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London Leasehold Valuation Tribunal File Ref No. **LON/OOAP/LSC/2010/0109**

Leasehold Valuation Tribunal: reasons

Landlord and Tenant Act 1985 sections 27A and 20C

Address of Premises	**The Committee members were**
Flat 3,	Mr Adrian Jack
146 West Green Road,	Mr R Humphrys FRICS
London N15 5AE	Mrs Sue Justice

The Landlord: **Regisport Ltd**

The Tenant: **Miss Anita Browne**

Procedural

1. By an application dated 10th February 2010 the tenant sought determination of her liability for service charges in 2006-07, 2007-08, 2008-09 and 2009-10.

2. The matter was originally listed on 22nd April 2010. On that occasion the tenant appeared in person. The landlord was represented by Ms Sophie Wisdom, legal advisor, and Ms Emma Caine, the manager responsible for the property.

3. As we noted in the reasons given on that occasion, there were difficulties with the landlord's case in that the service charge year was the calendar year, not the year ending 23rd June, which had been used in the preparation of the service charge accounts; that the accounts had never been certified in accordance with the lease; that the tenant had been denied the opportunity to see the originals of the documentation in support of the accounts; and that the service charge demands were raised in the name of the wrong landlord company.

4. The other issues between the parties were, however, ventilated on that occasion. Ms Wisdom submitted that there were only a very limited number of matters raised by the tenant in her application, so that the landlord only had to deal with those matters. The tenant, by contrast, said that she wanted to see the vouchers etc in support of the accounts, as she was entitled under section 22 of the Landlord and Tenant Act 1985 and that until she saw those documents she was disputing everything.

5. We indicated to Ms Wisdom on that occasion that in the Tribunal there are no formal pleadings. So long, obviously, as the other party was not prejudiced, it was open to an applicant to narrow or widen the issues she wished to raise. It was wrong to treat Miss Browne's application as if it were Points of Claim in a Commercial Court action.

6. The tenant's position has in fact been wholly consistent. She wants to see the

documentation in support of the accounts, so as to satisfy herself that she owes the money claimed by the landlord. The particular matters raised in her application to us were those matters on which she was able to comment. Once she saw the additional documentation she would be able to put forward her case on the other matters. Unless and until that happened everything was in dispute. We considered this a perfectly proper and indeed sensible approach on her part and told Ms Wisdom as much.

7. In order to be fair to the landlord and so that it was not taken unawares, as indicated in our previous decision, we gave directions. These provided for the landlord by 19th May 2010 to serve certified accounts for the calendar years 2007, 2008 and 2009 and a budget for 2010. The landlord only served the accounts on the tenant in June, but made no application to us to vary the directions. We consider further the accounts as served below.

8. The directions also provided for the landlord to permit the tenant to inspect vouchers by 2nd June 2010 "on a convenient date and a time and place". The landlord made no attempt to comply until it sent a letter dated on its face 17th June 2010 offering an inspection at offices in Southend-on-Sea at 1 pm on 2nd July. We shall return to this offer and this letter below. The tenant did not, for reasons which we shall explain, attend at that time.

9. The directions went on to provide for the tenant to serve her detailed case on the accounts by 11th June and for the landlord to serve its detailed case by 26th June. By reason of the landlord's failure to make the vouchers available, the tenant had been unable to serve a detailed case in the manner envisaged by the Tribunal's directions.

10. On 12th July 2010 the Tribunal inspected the property in the presence of the tenant. We describe our inspection below. The landlord did not attend.

11. The inspection was followed by a hearing. Again Ms Wisdom and Ms Caine appeared. With them was Daniel Harrison from the managing agents who was formally just observing but in fact also gave some evidence. The tenant again represented herself. We shall deal with the hearing below.

The law

12. 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

(1) 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 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

13. The tenant holds under a lease dated 15th December 1987 granting a term of 125 years from midsummer 1987. As noted in our previous decision the lease is peculiar in that it provides for the calendar year to be the service charge year but for payments on account to be made on 24th June, with adjustments once the service charge year had ended.

