LON/00AH/LSC/2006/0344
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTIONS 27A OF THE LANDLORD AND TENANT ACT 1985,

Address	230B Sydenham Road, Croydon, CR0 2EB
Applicant	Mr Tommy Coleman
Respondent	Mr Stanley Brown
Hearing date	19 December 2006

Appearances	Mr Tommy Coleman	For the Applicant
	Mr Stanley Brown	For the Respondent

The Tribunal

Miss J Dowell BA (Hons) (Chairman)
Mr T Johnson FRICS
Ms S Wilby

REF: LON/00AH/LSC/2006/0344

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF:

**230B SYDENHAM ROAD,
CROYDON, CR0 2EB**

B E T W E E N :

MR TOMMY COLEMAN

Applicant

- and -

MR STANLEY BROWN

Respondent

The Application

1. This is an application dated 20th September 2006 for determination of liability to pay and reasonableness of service charges for building works of £3,745.72, plumbing works of £90 and NatWest mortgage account administration fee of £50. 230 Sydenham Road is a four-storey property divided into three flats. The Applicant owns the second floor flat and the Respondent owns the freehold and occupies the lower flat which consists of the basement and ground floor. The first floor flat has also been sold on a long lease.

Summary of Statutory Provisions

2. The Landlord and Tenant Act 1985 as amended is herein after referred to as "the Act". All references are to the Act.

Section 18 – Meaning of "service charge" and "relevant costs"

(1) "Service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –
   (a) which is payable, directly or indirectly, for services, repairs, maintenance improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters for which the service charge is payable.

(3) For this purpose –
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19 – Limitation of service charges: reasonableness

(1) 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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20B – Limitation of service charges: time limit on making demands

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 27A – Liability to pay service charges: jurisdiction

(1) An application may be made to a Leasehold Valuation Tribunal for a determination on whether a service charge is payable and, if it is, as to

(a) the person by whom it is payable

(b) the person to whom it is payable

(c) the amount which is payable

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Sub section (1) applies whether or not any payment has been made.

(3) .....

(4) No application under sub section (1) may be made in respect of a matter which

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

The Hearing

3. The hearing of the application took place at 10 Alfred Place, London WC1 on 19th December 2006. Both parties appeared in person. Neither party had complied with the directions given at the pre trial review on 19th October 2006 when both parties were present. Mr Coleman relied on the facts stated in his written application form dated 20th September 2006. He had not prepared a detailed statement of case nor had the Respondent sent a written statement to the Tribunal. The parties had not prepared bundles as ordered although we were provided with a number of documents to which we refer below. A copy of the lease was lodged with the application in the usual way.

Inspection

4. The Tribunal was invited by the Respondent to inspect 230 Sydenham Road but we declined to do so as all the works in dispute were carried out in 2003 and an inspection would not have assisted our determination. The central issue in this case is when the demand for payment of the service charges in dispute was made and/or whether or not consultation took place in accordance with the requirements of the Act.

5. Mr Brown produced colour photographs of the condition of the property before the works were carried out.

The Lease

6. The Applicant's lease is dated 23rd May 1988 and made between Alan Gavin Ashworth (1) and Iain Sinclair Smith (2) for a term of 125 years from 28th April 1987. The relevant provisions in respect of the service charge are as follows:

(1) Paragraph 9 of the Particulars – Lessee's share of maintenance fund: one quarter.

(2) Paragraph 9 of the First Schedule – "the maintenance year" means a period commencing on the 24th day of June of each year and ending on the 24th day of June in the following year.

(3) Paragraph 10 of the First Schedule – "the maintenance charge" means the amount or amounts from time to time payable under clause (2) of Part 1 of the Fifth Schedule and shall include any value added tax payable thereon.

(4) Paragraph 11 of the First Schedule – "the interim maintenance charge" means the sum specified in paragraph 8 of the Particulars or one half of the maintenance charge for the immediately preceding maintenance year whichever is the greater.

