

Recd

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985 – SECTION 19(2A)

Re: 43A Wickham Road, London SE1LT

LON/00AZ/NSI/2003/0103
LON/00AZ/NSI/2003/0111

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

Applicant: Westcombe Homes

Respondent: Mrs Rita Carter

Hearing date: 19th January 2004

Appearances:

Mr V Pankhania
Miss P Rupani

for the Applicant

The Respondent in person

Members of the Leasehold Valuation Tribunal:

Miss A Seifert FCI Arb
Mr D Levene OBE MRICS
Mrs A Moss

Date of decision: 18th March 2004

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT
PANEL**

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Decision of the Leasehold Valuation Tribunal

1. This is a reference from the Oxford County Court (Claim No. BR105128), between Westcombe Homes, as Claimant, and Mrs Rita Carter, as Defendant. By an Order dated 18th April 2002, all matters in the action falling within the jurisdiction of a leasehold valuation tribunal were transferred for determination. The leasehold valuation tribunal did not receive notice of the transfer from the County Court until 5th August 2003.
2. On 28th August 2003 Westcombe Homes issued an application in the leasehold valuation tribunal, in respect of flat 43A Wickham Road ("the basement flat"). This application was under section 19(2A) of the Landlord and Tenant Act 1985 and requested the to tribunal determine the reasonableness of the service charges in respect of costs incurred, standard of works/services and the amount payable before costs were incurred for the service charge year 2003. The order for transfer to the leasehold valuation tribunal and the application in August 2003, were made prior to the Commonhold and Leasehold Reform Act 2002.
3. At the hearing on 19th January 2004, Westcombe Homes, the Claimant/Applicant, was represented by Mr V Pankhania, who also gave oral evidence. Mr Pankhania said that Westcombe Homes was a partnership, and the partners were himself and his wife. Miss P Rupani, who was employed at Westcombe Homes as its administrator, attended the hearing and gave oral evidence on behalf of the Applicant. Mrs Rita Carter, the Defendant/Respondent, represented herself at the hearing and gave oral evidence.
4. The issues transferred from the County Court related to the service charge years 1998 to 2001 inclusive. The application to the leasehold valuation tribunal related to the service charge year 2003. At the hearing the parties agreed that the tribunal should also consider the reasonability of costs incurred in the service charge year 2002. The application to the tribunal dated 28th August 2003 was regarded as amended accordingly.
5. The property was let to Mrs Carter under a lease dated 30th May 1997 ("the lease"). A copy of the lease has been provided to the tribunal.
6. Following the hearing, the tribunal inspected 43 Wickham Road ("the property") externally only, as access to the basement flat was not available at the time of the inspection.

7. The property was a semi-detached house comprising three storey plus basement and attic floor, originally built in about 1860. It was set back from the road with quite a deep front garden. The front elevation had peeling paint work and stained areas. Steps led up to a front door, which led to two separate front doors to two flats. The side entrance to the property had three steps down to the basement flat. The basement flat had double glazed windows. On the side elevation there was an area with a gulley which took waste from the kitchen and bathroom of the basement flat. This had a grille in which a small amount of leaves had gathered. Otherwise, this area was completely clear and there was no indication of dampness on the side elevation. Continuing down the passage to the side of the property, five steps led upwards to the garden. The rear elevation paint work was in a very poor condition. There was a gulley area to the rear bathroom which was at a low level. The gulley was covered with an iron grille. This gulley was completely clear and in a clean condition.
8. There was a manhole cover adjacent to the garden area, which showed the drainage to be at a very low level. There was no indication of any blockage at the time of the inspection. The rear garden was very deep and sloped inwards towards the house. A drainage pipe took discharge from the rear gulley area. The front and rear gardens were maintained to a fair standard.
9. Mr Pankhania told the tribunal that the property had contained four self-contained flats. An additional studio flat had been created in about 1998 or 1999 on the top floor. A certificate of established use had recently been granted in respect of the use of this top floor as a studio flat. This was a smaller flat than the other four flats and was let on an assured shorthold tenancy. The leases of the other four flats showed a service charge percentage of 25% per flat. The additional flat had existed since 1998 or 1999. However, no deed of variation had been entered into altering the percentages to reflect the additional studio flat on the top floor and no adjustment had been made by the lessor to reflect the creation of the additional flat at the property. However, in the service charge year 2003 the four original flats had been charged 22.5% (instead of 25%), and 10% allotted for the top floor flat.
10. One of the items challenged by Mrs Cater was the charges for insurance for 1998. It was common ground that Mrs Carter had paid these charges. These charges were not within the jurisdiction of the tribunal following the decision in R (on the application of Daejan Properties Ltd. v London Leasehold Valuation Tribunal [2001] EWCA Civ 1095, [2001] 3 EGLR 28. Accordingly the tribunal makes no findings in respect of the 1998 insurance charges.
11. At the hearing the items in dispute were:
 - A. Gas Board invoice for £30.15 in service charge year 1998.
 - B. Charges for exterior painting in the service charge year 1998.
 - C. Management charges in the service charge years 1998, 1999, 2000, 2001, 2002, 2003.
 - D. Charge of £225 in the service charge year 1998.
 - E. Insurance charges in the service charge years 1999, 2000, 2001, 2002, 2003.
 - F. Charge of £100 in the service charge year 2002.
 - G. Charge of £66.37 in the service charge year 2003
 - H. Property Maintenance provision of £200 in the service charge year 2003.

