LON/00AH/NSI/2003/0045(CR)

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

Applicant:	Daejan Properties Ltd.
Represented by:	George Ide, Phillips Solicitors
Respondent:	Ms D Meisels
Represented by:	Smithson Clarke Solicitors
Re:	4 Kirkdale Corner, Harrington Road, London SE25 4NP
Application date:	2 May 2003. Transferred from Shoreditch County Court.
Hearing dates:	15 September 2003
Appearances:	Mr T Deal – Counsel Mr D Weston – Management Assistant -Daejan Mr F Poole – George Ide, Phillips Solicitors **For Applicant** Mr F Banning – Solicitor, Smithson Clarke Solicitors **For Respondent**

Members of the Residential Property Tribunal Service:

Mr S Carrott LLB
Mr P Casey MRICS
Mr C Piarroux JP CQSW

1. This is an application by the landlord Daejan Investments Limited pursuant to section 19(2)(A) of the Landlord and Tenant Act 1985 for a determination as to the reasonableness of costs incurred by way of service charges. The Respondent, Ms D. Meisals, is the tenant of the Applicant at premises known as 4 Kirkdale Corner, Westwood Hill, London SE26 4NP. The terms of the Respondent's lease make provision for the payments of service charges.

2. The application comes before this Tribunal in the following way - in March 2002 the Applicant issued proceedings in the Chichester County Court for recovery of services charges, some £3427.82 of which related to works undertaken by the Applicant. By her Amended Defence dated 20 May 2002 the Respondent contended that the costs were unreasonable and that the matter should be referred to the Leasehold Valuation Tribunal. Owing to the fact that the proceedings were defended they were transferred to the Shoreditch County Court and on 17 January 2003 District Judge Manning referred the matter to the Leasehold Valuation Tribunal. At the time of the reference to this Tribunal all of the matters set out in the Amended Defence remained in issue.

3. On 2 July 2003 a pre-trial hearing took place before a differently constituted Tribunal, at which directions were given for the further conduct of this matter. Paragraph 7 of the directions provided that the Tribunal may consider requiring the Respondent to reimburse the Applicant with the whole or part of the fees paid in these proceedings in accordance with the provisions of the Leasehold Valuation Tribunal (Fees) Order 1997.

4. The substantive hearing of this application came before the Tribunal on 15 September 2003. The Applicant was represented by Mr Deal of Counsel whilst the Respondent was represented by her Solicitor, Mr Banning.

5. In opening the case for the Applicant, Mr Deal informed the Tribunal that agreement had been reached with regard to the reasonableness of the costs incurred and that the only issue was whether sum of £3427.82 was recoverable by virtue of the alleged failure to comply with section 20 of the Landlord and Tenant Act 1985. There then followed disagreement between the parties as to whether or not this was indeed the sole issue. In light of this disagreement the Tribunal decided to hear evidence from the Applicant concerning the provision of estimates, the process of service of the section 20 notice and any possible question of non-compliance. The Tribunal heard evidence from Mr David Weston, a Management Assistant employed by the Applicant. Mr Weston confirmed his written evidence contained in two witness statements dated 9 October 2002 and 11 July 2003.

6. Mr Weston told the Tribunal that as a result of a periodic inspection by the Applicant's surveyor, it was noted that works were necessary to electrical installations in the block and in particular the upgrading of the lateral mains. Two estimates were obtained from companies unconnected with the Applicant and on 17 August 2001 a notice was served on the tenants of the block enclosing the estimates and requiring a response by 18 September 2001. For those tenants who resided in the block, the notices were served by hand. For those tenants who did not reside in the block the notices were dispatched by first class post. Mr Weston informed the Tribunal that since the Respondent did not reside in the block her notice was sent by first class post. Some three weeks after 18 September the contractor providing the lower of the two estimates was instructed to carry out the works. The works were not carried out until the following year owing to the prior commitments on the part of the contractor. Mr Weston informed the Tribunal that no representations were received from the Respondent either before the contractor was instructed or at all save for the allegations now contained in the Respondent's Amended Defence.

