss Singh (£750).
23. Counsel submitted that the problems of water leaking into Ms Singh's property were caused by wear and tear, whilst the Applicants alleged it was due to a risk

that was insured against. Counsel submitted that it was for the Applicants to prove matters on a balance of probabilities, and that the Applicants had failed to do so.

24. Counsel stated that insofar as the repairs to the lighting were concerned, the repairs were necessary and the cost had been incurred, therefore the service charges claimed were reasonable. Counsel stated that the cost of the cleaning was reasonable. The sum for the current period was £1,008.00. Counsel stated that if the Applicant's case was taken at its highest and the building was not cleaned for 3 months the credit due would be in the sum of £100 to Miss Singh (25%) and £40 to Mrs Dua (10%).
25. Counsel stated that although Mrs Dua had raised as an issue the management of the service charge account and the fact that payments made by her have not been credited, however this had not been proven. The Respondent had also shown details of service charge demands and details of service charge statements that had been given to the Applicants.
26. Counsel stated that the management fee was in the circumstances reasonable. She stated that of the management fee for 2005-06 was £1010.50 the contribution made by the Applicants was again 25 % and 10 % respectively.
27. The Applicants did not make closing submissions and placed reliance on matters that had been set out within the course of the hearing
28. Neither party made an applicant in respect of costs under section 20 C of the Landlord and Tenant Act 1985.

### **The Decision of the Tribunal**

29. The Tribunal having heard the evidence and having read the documents supplied by the parties make the following findings.



- (i) At the hearing the Tribunal emphasised to the Applicants that the Tribunal's jurisdiction was concerned with the reasonableness of the service charges. The Applicant Mrs Dua made a complaint that payments had not been credited to her account. The Tribunal find that they do not have jurisdiction to make a finding on this matter. However the Tribunal note that the Respondent's agent was able to produce documents, which set out receipt of the amounts paid.
- (ii) The Tribunal have considered the reasonableness of service charges which cover the cost of insurance between 2002-03 and 2003-04. The Tribunal carefully considered the documents supplied and have concluded that the policies at pages 296-297 do not cover the Applicant's demise. In reaching this decision the Tribunal considered the existing policy and the reinstatement cost for the building. The Tribunal conclude that the previous policy only provided insurance cover in relation to the restaurant.
- (iii) The Tribunal considered the cost of cleaning, and have concluded that the cost is reasonable for the level of service provided. The Tribunal have decided on a balance of probabilities that there was a three month period in which no cleaning was carried out and that the Applicant should be credited pro rata the service charges paid for that period.
- (iv) The Tribunal are not satisfied that the water leaking was an assured risk and find that the Applicants have not proved that it was due to an insured risk. Accordingly the Tribunal find that the invoice at page 34 was recoverable as a service charge.
- (v) The Tribunal in considering this invoice have determined that there was considerable delay on the part of the Respondent in taking effective action to prevent further damage being caused by the water penetration. The Tribunal have seen copies of the letters at pages 307-309. These letters over a three month period as the tenant of the 2/3 floor flat to give access to allow repairs.
- (vi) The Tribunal find that this action on its own was insufficient. The Tribunal consider that a reasonable inference can be drawn that further damage was caused during that period.

(vii) The Tribunal have concluded that the invoice at page 34 should be reduced, by 25 % to reflect the fact that the problem was made worse, by the failure of the Respondent to provide an effective remedy for the water penetration.

(viii) The Tribunal also consider that the failure to deal promptly with the water penetration, and to respond to reports of problems concerning the lighting, and the request for information, are matters that ought to have been dealt with by the respondent. Given the failings, the Tribunal consider that management fee should be reduced by 20% for the period 2002-2006

(ix) Given the findings of the Tribunal, the following sums should be refunded to the applicants-:

£300 to Mrs Dua for the insurance contribution for 2002-2004

£750 to Miss Singh for her insurance contribution for 2002-2004

£40 to Mrs Dua (for the 3 month period in which no cleaning was provided. £100 to Miss Singh, for the same period.

That the invoice for the repairs (occasioned by the water penetration) at page 34 should be reduced by 25% to £934.50. This means that the proportion payable by each Applicant is as follows £93.40 from Ms Dua and £233.62 from Miss Singh.

The Tribunal also determine that the Applicants should be credited with any over payment of management fees, as a result of the Tribunals findings.

Chairman.....

Date.....

