LON/00AY/NSI/2003/0048

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE, ON AN APPLICATION UNDER SECTION 19(2A) OF THE LANDLORD AND TENANT ACT 1985, AS AMENDED

APPLICANTS:	Rigi Business Corporation
REPRESENTED BY:	Porter Crossick Solicitors
RESPONDENT:	Mr A M Huffer & Ms S Lee
ADDRESS:	39B Riggindale Road, London SW16 1QH.
APPLICATION DATE:	16 May 2003
HEARING DATE:	22 & 23 September 2003
APPEARANCES:	Mr P Simon (Barrister-Porter Crossick Solicitors) For the Applicant. Mr A Huffer For the Respondent
TRIBUNAL MEMBERS:	Mr T I Rabin JP Mrs S Redmond MRICS Mr O Miller

LON/00AY/NSI/2003/0048

39b Riggindale Road London SW16 1QH

FACTS

The Tribunal dealt with an application by Rigi Business Corporation ("the Applicant") to determine, in respect of the service charge year 2002 the reasonableness of service charges where costs have been incurred and whether the works carried out are of a reasonable standard pursuant to Section 19 (2A) Landlord and Tenant Act 1985 (as amended). The application was served upon Mr Andrew Huffer and Ms Sze Mei Lee ("the Respondents")

The Appellant owned the freehold of the property known as 39 Riggindale Road London SW16 1QH ("the Property") The Property comprised three flats and the top floor flat (39b) was held by the Respondents under the terms of a Lease ("the Lease") dated 15th August 1978 for a term of 99 years from 24th March 1987. A copy of the Lease was produced to the Tribunal and under the terms of the Lease the tenant has an obligation to contribute towards the costs of maintaining the Property. The management was carried out by Messrs Sandrove Brahams.

MATTERS TO WHICH THE APLICATION RELATES

The Tribunal treated the Applicant's statement (which was undated) as the statement of case. The Respondents submitted a reply, which was again undated, dealing with the points raised in the Applicants statement of case.

The application was in respect of the standard and costs of repairs that were carried out in the spring and summer of 2002.

INSPECTION

The Tribunal carried out an external inspection from ground level only. The Property comprises a double fronted three storey brick and part rendered terrace house under a tiled roof, built circa 1900. The upper storeys on both sides are detached from the adjoining buildings. There are mature trees to the front and rear of the Property. A branch appeared to have been lopped recently from the tree close to the rear of the house, but no other pruning was evident. The general impression was of a property in need of external overhaul to bring it up to a good standard of repair and decoration. The front dormer windows appeared to be in good decorative order but the remaining windows were in need of decoration and some repair to the woodwork. The upper part of the side elevation to the right of the Property looking from the street and close to the adjoining church appeared to have been recently rendered and painted and the cappings to the top of this wall appeared to be

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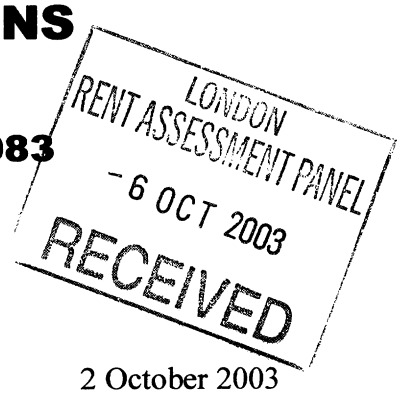

2 October 2003

Ms H Alinga
Leasehold Valuation Tribunal
Residential Property Tribunal Service
10 Alfred Place
London WC1E 7LR

Dear Ms Alinga

39 B Rigindale Road London SW16
LON/00AY/NSI/2003/0048

I enclose the decision relating to the above property. It has been approved by the other members of the Tribunal.

If you wish me to e-mail a copy, please advise me of the e-mail address.

Yours sincerely

Tamara Rabin

LON/00AY/NSI/2003/0048

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in good order. Some areas of brickwork to all elevations had been repointed, apparently at different times and some remained in need of attention. It was not possible to view the gulleys draining the roof nor was it possible to identify any recent work to the chimney stacks.

