



Residential
Property
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION BY LEASEHOLD VALUATION TRIBUNAL
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985/1987 as amended – Section 27A

Ref: LON/00AC/LSC/2006/0241

Property: 70A/78B Watling Avenue, Burnt Oak, Edgware,
Middlesex, HA8 0LU

Applicant: J Minsky & Sons Limited

Represented by: Mr. B. Mire FRICS
Mr. A. Landani BSC FRICS
Ms. J. Daboul, Property Manager

Respondents: Various Lessees

Represented by: No appearances.

Application Dated: 17 July 2006

Directions: 04 September 2006

Inspection: 30 October 2006

Date of Hearing: 30 – 31 October 2006

Date of Decision: 23 November 2006

Members of the Leasehold Valuation Tribunal:

Mrs. C. A. Lewis FCI Arb.
Mr. M. Matthews FRICS
Mr. A. Ring

LON/00AC/LSC/2006/0241

PROPERTY: 70A/78B WATLING AVENUE

PRELIMINARY

1. This was an application by the Lessor, J Minsky and Sons Ltd, for a determination of the reasonableness and/or liability to pay service charges under Section 27A(3) of the Landlord and Tenant Act 1985 ("the Act")
2. A Pre-Trial Review had been held on 1 September 2006 when the issues were identified as:-
 - (a) the cost of the major works to be carried out
 - (b) the extent of the major works to be carried out.
3. There was also an application before the Tribunal under Section 20C of the Act by the Respondent lessees and the Tribunal considered whether the Respondent should reimburse the Applicant with the whole or part of the fees paid in these proceedings.
4. The Respondents hold the premises on the terms of similar leases, and a copy of the lease in respect of No 70A was on the Tribunal's file. The provisions for payment of the service charge are contained within the lease.

INSPECTION

5. The Tribunal inspected the property on the morning of Monday, 30 October. The building is a 1930's three storey row of flats above commercial premises in a shopping parade, with brick external walls to the front and side elevations, part tiled pitched roof and part asphalt covered flat roof with some original timber sliding sash windows and some replacement windows.

The walls to the rear of the building are rendered and there are three external metal fire escape staircases. There was a semi-basement to number 78.

The Tribunal noted the condition of the external brickwork, the rendering, the decoration, the condition of the windows and of the external plumbing and rainwater goods.

The flats were accessed by three separate entrances at street level serving, respectively, Flats 70A to 72B, Flats 74A and 74B, and Flats 76A to 78B. The Tribunal inspected the internal common parts of all three entrances and noted the floor covering and decoration. An area of damp on the internal ground floor wall of the entrance serving the entrance serving Flats 74A and 74B was pointed to by the Tribunal.

THE HEARING

6. At the Hearing, Mr Mire FRICS appeared as advocate for the Applicant and called Mr Ladani BSc FRICS to give evidence on the specification.

Ms Daboul, Property Manager, also gave evidence. Mr S C Bangs, the lessee of Flat 72B, who also held a lease on the flower shop premises on the ground floor at No 72, was not present at the hearing but had submitted written representations.

7. The Tribunal was told that the need for major works was identified in November 2004, and the leaseholders were informed by means of a Notice of Intention under Section 20 dated 24 November 2004 of the Landlord's intention to carry out various works to the premises. No responses were received from the leaseholders. A specification was drawn up by Mr Ladani and put out to tender.
8. The second stage of the consultation requirements under Section 20 took place on 26 January 2006 when leaseholders were given details of the three estimates and informed that the lessors proposed to accept the lowest tender given by P J Harte (Decoration Contractors) Limited. The figure in the Section 20 Notice was shown as £48,665, whereas their actual tender figure was £48,695. It was explained to the Tribunal that the discrepancy was a clerical error by Mr Ladani.
9. Only two lessees responded to the Section 20 Notice and their responses were unrelated to the proposed works, but to personal circumstances.
10. The lessees were invoiced in March 2006 in advance of the works being undertaken. A significant proportion of the leaseholders had failed to respond to that demand and subsequent reminders. It had therefore been necessary to come to the Tribunal.
11. The estimated cost of the works was £64,329.05 inclusive of surveyors fees and VAT. The Applicant had apportioned this on the basis of recovery of one-tenth of the works exclusively required to the flats from the flats and one-seventeenth of the works to the whole building being recovered in equal proportions from both the residential and commercial tenants. This apportionment was in accordance with the lessor's usual method of apportioning the service charge, and resulted in a cost to each lessee of the flats of £4,951.32.
12. However, the lessor had become aware that this method of apportionment was not strictly in accordance with the provisions of the leases. Mr Mire said he had also therefore prepared an alternative apportionment on the basis envisaged by the lease. By this the contribution of each leaseholder was £6,158.97. He had ignored for these purposes the minor variation in the leases for Flats 74A and 74B relating to the costs associated with the stairway. In the circumstances, he asked the Tribunal to decide the method of apportionment of the costs.
13. Mr Mire referred the Tribunal to Mr Bang's written representations, and produced the service charge accounts for the year 1996 to 2005 inclusive. Only the account for 2005 showed income as well as expenditure. Mr Mire assured the Tribunal that there had been no opportunity to accumulate a

sinking fund as claimed by Mr Bangs. Income in previous years had been merely sufficient to cover annual expenditure.

