

REF LON /00AC/LSC/20005/0274
LON/00AC/LSC/20005/0206

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE-MATTER OF THE LANDLORD AND TENANT ACT 1985
SECTION 27A

Address **32 and 32A Audley Road Hendon London NW4
3EY**

Applicant **(1) Andrea Louise Guy Flat 32A
(2) Natalia Rubinstein - Flat 32**

Represented by **(1) Ms M Kinch and Ms H Griffiths of the College
of Law
(2) Ms Weissman**

Respondent **Cyril Freedman**

Represented by **Ms L Scott of Basicland Registrars**

The Tribunal
Mr P Leighton LLB (Hons)
Mrs L Jarero B Sc FRICS
Mr O Miller

Hearing Dates **20th December 2005 and 25th January 2006**

Date of Decision **16th February 2006**

A Introduction

- 1 By applications dated 10th July and 22nd October 2005 the Applicants apply to the Tribunal for determination of liability to pay service charges in respect of the premises at 32/32A Audley Road Hendon NW4 for the service charge years 2004 and 2005
- 2 A pre trial review was held on 3rd November 2005 at which the two applications were allocated to the fast track and directions were given for the further conduct of the applications and it was directed that they be heard on 20th December 2005
- 3 At the hearing Ms Kinch and Ms Griffiths represented the Applicant Ms Guy and Ms Weissman represented the Applicant Ms Rubinstein The hearing was not completed on the 20th December and the Tribunal decided to adjourn the hearing to 25th January 2006

Inspection

- 4 The Tribunal decided that an inspection of the subject property was necessary and arranged to inspect the subject property before the adjourned hearing on 25th January 2006
- 5 The property consists of a small terraced house situated in a residential street in Hendon. The house has been divided into two self-contained flats. The lower flat is occupied by Ms Rubinstein and the upper flat by Ms Guy. A single storey extension has been built at the rear of the property, which forms part of Ms Rubinstein's demise making her flat larger in area than that of Ms Guy.
- 6 The property was found to be in relatively poor condition externally, as the proposed building works had not yet been carried out. It was noted that when the rear gate to the garden was closed there was a limited view of several part of the rear of the property

The Lease

- 7 Both Applicants hold on 99 year leases paying a ground rent of £50 per annum. Ms Rubinstein has occupied the premises for over 20 years whereas Ms Guy only purchased the property in 2003 as a first time buyer

- 8 The lease defines the “common parts” as *“the foundations, main structure roof, external walls external surfaces of the windows and window frames and otherwise those parts of the lessor’s premises not comprised in this lease”*
- 9 By the terms of the lease the lessee covenants to pay the ground rent, secondly to reimburse the landlord on demand for the insurance premiums paid by the lessor and *“thirdly the service charge as hereinafter mentioned in the manner hereinafter prescribed”*
- 10 By Clause 2(ii) of the lease the lessee covenanted : *“to pay to the lessor without any deduction a proportionate part of the expenses and outgoingsin the repair maintenance and renewal of the common parts and the provision of services in the Lessor’s Premises and the other heads of expenditure as the same are set out in the Fourth Schedule.....”*
- 11 The lease provides for the service charge year to run from 1st January to 31st December. By Clause 2(ii) (f) the lessee is required to pay an interim charge at the time when the ground rent is payable.
- 12 By clause 2(vii) the Lessee is required to keep the flat in *“good and substantial repair and condition”* and where necessary to replace the windows of the flat.
- 13 By clause 3(20) of the lease the lessor covenants to *“1) maintain redecorate renew amend clean repaint repair, paint grain varnish whiten and colour the common parts” :-*
- 14 By Clause 3(7) the Lessor covenants to *“insure and keep insured ...against loss or damage by fire explosion storm tempest earthquake,in some insurance office of repute in the full value thereof (including an amount to cover professional fees and other incidental expenses in connection with the rebuilding and reinstating thereof*
- 15 The Fourth Schedule sets out the heads of expenditure which are recoverable by the lessor in connection with the repair, cleaning, future rates and taxes on the building and by clause 5 *“the cost of employing such persons as the lessor shall consider necessary for the due performance of the covenants on the Lessor’s part herein contained and the proper management of the lessor’s premises including the appointment of managing agents or accountants to administer the services and service charge accounts.”*