HEARING

The Applicant did not attend but was represented by Mr P. Simon of Counsel. Mr Huffer attended, but Ms Lee did not. It was agreed that the question for the Tribunal was whether the works to the Property were reasonable and had been carried out to a satisfactory standard. The sum in dispute was £3390, being one third of the costs which had been incurred by the Landlord.

The Applicant stated that there had been no works carried out to the Property for some time before the works were carried out in 2002. They stated that notices under Section 20(5) Landlord and Tenant Act 1985 in were served on all the tenants prior to commencement but that the Respondents raised some objections and the works were postponed pending resolution. Further notices were served on 21st March 2002 and the works were carried out by Procare Building Services in accordance with their estimate dated 15th March 2002 pursuant to the notices. The Applicant stated that, whilst the contractors were on site, they discovered additional works which were the subject of an additional estimate dated 14th June 2002. This was served upon the Respondents on 18th July 2002 and they made no objection to the estimate. Mr Simon stated that the works have been carried out in a satisfactory manner and that the estimate accepted was the most competitive. The additional works carried out were essential and it was prudent to carry out these works whilst the contractor was on site and the scaffolding had been erected. The Respondents had been given an opportunity to obtain another estimate.

Mr Huffer stated that he had been in correspondence with the Applicant. He stated that he originally proposed that the Respondents should be responsible for a proportion of the service charge contribution, reflecting the length of time that they had been living at the Property. He stated that he had only been provided with an estimate and that he had not been provided with a copy of the invoice. This was a point that he had made a number of times in his correspondence with the managing agents. In their statement the Respondents claimed that the work on the Property was not prioritised and that a leaking roof and leaking skylights had not been repaired nor had a clear breakdown of the costs been provided. The Respondents stated that they had made a fair offer and had requested relevant information which had not been provided.

In evidence Mr Huffer confirmed that, had the Applicant accepted his offer to pay a reduced amount, he would not have objected to the invoice. One of the members of the Tribunal went through the two estimates from Procare Building Services with Mr Huffer and he stated that he had not noticed

whether the work had been carried out in accordance with the estimate to a satisfactory standard.

DECISION

The Tribunal's jurisdiction is set out in Section 19 (2A) Landlord and Tenant Act 1985 (as amended) as follows:-
(2A) A tenant by whom, or a landlord to whom, a service charge is alleged to be payable may apply to a Leasehold Valuation Tribunal for a determination
whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred
whether services or works for which costs were incurred are of a reasonable standard or
whether an amount payable before costs is reasonable

The Tribunal was hampered by the failure of either the Applicant, who was seeking payment of the sums due, or the Respondents, who were objecting to paying the sums claimed, to make arrangements for the Tribunal to have access. It was only due to the courtesy of the ground floor tenant who, despite the fact he had not been told that the Tribunal would be inspecting, allowed them access which prevented the inspection from being a complete waste of time. The Tribunal was further hampered by the fact that the Respondents had not specified their objections to the service charge In addition they did not comly with the Tribunal's directions and failed to agree the Applicant's bundle or provide a bundle themselves. This added to the Tribunal's difficulties.

Mr Huffer had stated on a number of occasions that he wanted to see an invoice for the work. It is therefore unfortunate that the Applicant did not provide an invoice which may have satisfied the Respondents and avoided the necessity for a hearing.

Mr Huffer's view that he was only responsible for a proportion of the costs reflecting the length of time the Respondents had been lessees under the Lease was not sustainable in view of the terms of the Lease. It was not helpful that he gave no evidence as to what he had found to be unreasonable in the costs incurred or which of the works carried out he did not consider satisfactory. This created another difficulty for the Tribunal in coming to a conclusion which was added to by the failure of the Landlord or the managing agents to attend the hearing where important questions could have been explored.

The Tribunal did not find that the costs for the works detailed in the two estimates from Procare Building Services were unreasonable. The Tribunal also found that the Respondents had been provided with a copy of the additional estimate and had made no objection. It was reasonable in all the circumstances for the additional works to be carried out whilst the scaffolding was in place. The standard of work, insofar as the Tribunal was able to inspect, appeared to be reasonable.

The Tribunal was at a loss to understand the Respondents' objection within the terms of Section 19 (2A) Landlord and tenant Act 1985 as Mr Huffer seemed to be making a general complaint about the Landlord rather than addressing the terms of the application as set out in Paragraph 10 above. The Tribunal found that the sum of £3490.02 in respect of Flat 39b to be reasonable.