14. Mr Bangs had queried the provisional sums in the contract as a proportion of the total expenditure and drew attention to the amounts for overhaul of main roof slates of £3,000, and £3,000 for repair of external joinery and windows. Mr Ladani's response was that the provisional sums were used where works were known to be required but not their exact extent. In response to questions from the Tribunal he said that the inclusion and extent of provisional sums in the contract was appropriate at this stage. He told the Tribunal that he would monitor the work and costs against the provisional sums and any differences would be added or deducted in the final account. Mr Ladani disputed Mr Bangs' claims that there had been little time spent on preparation prior to tender, that the works could be carried out without scaffolding, that the contract could be completed in four weeks, and about the validity of the tendering process. Mr Mire and Mr Ladani disputed Mr Bangs' suggestion that the works were now costing more due to previous neglect.

DETERMINATION

15. The issue to be considered by the Tribunal related to costs to be incurred under Section 27A(3) of the Act which states:

An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to –

- (a) the person by whom it would be payable
 - (b) the person to whom it would be payable
 - (c) the amount which would be payable
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable
16. The Tribunal is in no doubt that the proposed works are necessary. The lease requires the lessor to carry out works to the property as necessary. On the evidence given to the Tribunal, no comprehensive works to the exterior or the common parts has taken place within at least the last 10 years. Furthermore, the Tribunal's inspection confirmed that work was overdue. No evidence was given to support Mr Bangs' contention that the works would now cost an extra £10,000 because of not being carried out at an earlier date. The Tribunal also took into account that Mr Bangs had had some financial benefit from not being asked to find the costs of the works earlier.
17. The necessary statutory procedures relating to the consultation with the lessees had been complied with and the lessor had selected the lowest tender following a valid tendering process. The Tribunal was satisfied with the way the provisional sums and access issues were dealt with in the tender. They do not accept Mr Bangs' suggestion that the works could be undertaken over a 4 week contract period.

18. The Tribunal considers that the 12½% allowed for drawing up specifications, tendering and consultation is reasonable but would not expect any further addition in respect of managing agents' fees.
19. Mr Bangs suggested that the expenditure should be reduced by the contents of the sinking fund, but Mr Mire said that there was no sinking fund.
20. There was no clear evidence before the Tribunal as to the existence or otherwise of the sinking fund and the sums it might contain. The Tribunal is therefore unable to say whether any part of the cost of the works could be offset against reserves held in the sinking fund.
21. The Tribunal notes from the specification that the final cost does not include the cost of renewing the windows of individual flats where required as these are to be recharged to the individual lessees. They agree with this approach as it is clear from the lease that the windows are within the demise of the flat, and their renewal is not therefore a cost which can be recovered through the service charge.
22. The First Schedule to the lease provides that the demised premises include *(1) the windows and window frames including all glass fitted in such walls and windows*. The Tribunal note that there are provisions within the lease for entry by the lessor in order to deal with disrepair to the demised premises in the event of failure by the lessee to perform their covenants under the lease.
23. As to repair Clause 3(4), to repair, places a covenant on the leaseholder to *"well and substantially repair ... the Demised Premises ..."*.
24. It is clear that the cost of any repair to the leaseholders' windows is rechargeable to the leaseholders and not part of the service charge.
25. The Tribunal notes that there is a provisional sum of £3,000 in the specification for repair to external joinery including windows. However, there is no indication in the specification whether this item relates to flats or common parts.
26. As to the apportionment of the service charge, we note Mr Mire's evidence that during his involvement with the property, the service charges have been apportioned on the basis of one-tenth and one-seventeenth rather than strictly in accordance with the lease. There was no evidence that this arrangement had been formally agreed with the lessees. The Tribunal can only abide by the terms of the lease as the definitive method of determining the service charge apportionment. We note however that adherence to the lease will result in a higher contribution than already demanded from the lessees of the flats.
27. According to Mr Mire's calculation, the service charge due under the method of apportionment set out in the lease requires a contribution of £6,158.97 from each lessee. We find this both reasonable and payable as an estimated sum. However, the final sum due from the lessees will need to take account of –

- (a) any costs of repair not recoverable under the service charge account under the provisions of the lease, such as those described in paragraph 24 above;
 - (b) the variation in the lease between Flat Nos 74A and 74B and the other flats.
28. Following their inspection, the Tribunal finds that the cost of the damp proofing works would not be reasonable unless and until further investigations have been carried out to establish the cause of dampness.
29. The application before the Tribunal under Section 27A(3) relates to cost to be incurred. When the works have been carried out and actual costs have been incurred, there will be an opportunity for a further application for a determination by the Tribunal as to reasonableness and payability under Sections 19 and 27A(1).

Application under Section 20C

30. No representations were received from the lessees regarding their application under Section 20C. The Tribunal was satisfied that the provisions within the lease under paragraph 6 of Part II of the Fourth Schedule allow the lessor to add the cost of the proceedings to the service charge, and in the light of their findings following the hearing, they make no Order under Section 20C.

Reimbursement of Fees

31. In the particular circumstances of the case the Tribunal finds that it would be just and equitable to make no Order for reimbursement of the fees by the Respondent Lessees to the Applicant Lessor.

Chairman C. A. Lewis

Date 23 November 2006

JG