(5) In paragraph 2 of Part 1 of the Fifth Schedule – "the Lessee covenants to pay to the Lessor a maintenance charge being that percentage specified in paragraph 9 of the Particulars of the expenses which the Lessor shall in relation to the property reasonably and properly incur in each maintenance year and which are authorised by the Eighth Schedule hereto (including the provision for future expenditure therein mentioned) the amount of such maintenance charge to be determined by the Lessor's managing agent or accountant acting as an expert and not as an arbitrator as soon as conveniently possible after the expiry of each maintenance year and further on the 31st day of March and 30th of September in each maintenance year ("the payment dates") to pay in advance on account of the Lessee's liability under this clause the interim maintenance charge the first proportionate payment thereof in respect of the period from the date hereof to the next following payment date to be made on the execution hereof and any capital PROVIDED THAT upon the Lessor's managing agents' or accountant's certificate being given as aforesaid there shall be paid by the Lessee to the Lessor any difference between the interim maintenance charge and the maintenance charge so certified".

(6) The Sixth Schedule contains the lessor's covenants. Paragraph (1) states "subject to the payment by the Lessee of the rents the maintenance charge and the interim charge herein mentioned and provided that the Lessee has complied with all the covenants agreements and obligations on his part to be performed and observed to keep in good repair and decoration and to renew and improve as and when the Lessor may from time to time in its absolute discretion consider necessary

(a) the structure of the property INCLUDING

(i) the roofs and foundations;
(ii) all the walls of the property whether external or internal;
(iii) the timbers joists and beams of the floors ceilings and roof of the property;
(iv) the chimney stacks gutters rainwater and soil pipes of the property.

Matters in Dispute

7. (1) <u>The Applicant's percentage of total service charges for which he was liable.</u>

The Respondent had charged him 30% but Mr Coleman relied on the lease which stated his share was 25%.

(2) <u>Liability of the Applicant for the service charges for the cost of works carried out to 230 Sydenham Road between April and June 2003.</u>

Mr Brown claimed £3,745.72 from Mr Coleman being 30% of a total sum of £12,485.75. These works consisted of scaffolding, cleaning paint off brickwork, shotblasting, pointing brickworks, roofing repairs, painting and cleaning works, flashings, repainting wood, labour, gutter replacement and hire

of machine. Mr Brown relied on a handwritten document dated April 2003 which Mr Coleman said he had not seen until the pre trial review on 19th October 2006. There was no evidence that consultation had taken place as required by the Act.

(3) A service charge of £90 for plumbing works which took place in early 2004.

Mr Coleman said he had never seen an invoice for this work and no invoice was provided to the Tribunal.

(4) NatWest mortgage account administration fee - £50.

The Respondent's solicitors had claimed the sum of £3,965.72 from Mr Coleman's mortgagee, National Westminster Home Loans Limited. Without reference to Mr Coleman NatWest had debited the demanded sum of £3,965.72 plus a £50 administration fee to Mr Coleman's mortgage account on 28th July 2005.

The Applicant's Case

8. Mr Coleman explained that he had purchased his flat in March/April 2003 (he could not remember the exact date). He produced copies of the seller's leasehold information form dated 10th February 2003 and questions to the landlord/managing agents signed by Mr Brown on 1st February 2003 which showed that he had been informed that there was "*possible repointing and cleaning of exterior of the building and resurfacing of driveway total cost approximately £7,000, 25% equals £1,750, depending on approval of estimates by Leaseholders.*". The landlord's form again shows that there was some anticipated expenditure in the future being "*repointing of the building, exterior relay front driveway*" total approximately £7,000 (25% equals £1,750)". Mr Coleman said that he had not seen any notices consulting about these works although he accepted they would have been served on his predecessor. He accepted that some works had been done to the property in April 2003 including scaffolding, cleaning paint off brickwork, shotblasting and pointing of brickwork. He said he was not aware that the other works had been carried out.

9. In his application form Mr Coleman explained that he moved out of 230 Sydenham Road in 2005 and rented the flat out. Unfortunately his mortgagee National Westminster Home Loans Limited did not receive his letter informing them that he had moved out so he received no correspondence from them. The landlord's solicitors wrote to Mr Coleman's mortgagee and claimed £3,965.72 being the outstanding service charges and £130 ground rent. Mr Coleman denied that he had ever received any written correspondence or notices in relation to the building works. He said he did not know what the building works included nor did he know what the plumbing works were for and that he wished to claim back the £50 administration fee which had been added to his mortgage. Mr Coleman pointed out that the sums claimed in the letter to him at 230B Sydenham Road dated 2nd June 2005 and Law Direct dated 8th June 2005 were both more than two years after the work had been carried out. He told the Tribunal that he had in any event not received either of these letters and he did not know why the landlord's solicitors had written to "Law Direct" in St Austell and that although the letter of 2nd June 2005 had been written to him at his flat in Sydenham

Road the landlord was aware he not living there. Mr Coleman told the Tribunal that the first time he had seen the handwritten list dated April 2003 was at the pre trial review on 19th October 2006. He denied that this "service charge demand" had been given to him in person by the landlord at a meeting in the landlord's kitchen in June 2003.

