

London Rent Assessment Panel & Leasehold Valuation Tribunal**Case No.LON/00AD/LSC/2005/0088****DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER Section 27A and Section 20C of the
LANDLORD AND TENANT ACT 1985**

Property: Flat 2, 67 Station Road, Sidcup, Kent DA15 7DR

Applicants: Ms P Watson (tenant)

Respondents: Lakeside Developments Ltd

Appearances: For the Applicant:
Ms Watson (In person)

For the Respondent:
Ms L Scott, Legal Support Manager,
Basicland Registrars Ltd, Managing Agents

Date of Application: 14 April 2005

Hearing: 12 July 2005

Decision: 14 September 2005

Members of the Leasehold Valuation Tribunal

Ms J A Talbot MA Cantab.
Mr P A Copland BSc FRICS
Mr O N Miller

Ref: LON/00AD/2005/0088

Flat 2, 67 Station Road, Sidcup, Kent DA15 7DR

Application

1. This application was made by the tenant, Ms Watson, on 14 April 2005 under S.27A Landlord and Tenant Act 1985 ("The Act") in relation to service charges. There was also an application under S.20C in relation to the landlord's costs.

Background

2. An oral Pre-Trial Review was held on 10 May 2005, at which the issues for the Tribunal to determine were identified as the liability and extent of any liability for the Applicant to pay service charges for the years 2003/2004 and 2004/2005. This was on the basis that the Respondent did not propose to charge for any period prior to those dates, as the Applicant purchased her flat in February 2004, and therefore was not liable for service charges before that date.
3. The Tribunal therefore had no power to make any determination in respect of any accounting years before the Applicant acquired her interest in the property. This had been made clear at the Pre-Trial Review.
4. The Tribunal decided at the end of the hearing that it was not necessary to inspect the property, as there was no dispute about the nature and extent of proposed external renovation and decoration works. Some useful photographs had been provided by Ms Watson, giving a clear indication of the size, location and type of property. The property was a three storey detached Victorian house situated on a main road, with a single storey rear addition. There was a driveway to the side and a small garden area to the front. The property was converted into five flats in 1986.

Jurisdiction

5. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money payable by a tenant to a landlord for the costs of services, repairs, maintenance or insurance, or the landlord's costs of management, under the terms of the lease. The LVT can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonable, so in deciding liability a tribunal also decides whether service charge costs are reasonable.

The Lease

6. The Tribunal had a copy of the lease of Flat 2, described as being on the ground floor north of the building. The Lease is dated 6 March 1987 and is for a term of 99 years from 24 June 1986 at a starting ground rent of £50 rising to £150.
7. The provisions relating to the calculation and payment of the service charge are to be found at Clause 4(2). The lessee is to pay to the lessor 20% of "*(i) all monies expended by the Lessors in carrying out all or any of the works and providing services and management and administration called for under Clause 5(4) hereof (ii) the insurance premium for the insurance policy covering the Building in accordance with the Lessor's covenants herein contained*". The lessee is to make payments on account in two yearly instalments "*of such reasonable sum as the Lessors shall require*".
8. The relevant provision in relation to the lessor's obligation to insure is to be found at Clause 5(2). The Lessor must "*insure and keep insured the Building against loss or damage by fire and other risks from time to time normally covered by a policy or policies of comprehensive insurance ... in some insurance office of repute in the full rebuilding value thereof*".
9. The lessor's obligations at Clause 5(4) to maintain the building are set out in the Fourth Schedule. In summary, they are to maintain and repair the main structure, paint and decorate the exterior every 5 years, and provide cleaning and lighting of the common parts.
10. In addition, at paragraph 5 of that Schedule, the lessor can charge "*expenses of management to include the proper and reasonable charges of any managing agent any legal and accountancy charges properly incurred in management and including the Lessors' liability of whatsoever kind in relation to this lease and the costs of enforcing the covenants herein contained and including reasonable remuneration to cover the Lessors' time and/or the time of any employee of the Lessors engaged in any of the aforesaid*".

The Hearing

11. The hearing took place in London on 12 July 2005. It was attended by the tenant Ms Watson in person, and Ms Scott from managing agents Basicland Registrars Ltd, on behalf of the landlord.