14. All the leases in the house are the same form. By clause 2 the lessee covenants "that the Lessee and the person deriving title under him will at all times hereafter observe and

perform the stipulations [etc] in the First Schedule hereto." The First Schedule includes prohibitions on using the demised property otherwise than as a dwelling house for a single family and from doing anything which might imperil the insurance.

15. Clause 4(iv) includes a provision that "if so required, the Lessor will obtain at the Lessee's expense a certificate from the Lessor's Accountant as to the amount due from the Lessee" in respect of the final accounts for each service charge year.

The accounts

16. The accounts produced show expenditure as follows:

	2007	**2008**	**2009**
Management fee	£705.00	558.7\8	825.12
Out of hours emergency services			55.20
Building insurance	1,548.60		
General repairs and maintenance	170.37	327.76	523.25
Pest control	381.87		138.00
Accountant's charges	94.00	203.25	293.75
Surveyor's fee		618.98	920.00
Health & Safety report			172.50
Bank interest received		(0.49)	
	£2,899.84	£2,398.00	£2,927.82

17. The 2007 accounts come with no form of certification whatsoever.

18. The 2008 and 2009 accounts have attached a letter addressed to the resident purportedly from "LB Group", chartered accountants, with an address in Vicarage Lane, Stratford and an accountant's report from "LB Group, Reporting Accountants". Neither the 2008 nor the 2009 letters and accountant's report are signed by any human being. Instead a crude scanned signature "LB Group" has been affixed to all four documents.

19. The Tribunal checked the professional qualifications of LB Group on the internet prior to the hearing, as it told the parties at the hearing. There is a company LB Group Ltd at the address in Stratford. Ms Wisdom confirmed at the hearing that the limited company were the accountants.

20. The two letters to the residents are not on professional notepaper. Instead the addresses are computer generated in the same typeface as the rest of the document. There is no mention of LB Group being a limited company nor of its registered office and registered number. This is a breach of the Companies (Trading Disclosures) Regulations 2008 (SI 2008/495).

Inspection

21. We inspected the property on the morning of 12th July 2010. The front garden showed some signs of gardening being done. Apart from that, the house was in a shabby condition. It comprises a two storey end-of-terrace house converted into the four flats, two on each floor. The tenant's flat is on the upper floor at the back. Flat 4 is opposite and looks onto the front garden. This is where we were told the drug-dealing had been taking place.

22. At that back of the property, adjacent to the footpath there is a high brick wall topped by broken glass. The wall was leaning ominously in the direction of the footpath and we are concerned as to its safety.

23. The front door had crudely repaired panels to the bottom of it. We were told later that this was a consequence of criminal gangs breaking in in connection with the drug-dealing, with damage also being caused by a police raid on Flat 4. The lock on the front door was in poor condition and provided little security. The common parts were dirty and the walls were in a poor condition. We were shown where there had been infestations of rats.

24. Some of the carpet on the stairs had been damaged, we were told by drug-takers who sat on the stairs to consume their illicit products. The state of the carpet was dangerous. There were no fire or smoke alarms fitted.

25. It was obvious that the management of the property had been severely neglected.

The hearing

26. In the afternoon we heard the matter. Ms Wisdom again repeated the submission, which we had rejected on the previous occasion, that the tenant was limited to the specific matters which she had raised in her application. The Tribunal indicated, as it had done previously, that that was simply not the approach which the Tribunal intended taking.

27. We raised the question of inspection of documents by the tenant. This had been the subject of repeated written requests by the tenant through 2008 and 2009. By letter of 20th August 2009 Mr Harrison invited her to visit the managing agent's offices "and view all documentation we have." By letter of 14th October 2009 sent recorded delivery to Central House, Southend-on-Sea (the address on Mr Harrison's letter), the tenant confirmed that she would attend their offices on 30th October 2009. She pointed out that due to work commitments she needed to book the time off in advance.