The Issues

- 16 The issues in Ms Guy's application cover the years 2003,2004 and 2005.. The matters, which are in dispute, are insurance, management fees, and costs of works of repair and professional fees. In the case of Ms Rubinstein items previously unpaid were the subject of a county court judgment which was not appealed and the amount was paid. She was up to date to July 2005 but thereafter she challenged all the items, which were challenged by Ms Guy..
- 17 The Applicant Ms Guy stresses in final submissions that she sought deferment of the major works issue so that the Tribunal could consider the insurance issues, which were her main concern. The Tribunal also noted the complaint that the accounts which were produced by Basicland were extremely confusing and it was not easy to ascertain exactly what sums were due or whether items were being double charged. For example the applicant challenged an item of professional charges for an asbestos survey because it appeared in successive years in the accounts and was not done. The Respondent accepted that it was not done in the first year and therefore not charged. It then appeared for the next year as it was intended to be carried out in the second year instead. .
- 18 Ultimately the figure was agreed but only after Ms Scott had given the explanation that the item was not being double charged and the account was explained. The Tribunal was strongly of the opinion that the managing agents should simplify the accounts by showing where an item was either deleted or carried forward to a subsequent year so that the leaseholder could clearly understand the figures.

Insurance

- 19 This was the major item of challenge by the Applicant based on the following demands:-
- 2003(half year) She was charged £905.89 for insurance based on 50% of the annual premium of £1811.78
- 2004 £957.47 being half the annual premium of £1914.94
- 2005 £1097.25 being 50% of the annual premium of £2194.50
- 20 The Applicant challenged these charges on the basis that they are excessive. She obtained a quote for 2005 in the sum of between £200 and £250 for her own flat. She did not have quotes for previous years and she did not obtain a quotation for the whole house. Her quotation was based on a rebuilding charge

of £55,000, based on the valuation given by the surveyor at the time of the grant of her mortgage. Mrs Rubinstein also obtained a quotation in the sum of £323.37 for the whole house based on a rebuilding cost of £110,000

- 21 The Respondent through Ms Scott said that the insurance was arranged through GBHC brokers and that the managing agents had no control over this. She was assured that they sought the lowest quote available in the market and reviewed it.
- 22 She asserted that the property was insured on a rebuilding cost basis but stated that the declared value according to the certificate was £404,000. She relied upon the decision of the court of Appeal in the case of **Berrycroft Management Ltd-v- Sinclair Gardens Investments (Kensington) Limited** 1997 EGLR 47 which established that the landlord was entitled to insure under a block policy for a portfolio of properties even though this might be more expensive for the tenant. Provided the premium was within a range of market rates and not excessive the landlord was not necessarily required to obtain the lowest possible premium.
- 23 The Tribunal was referred to the recent decision of the Tribunal in the case of **Flat 2 67 Station Road Sidcup, LON 00AD/LSC/2005/0088 in** which the Tribunal had strongly criticised BLR on the ground that they had left the insurance entirely in the hands of the brokers and had taken no steps to ensure that the lessees got the best value for money. In that case the Tribunal had reduced the landlord's claim for insurance from £2911.59 to £1000. The leaseholder had obtained a quotation for £612.44 but the Tribunal had adjusted this figure to make allowance for the considerations approved by the Court of Appeal in **Berrycroft**.
- 24 Ms Scott said that the agents had not modified their approach since that decision and that it was indeed subject to appeal. She was unable to give the Tribunal any details of the progress of the appeal.
- 25 In the absence of guidance to the contrary the Tribunal endorsed the approach of the Tribunal in **Flat 2 67 Station Road Sidcup** and was not satisfied in the absence of a detailed explanation from the brokers that attempts had been made to obtain a competitive market premium. Ms Scott was really unable to assist on this question other than to repeat what she was apparently told by the brokers.