The Respondent's Case

10. Mr Brown said that he had obtained twenty or thirty quotes for this building work in 2002 and that the work started in April 2003. However he admitted that he had not carried out the consultation procedure required by the Act. He said he had asked Mr Coleman about this and that Mr Coleman had said that Mr Brown did not need to serve a notice. He said the work started in April 2003 and was finished at the end of May 2003. He paid for the labour and also the materials himself. He said that the service charge demand which was his handwritten list of costs dated April 2003 was backdated by him and in fact he wrote it out in June 2003 and gave this demand to Mr Coleman at a meeting in Mr Brown's kitchen in June 2003. He explained that the owner of the first floor flat was not asked to pay anything because she was not in occupation. Mr Brown said that it had been agreed that Mr Coleman should now pay 30% of the costs even though it said 25% on his lease. He said that he had thrown away all the invoices to support the sums shown on the list of costs but said that he had shown the invoices to Mr Coleman at the meeting in June 2003. He also said that he had shown Mr Coleman copies of the quotations that he had received but that Mr Coleman said he had not wanted to see them (this was denied by Mr Coleman who said the works had started as he moved into the flat).

11. Mr Brown admitted that he had not produced any service charge accounts or obtained a certificate by a managing agent or accountant as required by the Fifth Schedule of the lease. He said "I am on to it". He admitted that he had not obtained a report from a surveyor in respect of the condition of the property prior to the works being carried out in April 2003.

12. Mr Brown claimed £90 from Mr Coleman for repairs to a sewage pipe in early 2004. He said the total invoice was for just over £300 but he could not produce this.

13. Mr Brown said that as Mr Coleman had not responded to him he had instructed his solicitors to write letters to Mr Coleman and again as there was no response he had instructed his solicitors to write to the mortgagee as he needed payment from Mr Coleman for his share of the building works. Mr Brown produced a letter from his solicitors, Raja & Co, dated 6th November 2005 which stated that "*the landlord/managing agent's replies*" were not completed in their office. Mr Brown denied that he had signed this form which is referred to in paragraph 8 above.

Decision

14. The first question for the Tribunal to consider is whether we have jurisdiction to hear this application in view of the fact that the service charges in dispute have been paid by the Applicant's mortgagee. Our determination is that we do have jurisdiction to hear this application by virtue of section 27A(2) and (5) of the Act. This makes it clear that an application may be made to a Leasehold Valuation Tribunal for a

determination as to liability to pay service charges and reasonableness of those service charges whether or not any payment has been paid and that the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

15. The next question to consider is whether the building works and repair costs which are in dispute come within the charging clause of the lease. We are satisfied that in principle the Applicant is liable to pay these charges under the terms of the lease as they come within paragraph (1) of Part 1 of the Sixth Schedule and paragraph (2) of Part 1 of the Fifth Schedule of the lease.

16. However the Respondent admitted that consultation within section 20 of the Act had not taken place. The old consultation rules apply to any work done from 1st April 1986 to 30th October 2003 under the unamended section 20 of the Act. The law requires that the landlord should consult with the lessees on any works that would exceed the cost threshold which is the greater of £1,000 or £50 multiplied by the number of tenants liable to pay the relevant service charge so in this case it would be £1,000. Failure to consult with tenants i.e. to serve a written notice informing them of the works to be carried out and inviting their comments, means that only the cost threshold of £1,000 can be recovered in this case i.e. a 25% share for Mr Coleman is £250.

17. We are satisfied that under the terms of the lease Mr Coleman's share of any service charge payable is 25% as clearly set out in the lease. There was no evidence presented to show that this proportion had been varied.

