

Ref: LON/00AJ/LSC/2006/0266

**LEASEHOLD VALUATION TRIBUNAL**

**THE TRIBUNAL'S DECISION**

OF ISSUES UNDER SECTIONS 27A & 20C OF LANDLORD AND  
TENANT ACT 1985 (as amended)

**PREMISES: 69D GRAFTON ROAD ACTON LONDON W3 6PF**

**Applicant:** Lakeside Developments Ltd  
**Represented by:** Miss L Scott of Basicland Registrars Ltd

**Respondent:** Mr N Hardy

**Hearing:** 2 November 2006

**Tribunal:** Mrs Sonya O'Sullivan Solicitor  
Mr M.L Jacobs FRICS  
Mr A.D Ring

## **Background**

1. This is a claim that was originally brought by the Applicant in the Barnet County Court to recover various service charge arrears accrued from January 2001 to January 2005 in the sum of £2,279.53. At the hearing the claim sum was amended by the Applicant to £2,070.83. By an Order of Barnet County Court dated 18 July 2006, the matter was transferred to the Tribunal for a determination to be made pursuant to s.27A of the Landlord and Tenant Act 1985 (as amended) (the “Act”) of the Respondent’s liability to pay and/or the reasonableness of the service charges claimed by the Applicant.

2. The Respondent is the lessee of Flat D 69 Grafton Road London W3 (the “Property”) by virtue of a lease dated 17 June 1987 made between Dianna Margaret Campion and Sybil Audrey Martin (1) and Nicholas Hardy and Lisa Jane Croft (2) (the “Lease”). By clause 4(4) of the Lease the Respondent covenanted to pay to the Lessor the Interim Charge and the Service Charge at the times and in the manner provided in the Fifth Schedule. It is not disputed by the Respondent that the service charges claimed by the Applicant properly fall within clause 4(4) of the Lease. Clause 1 (6) of the Lease provides that each service charge year shall commence on the 1 January of each year.

3. Directions were issued by the Tribunal on 23 August 2006. In accordance with those directions bundles were lodged by both parties in advance of the hearing.

4. The hearing in this matter took place on 2 November 2006. Following the hearing the Tribunal reconvened on 1 December 2006 to make its decision. Following the hearing the Tribunal also requested further documentation from the parties, namely a complete copy of the Lease. This was not received by the Chairman of the Tribunal until 20 January 2007, hence the delay in issuing this decision to the parties.

## **Hearing**

5. As referred to above the hearing in this matter took place on 2 November 2006. The Tribunal did not inspect the Property. Miss L Scott of Basicland Registrars Ltd (“Basicland”) appeared for the Applicant and the Respondent, Mr Hardy appeared in person.

6. At the commencement of the hearing the Tribunal asked Miss Scott to clarify the actual amounts claimed at they had been unable to reconcile the sums claimed as set out in the Claim Form at pages 45 to 48 of the Applicant's bundle with the Accounts Analysis and Tenant Statements included in the bundle. Following an adjournment Miss Scott clarified the amount claimed as £2,070.83 as set out below:

Service Charge Year	Item	Amount
<b>2001</b>	<b>O/s service charge</b>	<b>£76.24</b>
<b>2002</b>	<b>O/s service charge</b>	<b>£135.25</b>
		<b>£240.72</b>
<b>2002</b>	<b>Bounced cheque fee</b>	<b>£35.25</b>
<b>2003</b>	<b>O/s service charge</b>	<b>£275.94</b>
		<b>£275.94</b>
		<b>£3.86</b>
<b>2004</b>	<b>O/s service charge</b>	<b>£363.88</b>
		<b>£363.88</b>
		<b><u>£443.44</u></b>
	<b><u>Total Claimed</u></b>	<b><u>£2.070.83</u></b>

7. The Tribunal was taken by Miss Scott through each of the sums claimed above in turn by reference to the Accounts Analysis contained in the Applicant's bundle. The sum of £64.63 originally claimed in the proceedings was withdrawn as the Applicant was unable to support this figure in the Accounts Analysis and therefore does not appear above.

8. The Respondent's case was that he did not dispute his liability to pay the sums claimed but rather disputed the Applicant's allocation of payments made by him against sums due pursuant to the Lease. His claimed that he had made two payments to the Applicant in 2003 in the sum of £653.52 and £1,828.50 respectively. Put simply it was his case that had the Applicant

properly applied these payments as instructed the sums claimed in the proceedings and before the Tribunal today had in fact been paid.