- 26 Although none of the members of the Tribunal were experts on the matter of insurance they were familiar with insurance rates for properties of this type in the London area, and were satisfied from their own knowledge that insurance policies for cover of up to £400,000 with a small excess were available in some cases for under £400 by the most competitive providers and that a figure of between £400 and £500 was within the range of reasonableness. They considered that a premium of over £2,100 for a property of this type was manifestly excessive
- 27 The Tribunal was also satisfied that under the terms of the lease the amount to be insured was the rebuilding cost and not the market value. It took the view, therefore, that cover of £400,000 was probably not necessary and that the figure of £110,000 to £150,000 would probably be sufficient.
- 28 The Tribunal could not necessarily assume that a landlord with a portfolio of properties could get the same competitive rates as an individual resident with a clear claims record. On the other hand a leaseholder could not be expected to pay over four or five times the going rate simply to suit the landlord's convenience Therefore the Tribunal has made the adjustment to reflect the **Berrycroft** factor and concludes that a proper figure for insurance including terrorist cover should be available for a figure of about £650 so that each of the residents should not be required to pay more than £325 for their annual insurance cover. The Tribunal also notes that for the current year the landlord has been able to find a policy for under £1,500 for this property which suggests to the Tribunal that there is considerable elasticity.
- 29 The Tribunal has not received comparable figures for 2003 and 2004 so it has attempted to make adjustments for annual increases. It therefore assesses the annual figures for 2003 at £600, for 2004 at £625 and 2005 at £650.

Management Fees

- 30 The management fees charged for 2003 are £282, for 2004 £293 and for 2005 £470. These figures cover both flats. The agents justify this later increase on the basis that they have been more proactive in the later year and that costs have increased and that the burdens of legislation have now become more onerous
- 31 The Applicants complain that although the starting figures for 2003 and 2004 are reasonable, the agents have really given such poor service that their

charges ought to be considerably reduced. They point to the failure to answer correspondence, citing one request made in February 2004 not being answered until 14th November 2004. They also point to the fact that the landlord arranges his own insurance through the brokers so that they do not exercise any responsibility in this area. They also state that the only task performed by the agents in the past has been the provision of accounts and sending out demands which they say are in any event confusing and not explained.

32 The Tribunal noted that in the **67 Station Road Sidcup** case the Tribunal had reduced BLR's fees to £100 per flat, on the grounds that they had not been proactive and that they had done nothing more than produce accounts. The Tribunal was also critical of the arrangements whereby the agents met the shortfall on ground rents or payments of service charge and passed on this risk to the leaseholders through an increased management fee.

33 The Tribunal considers that the service provided by the agents was generally poor in 2003 and 2004 for the reasons stated by the tenants. The Tribunal also has reservations about the practice of charging the tenants a higher management fee on the ground that the agent has to meet arrears of ground rent or service charge.

34 The Tribunal accepts that the figures charged for 2003 and 2004 would be reasonable if the services were performed to a reasonable standard. This does not appear to be the case and the Tribunal will reduce the fees to £250 for each of the years 2003 and 2004. The Tribunal does not consider that it is really possible for an agent performing only basic services to undertake the work for less than about £125 per unit.

35 With regard to the year 2005 the Tribunal accepts that the agents have undertaken more works with regard to the major building works and adopted a more proactive role. It also accepts that the burdens placed on managing agents by the Commonhold and Leasehold Reform Act 2002 and the regulations under that Act involves the agent in more work so that a basic charge of about £200 per unit would appear to be justified. The figure of £470 is in the view of the Tribunal too high unless there are specific features of the duties, which justify that figure. This is a small and uncomplicated property to manage, unlike a large block of flats requiring the provision of a large number of services. The Tribunal therefore allows the sum of £400 for the year 2005.