CHAIRMAN.....

DATE..... 2nd October 2007

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Reference number:	LON/OOAY/NSP/2003/~~2003~~/0016
Property:	40 Mount Ephraim Road, London SW16 1LW
Applicant:	Mr H Sutton (Landlord)
Respondents:	The lessees of the seven flats (Tenants)
Appearances:	Mr H Sutton Ms V Everett (lessee of flat 5) Ms W Aitken (lessee of flat 7).
Tribunal Members:	Mr A Andrew Mr F L Coffey FRICS Mr A D Ring
Application date:	30th April 2003
Interim decision:	8th October 2003
Hearing date:	19th August 2004

BACKGROUND

1. The Applicant originally applied under Section 19(2B) of the Landlord and Tenant Act 1985 ("the Act") for a determination of the reasonableness of the proposed cost of repairs comprised in an estimate dated the 31st January 2003 obtained from Laketron Limited, trading as T plus T builders. The application first came before the Tribunal on 17th September 2003 and was adjourned to enable the Applicant to commission a specification of works from a qualified surveyor and to obtain competitive estimates on the basis of that specification. The interim decision issued on that occasion should be read in conjunction with this decision. The

the hearing. The Tribunal inspected the Property on the morning of 19th August 2004, immediately prior to the hearing.

PRELIMINARY ISSUE

3. Mr Bagnall's letter raised issues relating to the Respondents' liability to pay for the cost of the proposed works under the terms of the leases and the Tribunal could not consider that liability on an application made under Section 19(2B) of the Act. However since the date of the application, Section 27A of the Act had been introduced by Section 155 of the Commonhold and Leasehold Reform Act 2002 and that section allowed the Tribunal to consider the issue of liability. Consequently, at the request of those present, the Tribunal permitted the Applicant to withdraw his original application and it proceeded to deal with the matter as an application made under Section 27A of the 1993 Act, upon the Applicant undertaking to submit a written application, under that section, following the hearing.

a. There are seven flats in the Property all of which have been sold on long leases. Flats 4,5 and 7 are owned by "owner occupiers" whilst the other four flats are owned as investment properties and are let out on short-term tenancies.

b. On the instructions of the Applicant's management company, Tuffin Ferraby and Taylor had prepared a comprehensive specification of works dated March 2004.

c. On the basis of its inspection the Tribunal found that the Property was in a considerable state of disrepair and the schedule of works set out in the Specification was appropriate to put the Property into repair.

d. The Specification was put out to tender. On 15th April 2004 Tuffin Ferraby and Taylor reported to the Applicant on the tenders received by sealed bids from three firms, which were opened on 2nd April 2004. Tuffin Ferraby and Taylor had subjected all three tenders to rigorous scrutiny producing a comprehensive tender analysis. The tenders can be summarised as follows: -

W Hammond	£53,194.00
P A Finlay & Company Limited	£63,434.00
W H Simmonds & Sons Limited	£76,985.41

e. Tuffin Ferraby and Taylor recommended acceptance of the tender submitted by W Hammond which included a contingency sum of £10,000. On that basis they calculated the total cost of the work as follows: -

Tender sum	£53,194.00
Contract administration fee	£ 7,181.19
Planning supervision fee	£ 450.00
	£60,825.19
Plus VAT @ 17.5%	£10,644.41
Total	**£71,469.60**

THE LEASE

5. The Tribunal had a copy of the lease of flat seven, dated 22nd December 1987 ("the Lease"). It understood that all the leases were in substantially

the same form. At this stage it is only necessary to consider the mechanics of the service charge provisions of the Lease.

6. The service charge year runs from 25th December in each year. On the 25th December and 24th June in each year the lessee pays to the lessor, as an interim payment and on account of her ultimate liability, such sum as "shall be decided by the lessor". After the end of each service charge year the lessee pays, to the lessor, 25% of the difference between (a) the costs reasonably and properly incurred by the lessor, in carrying out his obligations set out in the fifth schedule to the Lease, during the preceding year or to be incurred "shortly thereafter" and (b) the sum of the interim payments received from all the lessees during the preceding year together with any reserves carried forward from previous years.