7. Mr Banning was given the opportunity to cross-examine Mr Weston. Mr Banning did not challenge any material particular of the evidence given by Mr Weston. Indeed the Tribunal pointed out to Mr Banning that he had not challenged evidence as to the process of service and the reasonableness of the costs incurred. Mr Banning conceded that the costs were reasonable but for one issue, namely whether with regard to the costs of the works, there was compliance with the provisions of section 20(4)(d) of the Landlord and Tenant Act 1985. No written or oral evidence was tendered on behalf of the Respondent.

8. The issue of the validity of the section 20 notice had not been pleaded in the Respondent's Amended Defence. It was first raised in correspondence between the parties after the close of pleadings in the County Court and indeed the Tribunal was only given notice of this issue following the pre-trial hearing and shortly before the substantive hearing.

9. Mr Banning argued that the notice served pursuant to section 20 of the1985 Act did not comply section 20(4)(d) of the Landlord and Tenant Act 1985, in that the date stated in the notice was not earlier than one month after the date of on which the notice was given. He argued that the phrase one month referred to one calender month and in support of that proposition relied upon various extracts from volume 45(2) of Halsbury's Laws of England, dealing with the computation of time. He further argued that since the notice in the present case was served by first class post, pursuant to the provisions of Rule 6.7 of the Civil Procedure Rules, the deemed date of service was the second day after the notice was posted. Accordingly irrespective of whether or not the phrase 'one month' meant one calender month or indeed four weeks or 28 days, the present notice fell short of the requisite period.

10. Despite Mr Banning's technical arguments as to the invalidity of service of the notice, the Tribunal considered that there was a preliminary and indeed more fundament issue, namely whether or not Leasehold Valuation Tribunal has jurisdiction to consider the validity of a notice served under section 20 of the 1985 Act. It was Mr Banning's assertion that the Leasehold Valuation did indeed have jurisdiction, whilst Mr Deal for the Applicant argued that there was no jurisdiction.

11. In testing the Respondent's argument as to jurisdiction, the starting point is section 19(2A) of the Landlord and Tenant Act 1985. This sub-section provides that a landlord or tenant may apply to the Leasehold Valuation Tribunal for a determination as to the extent to which costs have been reasonably incurred and where they are incurred on the provision of services or the carrying out of works, whether the service or works are of a reasonable standard. Section 19(2B) gives a right to apply to a Tribunal in similar circumstances in respect of the reasonableness of prospective costs or the standard of prospective works or services. However the right to apply to the Tribunal is dis-applied by section 19(2C) where the costs have been agreed or admitted by the tenant, the lease contains an arbitration clause, or the matter has been the subject of a determination by the Court or a tribunal.

12. Section 20 of the 1985 Act affords additional protection to a tenant liable to pay a service charge by imposing a statutory requirement for consultation by way of a notice procedure and the provision of estimates where the relevant costs of works exceed the prescribed limit of £50 multiplied by the number of dwellings let to the tenants or £1000, which ever is the greater. The excess over the prescribed limit shall not be taken into account in determining the amount unless the notice requirement has been complied with or has been dispensed with by the Court if the Court decides that the landlord has acted reasonably. There is nothing in section

20, which indicates that the Tribunal has jurisdiction to deal with a dispute as to the provision of estimates and consultation. Indeed there is a contrary indication in as much as a dispensing power is reserved specifically to the County Court.

