

LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL

DETERMINATION BY LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 Section 27A and 20C

---

LON/00AL/LSC/2006/0257

**Address:** 45 Heavitree Road  
Plumstead  
London SE18 7QX

**Applicant:** Mr John Sheridan

**Represented by:** Mr and Mrs Sheridan (Applicant's parents)

**Respondents:** London Borough of Greenwich

**Represented by:** Ms Kate Twomey, legal officer  
Mrs Karen Richardson, capital works manager  
Ms Zoe Leach, capital works officer

**Tribunal Members:** Mr NK Nicol (Chairman)  
Mr J Power  
Mr D Wilson

---

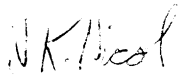
1. The Applicant is the lessee of a flat at 45 Heavitree Road, Plumstead, London SE18 7QX which he bought from the Respondent in April 2003. Before the purchase, the Respondent served him on 7<sup>th</sup> May 2002 with a notice under s.125 of the Housing Act 1985 advising him that they intended to carry out works to the balcony, common parts and windows to which they estimated he would have to contribute £4,850. Then, on 17<sup>th</sup> October 2003 the Respondent issued him a notice in accordance with s.20 of the Landlord and Tenant Act 1985 informing him that they proposed to carry out such works. The notice stated that his total estimated contribution would be £7,306.63 but went on to say,  
"However, as you were still in the initial period of your lease (i.e. the first five years of your lease) then your charges will be limited to **£414.81** as shown on the attached table."
2. The Respondent now admits that the figure of £414.81 was an error. The Applicant's contribution to the works should have been calculated by reference to the rateable value of his flat relative to that of the whole block, subject to a maximum limit imposed by the figures given in the s.125 notice of 7<sup>th</sup> May 2002. However, the Respondent used the wrong figure for the rateable value of the block, thereby reducing the figure far below what it should have been.

3. As at the date of the Tribunal hearing on 25<sup>th</sup> September 2006 the Respondent had still not calculated the Applicant's actual contribution, although they do now have the final account for the cost of the works. The Respondent's witness, Mrs Richardson, estimated that the final figure would be made available within 6 weeks. In the meantime, they had estimated figures.
4. The Respondent first noticed their error in October 2004 when they sent the Applicant their final estimate of his bill in the sum of £4,269.84. It turned out during these proceedings that this was in error too. The block rateable value they used was again wrong, this time because it only included 6 of the nine flats in the block. The Respondent revised their estimate again and now say that the best figure they can come up with prior to the final account is £2,557.48.
5. The Applicant is living in New Zealand with his girlfriend who is from that country. He was represented at the Tribunal hearing by his parents, Mr and Mrs Sheridan. They explained that they had discussed this case extensively with their son and were able to say what had happened. As they tell it, when the Applicant received the s.20 notice, he was somewhat surprised by the low charge. He therefore telephoned the Respondent to query it. He spoke to a woman who assured him that the figure of £414.81 was correct. He was naturally both pleased and reassured by what he had heard. His girlfriend had recently returned home to New Zealand and, on the basis of what he had been told, the Applicant decided he could now join her.
6. Mr and Mrs Sheridan stated that their son would not have gone to New Zealand when he had if he had known the true picture in relation to his liability for the service charge for the works to his block. He had researched salary levels in New Zealand and knew that he would have to take a significant drop in salary if he moved there, as has turned out to be the case. If he had realised his true liability, he would have stayed for a while to earn money to meet it. Instead, he went to New Zealand in reliance on the Respondent's representation and had now suffered the detriment of having to meet this liability out of a much lower salary.
7. The Tribunal has wrestled with the fact that the Applicant's evidence relies on hearsay. There is no bar to the Tribunal receiving such evidence but the Respondent correctly pointed out that they did not have any opportunity to cross-examine the Applicant at the hearing. Having said that, the Respondent is in contact with the Applicant but made no attempt to address any questions to him, despite having full notice of his case in the Tribunal application itself. Mr and Mrs Sheridan came across as genuine and reliable witnesses and the Tribunal has no doubt that they were presenting the facts as accurately as they understood them. In the circumstances, although more soundly-based evidence would have been preferable, the Tribunal did the best it could with the evidence available.
8. The Respondent questioned whether the Applicant had phoned them after receiving the s.20 notice because they had no record of it. However, they also admitted that the lack of record is not conclusive. In the Tribunal's opinion, the fact of and the alleged content of the phone call are highly credible. Mr and Mrs Sheridan were confident that their son knew about the s.125 notice and so it is virtually certain that he would have been surprised by the low figure in the s.20 notice. It is further highly credible that he would have attempted to query it. The mathematical error which had led to the wrong figure being given was not apparent