7. The following comments can be made about the above provisions, in the context of the proposed works, viz: -

   a. The percentage of 25% is explained by the fact that flat seven is twice the size of the other six flats all of which contribute 12.5%.

   b. There are no provisions in the Lease which permit the lessor to obtain money on account of exceptional expenditure other than through the twice-yearly interim payments or, when the balancing charge is paid, in respect of expenditure to be incurred "shortly thereafter". Thus to the extent that the proposed cost has not already been included in previous demands for interim payments the Applicant will not be able to demand further on account contributions until the next interim payments fall due on 25th December of this year.

DECISON

8. In his letter of 29th June 2004 Mr Bagnall, on behalf of Ms Morton, wrote that the specification seemed properly drawn up and priced. His client was perfectly happy to pay her proportion of the cost but required her concerns, relating to past disrepair and the scope of the work to be addressed. Those concerns were set out in Mr Bagnall's letter and the Tribunal considered them.

9. Ms Morton was concerned that the proposed cost reflected a past lack of maintenance. She did not however identify that lack of maintenance nor did she quantify the increased cost resulting from it. The work proposed by the Specification was very much of the type that one would expect to be carried out under a seven year repairing cycle, which would be appropriate for a property of this type. Viewed in that light the cost for flats one to six equates to just over £1,250 per flat per year (and for flat seven, £2,500 per year) which is the sort of annual expenditure that one might expect for ongoing maintenance, repair and redecoration.

10. Having inspected the Property the only lack of maintenance identified by the Tribunal, which might have significantly increased the cost, was a failure to redecorate the exterior at more frequent intervals. To the extent that that failure had increased the cost the Tribunal considered that it would have been more than balanced by the costs that would have been incurred if the exterior had been redecorated at more frequent intervals. Furthermore the lessees had had the benefit of the money saved. On the evidence before it the Tribunal saw no reason to discount the proposed cost to allow for any past lack of maintenance.

11. Ms Morton correctly recalled that when the roof had been replaced in 1994 the contractors had issued a guarantee. She considered that some of the works included in the specification might be covered by the guarantee. The Tribunal had a copy of that guarantee. Mr Sutton's evidence, which the Tribunal accepted, was that he had made enquires with a view to enforcing the guarantee only to find that the contractors were in liquidation and the guarantee was no longer enforceable. Ms Morton also had concerns relating to the use of the roof terrace by the lessee of flat seven and considered that she might have a claim against that lessee and/or the Applicant arising from that use. However the Tribunal had no jurisdiction to consider these matters.

12. A major item of work related to the replacement and repair of some of the window frames and in particular those within the dormers to flat seven, which is formed within the main roof void of the Property. Mr Bagnall suggested that the window frames were the responsibility of the lessees and that the relevant works should be deleted from the specification. The

point is simply put but more difficult to answer because the Lease makes no mention of the window frames.

13. By clause 3 of the Fifth schedule the Lessor covenants to "maintain repair redecorate renew and keep in repair the Building known as 40 Mount Ephraim Road aforesaid and the main structure…and the roofs". It is apparent from that covenant that the lessor is to be responsible for all those parts of the Building which do not fall to be maintained repaired and redecorated by the lessees. That takes one to the lessees repairing and redecorating covenants which are to be found in clauses 4 and 5 of the fourth schedule. By clause 4 the lessee covenants to repair the Demised Premises as defined in first schedule. It is clear from that definition that only the interior of the flat is included in the demise and there is specifically excluded from the demise "the external walls".

14. Thus it can be concluded that the window frames are only repairable by the lessee to the extent that they form part of the interior of the flat and conversely they are repairable by the landlord if they form part of the "main structure" and/or "the roofs" and/or "external walls".

15. Although the internal faces of the window frames form part of the interior of the flats, the frames to the bottom three floors are situated within the external walls. Furthermore the window frames are large and ornate being generally of cased frame or "sliding sash" type as typically found in Victorian properties such as this. In that context the Tribunal considered that they formed an integral part of both the structure and the external walls of the Property. The dormer windows project above the slated surfaces of the Mansard roof structure within which flat seven is formed: they account for a substantial proportion of the roof surface and the Tribunal considered that they formed an integral part of the roof.