13. As to this specific reservation of the dispensing power to the County Court Mr Banning, on behalf of the tenant readily admitted that the Leasehold Valuation Tribunal had no power to dispense with the notice but that on the issue of non-compliance and recoverability, the Tribunal nevertheless had jurisdiction. The Tribunal considered that if such an analysis was correct, it would provide a somewhat unusual and unintended consequence, namely that where there was a deficiency in the notice or service of the notice in circumstances where the landlord has acted perfectly reasonably, the only order which the Tribunal could make would be to disallow or limit the costs. The injustice in such a construction of section 20 is readily apparent in the present case where the landlord did not issue instructions for the carrying out of the works until some three weeks after the expiry of the notice and the works themselves were not carried out until the following year, there being no issues raised by the tenant as to the notice, the nature of the works or the proposed contractors even though it was conceded that the notice was in fact received by the tenant. Parliament could not have intended that the Leasehold Valuation Tribunal should make a determination that costs were irrecoverable only for the County Court (to which there is no right of appeal from a decision of the Leasehold Valuation Tribunal) to over turn that decision by dispensing with the notice. The Tribunal therefore accepts Mr Deal's submission and holds that where there is an issue which impacts upon the validity of the consultation procedure under section 20 of the 1985 Act, jurisdiction rests with the County Court and not the Leasehold Valuation Tribunal.

14. Further support for Mr Deal's submission can be found in the provisions of the Commonhold and Leasehold Reform Act 2002. Section 151 of the 2002 Act comes into force on 31 October 2003 (see S.I 2003 No. 1986). The section substitutes a new section 20 and section 20ZA, the combined effect of which is to enlarge the jurisdiction of the Leasehold Valuation Tribunal to deal with the validity of and dispensing with the service of section 20 notices. The enlargement of jurisdiction would not have been necessary if, as Mr Banning contends, the Tribunal already had jurisdiction.

15. Having decided there is no jurisdiction to deal with the challenge to the validity of the notice, it would be wrong to express any opinion as to the merits of the argument raised by the Respondent that the phrase "one month" as contained in section 20(4)(d) means one calender month or simply four weeks or 28 days, since this question now remains to be decided by the County Court. However the Tribunal notes that so far as the provisions of the Part 6 of the Civil Procedure Rules are concerned, the provisions in respect of deemed service are in connection with notices served during the course of proceedings and do not apply to the service of a notice under the consultation procedure in section 20 of the Landlord and Tenant Act 1985.

16. The Respondent in this case was given notice on 2 July 2003 that the Tribunal may consider making an order that she reimburse the Applicant with fees that the Applicant was required to pay in connection with this application. In this regard, the Tribunal accepts Mr Banning's submission that the issues concerning the reasonableness of costs could not be clarified until sufficient particulars had been given by the Applicant. The Tribunal considered that the particulars given in the Claim Form gave insufficient information with regard to the reasonableness of the service charges in dispute. Indeed, even the first witness statement of Mr Weston

dated 9 October 2002 failed to deal with the issue in any sufficient particularity. Accordingly there can be no criticism on the part of the Respondent in continuing at that stage to persist upon a reference to the Tribunal. However sufficient particulars were given by the Applicant in Mr Weston's witness statement dated 11 July 2003. At that stage it should have readily been apparent that the real issue related to the service of the section 20 notice and that this was a matter that could only have been dealt with by the County Court. At that stage the Respondent should have notified the Applicant that it was not necessary to proceed with this hearing but that the matter instead should have gone back to the County Court.

17. In light of the above this Tribunal holds and orders that the disputed costs are reasonable and have been reasonably incurred and that the Respondent shall reimburse the Applicant with the fee in respect of the hearing on 15 September 2003 in the sum of £150. The Tribunal declines to deal with the issue of the validity of the section 20 notice for want of jurisdiction.

Chairman S E Caveats

Dated 10/10/03

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15. Having decided there is no jurisdiction to deal with the challenge to the validity of the notice, it would be wrong to express any opinion as to the merits of the argument raised by the Respondent that the phrase "one month" as contained in section 20(4)(d) means one calender month or simply four weeks or 28 days, since this question now remains to be decided by the County Court. However the Tribunal notes that so far as the provisions of the Part 6 of the Civil Procedure Rules are concerned, the provisions in respect of deemed service are in connection with notices served during the course of proceedings and do not apply to the service of a notice under the consultation procedure in section 20 of the Landlord and Tenant Act 1985.

