LON/00AB/LIS/2005/0108

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTIONS 27A OF THE LANDLORD & TENANT ACT 1985 (AS AMENDED)

Applicant: Mr. Mark Jones

Respondents: London Borough of Barking and Dagenham

Re: 3 John Burns Drive, Barking, Essex, IG11 9RQ

Hearing dates: 22nd February 2006

Appearances: For the Applicant: Mr. Mark Jones

For the Respondent: Non attendance

Members of the Residential Property Tribunal Service:

Mr. G F Bowden TD MA FRICS

Mr. F L Coffey FRICS

Mrs G V Barrett JP

3 JOHN BURNS DRIVE

1 Background

1.1 This was an application under Section 27A of the Landlord and Tenant Act 1985 (hereinafter called "the 1985 Act") by Mr Mark Jones, for the Leasehold Valuation Tribunal to determine the liability to pay service charges in respect of 3 John Burns Drive, Barking, Essex, IG11 9RQ.

1.2 The Respondent-Landlord was the London Borough of Barking and Dagenham.

1.3 The Application related to a service charge claim for the years 2003-2004 in respect of capital repairs to the block in which the subject flat was situated.

2 Hearing

2.1 A Hearing was held on 22 February 2006, at which the Applicant appeared in person. The Respondent Council were not represented, neither were there any written representations from the Council, nor any response or explanation as to why the Council were not present.

2.2 The Tribunal decided to proceed with the Hearing, giving the Applicant the opportunity to fully present his case.

2.3 Mr Jones explained that in the accounting year 2003-2003, the Council had carried out major works to the subject block. Fully documented details of the

works programme were set out in the Applicant's bundle. The original estimates, revised schedule of costs and exchange of letters indicated that there had been ongoing negotiations in relation to the works.

2.4 The present position was, in essence, summarised by Mr Jones in his Application. A Section 20 Notice was sent in November 2002 with estimated costs of £1400. The final bill was for £7622.38, of which £1084.76 was taken from a Reserve Fund, leaving £6537.62 to be paid. Mr Jones complained that no Section 20 Notice had been served in respect of some of the works.

2.5 The bill was amended to £2919.28 (from £6537.62) Mr Jones further complained that the Section 20 Notice had not been complied with in respect of the work done.

2.6 The Respondent disputed this interpretation of the situation and sent a final bill for £2919.28.

2.7 Mr Jones contended that the Respondent-Landlord had not complied with the statutory provisions of Section 20 under the old rules. These circumstances the Landlord should reinstate the £1084.76 taken from his reserve fund.

2.8 In answer to questions from the Tribunal the Applicant stated that he had written to the Council on 13 December 2002; 23 January 2003; and 10 February 2003 in relation to this matter, but had received no response from

them. It was not until after a telephone conversation that the Respondents in a letter dated 23 June 2003 reduced the sum of £2651.12 to £1599.69.

2.9 In the absence of any representation, oral or written from the Respondents, the Tribunal found it difficult to understand the process by which they had scheduled the works in question, amended costs without any indication of cost breakdown, or indeed to give proper consideration to the Council's position in the matter.

2.10 The Tribunal therefore adjourned the Hearing and issued directions that:-

(i) by Friday, 10 March 2006, the Respondent should file an answer to the case set out in Mr Jones application, and supported by the documentation in the Applicant's bundle;

(ii) by Friday, 24 March, the Applicant should respond to, and make any appropriate further representations in the light of the Council's response;

(iii) On Friday, 31 March, the oral Hearing would be resumed to consider such further evidence as the parties may wish to present.

2.11 At the resumed Hearing on Friday, 31 March 2006, the Applicant attended. The Respondent Council were not represented, but had submitted a memorandum containing a brief statement of case; the basis of service

charge apportionment under the lease; the legal requirements of Section 20 of the 1985 Act; and a seven point response to the issues raised.

2.12 In considering this memorandum the Tribunal noted that it adopted a generalised view of principles as to the matters in dispute, and did not specifically address the detailed matters of concern raised by the Applicant.

3. Decision

3.1 The Tribunal considered the relevant sequence of events:

(a) The first schedule of capital works estimated at £2651.12.

(b) This figure subsequently reduced by £939.78 to reflect the fact that the Applicants door was not to be replaced. This resulted in a figure of £1599.69. This sum being inclusive of not only the cost of works, but also fees and administration charges.

3.2 A Schedule of Final Costs, in the sum of £7,622.38 was presented on 23 August 2004, which was inclusive of fees, management and administration charges. These costs represented an increase, in respect of windows to the subject property from £1,309.24 to £2,025.84. It was noted that the letter stated:-

"These costs do not reflect any credit balance in your reserve fund which will be deducted from the final costs when you are formerly [sic] invoiced".

3.3 The afore mentioned letter (23 August 2004) also specified:

Communal windows	£1,385.79
Room repairs	£2,184.67
External works	£1,120.11

3.4 A further Schedule of Final costs was issued on 7 April 2005, which indicated that the leaseholders' apportionment of costs was in the sum of £3,921.02. This sum, it was stated, was exclusive of any costs in relation to either roof repairs, renewals or external works the sum was however inclusive of fees and administration charges.

3.5 The Tribunal, in reviewing this documentation found the position complex and confusing. They would have welcomed the opportunity of questioning the Respondents on a number of issues at the hearing, in order to clarifying the position.

3.6 The Tribunal took the view that the communications by the Respondent-Council to the Applicant lacked clarity and consistency. They also accepted that enquiries make of the Respondent by the Applicant had not received an adequate response, or in some instances, any response at all.

3.7 The Tribunal recognised that its duty in this case was to determine a sum which was reasonable to reflect the benefit to the Applicant from the works which had been carried out by the Respondent. They had to make their determination in the context of uncertainly and lack of clarity, as evidence by the facts as summarised above.

3.8 The Tribunal also had to consider the validity of the Section 20 Notices. The Respondent-Landlord contended that their letter of 22 November 2002 complied with the statutory requirements. It was noted that the Applicant was given until 27 December 2002 to make any response. The Applicant did in fact respond on 13 December 2002.

3.9 The Tribunal, after careful consideration, decided that the letter of 22 November 2002, the purported notice, was defective, in so far as it failed to conform to Section 20(4) (b) which requires:

> "A notice accompanied by a copy of the estimates shall be given to each of those tenants concerned or shall be displayed in one or more places where it is likely to come to the notice of all those tenants."

3.10 In the light of the above considerations, the Tribunal determined that the sum payable by the Applicant to the Respondent, pursuant to Section 20 (3) (b) should be £85 (eighty five pounds).

CHAIRMAN...Mr G Bowden.....Gerard Bowden.....

DATE .....14 July 2006.....