Service Charges

12. The dispute concerned the service charges for the accounting years ending 24 June 2004 and 24 June 2005. On 25 June 2004 the Applicant, Ms Watson, had received a demand for interim service charges due for the period 24 June

2004 to 23 December 2004, in the sum of £514.33. This was the first demand she had received since her purchase.

13. Ms Scott explained that Ms Watson's vendor and predecessor in title, had made service charge payments in respect of the accounting year ending 24 June 2004, to the extent that the only amount owed by the Applicant was a surplus balancing charge of £7.00. In view of the *de minimis* outstanding amount, Ms Scott agreed on behalf of the landlord to waive this surplus charge. The Tribunal therefore proceeded to hear evidence in relation to service charges for the year ending 24 June 2005.
14. Ms Scott explained that the amount demanded was one half of the estimated budget expenditure of £1,028.65 for the subject flat, demanded in half yearly instalments. The estimates for the building included £129.25 accountancy charges, £80.00 electricity to common parts, buildings insurance of £3,008.00, £735.00 management fee, £441.00 asbestos survey and £750.00 repairs and maintenance.
15. The Service Charge Certificate for the period, dated 3 June 2005, indicated an actual expenditure of £2,911.59 for insurance, £41.89 for electricity, £440.63 plus VAT for asbestos survey, and £735.00 for management fees. Of these figures, Ms Watson chiefly opposed the insurance and management fees.

Insurance

16. In relation to insurance, Ms Watson contended that the amount demanded was excessive and unreasonable. She had obtained a quote from Adrian Flux, dated 22 June 2005, for a premium of £612.44. The quote was headed "Your household insurance". The building insurance sum insured was £300,000 with a policy excess of £100 and £1000 subsidence excess. She had no professional valuation evidence to support her sum insured.
17. Ms Scott contended that Ms Watson's quote was not obtained on a like-for-like basis and therefore not directly comparable to the landlord's insurance, where the declared value was £546,476 and the sum insured was £683,095. The policy excess was £250 and £1000 subsidence excess. The Certificate included property owners liability, emergency assistance and terrorism cover. The cover limit and premium levels were set by the landlord's brokers and increased by approximately 10% each year.
18. In response to questioning from the Tribunal, Ms Scott said that the agents simply collected the premiums and asked the brokers to re-negotiate the policy on renewal. She was unable to explain how the sum insured had been arrived at, why there had been a 10% increase on renewal, or when the rebuilding costs had last been assessed. No such steps were taken unless

the amounts were challenged by the lessees, when their letters were forwarded to the brokers. The agents did not nominate or control the insurers. This was the landlord's direct responsibility. The landlord insured the property through a block policy. The budgeted future demands were based on previous figures from the brokers. The actual amount expended for the year in question was £2,911.59.

Managing Agents Fees

19. Ms Watson's case was that the managing agents did not provide a reasonable standard of service to justify their fees of £141 per flat plus VAT. Since she moved in, she had seen no evidence of any routine maintenance, repairs or visits to the property. As she was unemployed and spent much time at home, she would have been aware of any such visits. She further contended that according to other lessees there had been no routine visits or inspections for several years. She distinguished this from the visit by Baxter & Co in preparation for proposed external repairs and decorations (see below).
20. Furthermore, Ms Watson contended that the managing agents did not respond adequately to lessees' requests for information, or ask lessees to report on the state of the property. They did not deal with the insurance but relied on the landlord's brokers. In her view, £50 per flat per year would be a reasonable charge for management.
21. Ms Scott's evidence was that BLR carried out a variety of standard management tasks, as set out in paragraph 12 of her Statement on behalf of the Respondents. These included preparing service charge accounts and invoices, ground rent demands, complying with various statutory requirements, monitoring buildings insurance, dealing with enquiries from lessees, dealing with solicitors in relation to sales enquiries, arranging quotes and budgeting for works, and vetting contractors.
22. Ms Scott also submitted that the managing agents were required, under their agreement with the freeholder, to meet payments of ground rent and insurance premiums where these remained uncollected from the lessees. In reply to questioning from the Tribunal, she maintained that the managing agents would effectively subsidise the lessees, that this was standard practice for BRL, and that the management fees reflected this risk.
23. In relation to sales enquiries, BLR applied a separate set of additional fixed charges for various consents and registration fees. In reply to questioning from the Tribunal, Ms Scott accepted that there appeared to be a degree of duplication in that sales enquiries were stated to be part of the standard management fees.

