

**HM COURTS AND TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/29UQ/LSC/2012/0099**

**Re: 44 Hastings Road, Pembury, Kent, TN2 4JP**

**BETWEEN :**

**MR AND MRS REGIS (38)  
MR AND MRS MIAN (40)  
MR K LAMBERT (42)  
C/O MR AND MRS JONES**

**Applicants**

**and**

**MR H PADWA C/O FELDGATE**

**Respondent**

**Members of the Tribunal:** Mr S Lal LL.M, Barrister (Chairman)  
Mr R Athow FRICS MIRPM  
Mr P Gammon MBE BA

**Date of Inspection/Hearing:** 16<sup>th</sup> October 2012

**Date of Decision:** 20<sup>th</sup> October 2012

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**THE TRIBUNAL'S DECISION**

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**Background**

1. This is an application made by the Applicants, Mr and Mrs Jones pursuant to Section 27A of the Landlord and Tenant Act 1985 (the "Act") to determine whether sums specified in the application form are reasonable and payable.
2. The Applicants took over the right to manage the subject premises in April 2012 and the application concerns itself with the service charge year 2011 only. The contested service charge expenditure is confined to three distinct areas. These are £576.00 in respect of repairs, building surveying fees of £1183.70 and management fees of £2040.00.

### **The Inspection**

3. The Tribunal inspected the subject premises on the morning of the hearing. It consists of a semi-detached house built about 100 years ago and subsequently converted into four flats. It is on traditional design and construction with a tiled roof, brick and rendered & colour washed panelling to the walls. Internally there is a communal hall and stairs to the upper floors. Off the ground floor hall is a door to the rear yard. The Tribunal was informed that all gardens are either demised to or maintained by the ground floor flat.

### **Representation**

4. The Tribunal assembled at Tunbridge Wells County Court. Mr and Mrs Jones appeared in person for the Applicants and Mr Abe Berger, Company Secretary represented the Respondent.

### **Submissions**

5. The Tribunal is pleased to note that both sides have complied with Directions and the Tribunal was supplied with one composite bundle that had been helpfully paginated and divided. The Tribunal had regard to the contents of the Bundle and the respective written submissions of each side. Each party was invited to make any further additional oral submissions and these are summarised below.

### **The Case for the Applicant**

6. Mrs Jones acted as the spokesperson for the Applicants. She divided her oral submissions into three distinct areas.

#### **(a) The Repair Invoice**

(i) In respect of the above matter she stated that one of the tenants had made a phone call in about November 2009 in respect of a water leak. Apparently the Respondent had sent a man who had borrowed a ladder from one of the other tenants and attempted to clean the offending blocked gutter. She stated that he was asked to leave when he was spotted and that the problem was not fixed in any event. She said that the tenants themselves cleaned and lined the gutter. Significantly she stated that she had not been told or informed about the so called repair until April 2012 as part of the final settlement demand prior to the new management company taking over. She queried whether the payment was lawfully due and even if it was she suggested it was unreasonable to pay it because the tenants had done it themselves

**(b) Surveyors Fees**

(i) In respect of the above she argued that the invoice related to proposed works in 2009/10, which had not been carried out. She said that the invoice was emailed to her in September 2011 and that she was not aware of them prior to this date and in any event the fees had not been charged until April 2012. She queried whether the payment was lawfully due.

**(c) The Management Fees**

(i) In respect of the above, it was accepted by all the parties that this related to fees for the managing agents' time input and costs relating to the consultation process in respect of the proposed major works that never took place. It was the case for the Applicant that they only became aware of these in September 2011 and that the first time she was charged for them was in April 2012. She queried whether the payment was lawfully due and even if it was she suggested it was unreasonable in any event.

**The Case for the Respondent**

7. Mr Berger likewise divided his submissions up into three parts and these are summarised as follows.

**(a) The Repair Invoice**

(i) Mr Berger accepted that the repair invoice which related to 2009 had not been billed when it should have been due to an oversight but that the Respondent had demanded £250 under service charges for the financial year 2011 in March 2011 and therefore this did not fall foul of the 18 month rules in Section 20b of the Landlord and Tenant Act 1985. When asked by the Tribunal he confirmed that the £250 was not specified but was for general repair matters. He stated that the work had been carried out.

**(b) The Surveyors Fees**

(i) In respect of the above, Mr Berger submitted that the surveyor's fees are due for services provided and that the invoice became due in September 2012 and therefore did not fall foul of the 18-month rule.

(ii) The Tribunal enquired if there was a contract in writing between the surveyor and either the freeholder or his managing agent. Mr Berger said there was not one in existence, but that the surveyor undertook a large amount of work for Feldgate and there was an established practice of charging 12.5% of the final contract price for the works specified and supervised. Furthermore the payment for this did not become due until the works had been completed.

