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**Residential
Property**
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
LANDLORD AND TENANT ACT 1987**

LON/00AN/LSC/2010/0804

Premises: 25 Jepson House, Perascroft Road, SW6 2BG

Applicant: Mr & Mrs T Flynn

Represented by:

Respondent: London Borough of Hammersmith & Fulham

Represented by: Ms M Cave, Income Recovery Manager
Mr D Reynolds, Group Leader, Engineering Services

Tribunal: Ms E Samupfonda LLB (Hons)
Mrs J Davies FRICS
Mr J Francis QPM

Date of Hearing: 23 May 2011

Date of Decision: 17 June 2011

In the Leasehold Valuation Tribunal

LON/00AN/LSC/2010/0804

Applicant	Mr & Mrs Flynn
Respondent	London Borough of Hammersmith and Fulham
Premises	25 Jepson House, Pearscroft Rd, London SW6 2BG

Tribunal

Ms E Samupfonda LLB(Hons)

Mrs J Davies FRICS

Mr J Francis QPM

1. The Applicants are leasehold owners of the above named premises. The premises were purchased under the Right to buy provisions of the Housing Act 1985. Pursuant to s125A to C of the Housing Act, they received the pre purchase service and improvement charge estimates. The Applicants now seek a determination under s27A of the Landlord and Tenant Act (the Act) 1985 as amended of the reasonableness of the costs incurred by the Respondent landlord in replacing two lifts.
2. An oral pre trial review was held on 5th January 2011. Ms M Cave, Income Recovery Manager and Mr D Reynolds, Group Leader of Engineering Services within the Building and Property Management Department of the London Borough of Hammersmith and Fulham attended on behalf of the Respondent. Mr and Mrs Flynn attended in person. The issues to be determined were identified at the PTR and directions for the future conduct of this case were made. An inspection was not considered to be necessary unless this Tribunal considered otherwise.
3. The hearing was held on 23rd May 2011. Mr and Mrs Flynn attended in person. Ms Cave and Mr Reynolds attended on behalf of the Respondent.

The Applicants' case is that the costs incurred by the Respondent in installing two new lifts have not been reasonably incurred because the contract was poorly managed and following completion, the Respondent accepted lifts of poor quality as they repeatedly broke down or operated poorly with continuous violent shuddering and knocking noise. The lift floors had to be changed 3 times. It was explained that Jepson House is a block of 67 flats with 17 floors. The Applicants' flat is on the sixth floor. They explained that Jepson house is serviced by two lifts; A and B. Works to renew the lifts were carried out between July 2002 and April 2003 by a contractor known as Apex Lifts. The lifts were renewed separately so that lift services were available at all times, starting first with lift A, in July 2002 and completing it in December 2002. Work to lift B started in December 2002 and completed in April 2003. However, there were occasions when the working lift broke down resulting in no lift services thus causing great inconvenience to the residents. The Applicants said that there was a delay of 14 weeks in completing the contract. They submitted that their level of contribution to the service charge should be reduced to reflect the time and efforts they made in identifying defects and bringing them to the Respondent's attention. It took the Respondent 2 to 3 years to recognize those problems and following a site visit to the lifts from the Assistant Director of Housing compelling them to act. The Applicants contended that there were additional cleaning costs incurred as regular caretakers were taken from their standard duties to clean the mess left by the contractors.

