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LON/00AP/LSC/2007/0027

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER THE LANDLORD AND TENANT ACT 1985: SECTION 27A, AS AMENDED

Address:	36 Summerland Grange, Summerland Gardens, London, N10 3QP
Applicant:	Ms J S Brennan
Respondent:	Summerland Grange Residents Ltd
Application:	17 January 2007
Inspection:	24 May 2007
Hearing:	24-25 May 2007

Appearances:

Tenant		
Ms J S Brennan	Leaseholder	For the Applicant
Landlord		
Mr Christie	Counsel	For the Respondent

Members of the Tribunal: Mr I Mohabir LLB (Hons)
Mr P Roberts DipArch RIBA
Mr O Miller BSc

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AP/LSC/2007/0027

IN THE MATTER OF 36 SUMMERLAND GRANGE, SUMMERLAND GARDENS, LONDON, N10 3QP

AND IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT 1985

BETWEEN:

Ms JOLANTA BRENNAN

Applicant

-and-

SUMMERLAND GRANGE RESIDENTS LIMITED

Respondent

THE TRIBUNAL'S DECISION

Background

1. This is an application made by the Applicant pursuant to section 27A of the Landlord & Tenant Act 1985 (as amended)("the Act") to determine her liability to pay and/or the reasonableness of various service charges arising in the 2006 and 2007 service charge years.

2. The Applicant occupies the property known as Flat 36, Summerland Grange, Summerland Gardens, London, N10 3QP by virtue of a lease granted to her by the Respondent dated 8 September 1993 for a term of 125 years from 25 March 1993 ("the lease").

3. The Applicant's contractual liability to pay a service charge contribution arises in the following way. Clause 1 of the lease defines the service charge as being:

> *"the costs incurred by the Landlord in providing the Service Obligations."*

The Service Obligations are defined as being:

> *" the obligations undertaken by the Landlord to provide the services and other things as specified in Clause 5."*

Clause 1 of the lease also goes on to provide that the tenant's service charge contribution shall be one thirty sixth part of the service charge expenditure and that such payment shall be made of such dates as the landlord may from time to time specify. In practice it appears that the service charge contribution is payable by four equal payments on the usual quarter days in each calendar year ("the due dates"). The service charge expenditure was calculated to the 31 May of each year, being the accounting year set out in the lease.

4. By clause 3.1 of the lease, the Applicant covenanted, *inter alia*, to pay the service charge contribution on the due dates. Clause 5 of the lease sets out the landlord's covenants relating to the service obligations for which any expenditure incurred was recoverable through the service charge account. It is not necessary to set out here the heads of expenditure because it was not disputed by the Applicant that the service charge costs being challenged by her were not expenditure within the meaning of clause 5.

5. The heads of service charge expenditure challenged by the Applicant for each of the service charge years can be set out as follows:

(a) Gardening.
(b) Entryphone system.
(c) New entrance door.
(d) New numbers and signage.
(e) Drainpipes.
(f) Water tanks.
(g) Redecoration of common parts.

(h) Managing agent's fees.

The challenge made by the Applicant in relation to each of the heads of expenditure is articulated and considered it turn by the Tribunal below.

Inspection

6. The Tribunal internally and externally inspected the subject property and the estate, of which it forms part, on 24 May 2007. The Applicants flat is a second floor 1 bedroom unit in a 3 storey block of similar flats (36 in all) built in the 1950's on a steeply sloping site within extensively landscaped grounds with a hard parking area facing the block and with separate garage area beyond. There are six entrances, with entryphones, each leading to six flats. Construction is of brick elevations under a concrete tiled roof, windows have generally been renewed whit uPVC double glazed units, some of the original steel windows were still in place. Replacement PVC rainwater downpipes were noted as was past staining to brickwork at high level adjacent to the subject flat at the rear. The rear garden was less well tended with weed growth in evidence. Common parts leading to flat nos. 31 to 36 were inspected, as was the interior of flat no. 36. There was a good quality carpet to the stairs and landings; internal decorations had been carried out at the end of 2006 and were to a good standard, although some scuff marks were now evident. Overall the estate appeared well maintained set within pleasant mature landscaping.

Hearing

7. The hearing also commenced on 24 May 2007 and continued on the following day. The Applicant appeared in person. Mr. Christie of Counsel appeared for Parkwood Management Co. (London) Ltd.(" Parkwood"), the Respondent's managing agent, who were authorised to conduct this litigation on its behalf. Somewhat surprisingly, when asked by the Tribunal, Mr. Christie said that the Respondent had not filed and served a statement case because it did not understand the case brought against it by the Applicant and, in any event, did not believe it had any need to do so because of the perceived informality of these proceedings. Nevertheless, the Tribunal allowed the very late disclosure

made by the Respondent on the basis that such disclosure would assist both the Tribunal and the Applicant in the determination of the issues.