The Building works

- 36 The Applicants criticised the necessity for the works on the basis that the surveyor who attended from HR Surveyors attended when they were not at home and could not obtain access at the rear to observe a number of the items which have been put in the specification
- 37 They rely on the evidence of Mr Harding who has prepared a specification. He is a master builder from Oxford. Ms Scott for the Respondent submits that the survey was carried out by a qualified surveyor and even if he had a limited view of some aspect so the works required he was justified in putting them in the specification at this stage since having regard to the age and condition of the property it would be more economic to do works in under one contract than spread it over a period of time.
- 38 The Tribunal is of the opinion that it would be wrong to delete works from the specification at this stage. It may be necessary to add to or reduce the scope of the works when they are in fact undertaken but it would not be right to find that at this stage they were excessive.
- 39 The works were put out to competitive tender and an invitation was made to Ms Guy's father to tender for the works. He declined to do so because the matter was then contentious and before the Tribunal. In the view of the Tribunal that was an error. The mere fact that the matter was being considered by the Tribunal was no reason not to take part in a legitimate tender exercise and there was no reason for the Respondent to suspend the tender exercise on this account.
- 40 Accordingly the lowest tender received from M and K Properties in the sum of £8190 was the lower of the two tender figures received. The tender was analysed by Mr Henry of HR Surveyors in September 2005 and found to be reasonable.
- 41 The Tribunal is not willing to reduce the scope of the work based on the report of Mr Harding although it accepts that when the contractor comes on site he may decide that certain of the specified works do not need to be done and the Applicants will be credited accordingly
- 42 The Applicants contend that works involving the windows should be excluded from the contract since the responsibility for the windows under the lease is on the Lessee and not the lessor.. .

- 43 The Tribunal does not agree. For the purposes of redecoration the external windows and window frames are common parts and part of the structure of the building. Any other construction would be unrealistic since it would mean that the landlord would not be able to comply with its covenant to redecorate unless it could properly prepare and if necessary repair the wooden surfaces of the windows and frames. The question of replacement may well fall on the leaseholders but this does not arise here and the items will remain in the specification as necessary.
- 44 The Tribunal is satisfied that the Applicants have not shown that the works are unnecessary nor that the cost of such works is excessive.

Professional Fees

- 45 The Applicants challenge the fee of Mr Henry of H R Surveyors on the basis that £1,500 is excessive for what was a cursory survey of the premises.. .
- 46 The Respondent contends that this fee is based on 10% of the work or £1500 whichever is the higher so that there is a minimum fee of £1500 payable on small contracts. This is apparently on the basis that the surveyor is required to review the property and then prepare the specification and analyse the tenders.
- 47 HR Surveyors are a firm used frequently by the agents in this case and the Tribunal is surprised that it has not been possible to agree a lower standard fee for this type of work on small contracts. However, the Tribunal is unable to say that the amount charged is wholly excessive although it amounts to a higher percentage than one would expect for this type of contract.
- 48 If the respondent intends to use this firm for a large number of contracts, the Tribunal may well in future applications investigate in greater detail the arrangements made and what attempts have been made to negotiate a smaller minimum fee for small contracts on the basis of undertaking a considerable body of work.
- 49 A query was raised in connection with a claim for £65.89 for a Land Registry Fee. This was a sum actually incurred and is in the view of the Tribunal payable. It was not raised as an item in the original application and the Applicants have not discharged the burden of showing it to be unreasonable.

Section 20C Costs

- 50 The Applicants contend that the lease does not provide for the recovery of costs and that in any event an order should be made under Section 20c since

the Applicants were justified in bring the application.. They maintain only a small amount of time was spent on the building works and that the main complaint was in relation to insurance. The Applicants have incurred no costs as they were represented pro bono by the students of BPP and the Respondent was represented by an employee so no additional costs should have been incurred. They also complain that the Respondent has failed to meet the directions time limits (In each case they were 4 days late) and that the behaviour of the Respondent through the agents has destroyed trust and made the proceedings inevitable. They also seek reimbursement of the application and hearing fees.