9. By way of background the Tribunal heard that there was a dispute between the parties as to the cost of some external repair and redecoration works (the “External Works”) which commenced at 69 Grafton Road in 2003. The final invoiced sum in respect of these works was £5,260 plus VAT, such cost being shared between the four leaseholders at 69 Grafton Road. It was the Respondent’s case that the Applicant had chosen to ignore his instructions as to the allocation of his payments which meant that the disputed sum in respect of the External Works had been settled but a balance left outstanding in respect of the service charges before the Tribunal today. It was his case that if his instructions as to allocation had been followed the service charges which were the subject of this dispute would not be outstanding but rather a proportion of the sum claimed by the Applicant in respect of the disputed External Works would remain due. It was not disputed by the Applicant that the two payments had been made by the Respondent and the Tribunal therefore heard evidence on the circumstances surrounding the payments from the parties as set out below.

**Payment of £653.52**

10. Mr Hardy gave evidence that under cover of the letter at page 100 of the Applicant’s bundle he made a payment of £653.52 on 20 November 2002. Mr Hardy referred the Tribunal to the items against which he instructed this cheque be paid as set out in the letter at page 100 of the Applicant’s bundle as set out below:

<b>Date</b>	<b>Item</b>	<b>Amount</b>
2001	Balancing Charge	£232.02
01/01/02	Service charge in advance	£135.74
24/06/02	Service charge in advance	£135.74
01/07/02	Ground rent	<u>£150.00</u>
	<b>Total paid</b>	<b>£653.52</b>

11. However this cheque was returned marked “refer to drawer”. Mr Hardy then gave evidence that this letter was resent on 10 March 2003 and another cheque in the same amount of £653.52 was included. Some confusion arose however as the Applicant’s accounts showed the cheque to be credited on 18 February 2003. Mr Hardy then gave evidence that he may have been confused as to dates and that the cheque must have been resent in February 2003 but that he was sure that the cheque was resent with the covering letter at page 100.

12. More confusion arose however as it was noted that the letter at page 100 although dated 10 March 2003 had been manually amended to be dated “20/11/03”. Mr Hardy explained that his computer had an automatic dating facility and that whenever he accessed this letter it would automatically be redated to that date. He thought it was likely that it has been redated to 10 March 2003 as Mr Hardy had written to Basicland again on that date and may have referenced the letter at page 100. Mr Hardy also gave evidence that his manual annotation of “20/11/03” on the letter dated 10 March 2003 had been to illustrate the original date upon which he had sent the letter.

13. In response Miss Scott gave evidence that it was the Applicant’s policy to allocate cheques received in accordance with the instructions given by the payee. However if no instructions were received the cheque would be allocated against the oldest arrears on account first. Her evidence was that Basicland had received the cheque when it was sent for the first time in November and referred the Tribunal to a letter at page 98 of the Applicant’s bundle in which reference was made to receipt of a letter from Mr Hardy dated 25 November 2002 together with a cheque in the sum of £653.52. However she had no record on file of any subsequent letter being received when a further cheque in the same amount was resubmitted in or around mid February 2002 and as a result the cheque had not been allocated as per the instructions set out in Mr Hardy’s letter in November. Instead the cheque was allocated against the arrears on account of service charges and the External Works.

### **Decision in relation to the cheque in the sum of £653.52**

14. In relation to the payment made in the sum of £653.52 the Tribunal accepted that Mr Hardy’s intention had been that the cheque be allocated against the specific sums due set out in paragraph 9 above. However it was not clear whether this cheque had been accompanied by any covering letter

at all when resubmitted. Mr Hardy was unable to point the Tribunal to a copy of the letter which accompanied the cheque when resent in February and indeed gave conflicting evidence as to the date upon which the cheque was resent. Miss Scott's evidence was she had no correspondence on file to indicate when the second cheque had been received. From the copy letter at page 98 of the Applicant's bundle it is clear that when the first cheque (which was later returned unpaid) was received, the Applicant did in fact allocate the payments as instructed in the letter at page 98. However this cheque was returned marked "refer to drawer" and another cheque not resent to Basicland for a period of almost 3 months. The Tribunal found that there was no evidence that the cheque was resent with the covering letter as submitted by the Respondent and that it was unreasonable to expect a busy accounts department to make any connection between a cheque received in February 2003 with instructions set out in a letter received almost 3 months earlier. Accordingly, the Tribunal found that without clear instructions to the contrary being given upon submission of the cheque the Applicant was entitled to allocate the payments as it did.