28. When she arrived at Central House on that date, she was unable to gain access. There was no buzzer, only a closed door. It was only by "tailgating" someone entering the building that she was able to gain access at all. Once in the building, it transpired that no one was expecting her coming and no documents were available. After making some enquiries, she was told to go to another office of the managing agents at Thamesgate House. There she was given photocopies of some documents, but was refused access to inspect the originals.

29. It was against this background that the tenant issued the current application. As we have noted above the Tribunal gave directions for the landlord to make arrangements by 2nd June 2010 for the tenant to inspect the originals at a convenient place, time and date. Although it would obviously be convenient for the accounts to be ready by that date, our order was not dependant on the production of the accounts. Accounts prepared to the years ending 23rd June had already been produced, so it was clear what the documentation to be shown to the tenant would be.

30. In purported compliance with our order, the managing agents sent a letter dated 17th June 2010 inviting the tenant to attend Thamesgate House on 2nd July at 1 pm. In fact that was not the date on which the letter was posted. It was posted on 29th June and was received on 2nd July, after the tenant had departed for work. The tenant was fortunately astute enough to keep a copy of the date stamped envelope from the managing agents.

31. Ms Caine accepted that she was responsible for the letter but she failed to provide any adequate explanation for the false dating. She also claimed that one of her colleagues, Ms Moon, had attempted to telephone the tenant on several occasions on 21st June. The tenant said that she had never given the landlord her telephone number. The managing agents were unable to say what number they had rung in order to contact the tenant.

32. We do not believe Ms Caine's evidence about the attempts to contact the tenant and we accept Ms Browne's evidence in relation to disclosure of her telephone number. In our judgment the false dating of the appointment letter was a cynical attempt to try and show that the landlord had made reasonable arrangements for the tenant to attend to inspect the documentation. If it had not been for the tenant's retaining the envelope, it may well be that the Tribunal would have been mislead.

33. We should add in any event that we do not consider that Southend-on-Sea is a convenient venue for the tenant to be invited to inspect the documentation.

34. The Tribunal enquired as to whether Ms Wisdom had brought the originals of the documentation with her. As will be seen from the list of items in the accounts set out above, the amount of documentation to be produced is small. Equally, proving payment of those few invoices should have been easy by the production of the relevant bank statements.

35. Ms Wisdom said that she had not brought any originals. The documents, she said, were in various files and it would have been too onerous to bring all the files, some of which were electronic. We do not accept her evidence on this. We consider that the managing agents have made an attempt to prevent the Tribunal making a proper decision on proper evidence in this matter. The failure to bring the documentation to the Tribunal hearing was a deliberate attempt to prevent the Tribunal satisfying itself by inspection of the originals that sums had been incurred and paid. So far as electronic files are concerned, nowadays nothing is easier than to put such a file on a memory stick and play it on a laptop.

36. Ms Wisdom also said that the landlord did not have access to the documentation for 2007. Countrywide had taken over the management of the property in 2008 and the

previous managing agents had not handed over the documentation for the previous period. The Tribunal pointed out that a landlord could and should take steps (including, if necessary, obtaining court orders) to ensure that it has documentation from prior managing agents. Ms Wisdom adduced no evidence of the steps taken to obtain documentation from the previous agents.

37. The Tribunal invited Ms Wisdom to consider whether she wished to apply for an adjournment, so that she could provide proper inspection of the documentation. The Tribunal indicated, however, that any adjournment (if one was granted) would be on terms that the landlord paid the tenant's out of pocket expenses and loss of earnings.

38. The Tribunal also indicated the problems with the supposed certification of the accounts. Ms Wisdom accepted that LB Group were a limited company and had no answer to the point on the absence of any professional notepaper satisfying the statutory requirements for such paper. Mr Harrison said that the accounts had been prepared by a Mr Reveller of LB Group Ltd.

39. The Tribunal gave Ms Wisdom an adjournment to obtain instructions on whether the landlord would pay the tenant's costs caused by an adjournment and whether she could obtain further evidence from the accountants.

