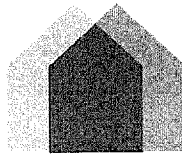


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Residential  
Property  
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**LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL**

**Landlord and Tenant Act 1985 – Section 27A**

**LON/00BE/LSC/2010/0067**

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<b>Property</b>	<b>:</b>	<b>6 Lewes House, Green Hundred Road London SE15 1RP</b>	
<b>Applicant</b>	<b>:</b>	<b>London Borough of Southwark</b>	<b>Landlord</b>
<b>Represented by</b>	<b>:</b>	<b>Miss E Sorbjan                      LBS</b>	
<b>Respondent</b>	<b>:</b>	<b>Mr Nicholas Ikechukwu Okwulu</b>	<b>Tenant</b>
<b>Represented by</b>	<b>:</b>	<b>In Person supported by Mr M Orey</b>	
<b>Date of Referral</b>	<b>:</b>	<b>27 January 2010</b>	
<b>Date of Hearing</b>	<b>:</b>	<b>1 June 2010</b>	
<b>Date of Decision</b>	<b>:</b>	<b>29 July 2010</b>	
<b>Tribunal</b>	<b>:</b>	<b>Mr John Hewitt                      Chairman Mr Trevor Johnson                  FRICS Mrs Rosemary Turner              JP BA</b>	

**Decision**

1. The decision of the Tribunal is that:

- 1.1 The sum of £8,839.22 being the balance of an invoice requiring payment of a sum on account of major works to be carried out by the Applicant is payable by the Respondent to the Applicant;
- 1.2 The said sum of £8,839.22 is payable forthwith;
- 1.3 The said sum of £8,839.22 is payable by cheque or cash as the Respondent shall see fit;
- 1.4 The Tribunal requires the Respondent by 4pm Friday 27 August 2010 to reimburse the Applicant the sum of £150 being fees paid by the Applicant to the Tribunal; and
- 1.5 The matter be referred back to the Lambeth County Court for the court to make determinations on the claim to statutory interest and to costs and court fees in the court proceedings because these matters are outside the scope of the Tribunal's jurisdiction.

**NB** Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file running to some 817 + pages provided to us for use at the hearing.

### **The Lease**

2. The relevant lease is dated 13 June 2005 [32]. The lease was granted by the Applicant to the Respondent, the Respondent having exercised the right to buy. The lease granted a term of 125 years from the date of grant. In essence the lease obliges the landlord to insure the development and to carry our repairs and redecorations and to provide services. The lease obliges the tenant to contribute a 'fair proportion' [51] of the costs and expenses incurred in complying with its obligations.
3. The lease terms were not in issue.

4. The Applicant had arrived at the amount of the 'fair proportion' by the application of its bed weighting formula. It was not in dispute that this resulted in the ascertainment of a fair proportion.

### **Background**

5. In 2007 the Applicant proposed to carry out major works on its Friary Estate which comprises Lewes House, Reading House and Lynn House.
6. The Applicant asserts that it complied with the consultation requirements of s20 of the Act.
7. On 10 October 2008 the Applicant issued a demand for payment to the Respondent in the sum of £11,785.62 [250] being an estimate of his share of the costs after taking into account the effect of contribution to capital works notified on the s125 notice at the time when the Respondent exercised his right to buy [241].
8. Some payments on account were made. On 16 November 2009 the Applicant commenced proceedings against the Respondent in the Lambeth County Court. The Applicant claimed:
  1. £8,839.22 balance of the invoice dated 10 October 2008 in respect of the major works;
  2. £185.34 interest pursuant to s69 County Courts Act 1984, and continuing at the rate of £1.94 per day from 2 November 2009 until payment;
  3. £225 court fee; and
  4. Costs.
9. By order made 6 January and dated 20 January 2010 District Judge Zimmels ordered that *"This matter be transferred to the Leasehold Valuation Tribunal"*.

10. Directions were duly given and the hearing came on before us on 1 June 2010. We were provided with a comprehensive hearing file running to some 817 + pages and further pages were handed in during the course of the hearing. The papers included documents showing how the project and been taken forward, consulted over and competitive pricing achieved. Included were witness statements made by:

Mr John Plant FCIOB [732] Director, Brodie Plant Goddard, Lead Consultant;

Mr Trevor Wellbeloved [734] LBS Estimated Accounts Manager, Home Ownership Unit;

Mr Dave Wenlock [738] Divisional Manager, Apollo

Mr Zaid Nuaman MRICS [740] Associate Director, Brodie Plant Goddard,

Mr Michael Orey [743] Chair of Unwin and Friary Tenants Management Organisation and long term resident on the Friary Estate.