Service charge invoices dated 1st January in each of the years 1998 to 2003 inclusive were produced to the tribunal, showing the amounts charged to Mrs Carter, which also record alleged arrears and interest payable. The latter are not within the jurisdiction of the tribunal. It appeared that no certified service charge account had been prepared as required under the terms of the lease.

Gas Board Invoice - 1998

12. Mrs Carter had been charged £30.15 in respect of a Gas Board invoice.
13. Miss Rupani said that the Applicant had received a gas bill for the whole property of £195.37 on 13th August 1997. The basement flat had been sold to Mrs Carter on 30th May 1997. She had charged Mrs Carter originally the full amount of the bill but had later amended this to £30.15, on the basis of an apportionment calculated from the date that Mrs Carter purchased the basement flat. Mrs Carter wrote a letter dated 13th June 1998 offering to pay £26.06, but withheld the sum as part of her counter-claim against the Applicant in the County Court.
14. At the hearing Miss Rupani said that on further consideration she accepted that the Gas Board invoice did not fall within the service charge as it related to charges for gas used within the basement flat. The tribunal notes that under clause 1(b) of the lease, the service charge included sums representing the costs that the landlord might reasonably spend in the payment of gas charges in respect of any common part of the property. Therefore gas consumed within the basement flat was not a service charge item under the lease.
15. Accordingly, this item is not within the jurisdiction of the tribunal and no finding is made in respect of the reasonability of such charge.

Exterior painting - 1998

16. The total cost of the exterior painting was £1,800. Mrs Carter had been charged £450.
17. Mr Pankhania said that he had wanted to carry out the work while the weather was favourable. He said that had spoken at the telephone to the lessee of flat C, who he described as the representative of the Tenant's Association, and had been told to proceed. Mr Pankhania produced a copy of a letter dated 10th July 1997 from the Applicant to the lessees of flat C, which stated that the Applicant had obtained an estimate that was substantially 'higher than ours'. Mr Pankhania also produced a copy of a letter dated 8th July 1997 addressed to Mrs Carter. This was headed "RE: NOTICE UNDER Section 20 Landlord & Tenant Act 1985" and stated that three quotations were enclosed to carry out urgent exterior works to the property. The quotations produced were from PJ Wiffen Roofing Specialists and Westcombe Properties.
18. Mr Pankhania said that Westcombe Properties is an associated business to Westcombe Homes. He is a partner in both firms. Westcombe Properties was a general building maintenance firm that only carried out work for its associated partnerships.

19. Mr Pankhania produced the estimate from P.J. Wiffen Roofing Specialists dated 7th July 1997 for £2,150 and the estimate from Westcombe Properties dated 8th July 1997. He told the tribunal that the Applicant had been unable to find a third firm to quote for the work, but later corrected this by telling the tribunal that a third quote had been obtained but that he could not find this quote now.
20. The work had been carried out by Westcombe Properties. A document dated 15th July 1997 containing a breakdown of the cost was shown to tribunal. Mr Pankhania said that he considered that the work was carried out to a satisfactory standard.
21. Mrs Carter said that she had not provided with three quotes. The works had been carried out without any notice to the lessees and without compliance with section 20. There had been an ongoing dispute between the lessees and the Applicant as to how the works were carried out and the standard of the works. Mrs Carter said that she had not been at the property on a day to day basis, but the other lessees had told her that they were withholding service charges because the works had not been carried out to a satisfactory standard. However, the other lessees had paid when negotiations for the purchase of the freehold collapsed. So far as the exterior painting was concerned, apart from what she had been told by other lessees, Mrs Carter was unable to produce evidence to support her allegation that the works had not been carried out to a reasonable standard.
22. The tribunal finds that the charges for exterior painting were reasonable and reasonably incurred. This matter was transferred to the tribunal prior to the Commonhold Act 2002. Accordingly, the tribunal has no jurisdiction to make a finding in respect to the validity of the section 20 notice and makes no finding on recoverability of the sums claimed. The tribunal's finding is limited to the question of the reasonability of the costs.

