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LON/00AY/LSC/2006/0447

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

Property: **Flats 1 and 2, 7 Loughborough Road, London SW9 7TA**

Applicants: Mrs Pauline Stanley (leaseholder, Flat 1)
Mr Tim Smart (leaseholder, Flat 2)

Respondent: The Mayor and Burgesses of the London Borough of Lambeth (landlord)

Date heard: 26 March 2007

Appearances: Mrs Pauline Stanley for the applicants

Mr Alastair Redpath-Stevens of counsel for the respondent

Members of the leasehold valuation tribunal:

Lady Wilson
Mr M Cairns MCIEH
Mr L G Packer

Date of the tribunal's decision: 26 March 2007

1. This is an application by the leaseholder of Flat 1, 7 Loughborough Road, London SW9, to which the leaseholder of Flat 2 in the same building has been joined as an applicant at his request. Each of the applicants holds a long Right to Buy lease of a two storey maisonette in a converted Victorian house from the landlord, the London Borough of Lambeth. The application is made under section 27A of the Landlord and Tenant Act 1985 ("the Act") and seeks a determination of the applicants' liability to pay service charges in respect of various works of external refurbishment carried out to the building in which the flats are situated. The applicants will be referred to as "the tenants" in this decision.

2. Notice of the proposed works and their estimated cost was given to the tenants under section 20 of the Act by letters dated 23 August 2001. The projected cost to each of them was said in the notices to be in the region of £15,000, the cost to Mrs Stanley being slightly more than the cost to Mr Smart because service charges for the building are divided between them on the basis of rateable value, and the rateable value of Flat 1 is 50.8% of the rateable value of the whole building. It appears that the works were completed in 2002. By letters dated 19 February 2003 the landlord wrote to each of the tenants to say that, pursuant to section 20B of the Act, it wished to inform them that it had "currently incurred costs for [Scheme 1338C (Roof Renewal)]" and that "an invoice will be issued when actual block costs are calculated". In fact the actual costs of the works have not, even, now, been calculated, and accordingly the costs have not been certified by the landlord's auditors or accountants as the leases require.

3. At the hearing of the application on 26 March 2007 Mrs Stanley represented herself and Mr Smart, who was unable to attend, and Mr Redpath-Stevens of counsel represented the landlord.

4. Mrs Stanley told us of the tenants' understandable frustration and concern that a very large bill had been hanging over them for years, their liability to pay it unresolved. She also told us of the attempts which she and the then leaseholder of Flat 2 had made to buy the freehold from the landlord so that they could organise the

works themselves at a cost far lower than that incurred by the landlord, attempts which she considered to have been frustrated by the landlord, notwithstanding its agreement to the enfranchisement which it had given as long ago as March 2000. She was also, understandably, aggrieved that she appeared to have lost the benefit of the terms of the Offer Notice on the basis of which she bought her lease because, she considered, the landlord had delayed in carrying out the works specified in the Notice.

5. Mr Redpath-Stevens said that his instructions were that not even the estimated final account had been prepared by the landlord, despite the long period since the works were completed. He said that the estimated final account was expected "next week", but he could give no date when the actual final account would be ready and the costs certified by the appropriate person. He said that, as things stood, neither of the tenants was liable to pay any service charges in respect of the works because none had been demanded of them.

6. In these circumstances we determine that the tenants are not liable, at present, to pay any service charges in connection with the works. Clearly, however, once a proper demand has been made they will become liable, subject to any defences which may be open to them, to pay any sum which has been reasonably incurred. We emphasise that we have not determined that they will be either liable or not liable to pay a share of the cost of the works. Whether they are will depend on whether the costs were reasonably incurred, whether the section 20 notices given to them complied with the Act, and whether the letters dated 19 February 2003 were valid notices under section 20B(2). All these, and possibly other, defences may be open to them, but we have not made any decision in respect of them. We record Mr Redpath-Stevens's assurance on the landlord's behalf that the landlord will not seek to recover any costs in excess of the amounts identified in the section 20 notices.

7. It is, we think, and Mr Redpath-Stevens acknowledged, with his usual fairness, very regrettable that it will have taken over four years for the landlord to obtain the final figures - or even the estimated final figures - and to certify the amounts said to be due from the tenants. It is particularly surprising that the final figures are not available when, as Mrs Stanley pointed out, almost certainly the contractors were paid years ago. Mr Redpath-Stevens agreed that in the circumstances it was appropriate

that the landlord should reimburse the application and hearing fees paid by the tenants, and we so order. We expect that everything possible will now be done to bring this matter to a quick conclusion.

CHAIRMAN.....

DATE.....26 March 2007