RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

S. 27A Landlord and Tenant Act 1985 (as amended)
Commonhold & Leasehold Reform Act 2002 Schedule 12, Paragraph 10

DECISION AND ORDER

Case Number:	LON/00BG/LSC/2005/0186
Property:	46 Kinsham House Ramsey Street London E2 6HS
Applicant:	London Borough of Tower Hamlets
Respondent:	Mr Andrew Ashfield
Date of Court Order:	28 June 2005
Date of Hearing:	Wednesday, 23 November 2005
Date of Decision:	20 December 2005
Appearances:	Mr Roger Brayshaw supported by Ms Angelique Scheepers For the Applicant Mr Andrew Ashfield
Tribunal Members:	Mr B H R Simms FRICS MCIArb (Chairman) Mr M L Jacobs FRICS (Professional Member) Mr D Wilson JP (Lay Member)

Summary of Decision

Prior to and during the hearing, the Respondent agreed that all items in dispute were reasonable and payable. The Tribunal had no service charges to determine. The Tribunal determines that insofar as it falls within its jurisdiction, the Applicant has complied with the S.20 notice procedure in respect of the emergency repairs to the electrical mains and distribution boards. The Tribunal made an Order that the Respondent should pay the costs of the Applicant in the amount of £300.

By clause 5(c):

the lessee covenants to pay the council in every financial year a sum of account of the Service Charge attributable to the Flat in that year demanded by the Council in accordance with the provisions of the Eighth Schedule hereto by equal half yearly instalments in advance on the first day of April and the First day of October such sum to be apportionable from day to day and the first such instalment (being an apportioned part from the date hereof) to be paid on the execution of this Lease

(d) To pay to the Council whenever demanded in accordance with the provisions of the Eighth Schedule hereto a sum equal to the excess of the Service Charge attributable to the Flat in any such financial year over the sum so paid on account of the same as aforesaid such sum to be payable on demand and not to be apportionable

9. In addition the lessee pays the cost of insurance and heating charges if any.

10. The Eighth Schedule states specifically which costs are to be recovered as a service charge and in Part II the proportion payable is set out and the method by which the service charge is demanded, in particular paragraphs 3 and 4 in Part II of the Eighth Schedule describe the arrangements as follows:

11. *3. The Council shall annually serve on the Lessee before the first date for payment thereof a written demand for sum representing the Council's estimate of the Service Charge attributable to the flat in that year*

4. After the end of each financial year

(a) If the sum demanded under paragraph 3 hereof proves to be less than the Service Charge attributable to the flat in that year the Council may serve a written demand on the Lessee for a sum equal to the deficiency

(b) If the sum demanded under paragraph 3 hereof proves to exceed the Service Charge attributable to the flat in that year the Council shall credit the surplus against the next demand under the said paragraph

HEARING

12. Mr Brayshaw (for the Applicant) addressed the Tribunal at length regarding the administration charges. It was explained that in each year there was a housing management charge and an administration charge. These were terms used by the Applicant to identify the costs of managing the estate and the block and could otherwise be identified as management fees. They were not administration charges as defined in the legislation and were variable charges made by the Applicant each year. Mr Brayshaw explained how these charges were made up and produced a summary for each year showing that the actual cost of managing and administering the estate and block were in excess of the charges made to the lessees.

13. Mr Brayshaw referred throughout to the detailed papers that had been submitted in the bundle and made available to the Respondent prior to the hearing.

14. The Respondent then advised the Tribunal that he did not dispute these charges and would agree them. The Chairman questioned Mr Ashfield to confirm that he had allowed Mr Brayshaw to spend time addressing the Tribunal when he knew that the items were not in dispute. Mr Ashfield confirmed that he only wished to make general points regarding the charges and did not dispute the costs themselves.

15. Mr Ashfield then indicated that it was not only the major works that were still in dispute. He disputed the door entry maintenance charges and the lift maintenance charges.