on the face of the papers on the relevant file and so it is also highly credible that an officer taking a cursory glance at the file would have taken it upon himself or herself to assure the Applicant that the figure was correct. Therefore, on the evidence available, the Tribunal is satisfied that the Respondent represented to the Applicant that his liability was £414.81 not only in the s.20 notice but also by phone.

9. The Respondent also questioned whether it was likely that the Applicant would or should rely on an estimated figure. However, there is no point in producing estimates other than to provide guidance as to the likely final figure. Of course any reasonable person would have to prepare himself or herself for the probability that the final figure may differ to some extent but not to the degree in this case where the Respondent initially revised their figure by around 1000%. Also, although the full charge in the s.20 notice was expressed to be an estimate, the Applicant's contribution was not and, on the wording used by the Respondent, it is credible that the Applicant would have understood the sum of £414.81 to be the final figure. The Tribunal is satisfied that the Respondent intended the Applicant to rely on their statement of his contribution and that he did so.
10. On the balance of probabilities, the Tribunal is also satisfied that the Applicant altered his position, to his detriment, in reliance on the Respondent's misrepresentation as to his service charge liability. It is not credible that he would have adjourned his move to New Zealand indefinitely – the fact that he was prepared to follow his girlfriend to the other side of the world demonstrates a level of commitment that would probably not have been deflected entirely by such outstanding debts. However, the sums involved were more than enough to give him pause and persuade him to delay his departure to give him time to pay all or part of the debt out of his current salary rather than the lower salary available to him in New Zealand. Mr and Mrs Sheridan asserted that this was the case and the Tribunal is satisfied that they are correct.
11. In the circumstances, the Tribunal is satisfied that the Applicant has established all the elements of "estoppel by representation". The Applicant has relied to his detriment on the Respondent's mistaken representation of the facts so that the Respondent is "estopped" from pursuing him for any greater amount than the original charge of £414.81.
12. The Respondent asserted that their error was only a minor, understandable administrative mistake. The Tribunal does not accept this characterisation. The original error might have been minor but it had major consequences. The Respondent's apologies, delivered at the Tribunal hearing, are welcome but not sufficient in the circumstances..
13. The Respondent further asserted that this matter should be looked at in context. They pointed out that the Applicant was warned of a higher liability in the s.125 notice and knew from his lease that he would have to pay such service charges. However, it is clear that the Applicant knew all this and that it was this context which caused him to query the service charge. The immediate context for his actions was the phone call in which he was assured that the charge of £414.81 was correct and it is that context which counts.

14. Therefore, in accordance with s.27A of the Landlord and Tenant Act 1985, the Tribunal has determined that no greater sum is payable by the Applicant to the Respondent in respect of the relevant works.
15. The Respondent undertook to the Tribunal that they did not intend to pursue the Applicant for the costs of these proceedings and so the Tribunal saw no point in considering or making any order under s.20C of the Landlord and Tenant Act 1985.
16. The Applicant incurred fees of £250 for the Tribunal application and hearing. The Tribunal has the power to order the Respondent to reimburse the Applicant for this sum. The Respondent had no objection in the circumstances and the Tribunal so orders.

Chairman  .....

Date: 25<sup>th</sup> September 2006