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**LONDON RENT ASSESSMENT PANEL**

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON A MATTER UNDER  
SECTIONS 27A OF THE LANDLORD AND TENANT ACT 1985**

**Case Reference:** LON/00AG/LSC/2011/0611

**Premises:** 35 QUEENSGATE PLACE, LONDON NW6 4JS

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**Applicant(s):** London Borough of Camden

**Respondent(s):** Mrs ST Uthman  
Mrs SO Uthman  
Mr MO Uthman

**Date of hearing:** 19 December 2011

**Appearance for Applicant(s):** Mr Schooling, Court Officer

**Appearance for Respondent(s):** None

**Leasehold Valuation Tribunal:** Ms F Dickie, Barrister, Chairman  
Mr A Lewicki, MRICS  
Mr C Piarroux

**Date of decision:** 18 January 2012

4. The Applicant was represented at the hearing by Mr Schooling and the Respondents did not attend. The tribunal had received no communication from the Respondents concerning the proceedings, or notification that they could not attend or would be late for the hearing. Mr Schooling advised that the Applicants had received no such communication either.
5. The hearing began at 10:10am ended at 10:30am. At 11:10am the Respondents arrived at the hearing venue and were advised that the hearing had ended, and members of the tribunal as well as the Applicant's representative had already left the building.
6. The tribunal has received a letter dated 19 December 2011 from the Respondent Mrs Uthman stating that she had left the house (which is in Kilburn) in good time to attend the hearing, but owing to being stuck on the underground and transport delays she was late and could not contact the tribunal. No evidence of transport disruption was provided in support of this assertion, and the tribunal does not find it credible that transport difficulties would have delayed her arrival by at least an hour and 10 minutes, when making her relatively short journey, and prevented her from telephoning the tribunal. In these circumstances, and given the Respondents' failure to comply with Directions issued, and the cost and inconvenience to the Applicant that would be likely to result from having to attend another hearing, the tribunal has decided not to adjourn to a further hearing. It has made its decision on the basis of the available evidence.

### **The background**

7. The property which is the subject of this application is a self contained ground and first floor maisonette within a building on a larger estate known as the Kingsgate Estate. The Tribunal did not consider it necessary or proportionate to inspect the property, given the issues in dispute.
8. The Respondents hold a long lease of the property dated 19 September 1988 for a term of 125 from that date, which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The lease provides (at Clause 2(f)) for the payment of service charges in respect of a reasonable provision for anticipated expenditure.

### **Respondents' Case**

9. The First Respondent made a formal admission in the County Court in the sum of £2000. In the Defence Form N9B she said "I was happy with the windows at my home which had not changed in over 25 years. The council changed windows and other parts of other houses such as intercom doors and corridors which had nothing to do with my home (There are no intercom doors or systems at my house).....The windows which the council replaced on houses were faulty and the council sent letters asking for the windows not to be opened wide because they were faulty and falling out." She also made

reference to her personal financial circumstances. No other evidence or challenge was put forward before the transfer of the proceedings to the Leasehold Valuation Tribunal or since.

### **Applicant's Case - Annual Service Charges**

10. Regarding the claim for annual service charges for the years ending 31 March 2009 and 2010, Mr Schooling confirmed that the Council was seeking a determination in relation to estimated service charges, though demands in respect of actual expenditure had now been issued. He considered that the tenant had not in the County Court Defence or otherwise raised any challenge to the annual service charges. Mr Schooling confirmed that he understood that if the tenant had any objection to the amount of actual service charges now demanded she had the right to make her own application to the Leasehold Valuation Tribunal, which would have the jurisdiction to determine what was reasonable and payable.
11. The Applicant's evidence demonstrated that it levies a service charge on the Respondents for the provision of the following services: Caretaking; Door entry systems; Electricity; Grounds maintenance; Heating and hot water; Insurance; Lighting maintenance; Mechanical equipment/ventilation; Mobile security patrol; Repairs and maintenance to the block and estate. A schedule of the annual service charges and demands for the years ending 31 March 2009 and 31 March 2010 were produced by the Applicant. These showed a breakdown of the charges under each of these heads, and a copy of the demands was produced.

### **Applicant's Case - Major Works Charges**

12. In respect of the major works, Mr Schooling said that the final account had not yet been audited by quantity surveyors. He had instructions to make a concession with regard to the charges for the replacement windows and doors which were disputed by the leaseholder, as well as the whole supervision and management fee, since he was unable to produce evidence from the Council's consultants at the hearing. This reduced the amount for major works sought by the Applicant from the Respondents to £13,621.17. This amount represented the Respondents' proportionate share of the total estimated cost of the works (excluding window and door replacement, management and supervision fees) of £108,969.39. The Respondents' proportion under the lease was 12.5%, based on rateable value. These remaining costs had not been the subject of any substantive dispute by the Respondents. Mr Schooling confirmed that these concessions by the Council regarding the window, door, management and supervision costs would also apply to the actual cost of the works to be invoiced to the Respondents once the quantity surveyors had prepared the final accounts.