### **Inspection**

11. The Tribunal decided that it did not need to inspect the development in order to arrive at its decision because it was concerned with the reasonableness of an estimate of major works which had been based on a detailed written specification and associated matters.

### **Matters in Dispute**

12. In essence the matters in dispute were:

1. The proposed costs of the works and the allocation of the amount referable to Lewes House;
2. The amount to be capped by reference to the s125 notice Appendix B schedule of capital works issued at time of the grant of the lease;
3. Whether the Applicant had served the s20 consultation notice on the Respondent; and

4. The Applicant's application that the Respondent be required to reimburse it with the sum of £150 being the fees paid by the Applicant to the Tribunal.
13. The Tribunal does not have jurisdiction to determine the claim to statutory interest and to costs and court fees in the court proceedings and therefore these claims are referred back to the court to determine.

### **The Law**

14. Relevant law we have taken into account in arriving at our decision is set out in the Schedule to this Decision.

### **The proposed cost of works and the cap**

15. In their opening statement the Respondent and Mr Orey explained that their concerns turned on the reasonableness of the apportionment of the costs to Lewes House, the quality of works and the transparency of the costs.
16. Mr Trevor Wellbeloved gave evidence, he spoke to his statement [734] and he was cross-examined. Mr Wellbeloved took us through the relevant documents in some detail and explained the process undertaken by the Applicant. Key documents are at [257 and 258] Mr Wellbeloved produced a variation [257(a)] to help explain and clarify the application of the cap on contribution to major works by reference to the s125 notice and appendix B.
17. Mr Wellbeloved explained how the estimated costs of the project, which involved three blocks, had been arrived at and how those costs had been allocated to each block. Mr Wellbeloved answered detailed questions put to him by Mr Orey. He dealt fully and well with a number of questions put to him. Mr Orey sought to challenge a number of component parts of the estimate of costs and taken in isolation suggested that they were either too high or an unrealistic proportion of the whole. An example is the cost of general preliminaries.

18. Mr Wellbeloved impressed us as being an honest and careful witness upon whom we could rely with confidence. We have no hesitation in accepting his evidence.
19. Mr Zaid Nuaman gave evidence and spoke to his witness statement [740]. Mr Nuaman gave detailed evidence about the scope of works, particularly with regard to the roof. He was cross examined. Again we found Mr Nuaman to be an honest and reliable witness doing his best to assist us.
20. In giving evidence the Respondent stated that he was just looking for clarity. He was not saying he does not have to pay. He wanted the bill justified. The scope of the works was not challenged. He also said that he has some concerns about the quality of works. He said that in general the new kitchens which had been fitted into the council tenant's flats were falling apart. Also he complained that the windows do not open sufficiently wide, for example in the toilet which causes a problem with damp. The Respondent was unable to identify or pinpoint any particular complaints about the quality of works carried out to Lewes House. He complained that the unevenness of the asphalt work on the ground floor near to his flat was a slight worry to him. He was also not totally happy with the guttering work because water was still pouring onto the verandas causing a potential health and safety risk due to puddling.
21. We were satisfied that the approach by the Applicant to ascertain the estimated cost of works was careful and methodical. The documents and the witnesses called by the Applicant stood up to scrutiny. We find that the sum claimed was a careful and reasonable estimate that proper and due regard was given to the cap on contributions to service charges imposed by reason of the s125 notice and it was properly calculated and applied and it was in conformity with The Housing (Right to Buy) (Service Charges) Order 1986 SI 1986 No. 2195.

22. We are satisfied that the demand dated 10 October 2008 was a reasonable estimate of the likely fair contribution to the cost of the major works and that it was payable by the Respondent to the Applicant. The balance of £8,839.42 is payable to the Applicant.
23. We have noted the relatively modest issues that the Respondent raised in respect of the quality of the works. These are not matters we need dwell upon. We are concerned solely with the reasonableness of the amount of the estimate and the way in which that was arrived at. The question of quality of works and the appropriate cost of works actually carried out are matters to be determined once the final account has been issued and the actual cost of works ascertained. We also note that the works are still within the 12 months defects period. We would hope that the Applicant's representatives have taken note of the quality issues so that they can be taken up with the contractor.

#### **The section 20 notice**

24. The relevant notice is at [230]. It is dated 8 October 2007. It estimated the Respondent's liability at £22,212.37 less Appendix B reductions of £10,406.38, a net contribution of £11,805.99. The Applicant told us that he was certain the notice was never delivered to him. He said that his post was unreliable and that in October 2008 the demand was not delivered and was returned 'Addressee Gone Away' even though he was living in the flat at the time.
25. The Respondent told that he was involved in the local community and with residents on the Friary Estate. He said that he called a meeting in March 2008 'when we began to receive bills'. He said that he was requested to call the meeting because a number of people had queries and complaints about the project. The Applicant said that to the best of his recollection the first invoice he received was late 2007 or early 2008.