16. Mr Brayshaw and the Tribunal sought clarification on the items under these headings still in dispute. There was evidence before the Tribunal that Mr Ashfield had made an offer to settle at 50% of the original estimated amounts and in practice this meant that he had offered to settle disputed items at figures in excess of the actual charge made. For example, the actual cost for the door entry maintenance for the year 2001/2002 was £1.93 in respect of Mr Ashfield's flat and he had offered to settle the matter at £12.50. A similar situation arises in respect of the lift maintenance costs which for the year 2001/2002 were £15.41 and Mr Ashfield had offered to settle at £30.50.

17. On further discussion and identifying the type of costs that would arise from normal maintenance, Mr Ashfield confirmed that he agreed the door entry maintenance charges and the lift maintenance charges for all the years in dispute and there would be nothing for the Tribunal to decide.

18. It was therefore left to decide the remaining matters relating to what had been described as major works. These works were not charged as part of the service charge work but the Applicant made separate requests for sums to pay for these items as and when they arose.

19. The Chairman pointed out to Mr Brayshaw that he could not find in the lease any arrangement that allowed the Applicant to charge for repairs in this way. Mr Brayshaw indicated that the Applicant was duty bound to carry out the repairs and that by requesting payment as and when the costs arose this enabled the Applicant to offer to the lessees easy terms for payment. Mr Brayshaw admitted that the lease did not specifically allow the landlord to charge for repairs in this way but he felt that in practice many local authority landlords manage their affairs in this way.

20. A charge had been made to the Respondent for the amount of £541.27 in respect of the renewal of the landlord's electrical power supply and rewiring in the common parts. Mr Brayshaw explained that the total cost of the electrical work had been apportioned so as to exclude any costs relating purely to the rewiring of individual flats which was a cost for which the landlord was responsible. The charge made to the lessees related only to the common parts for which the lessees were responsible for reimbursement.

21. Mr Ashfield addressed the Tribunal in respect of the costs and identified the judgement of the Audit Commission and statements of the Solicitor General as pointing out that some councils treat their leaseholders as cash machines. He was unable, however, to identify how the charges made for the electrical work were unreasonable or not payable. He agreed that the lease required the landlord to maintain and repair these items and he was unable to produce any evidence or personal view that the charge made was unfair.

22. The second item of costs related to the replacement of the lift in the sum of £4,024.32 charged to the subject flat. Mr Ashfield again referred to the Audit Commission report and general comments made with regard to local authority landlords. He could not say that the lifts did not need to be replaced or that the cost was unreasonable.

23. On further questioning by Mr Brayshaw and the Tribunal Mr Ashfield accepted that the service charge costs in respect of the rewiring work to the common parts and the replacement of the lift were reasonable charges.

24. The third item related to emergency repairs to the electrical mains and distribution boards in the building at a total cost of £1,024.32. It is this item that was addressed by Mr Ashfield's expert, Steven Phillips. Mr Ashfield relied upon this report although Mr Phillips was not present or available for questioning. Part of Mr Phillips' report deals with the cleaning which is a matter that Mr Ashfield had already agreed.

25. Mr Phillips makes no comment upon the reasonableness of the cost of emergency repairs to the electrical mains and distribution boards as described. He simply refers to the failure of the Applicant to comply with the relevant requirements as set out in S.20 of the Landlord & Tenant Act 1985 in respect of consultation. He says that because of the failure to consult in the proper way the Applicant may not recover the full amount but only an amount of £50, unless dispensation has been received.

26. Mr Brayshaw explained that the landlord advised the lessees of the need to carry out the emergency repair work by way of a letter dated 20 May 2002 and this letter in all regards complies with the requirements of S.20. It is accepted by the landlord, however, that the consultation period required by S.20 of the Act was not complied with. In defence of this action Mr Brayshaw advises the Tribunal that the work was urgent and an emergency. This is dealt with in some detail in the Applicant's statement in reply to the Respondent's statement. Although Mr Phillips acknowledges this explanation he makes no comment upon it and does not say whether he believes the response is reasonable or not.

27. Mr Brayshaw advises that none of the lessees objected to the work and although it commenced before the consultation period expired, he would have expected the lessees still to object if they felt strongly that the work should not have proceeded.