(iii) He accepted that this was an unusual arrangement adopted by Feldgate and the surveyor, but that it was a relationship that worked for them. As a result the fee was not charged until the residents Right to Manage Company took over in April 2012. In response to a question from the Tribunal Mr Berger stated that the surveyor was content for the matter not to be invoiced until September 2011 even though his work had actually been carried out in 2009.

### **(c) The Management Fees**

(i) Mr Berger submitted that the management fees were in respect of the input by Feldgate in connection with the Consultation process required under Statute in connection with the proposed major works and are based on an hourly rate of £100 per hour and that 17 hours work was carried out.

(ii) When questioned by the Tribunal why the hourly rate was at £100 per hour rather than the £50 per hour set for clerk or property manager as set out in their management agreement he stated that the work was undertaken in the capacity of Company Secretary for Feldgate and therefore at the appropriate rate of £100 per hour which is the rate set for a partner, director or company secretary. The role of property manager relates to anyone in the office without a specific role. He stated that even though most of the services were carried out in 2009/10 the invoice would normally only become due on completion of the works. In this instance it became due in September 2011 and thus within the 18 month limitation period.

### **The Tribunal's Decision**

8. It seemed to the Tribunal that the starting point for its analysis should be whether the amounts in dispute were payable and then if applicable to consider whether they were reasonable under S27. In this regard the Tribunal had regard to the provisions of Section 20B of the Landlord and Tenant Act 1985. This states as follows:

***Limitation of service charges: time limit on making demands.***

*(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.*

*(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.*

9. The Tribunal finds as follows:

**(a) The Repair Invoice**

(i) The Tribunal finds that the amount of £576 is not payable under the above section. The repairs were carried out in November 2009. The invoice was dated 18<sup>th</sup> November 2009 and Feldgate did not send the demand to the lessees until 4<sup>th</sup> April 2012. This is a period of 29 months and therefore is out side of the 18-month limitation. The Tribunal notes the Mr Berger accepted that the failure to demand was indeed an oversight and the Tribunal finds that any subsequent attempt to remedy the oversight by importing a reference to the 2009 repair by virtue of an unspecified “repairs” requirement in the 2011 demand is nebulous and seeks to subvert the protection afforded by the Act itself. By way of passing the Tribunal finds on the facts that the work was not actually carried out or if an attempt was made it was so poor that the net effect was like the work had never been carried out.

**(b) The Surveyors Fees**

(i) The Tribunal finds that the amount of £1183.70 is not payable but for the sum of £225.00 plus % VAT at 20% which equals £270. 00. This is because the sums in respect of a visit to the property in March 2009, the preparation of documents in September 2009 and January 2010 and the travel and printing in respect of these documents were all before the 18 month limitation. The Tribunal are unable to accept that the unusual business relationship between the Respondent and the surveyor resulted in the demand not being notified until September 2011. The Tribunal notes as an expert Tribunal that the usual industry practice is for the surveyor’s fees to be billed in two parts, the first to prepare the specification, obtain tenders and prepare a tender report, and the second for the supervision role, becoming due after the works have been completed. This has the practical effect of the surveyor being paid for the initial report even if the works are not eventually done. The Royal Institution of Chartered Surveyors’ general code of conduct requires their members to have a written terms of engagement setting out what is due and when, so as to avoid uncertainty as has occurred in this instance.

(ii) In the instant case the Tribunal are concerned that *but for* Mrs Jones raising the matter in September 2011 of her own volition, the tenants may well have been informed of what was due many years after the event as the major works process dragged on! This would directly subvert the purpose of Section 20B, which was to afford a degree of protection to, tenants from onerous bills going back many years. However the balancing amount of £270 is payable because this was within the 18 month period


**(c) Management Fees**

(i) The Tribunal had regard to the widely established industry practice of charging a fixed fee per flat for the Section 20C Consultation process. In this instance it decided that a reasonable total fee would have been £300.00. However the Respondents' Managing Agent charged at an hourly rate, which was disproportionately high for the work involved. They charged at Director/Company Secretary rate of £100 per hour. The Tribunal finds that this work is capable of being undertaken by a property manager. The Managing Agents fee structure within the Terms of Engagement put the property manager rate at £50, which the Tribunal finds is reasonable. In the circumstances the Tribunal allows the sum of £300.00.

**Section 20C Application**

10. Having regard to the guidance given by the Land Tribunal in the Tenants of Langford Court v Doren LRX/37/2000, the Tribunal considers it just and equitable to make an order under s.20C of the Landlord and Tenant Act 1985. The Applicants have succeeded in respect of the majority of their submissions. The Tribunal directs that no part of the Respondent's relevant cost incurred in the application shall be added to the service charges.

CHAIRMAN  
Mr S. Lal

  
20/10/17.