8. The Tribunal also explained to the Applicant that the issue of the lawfulness of the appointment of Parkwood, raised in her statement of case, was not a matter it had jurisdiction to determine in these proceedings.

(a) Gardening

8. The total expenditure incurred by the Respondent for gardening in 2005 and 2006 was £2,579 and £4,307 respectively (p.65). It was the Applicant's case that these costs were not reasonably incurred and/or were unreasonable as to amount. The Applicant submitted that the costs should have remained at the same level *of £461* incurred in 2004. The gardens had in fact been landscaped in 2000 but thereafter had not been looked after. There was no reason for the increased costs incurred in 2005 and 2006 because no work had been carried out in the gardens to warrant this increase. A lot of plants had died and trees not attend to. The only duties performed by the gardeners on the fortnightly visits were to cut the grass, pick up any rubbish or litter and sweep the driveway. The visits took place on a Saturday morning and were approximately three hours in duration. The duties carried out were performed by a team of four to five people. In conclusion, the Applicant stated that if the gardens had always looked as they did at the time of the Tribunal's inspection, she would not have challenged the increased costs.

9. In reply, Mr. Christie stated that the Respondent's 5 year maintenance program (p.62), which had not been previously challenged by the Applicant, provided for an increase of £500 per annum. By 2002/3, the estimated expenditure was placed at £8,000 and if the increase was carried forward to the service charge years in question, the expenditure would now be £10,000. He submitted that it was difficult to understand how the Applicant could now assert that expenditure of approximately £6,000 was unreasonable. It would be difficult to create such a well tended garden just for the Tribunal's inspection. The only possible explanation was that the gardens had been well maintained historically.

10. At the time of the Tribunal's inspection, the gardens appeared to be very well kept. Save for her assertions otherwise, the Applicant had not produced any evidence that the cost of the gardening was unreasonable. For 2005, the cost of gardening equated to approximately £8.50 per hour (4 people x 3 hours x 52 weeks). In 2003, the total costs incurred for both cleaning and gardening was £3,330, which equated to approximately £11 per hour. Making a deduction for cleaning, which the Tribunal considered was less onerous and time consuming, £8.50 per hour charged for gardening in 2005 did not appear to be dissimilar to the rate that was applied in 2003. The Tribunal, therefore, allowed the sum of £2,579 for the cost of gardening in 2005 as being reasonable.

11. In relation to the costs incurred in 2006, there was no explanation given by the Respondent why these had increased to £4,307. It was not disputed by the Respondent that the gardeners were not undertaking a greater amount of work in the intervening year. In these, the duties performed appeared to be exactly the same. In the absence of any such evidence to explain the increase in costs, the Tribunal did not consider and inflationary increase other than 3% to be justified. Accordingly, the Tribunal allowed the sum of £2,700 to be reasonable for the gardening costs in 2006.

(b) Entryphone System

12. A new entryphone system was installed in late 2006 at the cost of £1,169.13 (p. 111). It appears that the entire installation was replaced. The Applicant contended the cost was unreasonable because only the defective parts in the old system needed replacing, however, she was unable to say what those were. She further contended that the buttons on the entryphone panel could not be seen in the dark and made a very loud noise when used. The new entryphone system and also been rented for a term of 15 years and, before doing so, none of the tenants had been (informally) consulted or any explanation given by the Respondent for replacing the entire system. No consideration had been given to repairing the existing system, instead, the decision had been made to simply replace it.

13. Mr. Christie, correctly, submitted that the Respondent had no statutory obligation to consult with the tenants before replacing the entryphone system because the rental agreement was not a qualifying long term agreement within the meaning of the Act as the tenants service charge contribution in this regard fell below the £100 per year threshold. In addition, by clause 5.7 of the lease, the Respondent was obliged to keep the property in repair. Mr. Christie said he was instructed that several of the flats had experienced problems with the previous entryphone system, parts were difficult to obtain and it was not clear which phones had broken down. The Respondent could not be expected to install phones on a piecemeal basis and that it was entirely reasonable to replace all of them at the same time. Furthermore, the Applicant had not adduced any evidence that the cost was unreasonable. Mr. Christie submitted that the correct test to be applied was set out in Hill & Redman at footnote 5 on page A 4626 which stated that a landlord is not required to keep the cost down to a minimum standard. Instead, the test is that of a reasonable owner who had to bear the cost himself: ***Plough Investments Ltd v Manchester city Council*** [1989] 1 EGLR 244; ***Flour Daniel Properties Ltd v Shortlands Investments Ltd*** [2001] 2 EGLR 103.