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15. Having decided there is no jurisdiction to deal with the challenge to the validity of the notice, it would be wrong to express any opinion as to the merits of the argument raised by the Respondent that the phrase "one month" as contained in section 20(4)(d) means one calender month or simply four weeks or 28 days, since this question now remains to be decided by the County Court. However the Tribunal notes that so far as the provisions of the Part 6 of the Civil Procedure Rules are concerned, the provisions in respect of deemed service are in connection with notices served during the course of proceedings and do not apply to the service of a notice under the consultation procedure in section 20 of the Landlord and Tenant Act 1985.

16. The Respondent in this case was given notice on 2 July 2003 that the Tribunal may consider making an order that she reimburse the Applicant with fees that the Applicant was required to pay in connection with this application. In this regard, the Tribunal accepts Mr Banning's submission that the issues concerning the reasonableness of costs could not be clarified until sufficient particulars had been given by the Applicant. The Tribunal considered that the particulars given in the Claim Form gave insufficient information with regard to the reasonableness of the service charges in dispute. Indeed, even the first witness statement of Mr Weston

dated 9 October 2002 failed to deal with the issue in any sufficient particularity. Accordingly there can be no criticism on the part of the Respondent in continuing at that stage to persist upon a reference to the Tribunal. However sufficient particulars were given by the Applicant in Mr Weston's witness statement dated 11 July 2003. At that stage it should have readily been apparent that the real issue related to the service of the section 20 notice and that this was a matter that could only have been dealt with by the County Court. At that stage the Respondent should have notified the Applicant that it was not necessary to proceed with this hearing but that the matter instead should have gone back to the County Court.

17. In light of the above this Tribunal holds and orders that the disputed costs are reasonable and have been reasonably incurred and that the Respondent shall reimburse the Applicant with the fee in respect of the hearing on 15 September 2003 in the sum of £150. The Tribunal declines to deal with the issue of the validity of the section 20 notice for want of jurisdiction.

Chairman S E Camoys

Dated 10/10/03

LON/00AH/NSI/2003/0045(CR)

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

Applicant:	Daejan Properties Ltd.
Represented by:	George Ide, Phillips Solicitors
Respondent:	Ms D Meisels
Represented by:	Smithson Clarke Solicitors
Re:	4 Kirkdale Corner, Harrington Road, London SE25 4NP
Application date:	2 May 2003. Transferred from Shoreditch County Court.
Hearing dates:	15 September 2003

Appearances:

Mr T Deal – Counsel
Mr D Weston – Management Assistant -Daejan
Mr F Poole – George Ide, Phillips Solicitors

For Applicant

Mr F Banning – Solicitor, Smithson Clarke Solicitors

For Respondent

Members of the Residential Property Tribunal Service:

Mr S Carrott LLB
Mr P Casey MRICS
Mr C Piarroux JP CQSW

1. This is an application by the landlord Daejan Investments Limited pursuant to section 19(2)(A) of the Landlord and Tenant Act 1985 for a determination as to the reasonableness of costs incurred by way of service charges. The Respondent, Ms D. Meisals, is the tenant of the Applicant at premises known as 4 Kirkdale Corner, Westwood Hill, London SE26 4NP. The terms of the Respondent's lease make provision for the payments of service charges.

2. The application comes before this Tribunal in the following way - in March 2002 the Applicant issued proceedings in the Chichester County Court for recovery of services charges, some £3427.82 of which related to works undertaken by the Applicant. By her Amended Defence dated 20 May 2002 the Respondent contended that the costs were unreasonable and that the matter should be referred to the Leasehold Valuation Tribunal. Owing to the fact that the proceedings were defended they were transferred to the Shoreditch County Court and on 17 January 2003 District Judge Manning referred the matter to the Leasehold Valuation Tribunal. At the time of the reference to this Tribunal all of the matters set out in the Amended Defence remained in issue.