4. The Applicants stated that Tanith Parr, Head of Leasehold Services informed them that the final sum that the Respondent is seeking to recover is £3,960.22. They have offered £2,000, which has been rejected.
5. The Respondent's case is that the costs were reasonably incurred and the sum sought is payable by the Applicants. Ms Cave denied that the contract was poorly managed. She explained that the reason why this work was undertaken was because the lifts were 10 years over their design life of 25 years and they broke down frequently. Thus she readily acknowledged that there were times during the lift renewal

work when the remaining operational lift broke down and when that occurred, it would result in no lift services but only for a short period of time as the Respondent attended to all fault call outs and always left the lift in good working order. She referred to call out logs and said that from her analysis of the breakdown reports, between 2002 and 2011, there were 99 instances of reported failures to lift A, of which 83 proved valid as faults were detected. Between 2003 and 2011, there were 61 instances of reported failures to lift B and 40 proved valid. Those identified as non-valid call outs resulted from the lifts breaking down due to acts of vandalism or residents leaving the doors wedged open. Ms Cave explained that as an acknowledgement of the time and trouble experienced by the Applicants, the level of their contribution towards the cost of professional fees was reduced from 11.5% to 5%, which is a reduction of £16,000 to the overall contract costs. She did not accept that they were entitled to further reductions for their efforts taken in bringing the defects to the Respondent's attention as they were not employed in that capacity by the Respondents but acted in that capacity in their roles as chairman and secretary of the Residents Association.

6. Mr Reynolds explained the background, the consultation process and the chronology of events and the management of the contract. He acknowledged that following completion of the work there were a number of defects identified both by the Respondents and the Applicants who reported a number of lift failures, poor quality rides and knocking sounds. The contractors Apex Lift, attempted to remedy the defects but could not address the issue of poor rides and knocking sounds. Consequentially the Respondent commissioned a report from Eurogears Ltd and all their recommendations were accepted with the exception of replacement of the suspension ropes. Apex Lifts carried out the remedial work but failed to satisfactorily remedy the problems. The Respondent then commissioned PDERS Elevators who finally resolved the problems. He added that the costs of resolving these difficulties were recovered from Apex Lifts. In addition Liquidated Damages were deducted from Apex Lifts for the late completion of the work. He explained that the delay was caused by Apex Lift not being able to manufacture the lift because they said that they were too busy and could

not meet their contractual deadlines. The Applicants were not charged for the replacement lift floors or the additional cleaning cost.

Decision

7. In determining this application, the Tribunal had regard to the relevant law, facts and evidence both oral and documentary. No issues were raised with regards to the validity of the notice served under s20 of the Act and liability to pay was not disputed under the terms of the lease. The issue before the Tribunal is whether the costs incurred by the Respondent in replacing the two lifts were reasonably incurred and whether the work that was carried out was carried out to a reasonable standard. From the evidence as presented, the Tribunal finds that there were a number of defects identified following completion of the lift replacement, some which were brought to the Respondent's attention by the Applicants' valiant efforts. Having identified those defects, the Respondent put in place a course of action to remedy the defects, first by recalling Apex Lifts, then commissioning a report from Eurogears and issuing instructions to Apex Lifts to carry out their recommended works and when that failed the Respondent finally resolving the issues by instructing PDERS Elevators. The defects notified to the lift floors were rectified by the installation of new floors. It is apparent that a value of £5,274 was applied to the cost of the incomplete work and this sum was deducted from the original contract price and liquidated damages of £7617.08 were deducted for the failure to complete the contract timely. From the catalogue of reported lift failures, the Tribunal finds that the number of failures is not indicative of poor standard of work particularly when taking into account circumstances where some of the defects are attributed to misuse.

8. The final account figure is £260,543.12. The Applicants are liable under the terms of their contract to contribute at 1.52%. No alternative figures were produced to support the contention that costs were not reasonably incurred. The defects noted were remedied within a reasonable time and there were no additional costs charged to the Applicants. On the evidence, the Tribunal is satisfied that the costs incurred have been reasonably incurred. The Tribunal is of the view that the Respondent has acted reasonably in reducing the

level of the Applicants professional fees contribution from 11.5% to 5% in recognition of the inconvenience caused by the delay and lift breakdown.

9. In the circumstances the Tribunal has decided that the sum of £3960.22 is reasonable and payable by the Applicants.

Chairman Ms Evis Samupfonda

Dated 17 June 2011