14 In the Tribunal's view, the Applicant's case on this issue was unsustainable. Her bare assertion that the existing entryphone system, although defective, could have been repaired instead of being replaced was not supported by any evidence whatsoever. She was unable to say which phones were defective and in what number. The Applicant had also adduced no evidence that the cost of repair would have necessarily be cheaper than the cost of replacing the entryphone system and having it maintained through a rental agreement. As stated above, there was no statutory obligation on the Respondent to consult with any or all of the tenants regarding the replacement of the system. Indeed, none of the tenants could insist on the Respondent consulting them, informally or otherwise. As the Applicant had, on balance, not satisfied the burden of proof placed on her, the Tribunal allowed the cost of replacing the entryphone system as being reasonable. It was, therefore, not necessary for the Tribunal

to go on to consider the test applied in ***Plough Investments*** and ***Flour Daniel*** as the cost *per se* did not strike it as being wholly unreasonable.

(c) New Entrance Door

15. The Applicant's complaint on this issue was that the Respondent had failed to ease the door, which had led to it being difficult to open. This was, in effect, an allegation that the Respondent had breached its repairing obligation under the terms of the lease. The Tribunal ruled that, in the circumstances, it had no jurisdiction to determine this issue under section 27A of the Act because no service charge costs had been incurred by the Respondent within the meaning of 18 of the Act in either of the service charge years being considered in this application and, therefore, no liability on the part of the Applicant arose. She was content to rely on this as amounting to a management failure when the issue of management fees fell to be considered by the Tribunal later.

(d) New Numbers & Signage

16. For the same reasons set out in paragraph 15 above, the Tribunal also ruled that it did not have jurisdiction to deal with this matter. The fact that the signage at the side of the building had not been illuminated for the last three years was irrelevant.

(e) Drainpipes

17. Again, for the same reasons set out in paragraph 15 above, the Tribunal also ruled that it did not have jurisdiction to deal with this matter. The Applicant simply stated that repairs to the drainpipes were required in 2005 and 2006 and had not been carried out until a few months ago.

(f) Water Tanks

18. The Applicant conceded that these costs had not been incurred in either 2005 or 2006 and, therefore, could not be considered by the Tribunal in this application. However, when the tanks had been replaced, there had been no consultation by the Respondent and no regard paid to the reduced water flow

that resulted. The Applicant submitted that this was another example of management failure.

(g) Redecoration of the Common Parts

19. This work was carried out in December 2006. The Applicant made two complaints in relation to this matter. Firstly, that the Respondent had failed to consult with any of the tenants about the colour scheme that was adopted. Secondly, that the standard of the work carried out was not reasonable. The replacement coat of paint had been placed over the original bright yellow colour thereby requiring five coats of paint, which had in fact not been applied. The Applicant asserted that only two coats of paint had been applied. The paint had been chipped in a number of places. Save for the Applicant's, the entrance doors to each of the flats had been repainted. However, the Applicant stated that they had been painted without being opened. She further stated that she did not approve of the new colour scheme. She accepted that only some of the work had been reasonably incurred because some of the common parts to some of the blocks needed redecoration whereas the common parts to other blocks did not. In this regard, she submitted that she was having to subsidise the work carried out to other blocks. Materially, the Applicant accepted that the cost of the work was reasonable.

20. Mr. Christie submitted that the lease provided no mechanism for apportioning the cost of redecorating the common parts as was suggested by the Applicant. Moreover, the piecemeal redecoration of each block was not conducive to keeping the aesthetic appearance of the property. The Applicant's suggestion that each block be redecorated on this basis would require estimates to be obtained on each occasion and tendering carried out. He further submitted that the subsequent damage to the paintwork was irrelevant, as decorations had been carried out properly at the time. The work had in fact been carried out five years after the last redecoration when the lease stipulated that it should be done every three years. In addition, no VAT had been charged by the contractor.

21. The Tribunal was satisfied that the Respondent was not obliged to consult either the Applicant or any other tenant prior to having the redecoration of the common parts carried out. The Applicant had simply asserted that five coats of paint were needed to cover the former yellow paint. However, the Tribunal did not consider the Applicant to be an expert on this matter and there was no evidence to support her assertion that five coats of paint were needed. The Applicant had also asserted that only two coats of paint had been applied. Again, there was no evidence to support this assertion. Indeed, she had admitted that she had not actually observed the work been carried out. There was no evidential basis on which to doubt that three coats of paint, as specified, had been applied to the common parts. Having inspected the common parts to the Applicant's block of flats, the Tribunal was satisfied that the work had been carried out properly and to a good standard.

