4911

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION SERVICE

LANDLORD AND TENANT ACT 1985 – SECTION 27A

LON/OOBE/LSC/2009/0655

Premises: 36 Riseholme House, Albrighton Road, London SE22 8AP

Applicant: London Borough of Southwark

Represented by: Ms. E Sorbjan, Litigation Officer

Respondent: Mr. Olabambo O. Omoyele

Represented by: In person

Tribunal: Ms. LM Tagliavini, LLM, Dip Law, BA (Hons)
Mr. I Thompson, BSc, FRICS
Mrs. L Walter

Hearing Date: 28 January 2010

1. This is an application made pursuant to section 27A of the Landlord and Tenant Act 1985, which has been referred to the LVT by an order of District Judge Zimmels dated 30 September

2009 for a determination of the reasonableness of service charges incurred or to be incurred, in respect of the major works which have recently been carried out in 2008/09 on the East Dulwich Estate of which the Respondent's building (Riseholme House, 1-38 Albrighton Road), forms part. In its claim form, the Applicant sought 50% (two quarters) of the total sum said to be owed and which amounted to £18,521.84 and included both a supervision and a management fee.

2. By a lease dated 16 April 2001, the Respondent was granted a term of 125 years at a ground rent of £10 per annum of the subject property. This comprises a three bedroom flat on the third and fourth floors of the purpose built block of flats. The lease contains a provision that the lessee is to pay sums on account of the liability, which arises in respect of service charges; *clause 2(3)(a) and The Third Schedule.*

3. In this instance, the Applicant seeks interim payment for major works intended to ensure that the Estate complied with the Decent Homes Standards, which were recently carried out and are still in the defects period. The work comprised of refurbishment of the exterior of the buildings on the Estate, full internal refurbishment of tenanted dwellings including rewiring; refurbishment of void properties; conversion of unused drying rooms; external/communal decorations and associated repairs; roof renewals and repair; window and front entrance door replacement; and replacement of communal cold water storage tanks. Although the costs initially claimed, were said to include a sum for Estate Costs, the Tribunal was told by the Applicant that these sums would now be omitted.

4. The Applicant produced and relied on a bundle of documents, which included a report of the external and internal condition of the East Dulwich Estate; a report on the condition of existing

windows; a tender report, a copy of the specification of works and the section 20 consultation notices.

5. Oral evidence was given by Mr. Wellbeloved who explained that the costs were apportioned according to the value of works carried out on a particular building (block). This was an attempt to ensure that lessees of buildings which had less work done on them, did not overpay. He also explained the basis on which individual lessee were charged by the assignment of unit values to each flat. A tried and tested method used by Southwark involved the assignment of a value of 4 to a property to which was added units reflecting the number of bedrooms. In this instant case the property attracted a weighted room value of 7, being the base value of 4 plus 1 unit for each bedroom. A management fee of 4.25% was charged as well as a 6.14% supervision fee.

6. The Respondent in his Statement of Case asserted that the costs were excessive and the payment terms unreasonable. He asserted that the Applicant should be responsible for more of the costs. The Respondent also challenged the apportionment of the costs; sought clarification on what is meant by administration and professional fees and asserted that his flat was a two bedroom flat as the third bedroom was no more than a box room. On questioning by the Tribunal, the Respondent conceded that he did not live in the flat and let it to a Housing Association. He also conceded that he let it as a three-bedroom property.

7. The Respondent appeared to confuse the percentage charges made for supervision and management fees as he asserted that they bore no relation to the Bank of England rates. He queried whether the work could have been carried out in smaller projects over a greater period of time. He accepted he had received the

section 20 consultation notices but asserted that he had not agreed to the works.

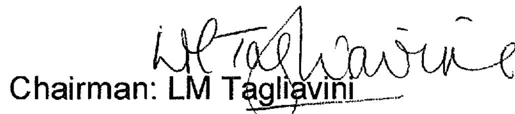
The Tribunal's Findings:

8. The Tribunal is satisfied that the works are reasonable and have been properly specified and tendered, subject to adjustment to reflect the amounts conceded as not being incurred. It was conceded by the London Borough of Southwark that:

- the Environmental works would be taken out of the current budget and would not go ahead at the present time.
- The disabled access works were not works of maintenance and would also be deducted from the costs.
- The revised total interim figure due from the Respondent is £14,010.52 of which 50% amounts to £7,005.26.
- The asbestos, roof insulation and formation of fire break works are reasonable.
- Management and supervision fees are reasonable being at the lower end of an expected range.
- The adjusted sum of £7,005,26 is reasonable and payable by the Respondent as an interim sum under the terms of his lease, by which the Respondent is bound.

Section 20c:

9. The Tribunal finds that in all the circumstances that it is not reasonable to add the costs of this litigation in the LVT to the service charges, no costs summary being provided by the Applicant as required by the directions (28/1/10), Equally, the Tribunal finds it not appropriate to direct the Respondent to reimburse the hearing fee. The Tribunal now remits this matter back to the County Court for any further determinations necessary.



Chairman: LM Tagliavini

Dated: 14 March 2010