24. Similarly, in relation to the proposed external works, Ms Scott's costs analysis contained an administration fee of £750, yet the schedule of standard management fees was stated to include arranging for such works. Ms Scott accepted that in fact BLR charged a separate fee for major works, at a flat rate of £750, over and above the day to day management of the property, so this work was not part of the standard management fees.

Electricity for the common parts

25. The estimated budget figure for the year ending 24 June 2005 was £80.00. The actual amount expended was £41.89. Ms Watson accepted at the hearing that this was not unreasonable.

Accountant's Fees

26. The invoice of Lawrence Wong & Co of £129.25 was the accountant's annual fee for producing and certifying the service charge account. Although Ms Watson had initially challenged this amount, at the hearing she accepted that as it was a single annual sum, it was not unreasonable. This charge was not, in the event, included in the Certificate of expenditure dated 3 June 2005.

Asbestos Survey

27. The figure of £440.63 was incurred for an asbestos survey. An invoice from HR Surveyors dated 30/11/2004 was produced. Ms Scott explained this was a once and for all charge for a survey required to comply with statutory regulations. Ms Watson did not dispute the necessity of the report, or the reasonableness of the charge.

External Works

28. Future external renovation and decoration works were proposed at a total cost of £16,944 plus VAT. A Specification of External Repairs and Decorations, and a report on tenders received, had been produced by Baxter and Company Chartered Building Surveyors at a survey fee of £995.46 dated 8 June 2004 and an analysis of tender results sent to BLR on 8 June 2004. A service charge demand to Ms Watson dated 10 May 2005 included the sum of £4,678.34 reflecting her share of these costs.
29. Ms Watson indicated that she did not oppose the necessity for the works, indeed in her view they were long overdue. She also raised no objection to the nature and scope of the works and accepted that the costs were not unreasonable.
30. However, Ms Watson did dispute the cost of Baxter's invoice, being an interim fee account of £995.46 inclusive of VAT, for inspecting the premises,

preparing the Specification of Works, issuing and reporting on tender documents. She asserted that the fee was too high but produced no evidence in support. Ms Scott submitted that the fee was reasonable.

Decision

31. In considering the lease provisions, these were relatively straightforward, and the Tribunal was satisfied that the lessees were liable to contribute towards the lessor's costs of providing all the services, maintenance and insurance. The dispute centred upon the reasonableness of the amounts rather than payability. The Tribunal accordingly determined the reasonable cost of each item in dispute.

Insurance

32. This was the most significant item, in terms of the level of the cost and the importance to Ms Watson. The Tribunal concluded that the insurance premium charged by the landlord was far too high, taking into account the size, type and location of the property.
33. There was a considerable discrepancy between the premium charged of £2,911.59, and the quote obtained by Ms Watson of £612.44. The Tribunal found that neither party had a satisfactory explanation for the valuation of the sum insured. Neither could produce a recent professional valuation. The landlord's declared value was £546,476 and the sum insured was £683,095. The estimated increases in the premium were about 10% per year, but there was no evidence that the estimate was tested to ensure accuracy. The Tribunal considered that such an approach was likely to lead to an artificially inflated figure year on year.
34. Ms Watson, on the other hand, had no professional support for her assertion that the sum insured should be £300,000 and had only limited details of the extent of the cover provided by her alternative quotation. The Tribunal concluded that the two quotations were not on identical bases, although it noted that the excess on Ms Watson's quotation was only £100 as opposed to £250 as on the landlord's insurance.
35. The Tribunal was unimpressed by the fact that BLR simply told Ms Watson and the other lessees that they had no direct control over the insurance premium because it was set by the brokers appointed by the landlord. As far as the lessees are concerned, BLR is their only point of contact with the landlord. It is difficult to see how, if all BLR does is to instruct the broker to negotiate at renewal, any attempt is being made to monitor the position or to test the market to ensure a competitive rate is being obtained.