40. After taking instructions, Ms Wisdom said that the landlord and managing agent refused to make any payment to the tenant as a condition of any adjournment. Now it is fair to say that prior to this brief adjournment Ms Browne had put her likely claim at £12 for the train fare to Southend-on-Sea and £150 loss of earnings. Later, on investigation, it seemed that her likely loss of earnings would be somewhat lower than that. This was clearly not, however, an issue for Ms Wisdom: the landlord's and managing agent's objection was to paying anything whatsoever.

41. Accordingly the Tribunal continued with the hearing. Ms Wisdom indicated that the accountants would do their best to fax the Tribunal a letter, but no such letter had been received by the conclusion of the hearing and Ms Wisdom did not request that there be any further short adjournment for her to chase the letter. The Tribunal accordingly concluded the case and considered its decision.

42. After the hearing had concluded and the parties had dispersed, and after the Tribunal had reached its decision, a fax was received at the Tribunal offices from LB Group Ltd. In view of the lateness of the evidence, the Tribunal did not read the fax and has ignored whatever might be its contents.

43. The tenant's position was that she disputed all the matters in 2007 and 2008. In 2009 she accepted the Health and Safety report at a cost of £172.50. (We have to record that we have our doubts about this: the report has not been acted on by the managing agents to date, so she has had no benefit from it.) She also accepted general repairs at £523.25 and pest control at £138, a total of £833.75, of which her portion was one quarter.

44. In 2010 the landlord had produced a budgeted figure of £499.50 as the tenant's contribution. It was typical of Ms Wisdom's refusal to cooperate with the Tribunal that she strongly disputed that the Tribunal had any jurisdiction over the 2010 service

charge year, even though the tenant had raised the figures for 2009-10 in her application, even when it was pointed out to her that there appeared to be no dispute about the budgeted figure. In the event the tenant accepted the figure of £499.50 for 2010.

Conclusions

45. In general it is easy for a landlord to comply with its duties in proving actual expenditure in service charge accounts. The landlord produces the invoice from the contractor or service provider cross-referenced to the relevant cheque number or electronic payment and the bank statement showing the payment. The accounts are checked by an accountant who gives a personal certification of the sums paid and payable.

46. The legislation (and in this case the Tribunal's orders) provide for a tenant to be able to satisfy him or herself of those matters. Once those matters are proved, the issue before the Tribunal is usually one as to reasonableness of the amount charged and the standard of the workmanship.

47. In the current case there has been a wholesale failure to prove the invoices or the payment. The accounts are simply computer generated and are not signed by any human being, let alone by a professional accountant taking personal responsibility for the correctness of the accounts. In the current age of computer technology and cheap printers, it is possible to generate false documentation with great ease. The only protection for tenants is sight of the originals and the production of accounts properly certified by a professional's signature.

48. Moreover there have been repeated and deliberate attempts to prevent Ms Browne seeing the documentation in this case. First there was the delay during 2008 and 2009 in arranging any inspection: the tenant was repeatedly fobbed off. Second, when she attended the managing agents' offices in Southend on an agreed appointment in October 2009, it was only with difficulty that she obtained any access at all to the office address on the agents' notepaper and when she was finally directed to the correct office she was not given sight of the originals. Third the managing agents failed to comply with the Tribunal's directions for giving access to the originals. Fourth the managing agents put a false date on its letter giving access with (as we have found) the deliberate intention of misleading the Tribunal in due course. Fifth, even when at the 12th July hearing they had a potential (though not guaranteed) opportunity to obtain an adjournment on very moderate terms so that they could show the originals, they refused to offer any terms.

49. The Tribunal has no hesitation in describing this as scandalous behaviour. The Tribunal then has to ask itself: Why? We conclude that there has been an improper attempt to conceal evidence which would be detrimental to the landlord.

50. As we have pointed out, a landlord does not generally have difficulty with the production of documentation. As the Tribunal has often pointed out: the easier the proof, the more suspicious its absence.