**Payment of £1,828.50**

15. The second disputed payment related to a payment made by Mr Hardy in the sum of £1,828.50. The Tribunal was referred to a letter dated 7 May 2003 at page 8 of the Respondent's bundle from the Respondent to Basicland enclosing the cheque. Mr Hardy submitted that clear instructions were given as to how this sum should be allocated as set out below:

<b>Date</b>	<b>Item</b>	<b>Amount</b>
01/01/01	Balancing Charge	£240.72
09/12/02	Bounced cheque fee	£35.25
24/06/03	Ground rent	£150.00
01/01/03	Service Charge	£275.94
07/05/03	Building Work Contribution	<u>£1,123.50</u>
	Total paid	£1,825.50

16. However as could be seen from the correspondence at pages 11 and 12 of the Respondent's bundle the letter of 7 May 2003 was not received by Basicland and by cover of a letter dated 20 June 2003 at page 13 of the bundle a cheque in this amount was resubmitted. It was Mr Hardy's evidence that this letter enclosed a copy of his earlier letter of 7 May 2003 which provided instructions as to how the sum should be allocated.

17. In response Miss Scott gave evidence that the Respondent's letter of 20 June 2003 was not accompanied by a copy of his letter of 7 May 2003 and that, accordingly, the cheque had been allocated as against the earliest arrears as was their usual practice. The effect of this was that the sum due in respect of the External Works was paid in full leaving the sums claimed in this application due. She referred the Tribunal to Mr Hardy's letter of 29 July 2003 at page 16 of his bundle which encloses a copy of the 7 May 2003 letter which she said suggested a copy had not been sent with the letter of 20 June 2003. She also referred the Tribunal to the letter of 20 June 2003 in pointing out that no reference was made in that letter to a copy of the letter of 7 May 2003 being enclosed and indeed the letter requested an acknowledgment of "this letter" only rather than letters plural.

18. Miss Scott also gave evidence that there was no "conspiracy" against Mr Hardy to ignore his instructions as to allocation but rather in the absence of clear instructions to the contrary a busy accounts department will simply apply payments received against the oldest arrears. She also submitted that even if the Tribunal accepted that Mr Hardy had give clear instructions as to allocation which had been received by Basicland this would still leave £1,306.93 of the total sum of £2,070.83 claimed before the Tribunal today outstanding. This was not disputed by Mr Hardy.

### **Decision as to the cheque in the sum of £1,828.50**

19. The Tribunal found that it was clear that Mr Hardy had intended that the cheque first sent under cover of the letter dated 7 May 2003 be allocated as per his instructions against the specific sums set out in paragraph 14 above. However on the evidence before it the Tribunal found that there was no evidence that Basicland had received a copy of the letter of 7 May 2003 when the cheque was resubmitted on 20 June 2003 and that in the circumstances the Applicant was entitled to apply the cheque as it did.

20. Accordingly the Tribunal finds that the amounts claimed in the sum of £2,070.83 are due.

21. It was clear to the Tribunal that the External Works commenced in 2003 remain a real issue between the parties. However as they were not part of the sums claimed by the Applicant the Tribunal was not of course able to consider the liability and/or reasonableness of those sums. The Respondent's proper course to challenge the liability and reasonableness of these works would be an application to the Leasehold Valuation Tribunal as the Tribunal is able to consider service charges which have been paid.

22. The Respondent made an application under Section 20C of the Act to limit the landlord's costs in the proceedings. The Tribunal have found that the sums claimed in the proceedings are properly due. However the Tribunal has noted that the Applicant failed to set out the sums claimed clearly in its initial claim before the Barnet County Court and in its Statement of Case before the Tribunal. On the day of the hearing the Applicant had to be given a one hour adjournment to enable it to reconcile the sums claimed with its accounts. Had the Applicant carried out this reconciliation and provided it to the Respondent at an earlier date the need for the hearing may have been avoided. Accordingly the Tribunal finds that if the Lease permits the Applicant to recover its costs the Applicant should be limited in its recovery to 50% of those costs.

**CHAIRMAN**



**DATE**

20 January 2007 .