Management charges – 1998 to 2003

23. Mrs Carter had been charged the following sums:

1998 - £119.33
1999 - £149.73
2000 - £180.64
2001 - £309.70
2002 - £50
2003 - £50
24. Under clause (e) of the lease it was provided that:
 "If and so long as the lessor does not employ managing agents in respect of the Management he shall be entitled to add a sum not exceeding 15 per cent to the sums expended for administration expenses and in any event to be entitled to a minimum sum of fifty pounds (£50.00) per annum per demised premises in respect of such management."
25. Miss Rupari accepted that incorrectly Mrs Carter had been charged 15% of the total expenditure for the service charge years 1998, 1999, 2000 and 2001 rather than 15% of the administration expenses in accordance with the lease. For the service charge years 2002 and 2003 a fee of £50 had been charged for management.

26. In respect of the standard of management generally, Mrs Carter said that she had alerted the Applicant to very serious damp problems at the property in 1998. Mr Pankhania said just prior to Mrs Carter's purchase of the basement flat the Applicant had obtained the advice of damp specialists. Work had been carried out and a guarantee obtained. Following complaints by Mrs Carter in 1998, he visited the property to inspect. He was unable to tell the tribunal whether or not he wrote to Mrs Carter with his conclusions. Mrs Carter had made no further complaints in respect of damp until 1999.
27. Mrs Carter said she had not had a full survey of the basement flat carried out prior to her purchase, but was aware that there was a bit of damp. The Applicant had done nothing about her complaints of damp at the property until just before Christmas 2003. She had a survey of the property carried out that showed that it had damp. She did not inform the Applicant of these findings as she had given up hope of Mr Pankhania dealing with the problem. She had cleared the gulley herself and she let the basement flat at a reduce rate on the basis that the tenants would clear the gulley.
28. Mrs Carter also complained that the Applicant had not answered queries from the lessees and had not replied to her letters. She claimed that the Applicant only visited the property about four times a year. She considered that the Applicant had a duty to visit the property regularly and ensure that the occupying tenants observed the regulations in the leases and that the property was properly maintained.
29. Referring to the management charges generally over the period of her ownership of the basement flat, Mrs Carter said that she considered that the standard of management had been abysmal. The invoices submitted to the lessees had baffling inconsistencies in the figures. Requests to explanations had been ignored. She considered that the Applicant had demanded arbitrary amounts for works that had not been carried out. She had not been able to deal with the problem of the drains at the property as this problem related to external areas not within her demise. She considered that the drain to the rear of the property was too small, that the downpipe was too small, and that there were problems with the underground drainage system. She described how the rear gulley filled up with three to four feet of foul smelling water. She did not consider that by clearing the gullies the Applicant had solved the problem. The Respondent's correspondence raising concerns about management issues was not responded to. Her queries about the insurance were not properly replied to.
30. Mr Pankhania denied failing to respond to lessees and said that the Applicant cleared the gullies regularly, especially in the autumn. The tribunal notes that a new managing agent has been appoint with effect from 1st January 2004.
31. The tribunal finds that for the service charge years 1998 to 2001 inclusive, the Applicant had been charging the management fee calculated as 15% of the total expenditure rather than 15% of the administration expenses. The error was acknowledged in the years 2002 and 2003 when the figure of £50 was charged for management. There was no evidence before the tribunal as to the correct figures for administration expenses for the years 1998 to 2001. The tribunal also considers

that there were serious shortcomings in the standard of management provided to the Respondent in all the service charge years in issue.

32. The tribunal considers that the charges for management in the service charge years 1998 to 2001 were not reasonable and were not reasonably incurred. The tribunal finds that the reasonable charge for management in each of the service charge years 1998 to 2003 was £50.

Invoice for £225 - 2001

33. The service charge invoice dated 1st January 2001 included a charge of £225. Mrs Carter referred to an invoice from Westcombe Homes for £225 dated August 2000, which was stated to be for attending to problems relating to the basement flat, site visit and survey fees. Mrs Carter said that she had not seen this invoice before the hearing.
34. Mr Pankhania said works had been necessary because the bath waste in the basement flat had been leaking, and also the occupying tenant had put substantial rubbish outside the basement flat. Mrs Carter had been charged the whole cost of the works rather than her proportion under the service charge.
35. Mrs Carter said that she was not aware of any leak from the bath and denied that there was rubbish at the property.
36. The tribunal notes that the invoice dated August 2000 does not state what works, if any, were carried out. Nor did Mr Pankhania or the Applicant inform Mrs Carter the results of his investigations. The tribunal considers that the services described in the invoice were part of the normal management function. This included investigating problems at the property and ought to have been included in the annual management charge. Accordingly the tribunal finds that the charge of £225 is unreasonable and unreasonably incurred, and no sum is allowed for this item.