3. On 2 July 2003 a pre-trial hearing took place before a differently constituted Tribunal, at which directions were given for the further conduct of this matter. Paragraph 7 of the directions provided that the Tribunal may consider requiring the Respondent to reimburse the Applicant with the whole or part of the fees paid in these proceedings in accordance with the provisions of the Leasehold Valuation Tribunal (Fees) Order 1997.

4. The substantive hearing of this application came before the Tribunal on 15 September 2003. The Applicant was represented by Mr Deal of Counsel whilst the Respondent was represented by her Solicitor, Mr Banning.

5. In opening the case for the Applicant, Mr Deal informed the Tribunal that agreement had been reached with regard to the reasonableness of the costs incurred and that the only issue was whether sum of £3427.82 was recoverable by virtue of the alleged failure to comply with section 20 of the Landlord and Tenant Act 1985. There then followed disagreement between the parties as to whether or not this was indeed the sole issue. In light of this disagreement the Tribunal decided to hear evidence from the Applicant concerning the provision of estimates, the process of service of the section 20 notice and any possible question of non-compliance. The Tribunal heard evidence from Mr David Weston, a Management Assistant employed by the Applicant. Mr Weston confirmed his written evidence contained in two witness statements dated 9 October 2002 and 11 July 2003.

6. Mr Weston told the Tribunal that as a result of a periodic inspection by the Applicant's surveyor, it was noted that works were necessary to electrical installations in the block and in particular the upgrading of the lateral mains. Two estimates were obtained from companies unconnected with the Applicant and on 17 August 2001 a notice was served on the tenants of the block enclosing the estimates and requiring a response by 18 September 2001. For those tenants who resided in the block, the notices were served by hand. For those tenants who did not reside in the block the notices were dispatched by first class post. Mr Weston informed the Tribunal that since the Respondent did not reside in the block her notice was sent by first class post. Some three weeks after 18 September the contractor providing the lower of the two estimates was instructed to carry out the works. The works were not carried out until the following year owing to the prior commitments on the part of the contractor. Mr Weston informed the Tribunal that no representations were received from the Respondent either before the contractor was instructed or at all save for the allegations now contained in the Respondent's Amended Defence.

7. Mr Banning was given the opportunity to cross-examine Mr Weston. Mr Banning did not challenge any material particular of the evidence given by Mr Weston. Indeed the Tribunal pointed out to Mr Banning that he had not challenged evidence as to the process of service and the reasonableness of the costs incurred. Mr Banning conceded that the costs were reasonable but for one issue, namely whether with regard to the costs of the works, there was compliance with the provisions of section 20(4)(d) of the Landlord and Tenant Act 1985. No written or oral evidence was tendered on behalf of the Respondent.

8. The issue of the validity of the section 20 notice had not been pleaded in the Respondent's Amended Defence. It was first raised in correspondence between the parties after the close of pleadings in the County Court and indeed the Tribunal was only given notice of this issue following the pre-trial hearing and shortly before the substantive hearing.

9. Mr Banning argued that the notice served pursuant to section 20 of the1985 Act did not comply section 20(4)(d) of the Landlord and Tenant Act 1985, in that the date stated in the notice was not earlier than one month after the date of on which the notice was given. He argued that the phrase one month referred to one calender month and in support of that proposition relied upon various extracts from volume 45(2) of Halsbury's Laws of England, dealing with the computation of time. He further argued that since the notice in the present case was served by first class post, pursuant to the provisions of Rule 6.7 of the Civil Procedure Rules, the deemed date of service was the second day after the notice was posted. Accordingly irrespective of whether or not the phrase 'one month' meant one calender month or indeed four weeks or 28 days, the present notice fell short of the requisite period.

10. Despite Mr Banning's technical arguments as to the invalidity of service of the notice, the Tribunal considered that there was a preliminary and indeed more fundament issue, namely whether or not Leasehold Valuation Tribunal has jurisdiction to consider the validity of a notice served under section 20 of the 1985 Act. It was Mr Banning's assertion that the Leasehold Valuation did indeed have jurisdiction, whilst Mr Deal for the Applicant argued that there was no jurisdiction.