22. The Tribunal also considered it was reasonable to have the common parts of all the blocks decorated at the same time. The Tribunal had no doubt that had this work been carried out in a piecemeal fashion, it would have resulted in greater costs to the tenants. It was also desirable to have a uniform look for all the blocks. Indeed, the Applicant accepted it was good practice to do so. Her main complaint appeared to be that the work became necessary as a result of damage caused to the common parts of various blocks by other tenants and, as a consequence, she was subsidising the cost of this work on their behalf. However, as Mr. Christie correctly submitted, the lease did not provide for the apportionment of costs in the way suggested by the Applicant and this could not be done by the Respondent. As the costs were conceded by the Applicant as being reasonable, the Tribunal allowed them in full as claimed.

(h) Managing Agents Fee

23. The total fees charged by Parkwood in 2005 and 2006 were £2,815 and £6,134 respectively. This equated to a management fee of £78 and £170 per flat for each year. This proved to be a highly contentious matter for the Applicant. She submitted, in broad terms, that Parkwood should be paid nothing for 2005 as they had failed to carry out any of the responsive repairs that were highlighted above. In relation to 2006, the Applicant submitted that

Parkwood's managing agents fee should be limited to £100 per flat inclusive of VAT. She contended that Miss Stoves, the lessee of Flat 9, carried out a lot of the management duties of Parkwood on a voluntary basis. Other management failures on the part of Parkwood included a failure to provide the e-mail addresses of the Directors of the Respondent company, that it was very difficult to contact, it did not answer the telephone nor did it reply to her numerous letters.

24. Mr. Christie submitted that it was not disputed by the Applicant that a managing agent was required. There is no evidence that the duties carried out by Parkwood could be done for less. A lot of the work carried out by Parkwood was "invisible". The Respondent, as a tenant run company, would not have entered into a contract that was too expensive. There was no evidence, apart from the Applicant, of any dissatisfaction from any of the other tenants with Parkwood. By way of explanation, Mr. Christie stated that Parkwood had not replied to the Applicant's correspondence for two main reasons. Firstly, her letters had not been conciliatory. Secondly, the Applicant's expectation of a reply to her large volume of correspondence was not realistic.

25. The Tribunal did not accept the Applicant's submission that Parkwood's managing agent fees for 2005 should be disallowed completely. Parkwood was in fact appointed on 3 November 2004, at approximately halfway through the service charge year, and would have carried out duties such as the placing of a buildings insurance policy, entering into maintenance contracts, ensuring that responsive repairs (to other blocks) were carried out and the preparation of the annual service charge accounts. Having regard to all of these matters, the Tribunal considered the fee of about £78 per flat was reasonable for that period. It follows that the total fees of £2,815 charged by Parkwood for 2005 were also reasonable.

26. The managing agents fee of £6,134 claimed by Parkwood for 2006 was the contractual amount set out in their agreement (p. 107) with the Respondent. The agreement set out the management duties to be performed by Parkwood.

If Parkwood had performed those duties, that evidence would have been put before the Tribunal. However, there was no evidence of this at all. Moreover, it was accepted by Mr. Christie that Parkwood had failed to reply either promptly or at all to the Applicant's correspondence. There is no evidence that Parkwood had been proactive in their management of the property by keeping the tenants informed on a regular basis or formerly consulting them on proposed works/costs as is good practice. In the absence of that evidence, the Tribunal considered it appropriate to limit their fees to £100 per flat inclusive of Vat for this year. Accordingly, the sum of £3,600 inclusive of VAT was allowed as being reasonable for 2006.

Section 20C-Costs

27. In the originating application, the Applicant had made a further application that the Respondent should be disentitled from being able to recover any costs it had incurred in these proceedings. In support of that application, the Applicant stated that she had offered to mediate with the Respondent but that offer had been refused. Instead, the Respondent chose litigation to recover these service charge arrears against her. She had withheld payment on the basis that Parkwood had done nothing to respond to her complaints.

28. In reply, Mr. Christie stated that the Applicant had offered the sum of £600 in respect of outstanding service charge arrears totalling £1,401. Parkwood had not entered into negotiations with the Applicant because her offer was based entirely on her views and if it had been accepted by the Respondent, then the Applicant might have considered her future liability to be limited to those amounts. In addition, no other tenants had supported the Applicant in bringing this application.

29. The Tribunal granted the Applicant's section 20C application in full. It is clear, even on its own case, that Parkwood and/or the Respondent had made no attempt to engage with the Applicant to either compromise this matter or to give her a proper explanation despite her numerous requests for information. This was accepted by Mr. Christie. Had that attempt been made, it is possible that the hearing and this litigation could have been avoided. The Tribunal is a

place of last and not first resort. In any litigation today, the emphasis placed on the parties is to state their case, make pre-action disclosure where appropriate and to attempt to mediate or compromise such claims. A failure to do so by either party will most inevitably result in it or them being penalised in costs. The Tribunal also took a serious view of the Respondent's complete failure to comply with the Tribunal's Directions.

Dated the 18 day of July 2007

CHAIRMAN..... I. Mohabir .....

Mr I Mohabir LLB (Hons)