

3633



**Residential
Property**
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AU/LSC/2007/0290

Applicant: Miss Siahm Mukhtar

Respondent: London Borough of Islington

Premises: 59B Highbury Park London N5 1TH

Date of Application: 30th July 2007

Date of Oral Pre-Trial Review: 3rd September 2007

Date of Hearing 26th November 2007

Appearances for Applicant: Miss Mukhtar (appearing in person)

Appearances for Respondent: Mr S Inskip (solicitor)
Mr J Ellis (Principal Building Surveyor)
Ms Dion Fahm (major works collection officer)

Leasehold Valuation Tribunal: Ms Helen Carr, Mr Roberts Mr Wills

THE APPLICATION

1. The Tribunal was dealing with an application under section 27A of the Landlord and Tenant Act 1985, as amended, ('the 1985 Act') for a determination whether a service charge is payable and, if it is, as to
 - i. the person by whom it is payable
 - ii. the person to whom it is payable
 - iii. the amount which is payable
 - iv. the date at or by which it is payable and
 - v. the manner in which it is payable
2. The Applicant is Miss Siahm Mukhtar the leaseholder of the premises. Miss Mukhtar purchased her leasehold interest on 17th September 1998.
3. The Respondent is London Borough of Islington.
4. The premises is a one bedroomed flat in a detached property.
5. The issues which were relevant to the determination of this matter were as follows:
 - (a) Whether the applicant is liable for service charges in respect of building works carried out in 1999 to windows and doors and external decorations to the premises.
 - (b) Whether the amount demanded by the respondent is reasonable
 - (c) Whether any claim which the Applicant might have for breach of the landlord's covenant to repair may be the subject of an equitable set off against any service charges due to the landlord.

The Tribunal's decision is that

- (a) The applicant is liable for service charges in respect of the building works which led to the dispute**
- (b) The service charges demanded by the Respondent are not reasonable. The amount of £1,586.12 is substituted for the amount demanded by the Respondent.**
- (c) The Tribunal makes no determination on the possibility of equitable set off in connection with the works**

The salient parts of the evidence are given below under the appropriate heading.

Background

6. The application before the tribunal arises from a long standing dispute between the applicant and the respondent about the quality of works carried out to the premises as part of a much larger works contract which commenced in May 1999.
7. The tribunal was faced with a very extensive collection of documents which were very poorly organised. Neither the respondent nor the applicant were

able to quickly draw the attention of the tribunal to relevant documentation. This made the determination of the matter considerably more protracted than it should have been. The tribunal is particularly concerned that the London Borough of Islington did not comply with the direction that it should agree a single bundle of documents.

8. Whilst Miss Mukhtar's documentation was extremely poorly organised, it is inappropriate for the tribunal to criticise an unrepresented applicant who could have been assisted in this matter by the respondent.
9. Moreover the respondent's communication with the applicant leaves much to be desired. The tribunal are particularly concerned that a payment on account made by Miss Mukhtar of £600 was mislaid by the respondent and that the matter was not resolved until the week of the hearing. It was not made clear exactly how much the respondent considered that the applicant owed it for service charges until the hearing commenced.

The Determination

The applicant's liability to pay service charges

10. The lease of the premises (dated 26th March 1990) contains the applicant's liabilities to pay service charges. The applicant did not dispute the fact that the lease required her to pay service charges. She was concerned about her liability to pay for the maintenance of the windows.
11. The respondent drew the attention of the tribunal to a number of clauses in the lease. In particular the applicant's liability to pay service charges is set out in clauses 1(2) and 3(1) of the lease, and clause 5 (2) provides that the applicant is required to pay a portion of the expenses and outgoings incurred or to be incurred by the respondent in respect of items set out in the third schedule of the lease including inter alia the repair maintenance renewal and improvement of the Building and any facilities and amenities appertaining to the building.
12. The work to the windows carried out by the respondent is covered by clause 7(5) (a) of the lease.
13. The tribunal is therefore satisfied and determines that **the applicant is liable to pay service charges in respect of the works carried out by the respondent.**

The reasonableness of the sums demanded

14. At the hearing the respondent provided a table which explained the basis of the charges made for work done to 59 Highbury Park and the apportionment of the cost to the premises. This showed that the amount it was demanding from the applicant was £2,505.44. However this table was prepared prior to the location of the £600 that the applicant had already paid. The sum in dispute is therefore £1,905.44.

15. The applicant had a number of concerns about the quality of the work carried out by the respondent. She was particularly concerned that the paintwork was shoddily carried out, that the external walls to the premises were not rendered, that the scale of charges for the preliminaries were excessive and that damage was done to the premises whilst carrying out the work.
16. The respondent was able to demonstrate to the satisfaction of the tribunal and the applicant that no charge had been made for rendering the walls which were not rendered.
17. There was no evidence that the quality of the paint and the workmanship was poor. The tribunal accepted the evidence of Mr Ellis that the current state of the paintwork was what he would expect after a period of six years. The issue of any alleged damage done to the premises whilst carrying out the works is dealt with below.
18. The tribunal was concerned that the charges for the preliminaries represented a very high proportion of the final account. The tribunal therefore determines that the sum demanded is not reasonable and substitutes the sum of £1,586.12 effectively reducing the proportion of monies paid for preliminaries to a reasonable sum. .

The possibility of equitable set-off

19. The applicant argues that the costs of remedying the disrepair to the interior of the premises caused by the poor workmanship of the workmen carrying out the contract should be set off against the service charge demand.
20. The applicant gave evidence to the tribunal that the workmen had damaged the roof of the premises which resulted in a leak from the roof into her flat. She also provided photographs of the damage done.
21. However she did not provide adequate evidence of the costs which she had incurred as a result of the damage, or of her complaints to the respondent about the persistence of the damage following her acceptance of an insurance payment
22. In the light of the lack of evidence the tribunal determines that it will make no decision about the possibility of equitable set off. If the applicant wishes to pursue this matter she will have to issue proceedings in the county court.

Decision: Helen Carr Chairman



Dated: 3rd March 2008

Signed.