18. However it is our determination that no service charges are recoverable in respect of building work carried out in April/May 2003 because section20B of the Act provides that there is a time limit on making demands. Section 20B is set out above and states that all service charges must be demanded within eighteen months of the costs being incurred or the tenant is not liable to pay them. This does not apply if within the period of eighteen months beginning with the date when the relevant costs in question were incurred the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

19. In order to make this determination we had to consider the evidence of the Applicant who said in his application form that "*I have no idea what the building works included as nothing was ever written to me from the landlord*". This statement was endorsed with a statement of truth. The landlord gave oral evidence in relation to a meeting which took place in the kitchen of his flat in June 2003 when he said he gave Mr Coleman the handwritten demand setting out the costs and claiming 30% of these costs. Mr Coleman denies that this meeting took place and we prefer his evidence on this point. His evidence is endorsed by a letter from Raja & Co, solicitors for the landlord, dated 2nd June 2005 addressed to Mr Coleman and a letter from Raja & Co dated 8th June 2005 addressed to National Westminster Home Loans Limited, Mr Coleman's mortgagee, both of which set out a claim for ground rent of £130, service charges for building works carried out in 2003, a share of 30% totalling £3,740.72 and £90 in respect of plumbing works. These letters both state "*we are therefore making a formal demand for the sum of £3,965.72 to be paid to us within the next fourteen*

days". The inference to be taken from these letters is that no formal demand had been made before 2nd June 2005.

20. We therefore determine that no payment is due from Mr Coleman to Mr Brown for the service charges in respect of the building works carried out to 230 Sydenham Road in April/May 2003 and the sum of £3,745.72 should be refunded by Mr Brown to Mr Coleman.

21. We then looked at the sum of £90 in respect of the plumbing work carried out to the top two flats. Mr Brown said this work was carried out in early 2004 but he produced no invoice nor any service charge demand prior to the letter sent by Raja & Co dated 8th June 2005. We accept that in principle the Applicant would be liable for the cost of these works under the terms of the lease but as the landlord was unable to produce an invoice to support his claim we determine that no payment is due from the lessee.

22. We would point out that notwithstanding the clear obligation on the landlord in the lease to provide a certificate in respect of service charges for each year no accounts nor any certificate had been provided since the Applicant purchased his flat in March/April 2003.

23. In his application Mr Coleman also requested that the Tribunal determine his liability to pay and reasonableness of the NatWest mortgage account administration fee of £50. The Tribunal has no jurisdiction in respect of this payment as it is not a service charge within the meaning of section 19 of the Act and is not a payment due from a lessee to a landlord.

24. For the sake of completeness we also add here that we have no jurisdiction in relation to alleged unpaid ground rent which was part of the sum which was paid by the Applicant's mortgagee to the Respondent.

Summary

25. The Tribunal determines,
    (a) Mr Coleman's liability for service charges is 25% of the total as set out in the lease;
    (b) no sum is payable by Mr Coleman to Mr Brown in respect of the building works carried in 2003/2004;
    (c) no sum is payable by Mr Coleman to Mr Brown in respect of plumbing works carried out in early 2004;
    (d) we have no jurisdiction in respect of the NatWest mortgage account administration fee of £50.

Reimbursement of Fees

26. At the end of the hearing Mr Coleman submitted that the service charge payments which he was challenging had wrongly been added to his mortgage account. This was without his permission or knowledge and he had not only had to pay the administration fee of £50 but interest which was still accumulating on this additional sum. He submitted to the Tribunal that this was because Mr Brown had not produced invoices and had not carried out the procedure in respect of the demand for service

charges in compliance with the law. Mr Brown opposed the application and said that the difficulties had arisen because Mr Coleman had not responded to letters from Mr Brown's solicitors.

Leasehold Valuation Tribunals (Procedures) (England) Regulations 2003

27. Paragraph 9 of the Regulations provides that "*in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings*".

Decision

28. Mr Coleman paid a total of £250 in respect of the application and hearing of this case. We determine that this sum should be repaid by Mr Brown to Mr Coleman because Mr Coleman's application has been successful and we have determined that none of the service charges in dispute are payable by the Applicant. It is therefore fair and reasonable that this sum should be repaid to the Applicant and we order that payment should be made within twenty-eight days of the date of the letter from the Leasehold Valuation Tribunal which accompanies this decision.

Tribunal
Miss J. Dowell BA (Hons)
Mr T. Johnson FRICS
Ms S. Wilby

.....
Chairman

Dated this 4th day of January 2007