13. The Applicant produced a Statement of Case and bundle of evidence pursuant to the Directions of the tribunal, which was served on the Respondents, in which the following case (in summary) was set out:
- (i) The contract undertook Raising the Standard Works to multiple blocks on the Kingsgate Road Estate. The supervision of the works was overseen by the consultant Capita Symonds (“Capita”) with the contract awarded to Apollo London (“Apollo”).
  - (ii) A Notice of Intention was issued on 15 August 2006 and a Notice of Estimates was issued on 18 September 2006 (which included a summary of leaseholders’ observations and the landlord’s responses). Copies of these documents were included by the Applicant in the hearing bundle, as were a series of notices served on the tenants under s.20B of the Act of expenditure incurred by the Council on the project.
  - (iii) The selected contractor commenced the works on 12 February 2007 and practical completion was on 1 February 2008. The work undertaken in broad terms covered general works, renewal of roof coverings, asphalt covered balconies, brickwork repairs, cavity wall upgrading works, replacement of windows and doors, rainwater goods, decoration to external and internal common areas and concrete repairs.
  - (iv) The priced specification was produced showing the breakdown of the estimated costs. The Applicant demanded payment of the estimated cost in the sum of £23,985.88 on 12 June 2007.

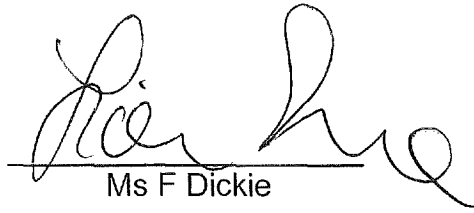
### **The Tribunal’s decision and reasons**

14. By Clause 2.2 of the Lease, the Respondents covenanted to pay without deductions by way of further and additional rent a proportionate part of the reasonable expenses and outgoings “incurred by the Corporation in the repair and maintenance renewal decoration and insurance and management of the building and the provisions of services therein and the other heads of expenditure as the same are set out in the Third Schedule...” Having had regard to the terms of the lease, the tribunal finds that all of the charges that are the subject of this application represent matters for which the Respondents are liable to contribute as set out in the Third Schedule of the lease, which is not recited here.
15. The Respondent has raised no dispute as to the estimated annual service charges, though the tribunal notes the challenge regarding supposed major

works charges for the door entry system. The lease provides (at Clause 10 of the Third Schedule) that they are liable to contribute if it is "used or capable or being used by the Tenant in common as aforesaid". It provides at Clause 2(e)ii) that in respect of matters which include the items referred to in Clause 10 of the Third Schedule the service charge is to be calculated by dividing the total cost of the specified services by the total number of flats for which such service is provided.

16. The Respondents produced no evidence that the entry phone system was not "capable of being used" by them, even in the event that it was not currently so used, or that the service was not provided for their flat. Estimated charges for the door entry system were approximately £30 to these Respondents in each of the years in dispute. In the event that there is in fact no liability under the lease to make this contribution, the Respondents have the ability to challenge this item in the final annual service charge demands, which have now been received.
17. The tribunal finds in the circumstances that all of the estimated on account service charges are reasonable and payable by the Respondents.
18. It was not necessary for the tribunal to consider further the question of the cost and quality of the window and door installation, since the Respondents are not now being charged for this by the Applicant. There was no evidence of major works charges for the entry phone.
19. The Respondents have raised no substantive issue in these proceedings with regard to service of the section 20 consultation notices, or any challenge as to the validity of the statutory consultation procedure in respect of the works carried out.
20. The Respondent's case in response to the major works charges, other than those for windows and doors, appears to be one of affordability. However, the Respondents were given the opportunity to agree interest free instalments, enter into a service charge loan, or agree a voluntary charge on this property. To the extent that the Applicant had any duty to consider affordability in carrying out this programme of major works, these financial options are sufficient in the view of the tribunal.
21. The tribunal finds on the evidence produced and considering the issues raised by the Respondents that all of the revised estimated major works charges the Applicant seeks to recover are reasonable and payable under the terms of the lease.
22. There were no applications made by either party in respect of costs or tribunal fees.

Chairman:

  
Ms F Dickie

Date:

18 January 2012

## Appendix of relevant legislation

### Landlord and Tenant Act 1985

#### 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, 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.
- (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 for 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 or later 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 provisions 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, 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.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
  - (a) has been agreed or admitted by the Tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

### **Section 20B**

- (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.