28. The law has changed with regard to the S.20 procedure and the Tribunal does not have jurisdiction to dispense with the Applicant's need to comply with the relevant

requirements of the consultation procedure as the notice was served prior to 31 October 2003. Only the Court may give this dispensation.

29. Notwithstanding the difficulties of the S.20 compliance, Mr Ashfield indicated that he did not dispute the actual cost as his expert had made no comment upon it. He felt that he would not wish to dispute the amount and therefore, subject to any comments on the S.20 procedure, he could agree the figure.

DECISION

30. The Tribunal is left in a rather unusual position in that all matters relating to the disputed items are agreed and therefore no determination is required.

31. The Applicant initially identified numerous matters in dispute but at the hearing he failed to raise any detailed objections and in all cases accepted that the costs were reasonable.

32. The only issue for the Tribunal to consider is the S.20 procedure

33. The 2002 Commonhold and Leasehold Reform Act has substituted a new S.20 with effect from 31 October 2003. In this case the S.20 Notice and the works were carried out prior to this date so the original S.20 procedure will apply. The consultation procedure may be dispensed with by the Court and sub-section 9 of S.20 applies. The jurisdiction is not transferred to the Leasehold Valuation Tribunal which has no power to dispense with the consultation procedure.

34. In order to decide the matter the Tribunal carefully considered the wording of S.20 and the relevant requirements that need to be complied with so as to avoid the amount of recoverable service charge being limited. In particular the Tribunal had regard to sub-section (4)(e). This reads:

"(e) The landlord shall have regard to any observations received in pursuance of the notice; and unless the works are urgently required they shall not be begun earlier than the date specified in the notice."

35. In this case Mr Brayshaw for the Applicant argues that the works were urgent. The London Electricity Board had identified the installation as needing urgent replacement and the surveyor for the Applicant expressed a similar view. In spite of the urgent and emergency nature of the work, the Applicant still notified the lessees of the extent of the proposed work and the likely cost and no objections were received at the time or subsequently until the Respondent expanded on his case in these proceedings.

36. Sub-section (4)(e) allows works that are urgently required to be begun earlier than the date specified in the notice and the Tribunal determines that the work was urgently required and could therefore be commenced earlier than the date specified in the notice.

COSTS

37. As a large amount of time at the hearing had been spent by the Applicant defending the service charges only to find that the Respondent agreed the amounts, the Chairman advised the parties that the Tribunal would hear representations in respect of reimbursement of costs in accordance with paragraph 10 of schedule 12 of the Commonhold & Leasehold Reform Act 2002.

38. The relevant paragraphs say:

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where –

(a) he has made an application...which is dismissed...,or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed –

(a) £500.

(b) such other amount as may be specified in procedure regulations.

39. Mr Brayshaw addressed the Tribunal referring to the history of payment, or lack of payment, of service charges by the Respondent. Until the landlord issued proceedings to recover the amounts, the Applicant had not been made aware of any disputes regarding the service charges levied. The Applicant and Mr Ashfield could not resolve the matters or reach agreement and the Applicant has been put to considerable expense in preparing for the hearing, only to find that the Respondent agrees the disputed items.

40. Mr Ashfield told the Tribunal that he felt there was never an opportunity to reach a compromise and he could only obtain satisfaction by defending the matter in Court and in front of the Tribunal.

41. The Tribunal considers that the Respondent has acted unreasonably in allowing the case to proceed in the way that it has and has made no effort to compromise the case but then has agreed all the amounts in dispute leaving the Tribunal with nothing to determine.

42. The Tribunal therefore considers that the Respondent should make a contribution towards the Applicant's costs in the amount of £300.

ORDER

43. It is ordered that the Respondent, Mr Andrew Francis Ashfield, pays to the Applicant, the London Borough of Tower Hamlets, the amount of £300 as a contribution towards the costs incurred in these proceedings.

44. The amount is payable within seven days of the date of this Order.

Dated 20 December 2005

Brandon H R Simms FRICS MCIArb
Chairman