26. The Respondent submitted that his contribution to the cost of the major works should be limited to £250 because the Applicant had failed to serve the s20 notice on him.
27. We heard evidence from Mr Kieran Hurley. He has been employed by the Applicant as a projects officer in the Home Ownership Unit for the past four years. He told us that it was his responsibility to prepare the estimates of costs and the related paperwork. He said that in October 2007 he prepared the s20 notices and that he went to the Friary Estate and delivered them by hand. He said that on 8 October 2007 he went to each block and he put them through the letterbox of each long lessee. In all he hand delivered 32 letters. He said that on his return to the office the same day he completed a Statement of Delivery and dated and signed it. He produced a copy [817].
28. Mr Hurley stood up well to cross-examination. He said that in response to the notices delivered to Lewes House he received two observations from lessees, flats 7 and 15.
29. We found Mr Hurley to be a reliable witness and we accept his evidence. We find that on the balance of probabilities the s20 notice was delivered to the Respondent. Whilst we accept the Respondent's evidence that he was having difficulties with Royal Mail over delivery of his mail, we find that the subject notice was not entrusted to Royal Mail for delivery to him. We are reinforced in our findings from the evidence of the Respondent himself. He told us that he became active on the issue in late 2007 or early 2008 and that it was about this time that he got the first invoice. We find that the first invoice was not in fact issued until October 2008. It seems to us more likely than not that what the Respondent had in his mind was not an invoice but the s20 notice which notified him that his contribution was estimated to be £11,805.99. For these reasons we reject the Respondent's submission that the s20 notice was not given to him.



## **Reimbursement of Fees**

30. An application was been made for the reimbursement of fees of £150 paid by the Applicant in connection with these proceedings. It was submitted that costs should follow the event.
31. The application was opposed. The Respondent submitted that he had made efforts to resolve matters but that the Applicant was not co-operative and rejected a proposal of mediation.
32. In reply the Applicant submitted that there had been a series of meetings and letters, both joint and individual as late as January and February 2009. They responded to everything put to them. No new issues have been raised, everything raised in the Tribunal proceedings had been dealt with previously. In the absence of anything new they considered that mediation would not be a good use of resources.
33. We prefer the submissions made on behalf of the Applicant. We find that the Respondent's case was without merit and that he had no real concerns over his contribution to the costs of the works other than his inability to effect payment. We consider that it is just and equitable that the Respondent should reimburse the Applicant the sum of £150 and we have required him to do so.

.....  
John Hewitt  
Chairman  
29 July 2010

## Landlord and Tenant Act 1985

**Section 18(1)** of the Act provides that, for the purposes of relevant parts of the Act 'service charges' 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, improvements 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.

**Section 19(1)** of the Act provides that 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 are of a reasonable standard;

and the amount payable shall be limited accordingly.

**Section 19(2)** of the Act provides that 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 of subsequent charges or otherwise.

**Section 20(1)** Where this section applies to any qualifying works...the relevant contributions of tenants are limited in accordance with subsection (6)... unless the consultation requirements have been either:

- (a) complied with in relation to the works, or
- (b) dispensed with in relation to the works...by (or on appeal from) a leasehold valuation tribunal.

- (2) In this section "relevant contribution", in relation to a tenant and any works ...is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to the relevant costs incurred on carrying out the works...
- (3) This section applies to qualifying works if the relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) ...
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State.

**NB** The regulations duly made are The Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003 No.1987) (as amended). Regulation 6 specifies the appropriate amount to be an amount which results in the relevant contribution of any tenant being more than £250.

(6) Where an appropriate amount is set by virtue of subsection 5, the amount of the relevant costs incurred on carrying out the works... which may be taken into account in determining the relevant contribution of tenants is limited to the appropriate amount.

(7) ...

**NB** The material consultation requirements in relation to the subject works are those set out in Schedule 4 Part 2 of the 2003 Regulations.

**Section 27A** of the Act provides that 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.

**Section 27A(3)** of the Act provides that an application may 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.

### **Leasehold Valuation Tribunals (Fees) (England) Regulations 2003**

**Regulation 9(1)** provides that subject to paragraph (2) a Tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or any part of any fees paid by him in respect of the proceedings.

**Regulation 9(2)** provides that a Tribunal shall not require a party to make such reimbursement if, at the time when the Tribunal is considering whether or not to do so, it is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Regulation 8(1) makes reference to a number of benefits/allowances including, but not limited to, income support, housing benefit, jobseekers allowance, tax credits, state pension credits and disability related allowances.