11. In testing the Respondent's argument as to jurisdiction, the starting point is section 19(2A) of the Landlord and Tenant Act 1985. This sub-section provides that a landlord or tenant may apply to the Leasehold Valuation Tribunal for a determination as to the extent to which costs have been reasonably incurred and where they are incurred on the provision of services or the carrying out of works, whether the service or works are of a reasonable standard. Section 19(2B) gives a right to apply to a Tribunal in similar circumstances in respect of the reasonableness of prospective costs or the standard of prospective works or services. However the right to apply to the Tribunal is dis-applied by section 19(2C) where the costs have been agreed or admitted by the tenant, the lease contains an arbitration clause, or the matter has been the subject of a determination by the Court or a tribunal.

12. Section 20 of the 1985 Act affords additional protection to a tenant liable to pay a service charge by imposing a statutory requirement for consultation by way of a notice procedure and the provision of estimates where the relevant costs of works exceed the prescribed limit of £50 multiplied by the number of dwellings let to the tenants or £1000, which ever is the greater. The excess over the prescribed limit shall not be taken into account in determining the amount unless the notice requirement has been complied with or has been dispensed with by the Court if the Court decides that the landlord has acted reasonably. There is nothing in section

20, which indicates that the Tribunal has jurisdiction to deal with a dispute as to the provision of estimates and consultation. Indeed there is a contrary indication in as much as a dispensing power is reserved specifically to the County Court.

13. As to this specific reservation of the dispensing power to the County Court Mr Banning, on behalf of the tenant readily admitted that the Leasehold Valuation Tribunal had no power to dispense with the notice but that on the issue of non-compliance and recoverability, the Tribunal nevertheless had jurisdiction. The Tribunal considered that if such an analysis was correct, it would provide a somewhat unusual and unintended consequence, namely that where there was a deficiency in the notice or service of the notice in circumstances where the landlord has acted perfectly reasonably, the only order which the Tribunal could make would be to disallow or limit the costs. The injustice in such a construction of section 20 is readily apparent in the present case where the landlord did not issue instructions for the carrying out of the works until some three weeks after the expiry of the notice and the works themselves were not carried out until the following year, there being no issues raised by the tenant as to the notice, the nature of the works or the proposed contractors even though it was conceded that the notice was in fact received by the tenant. Parliament could not have intended that the Leasehold Valuation Tribunal should make a determination that costs were irrecoverable only for the County Court (to which there is no right of appeal from a decision of the Leasehold Valuation Tribunal) to over turn that decision by dispensing with the notice. The Tribunal therefore accepts Mr Deal's submission and holds that where there is an issue which impacts upon the validity of the consultation procedure under section 20 of the 1985 Act, jurisdiction rests with the County Court and not the Leasehold Valuation Tribunal.

14. Further support for Mr Deal's submission can be found in the provisions of the Commonhold and Leasehold Reform Act 2002. Section 151 of the 2002 Act comes into force on 31 October 2003 (see S.I 2003 No. 1986). The section substitutes a new section 20 and section 20ZA, the combined effect of which is to enlarge the jurisdiction of the Leasehold Valuation Tribunal to deal with the validity of and dispensing with the service of section 20 notices. The enlargement of jurisdiction would not have been necessary if, as Mr Banning contends, the Tribunal already had jurisdiction.

15. Having decided there is no jurisdiction to deal with the challenge to the validity of the notice, it would be wrong to express any opinion as to the merits of the argument raised by the Respondent that the phrase "one month" as contained in section 20(4)(d) means one calender month or simply four weeks or 28 days, since this question now remains to be decided by the County Court. However the Tribunal notes that so far as the provisions of the Part 6 of the Civil Procedure Rules are concerned, the provisions in respect of deemed service are in connection with notices served during the course of proceedings and do not apply to the service of a notice under the consultation procedure in section 20 of the Landlord and Tenant Act 1985.

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Chairman S E Camoys .....

Dated 10/10/03 .....