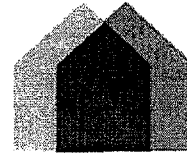


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**Residential
Property**
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
APPLICATION UNDER SECTION 27A OF THE LANDLORD and TENANT
ACT 1985 (as amended).**

LON/OOAN/LSC/2007/O275

Premises: River Gardens, Stevenage Road, London, SW6
6N

Applicant: River Gardens Amenity Ltd.

Represented by: Mr R. Wildman ,(Chairman)
Mr A. Banyard, Surveyor
Mr N. Candelot, River Gardens Treasurer
Mr A. Farrar, Property Management
Ms R. Dartnell

Respondents: Joint Tenants – 115 Leaseholders

Represented by: Mr N. Gee

Also in attendance: Mrs S. Jenner
Mr.D. Fairweather
Mr R. Weston

Tribunal: Mrs C.A. Lewis FCI Arb
Mr J. Avery FRICS
Mrs T. Downie MSc.

Date of Hearing: 2nd November 2007

Date of Decision: 26th November 2007

River Gardens, Stevenage Road, London, SW6 6NZ

Preliminary

1. This was an application by the Landlord under section 27A of the Landlord and Tenant Act 1985("the Act").
2. Directions had been issued by the Tribunal dated 10th September 2007 following a Pre Trial Review at which the Landlord had been represented by Mr R. Wildman, and Mr. Gee, lessee had represented the Respondents.
3. The sole issue to be determined by the Tribunal was whether or not the lease allows the lessor to undertake replacement of the windows and doors to all the flats and the common parts, and put the costs thereof onto the lessees. All the 115 leaseholders are shareholders of the Company River Gardens Amenity Ltd. and have varying share holdings. A specimen copy of a lease was placed before the Tribunal.
4. An inspection of the premises was not considered necessary by either the parties or the Tribunal.
5. Section 27A of the Act states:-

(3) an application may be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs, and if it would, as to –

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable.
- (c)
- (d)
- (e)

The Hearing

6. Mr Banyard said that the purpose of the present application was to establish whether or not the proposed work was allowed under the terms of the lease, before incurring large surveyors' costs. He asked the Tribunal to make a decision on the following:-

- (a) Whether the reasonable cost of replacing the existing opening and fixed doors and door frames, patio doors and their frames, and all external opening and fixed windows and window frames with new factory powder coated double glazed units without wooden sub-frames, is a cost which can be charged to the leaseholders in the service charge percentages, and is fully recoverable from the leaseholders.

- (b) Whether the reasonable cost of replacing the glass within the doors and windows with sealed double glazed units, toughened or obscured where necessary, is a cost which can be charged to the leaseholders in the service charge percentages.
- (c) Whether the reasonable cost of replacing all the existing metal cladding with new factory coated cladding, is a cost which can be charged to the leaseholders in the service charge percentages.

7. Mr Gee, acknowledged that the proposed work could be done and recharged by the Landlord under the terms of the lease and the Tribunal was able to establish at the hearing that the reasonableness of the costs of the work was not an issue under the present application.

8. The Tribunal's Determination

The tenants' obligations under the terms of the lease include 3(3) (a) " *To keep the interior of the flat and every part thereof (including the glass in the windows and the external doors) in good and tenantable repair and decorative state* " and under 3(10) " *Not to make any structural alterations in or to the flat nor to decorate or alter or add to the external elevations thereof in any way and if any external window thereof shall be broken forthwith to replace the same with similar glass to that therein at the date hereof or some other glass approved in writing by the Landlord.* "

The Landlord covenants under clause 4(4) of the lease to " *keep the common parts... in good and substantial repair and condition and to redecorate the exterior staircases halls and landings of the property in the manner in which the same is at the time of this demise decorated or as near thereto as circumstances permit whenever necessary and in any event at least once in every five years* ". The common parts of the property are defined on page 2 of the lease as " *those parts of the property (including the boundaries thereof) which are not included in leases of the flats at the property including without generality of the foregoing the structure roof gutters rainwater pipes exterior and shared service supplies* "

The Landlords had been investigating the possible replacement of the aluminium window frames and patio door access to the flats since 1994, and had sought Counsel's opinion on the Landlord's repairing obligations under the terms of the lease. They acknowledged that the windows, doors, patio doors and cladding to the flats were not described in the leases as being included, but Counsel's opinion had stated that they were probably liable. In May 2002 a fully detailed survey of the condition of the windows had been obtained from Blaygrove Chartered Quantity Surveyors, and their report had concluded that generally the windows had reached and surpassed their practical lifespan. Further investigations followed and a decision reached to carry out the work including the fitting of double glazed window units

with safety glass to meet with modern requirements. The cladding work was a necessary part of the work to the windows.

A Notice of Intention under Section 20 of the Act had been served dated 18th June 2007.

The Tribunal was satisfied that the Landlord Company was liable to repair the windows under the lease to modern requirements, and to add the costs of all the proposed works to the service charge. The change from single glazing to double glazing and the work to the cladding is only ancillary to the main object of addressing existing defects, see *Minja Properties v Cussins Property Group* (1988) 2EGLR52 and *Stent v Monmouth District Council* (1987) 1EGLR59. Furthermore, Mr Gee on behalf of all the lessees, accepted that the work could be done and recharged under the terms of their lease.

The question of the reasonableness of the costs to be incurred or actually incurred and the standard of the work would of necessity be the subject of a further application to the Tribunal

Chairman

C.A. Lewis

Date

26th November 2007