16. Furthermore clause 5 of the fourth schedule only requires the lessee to decorate the interior of the flat so that the lessor is responsible for the external decoration of the window frames. The exterior of the frames being open to the elements it is reasonable to assume that the draughtsman must have intended that the person responsible for their external redecoration would also be responsible for their repair. Were that not the case the lessor would have to the redecorate rotten and damaged frames without having

the power to either replace or put them in repair save by seeking injunctive relief, against defaulting tenants, from the courts. A course of action that would not only be inpractical but would render the timed completion of any work, under a specification, impossible.

17. For each and all of these reasons the Tribunal concluded that the window frames fell within the lessor's repairing obligations and that the work was properly included in the specification and the cost properly payable by the lessees through the service charge.

18. Mr Bagnall also opposed the cost of damp proofing work on two grounds: firstly because it would involve the removal and replacement of internal plaster coverings that were the responsibility of the lessees and secondly because the work amounted to an improvement the cost of which could not be recovered by the lessor under the terms of the Lease.

19. Mr Sutton's evidence, which the Tribunal accepted, was that the existing damp proof course ("dpc") had failed and he was simply proposing that it be replaced. The Tribunal considered that the replacement of a failed installation, even if carried out to a higher specification in accordance with current standards and regulations, amounted to a repair the cost of which could properly be recovered under the service charge provisions of the Lease. In remedying the dampness, by the insertion of a new dpc or by other means, the Applicant was simply observing the lessor's covenant to repair.

20. Although the work would involve the removal and replacement of internal plaster coverings, for which the lessees were responsible, that work was directly consequential upon the identified dampness which the Applicant was obliged to remedy under the lessor's covenant to repair. The Tribunal therefore concluded that the cost was properly recoverable through the service charge.

21. Finally Mr Bagnall objected to the cost of installing railings to the roof terrace adjacent to flat seven and to the retaining walls at ground floor level. Mr Sutton's evidence was that current health and safety regulations required the installation of these railings. However he accepted that there had never previously been any railings or similar security features. The Tribunal drew a distinction between the replacement of a failed installation

to a higher specification in accordance with current regulations and the installation of a new installation to comply with such regulations. Although the former could be regarded as a repair the latter would always be regarded as an improvement and the Lease did not permit the lessor to recover the cost of improvements. Consequently the cost of this element of the work, although reasonable, could not be recovered under the service charge provisions of the Lease. Furthermore any professional fees charged on a percentage basis would have to be abated, pro rata. Although the Tribunal had sympathy for Mr Sutton he was bound by the terms of the Lease and the cost would fall upon his shoulders.

22. Turning to the substance of the works both Ms Everett and Ms Aitken supported the application considering that the work was necessary and the cost reasonable: their concern was that the work should be completed before winter set in. They also said that Mr Coyne of flat 4, the other owner occupier, shared their views. Ms Morton's position is set out above and none of the other tenants had objected to either the specification or the proposed cost.

23. The Tribunal had no doubt that the Specification was appropriate for the work that was required. Although it had some concerns about the contingency of £10,000, it was a prudent precaution to avoid problems with the statutory consultation procedure, should the cost increase as the work progressed. The work would be professionally supervised and any surplus in the contingency would be credited to the lessees' account. The cost had been tested in the market place by a process of price competitive tendering and the tenders had been rigorously analysed. The Tribunal concluded that the proposed cost was reasonable.

24. The hearing bundle did not include copies of any statutory consultation notices. From comments made at the hearing the Tribunal was concerned that the Applicant might not have appreciated the extent of his obligations to comply with the statutory consultation procedure. The Applicant should be aware that the Tribunal's decision does not relieve him from responsibility for complying with that procedure.

CONCLUSION

25. The Tribunal determined:-

a. That the estimated cost of £71,469.60 is reasonable for the works envisaged by the specification.

b. That in calculating the sum that is recoverable from the lessees by way of interim payments under the service charge provisions of the Lease there should be deducted from the sum of £71,469.60 the estimated cost of installing security railings together with a pro rata proportion of any associated professional fees and VAT.

c. That the resulting sum would be payable by the Respondents to the Applicant in accordance with the provisions contained in the Lease relating to interim on account payments, which are discussed in paragraphs 5 to 7 above.

CHAIRMAN:.....(A J Andrew)

DATED: 15th September 2004