



**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
(LONDON PANEL)**

LANDLORD AND TENANT ACT 1985 Section 27A

Property: 168 East Hill, London SW18 2HD
Applicant: (Flats A and C) Joan Sinclair, (Flat B) Ian Braithwaite (Flat D) Hamish Macdonald and (Flats E and F) Slaven Ovuka
Respondents: Hausman Hughes Ltd

Tribunal Members:
Mr Adrian Jack (Chairman)
Mr Jerry Sharma FRICS
Mr Leslie Packer

Ref :LON/00BJ/LSC/2006/0446

1. This is an application by the tenants for the determination of certain service charges due in service charge years from 1998/99 to 2005/06.

Procedural

2. The tenants each applied to the Tribunal on 18th December 2006. A pre-trial review was held on 17th January 2007 with today fixed for the hearing of the matter. On 6th February 2007 the landlord suggested that the parties mediate their dispute, but the tenants in view of the proximity of the current hearing declined.
3. The landlord appeared today by Mr Robert Hughes, its director. Mr Hughes was accompanied by Mr Nicholson, his assistant. The tenants each appeared in person.

Facts

4. Mr Hughes is an architect and the landlord is his company. The premises consists of a purpose built block of six flats constructed by the landlord in about 1998.
5. We were shown a specimen lease of the flats. The lease provides for the tenants to pay service charges on 25th March and 29th September of each

- year. The landlord is at the start of each year to assess the likely amount payable by way of service charge. After the conclusion of the calendar year, the exact amount due is to be calculated and an appropriate adjustment made.
6. In fact the landlord failed to raise invoices for service charges until June 2005. Service charges have been calculated on the basis of a service charge year commencing on 1st December. The tenants raised no separate issue in relation to this change.
 7. Mrs Sinclair, when she purchased her flat in 1999, paid the landlord £500 toward a sinking fund. In fact the lease does not provide for the creation of a sinking fund. The landlord has used this money to pay the ground rent and what he considered due from Mrs Sinclair by way of service charges.
 8. The tenants complain that the landlord has done very little since it built the property and that the property is deteriorating.

The law

9. Section 19(1) of the Landlord and Tenant Act 1985 provides that:
 “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 provision 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.”
10. Section 27A of the Act gives this Tribunal jurisdiction to determine by whom, to whom, how much, when and how service charges are payable.
11. Section 20B of the Act provides that service charge demands shall be made within eighteen months of the relevant expenditure being incurred on pain of being irrecoverable.
12. The Tribunal has no jurisdiction to make orders that landlords carry out works. Nor can it award damages if a landlord fails to carry out works. Insofar as the tenants sought to raise issues about such matters, the Tribunal indicated it was unable to make a determination. Similarly the Tribunal has no jurisdiction in relation to the payment of rent.
13. Tenants have the power to purchase the freehold of their blocks or to manage their own blocks, and the Tribunal has jurisdiction in relation to such matters, but no such applications were before the Tribunal.

Reasons

14. Before the Tribunal the parties were able to reach agreement on all the underlying sums due.
15. The landlord accepted that he had failed to comply with section 20B of the Act in relation to the service charge years prior to 2003-04. Accordingly the Tribunal finds that no service charges are due in the service charge years prior to 2003-04.
16. So far as the service charge year 2003-04 is concerned, the parties agreed that £165.10 was due in respect of insurance. The sum sought to be recovered by the landlord in respect of electricity was in fact cancelled by reason of a credit given by the energy supplier, so the parties agreed that nothing was recoverable in respect of electricity. The parties also agreed that the landlord’s management charges at 12 per cent were reasonable and

recoverable. Accordingly the management fee for this year is £19.81. The total service charge due in respect of each flat in 2003-04 is thus £184.91.

17. So far as the service charge year 2004-05 is concerned, the parties agreed that the appropriate figure for the cost of drain clearance was £5.91 per flat (as opposed to the £6.50 billed by the landlord). The insurance this year was £184.56, which again the parties agreed. The electricity in respect of the common parts amounted to £24.21 per flat, which was also agreed. Adding 12 per cent management fees of £25.76 gives a total service charge due of £240.44 per flat in 2004-05.
18. So far as 2005-06 is concerned, the charge for drain clearance was agreed at £5.91 (instead of £6.50). At the hearing the landlord obtained a letter faxed from its insurance brokers. This showed the amount charged the landlord for insurance in this service charge year was more than the £200.90 which landlord had charged in demands raised by itself to date. The true amount due per flat was £236.48 (inclusive of the 5 per cent insurance tax). Subject to the making of a formal demand for this sum, the tenants accepted that this sum was due. The figure for electricity of £22.12 was agreed. The managing fee at 12 per cent was accordingly £31.74. The total due (subject to the landlord issuing a formal demand) is £296.25.
19. So far as the £500 paid to the landlord by Mrs Sinclair is concerned, she is entitled set off this sum against the service charges properly due and any rent.

Fees

20. In this matter our decision is the landlord should pay the tenants' fees of making the application totalling £350 and the hearing fee of £150. The Tribunal considered whether to make a different order by reason of the tenants' refusal to mediate, but considered that on the facts of this case the tenants were not acting unreasonably in declining to go to mediation at the late stage at which the landlord suggested it. The landlord brought this case on its own head.

Costs

21. The landlord indicated that it would not seek to recover its own costs from the tenants. Accordingly the Tribunal does not need to consider whether to make an order under section 20C of the 1985 Act and therefore dismisses the application.

DECISION

- a. **The Tribunal determines that each of the applicant tenants is liable to pay**
 1. **nothing in respect of service charge years prior to 1st December 2003;**
 2. **£184.91 in respect of the 2003-04 service charge year;**
 3. **£240.44 in respect of the 2004-05 service charge year;**
 - and**
 4. **£296.25 in respect of the 2005-06 service charge year.**

- b. The landlord respondent is to reimburse the applicant tenants a total of £500 in respect of the application and hearing fees paid by the applicants.

Adrian Jack

Adrian Jack, chairman

5th March 2007