Insurance charges – 1999 to 2003

37. The following sums were claimed from Mrs Carter:
- | | |
|--------|---------|
| 1999 - | £325.17 |
| 2000 - | £315.48 |
| 2001 - | £316.25 |
| 2002 - | £312.50 |
| 2003 - | £346.28 |
38. Mrs Carter considered that the cost of the insurance was excessive. She had submitted an alternative insurance quotation to the Applicant but had received no response. Despite writing to the Applicant on several occasions, the Applicant had not taken up Mrs Carter's suggestion that it should pursue the alternative lower quote. At the hearing Mrs Carter was unable to identify which insurance company she proposed would provide cover. The tribunal also noted that the quote obtained by Mrs Carter gave no indication of a proposed alternative insurance company. Mrs Carter had made some part payments based on a proportion of the amount of the alternative quote.

39. Mr Pankhania said the Applicant had taken legal advice in respect of its obligations to insure the property. He submitted that the Applicant was under no obligation to provide the cheapest cover and provided it acted reasonably, was only obliged to insure with a company of repute. He referred to the lessors covenant in clause 3(3) of the lease which was "to insure with an Insurance Company of repute and to pay all premiums necessary for that purpose within fourteen days after the same shall become due...."
40. Mr Pankhania said that the Applicant arranged the insurance through a broker and did not receive a commission. The Applicant had changed insurance companies every two years except the in the last two years. The tribunal was shown the following certificates of insurance for the property: Guardian Insurance for the period 25th December 1997 to 24th December 1998, London and Edinburgh Insurance for the period 25th December 1998 to 24th December 1999, Norwich Union for the period 25th December 1999 to 24th December 2000, Groupama Insurances from 25th December 2000 to 25th December 2001, AXA for the periods 15th December 2001 to 25th December 2002 and 25th December 2002 to 25th December 2003.
41. The tribunal considers that the insurance costs in each of the service charge years 1999 to 2003 were reasonable and reasonably incurred. For the reasons stated in paragraph 10 above, no findings are made in respect of the 1998 insurance charges.

Invoice for £100 – 2002

42. Mrs Carter was charged £100 for the service charge year 2002. The total cost of this item was £400 as shown on an invoice dated 1st November 2001 from Westcombe Homes for clearing blocked gullies/drain and adjusting rain water pipes.
43. Mrs Carter said that this work would not have been needed had her original complaint been dealt with properly. The tribunal considered that it was not unreasonable to carry out this work in an attempt to find a solution to the dampness problem and that the cost was reasonably incurred.

Invoice for £66.37 - 2003

44. Mrs Carter was charged £66.37 for the service charge year 2003. The total cost of this item was £295 as shown on an invoice dated 1st October 2002 from Westcombe Homes to the Applicant. This stated that the charge was for cleaning blocked gulley together with clearing out leaves/trimming bushes. In 2002 Mrs Carter had been charged £100 being 25% of a total charge of £400, the subject of an invoice from the Applicant dated 1st November 2001. That invoice was for clearing blocked gullies/drain and adjusting rainwater pipes.
45. Mr Pankhania said that Mrs Carter had been invoiced in the sum of £66.37 as her proportion of the cost (by the service charge year 2003 her percentage share of the costs was adjusted by the Applicant to 22.5% to take into account the top floor flat). Mr Pankhania said that this charge included the removal of bushes to the rear of the property, which were contributing to the blocking of the gullies.

46. Mrs Carter said that she had spoken to a Mr Willings who had inspected the property on behalf of the Applicant. She said that Mr Willings had told her that there were problems with the underground drainage and that he had sent a report to the Applicant. Mr Pankhania said that in autumn 2003, Mr Willings had been instructed by the Applicant to advise in respect of damp at the basement flat. Mr Willings had advised the Applicant to have the property inspected by a damp expert but had not advised that there was any problems underground. He denied the existence of a report.
47. The tribunal considers that there are ongoing problems at the property that have yet to be properly investigated and addressed by the Applicant. The tribunal does not consider the charge of £295 (£67.37 to Mrs Carter) to be reasonable or reasonably incurred, particularly having regard to the charge in the previous year and the provision in 2003 for maintenance, and no sum is allowed for this item.

Property maintenance provision - 2003

48. The sum of £200 was allowed in the 2003 service charge invoice in respect of estimated service charge expenditure in 2003 for property maintenance. As there are investigations to be made at the property, the tribunal finds this sum reasonable.

Proposed charge of £1,511.77 – 2003

49. Mr Pankhania said that the Applicant was no longer seeking to recover £1,1511.73, because the proposed charge was out of date.

Chairman.....*Anne Seifert*

Date.....*18th March 2004*

Members of the Leasehold Valuation Tribunal:
Miss A Seifert FCI Arb
Mr D Levene OBE MRICS
Mrs A Moss