51 The Respondent whilst admitting delay by the agent in responding to correspondence does not accept that there should be a breakdown of trust. Ms Scott contends that the Respondent acted reasonably in the conduct of the proceedings and that there were breaches by the Applicants in that one Applicant was late with her bundle, that an illegible copy of the statement of Mr Harding was sent in time but the legible copy was late. She also maintains that part of the reason for the delay was the Respondent's agreement to adjourn the directions hearing which resulted in tightening of the time limits for the Respondent

52 She also drew the tribunal's attention to the decision of the Lands Tribunal in **The Tenants of Langford Court –v- Doren Lands Tribunal LRX 37/2000**. In which His Honour Judge Rich said that automatic success by a tenant should not necessarily deprive a landlord of its costs which were a property right and the section should not be used as an instrument of oppression .She maintained that the costs were £1950 inclusive of VAT which included attending the hearing and preparation including preparation of a bundle.

53 The Tribunal was of the opinion that the clause in the lease might not cover the costs of attendance at a Tribunal since it appeared to relate to the performance of the covenants and management of the building. It might however, be argued that attendance at a Tribunal to resist a reduction in the service charge was a function of management. It is not ultimately for the Tribunal to decide that issue under Section 20C. It merely has discretion to disallow any costs, which might be recoverable under the lease.

- 54 The Tribunal has carefully considered the submissions made by both sides Both sides have made allegations against the other but the essential question relates to the merits of the case. and whether it would be right to deprive the landlord of the costs or any part of them.
- 55 The Tribunal considers that it would be reasonable to disallow some part of the landlord's costs since the Applicants have been largely successful on the major issue of insurance which has resulted in a sizeable reduction of liability and partially successful on the management fee. They have been unsuccessful on the building works and the professional fee
- 56 As there are only two leaseholders in the house the burden of costs falls more heavily than if there was a block of flats and the service charge account was shared between many leaseholders. The LVT is intended to be a costs free environment and section 20C is partly intended to prevent the successful tenant being deprived of the fruits of victory by having to meet a large costs bill.
- 57 Weighing all those factors the Tribunal has concluded that if the costs are recoverable under the lease the Tribunal should disallow two thirds of the landlord's costs namely £1300 so that the sum of £650 would be chargeable to the service charge account. The Tribunal considers that the figure of £1950 is not unreasonable in amount for the time spent albeit that Ms Scott is an employee of Basicland Registrars and not an independently instructed barrister. If counsel or solicitors had been instructed on a two day hearing the costs would have been significantly higher.
- 58 With regard to the application for reimbursement the Tribunal considers that the total fees of each Applicant is £100 on the application and £150 for the hearing. It is not clear whether two hearing fees were paid. In any event the Tribunal determines that each Applicant shall recover £100 by way of reimbursement. If one of the Applicants has not had to pay a hearing fee then the figure shall be reduced to £75 for each Applicant.

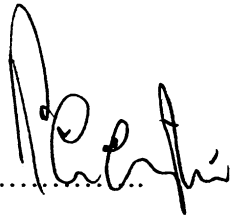
Conclusion

- 59 In the event the Tribunal determines that the First Applicant Ms Guy shall pay insurance in the sum of £600 for the year 2003, £625 for 2004 and £650 for 2005. The Applicant Ms Rubinstein shall pay insurance of £650 for the year 2005 in so far as any sum is outstanding. She shall not however, receive any

refund of premium if she has paid a sum in excess of this under the county court judgment.

- 60 The Tribunal determines that Ms Guy shall pay management fees of £125 for the year 2003, £125 for the year 2004 and £200 for the year 2005. Ms Rubinstein shall pay £200 and the same consideration shall apply as under Paragraph 59
- 61 The Tribunal determines that the sums for the building works if payable would be reasonable in the amount tendered by M and M Properties of £8190 plus VAT
- 62 The Tribunal further determines that the professional fees of H R Surveyors are recoverable in the sum of £1500 plus VAT
- 63 The Tribunal disallows two thirds of the landlord's costs of £1,950 under Section 20C of the 1985 Act. Therefore the sum of £650 will be added to the service charge account.
- 64 The Tribunal determines that each Applicant shall be reimbursed £100 on account of fees for the application and hearing save that if only one hearing fee has been paid the amount shall be reduced to £75 for each Applicant

Chairman



Date

16/2/06