51. In relation to 2007, there is no evidence before us of the efforts of the landlord to obtain the files from the previous managing agent. No letters were produced showing that the landlord or the current managing agents had even written to the previous agents asking for the documentation. Moreover, in extremis, there is the power to seek a witness summons from the High Court for the production of documents for an inferior tribunal, such as the Leasehold Valuation Tribunal: see CPR Rule 34.4. We thus make no allowance in favour of the landlord in relation to the 2007 documentation.

52. There is even less ground for making any allowance in relation to the 2008 and 2009 documentation.

53. In relation to all these three years, we infer that the landlord has failed to produce the originals because they would not show that the landlord had actually incurred the sums which it claims against the tenant either at all or in the amounts claimed. This is an exceptionally bad case of a landlord and its agents trying to prevent a tenant inspecting the originals of documents which the Tribunal has ordered that the tenant is entitled to see.

54. Accordingly apart from the sums which the tenant conceded were due of £208.44 (one quarter of £833.75) in 2009 and £499.50 on account for 2010, we disallow all the sums claimed by the landlord.

55. If we were wrong about the inferences we drew, we would then have to consider the other matters in the case. It is apparent that the landlord would have great difficulty in justifying the sums claimed.

56. For example, the services provided by the current and former managing agents are grossly substandard. When drug-dealing was discovered in Flat 4 in 2007, the agents' response was lackadaisical. Ms Wisdom suggested at the hearing that the landlord was unable to do much, because under the terms of the lease there were no grounds for forfeiture against the long leaseholder of Flat 4. It was the sub-tenant, not the long lessee himself, who was dealing drugs, she said. That in our judgment is not the case. Clause 2 of the lease includes a covenant that any person deriving title from the lessee would obey the terms of the First Schedule. Thus the long lessee was liable for the acts of the sub-tenant. We note further that the managing agents did not even arrange building insurance in 2008 and 2009.

57. Despite the adjournment granted, the managing agent has still not managed to give the details required by section 48 of the Landlord and Tenant Act 1987 on its demands. (The tenant sensibly waived this requirement in relation to the matters which she accepted.) It has complied with section 47 of that Act, but that alone is not in our judgment sufficient to comply with section 48.

58. In the light of our conclusion on the absence of adequate proof that sums had been properly incurred, we do not, however, need to consider any question of the quality of work further.

Costs

59. The Tribunal has a discretion as to who should pay the fees payable to the Tribunal. These comprise a £50 application fee and a hearing fee of £150. In our judgment the tenant has won and the landlord ought to pay those costs.

60. The tenant also asked us to consider making a costs order under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. As we have outlined the landlord has behaved in a grossly unreasonable manner, so that the threshold for making an order under that provision has been reached. However, there is an issue of causation. Even if the landlord had behaved completely correctly and properly complied with the Tribunal's orders, there would still have needed to be a second hearing. In these circumstances the landlord's behaviour has not caused any wasted costs on the tenant's part. Accordingly we make no order under paragraph 10.

61. The tenant applied for an order under section 20C of the 1985 Act to prevent the landlord recovering the cost of the current proceedings through the service charge. Ms Wisdom indicated that the landlord did not intend to seek any costs in relation to the current proceedings. In those circumstances we do not need to consider the section 20C application further.

DECISION

The Tribunal accordingly determines:

a. **that in the calendar year 2007 no service charge is payable by the tenant to the landlord;**

b. **that in the calendar year 2008 no service charge is payable by the tenant to the landlord;**

c. **that in the calendar year 2009 the tenant is obliged to pay £208.44 to the landlord by way of service charge;**

d. **that in the calendar year 2010 the tenant is on 24th June 2010 obliged to pay £499.50 on account of service charges;**

e. **that the landlord is to pay the tenant £200 in respect of the fees payable to the Tribunal;**

f. **that otherwise there be no order in respect of costs.**

Adrian Jack

Adrian Jack, chairman 16th August 2010