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London Leasehold Valuation Tribunal File Ref No. **LON/OOAH/LSC/2009/0731**

Leasehold Valuation Tribunal: reasons

Landlord and Tenant Act 1985 section 27A

Address of Premises	**The Committee members were**
43B Whitehall Road,	Mr Adrian Jack
Thornton Heath,	Mr Peter Roberts DipArch RIBA
Croydon CR7 6AF	Mr Owen Miller

The Landlord: **Southernland Securities Ltd**

The Tenant: **Ms H Pancrace**

Procedural

1. By an application dated 30th October 2009 the tenant sought determination of her liability to contribute in respect of major works carried out in 2009, comprising external repairs and redecoration. The landlord was claiming £2,972.53 from her.

2. The Tribunal issued directions on 12th November 2009 and these were substantially complied with. The Tribunal did not then consider that an inspection was desirable; neither party requested one, so none was held.

3. The Tribunal held a hearing on 11th February 2010. The tenant appeared in person. The landlord was represented by Mr B Taylor and Ms D Toson, both of the managing agents. Mr Taylor dealt with the accounts; Ms Toson with relations with the tenants.

The law

5. The Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-

(a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.

(3) for this purpose

(a) costs includes overheads and

(b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period

Section 19

(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 on 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.

Section 27A

An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also 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) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable."

The lease

6. The tenant holds under a lease dated 14th June 1988, which granted a term of 99 years from that date. The building, we were told, was a semi-detached house from the early 20th century, converted into three flats in the 1980's.

7. The lease contains usual provisions for the payment of service charges on account with a balancing charge once the final accounts are available. The service charge year is the accounting year.

8. The demised premises include "window frames... (other than the external surfaces of

such.. window frames)".

9. Clause 5(5)(j)(i) permits the landlord to employ managing agents. The cost is recoverable under the service charge. There is, however, a limitation (of a type unusual in the Tribunal's experience) on the recoverability of management fees. The lease provides that "in no event shall the total annual charge levied by such agents exceed 15% of the total amount demanded of the levee."

The tenant's case

10. The tenant said that she had lived in her flat for some six years. She said it was not in a great state and that nothing had been done. She had looked forward to the major works being carried out. The major works were to comprise external repairs and redecoration.

11. The tenant accepted that the landlord had carried out a proper consultation in accordance with section 20 of the Landlord and Tenant Act 1985. She had not nominated contractors. She accepted that it was her responsibility to do so, if she thought that a cheaper quotation might be obtained.

12. The scaffolding went up on about 9th or 11th September 2009 and painting and other works to the exterior started on 15th September. It was completed by 16th October. The scaffolding was taken down on 19th October 2010.

13. She had a number of complaints about the manner in which the works were carried out. She said that she had had poor communications with the supervising surveyor. She pointed to some moulded masonry on the front of the building which had not been repaired. She also showed a photograph of the window to her son's bedroom, where part of the frame was hanging lose. There were a number of areas where the painting on the outside walls and doors was poor. The scaffolding had not been alarmed and the decorators had left the front door of the building open.

14. The 15 per cent demanded by the managing agents in respect of the works was excessive.

The landlord's case

15. The landlord denied that there had been poor communication with the tenant. Ms Toson explained that she had done what she could to discuss any outstanding issues with the tenant. She accepted that there were some matters which would need fixing within the defects liability period. She expressed concern at the state of the window to the tenant's son's bedroom. Although the repair to the window itself was for the individual tenant's account (because it was part of her demise), it should, she accepted, have been fixed at the time the scaffolding was up.

16. As regards the 15 per cent uplift for management fees, she and Mr Taylor pointed to the unusual provisions of the lease, which meant that in "normal" years, when there were no major works the amount billed for management fees were very small. In 2007, for example, the service charges accounts for the whole block comprised one pound and eleven pence for repairs and maintenance, £98 for accountancy, so as to leave a management fee for the whole block of £17.47, or £5.82 per flat. At that rate, the

management of the block was wholly uneconomic. It was only by charging the full fee on major works, that the management of the block was possible.

The Tribunal's determination

17. The Tribunal accepted that Ms Toson had had frequent contact with the tenant and had done her best to explain the procedures which were being adopted. However, it is clear from the emails which the Tribunal has seen that the tenant did have a number of concerns which could and should have been addressed by a meeting at the site between her and the surveyor. Both the surveyor (and Mr Taylor at the hearing) were unduly dismissive of the tenant and her observations.

18. Leaving the front door open was undoubtedly a matter of concern to the tenant, but in the event no harm was done, so there should be no impact on the service charges.

19. Matters, such as the problem with the tenant's son's window could and should have been picked up while the scaffolding was up and should have been reported on by the contractor and/or the surveyorHad a site meeting been held, then no doubt that matter would have been dealt with. Similarly, it does not appear that the surveyor ever completed a snagging list. Certainly none was produced to us.

20. The Tribunal reminds itself, however, that it is dealing here solely with an interim service charge demand in respect of works where a final account has not yet been agreed with the builder and where the defects liability period has not yet expired. Accordingly, it is premature for the Tribunal to make any reductions in the interim service charge on the basis that works had been done poorly. There is still time within the defects liability period for defects to be put right.

21. The matter which has given the Tribunal most concern has been the 15 per cent which the managing agents have levied on both the builder's invoice and the surveyor's fee. Ordinarily, it is bad practice (and contrary to RICS guidance) for a managing agent's fee to be based on a percentage. Moreover an agent's fee on top of a surveyor's fee at as much as 15 per cent would normally be excessive.

22. Nonetheless (and notwithstanding some misgivings) the Tribunal considers on the unusual terms of the lease the 15 per cent is justified. If the agents were not able to levy this fee on the major works, the building would in effect be unmanageable, because no agent would take the block on. (It may be that the parties should in due course consider varying all the leases in the block to allow a more rational means of calculating the management expenses, but that is not a matter before the Tribunal.)

23. Accordingly the Tribunal disallows nothing in the interim bill in respect of major works.

24. The Tribunal notes, however, that in due course there was be some reduction in any event, because the contingency in the quote for works was not drawn upon.

Costs

25. The Tribunal has a discretion as to who should pay the fees payable to the Tribunal by the

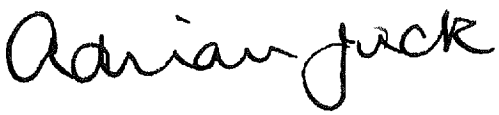
applicant tenant. In the current case the tenant has substantially lost. Accordingly in our judgment the fees should fall on the tenant. The landlord indicated that it did not intend to pass the cost of attending the Tribunal to the service charge account. Accordingly the Tribunal need make no order under section 20C of the Landlord and Tenant Act 1985.

DECISION

The Tribunal accordingly determines:

a. **that the tenant is obliged to pay £2,972.53 by way of interim service charge for the major works carried out in 2009;**

b. **that there be no order in respect of costs.**



Adrian Jack, chairman 3rd March 2010