36. The Tribunal noted Ms Scott's representations that the property is insured as part of a large portfolio in the landlord's ownership, and her reliance on the case of Berrycroft Management Limited –v- Sinclair Gardens Investments Limited (CA 1997) to support her submission that it was not unreasonable to insure a property portfolio with single underwriter, even if the premiums were higher than some alternative insurers would charge. However, this did not, in the Tribunal's view, give the landlord authority to charge insurance premiums that were unreasonably high.
37. Based upon its own expertise and experience, the Tribunal concluded that the appropriate buildings insurance premium for a property of this size, type and location could have been obtained for substantially less than the amount being paid, and that an allowance of £1,000 for the accounting year ending 24 June 2005 should be more than adequate for the purpose.

Managing Agents' Fees

38. The Tribunal accepted Ms Watson's evidence, that the property had been neglected for some years, with no routine maintenance being carried out, and no regular visits or inspections by the managing agents. Although the Tribunal accepted that the agents carried out the tasks claimed, such as preparing estimated budgets, statements of account and service charge demands, and dealing with leaseholders queries and correspondence, these were essentially central administrative and accounting procedures.
39. The Tribunal considered that the agents failed to take pro-active role in managing the property itself, as was necessary and desirable for a property of this age and type. In particular, there were no routine inspections or regular ongoing maintenance, as required by the RICS Code. There was no attention to the need for ongoing minor repairs. It was not satisfactory simply to rely on, and respond to, reports from individual lessees, who might have their own agendas and not represent the views of the other occupiers.
40. In particular, the Tribunal was surprised that the managing agents fees included an element of protection for the agent to reflect an agreement with the landlord under which BLR is required to meet payments of ground rent and service charges where these remain uncollected from the tenants. This was, in the Tribunal's experience, a most unusual situation. It was unsatisfactory and unreasonable for the lessees effectively to bear the cost of this risk by paying higher agents' fees through the service charge.
41. For these reasons the Tribunal decided that the managing agents' fees should be reduced to £100 plus VAT per flat for the year ending 24 June 2005. This was a reasonable level to reflect the work carried out.

External Works

42. The Tribunal had no difficulty in deciding that the fee charged by surveyors Baxter and Company of £995.46 was reasonable. It represented 50% of the fee to which they would eventually be entitled on completion of the major works, which was 10% of the estimated total cost. As such it was an interim charge. This is a standard professional rate for the job of writing the specification and obtaining tenders.

Other Service Charges

43. As recorded at paragraphs 25 to 28 above, Ms Watson did not dispute service charges for electricity, asbestos survey fee, accountant's fee, and the cost of the anticipated major works. Accordingly the Tribunal records that these are payable, as they are admitted by the tenant.

Section 20C Application

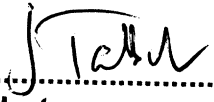
44. Ms Watson sought an order pursuant to Section 20C of the Act that the costs incurred by the landlord in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the tenant. The Act provides that the Tribunal may make such order on the application as it considers just and equitable in the circumstances. The Tribunal is concerned with the merits rather than the quantum of these legal costs.
45. Ms Scott submitted that Ms Watson's application was misconceived, and that the Tribunal should order that the landlord's costs of £1,440 plus VAT should be recoverable as part of the service charge. The amount was calculated at an hourly rate of £90 per hour for 16 hours work.
46. The Tribunal considered that Ms Watson had substantially been successful in relation to the most significant elements of the application, namely the insurance and the managing agents' fees, and that she was justified in bringing the application. Therefore it would be just and equitable to make the order sought.

Order

47. It is therefore ordered that the amounts payable by way of service charges in relation to the disputed charges for the accounting year ending 24 June 2005 are as follows:

Item	Total Cost	Share of Flat 2 @ 20%
Electricity	£ 41.89	£ 8.38
Insurance	£1,000.00	£200.00
Management fees	£ 587.50 (inc.VAT)	£117.50
Asbestos survey	£ 440.63	£ 88.13
Total	£2,070.02	£414.01

48. It is also ordered, in accordance with paragraph 46 above, that none of the costs incurred by the landlord in connection with these proceedings are to be regarded as relevant costs to be taken into account when determining the amount of any service charge payable by Ms Watson

Signed

 Ms J A Talbot
 Chairman

14 September 2005