

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

**DECISION ON THE APPLICATION OF THE APPLICANT UNDER Section 27A  
LANDLORD AND TENANT ACT 1985**

**Property** 96 Burnt Oak Broadway, Edgware Middlesex HA80BE

**Applicant/**

**Landlord** London Borough of Barnet

**Respondents/** Mr. R D Patel & Mrs. M R Patel

**Tenant**

**Tribunal:** Ms. M Daley (Chair)

Mr. T Sennett MA FCIEH

Mrs. L Walter (MA)

**Appearances**

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Ms. J Lamb (representing the London Borough of Barnet Mr. B and Mr. V Patel  
(Representing Mr. R D & Mrs. M R Patel)

**Date of Hearing** 19<sup>th</sup> April 2007

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## **1. The Application**

The Applicant seeks a determination of the Respondents' liability to pay service charges for the following years:-

- (i) 2001/02-£ 686.97
- (ii) 2002/03-£ 340.42
- (iii) 2003/04-£651.10
- (iv) 2004/05-£664.87
- (v) In August 2006 the Applicant issued proceedings in the Barnet County Court for service charges of £2,897.07, which the Applicant claimed as outstanding for the above period. The Respondents put in a Defence to this claim, which denied liability for the amount outstanding, although The Respondents admitted the sum of £1391.39.
- (vi) On 4.January 2007 the Barnet County Court gave judgment on the sum admitted and transferred the outstanding claim to the Tribunal for the Tribunal to determine the payability of the Service charges and the amount outstanding.
- (vii) An oral pre-trial review was held on 7.February 2007. The Applicant was represented by Ms Jack ,counsel and the Respondents were Represented by their sons Mr. B and Mr. V Patel

The Tribunal identified the following issues to be determined:-

1. The reasonableness of the service charges for the years 2001-2005 and the liability of the Respondents to pay the arrears.
2. The Directions required that the Respondents by the 14 February 2007 write to the Tribunal and the Applicant and explain why the Respondents were not personally conducting the proceedings, and providing confirmation of their authority to conduct the proceedings.
3. The Applicant was required by the 28 February 2007 to serve and file a brief written explanation of the service charges claimed in these proceedings; The Applicant was required to serve on the Respondents any documents which are relevant or relied upon in support of the amount claimed.

4. The Parties were required to provide each other with copies of any relevant documents on which they wished to rely at the full hearing before 20<sup>th</sup> December 2006.

## **2. Documents Received**

- (i) Applicants Bundle of Documents
- (ii) Letter from Ms J Wallace to the Tribunal dated 21.4.07
- (iii) Letter from Mr. Patel dated 30.4.07 in reply

## **3. The Law**

### **Section 19 Landlord and Tenant Act 1985**

#### **Limitation of service charges: reasonableness.**

1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

(3) An agreement by the tenant of a flat (other than an arbitration agreement within the meaning of section 32 of the Arbitration Act 1950 is void in so far as it purports to provide for a determination in a particular manner, or on particular evidence, of any question—

(a) whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred

(b) whether services or works for which costs were incurred are of a reasonable standard, or

(c) Whether an amount payable before costs are incurred is reasonable.

Section 27A Landlord and Tenant Act 1985

(i) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable.

#### **4. Description of the Property**

The Subject premises are a self-contained flat situated within a purpose built mixed use building on three floors and comprising commercial offices under the control of the landlord that comprise the whole of the ground floor, including a rear single storey extension and two flats on each of the first and second floor, including a rear single storey extension and two flats on each of the first and second floor with separate and exclusive access from the side of the building..

#### **5. The Lease**

The relevant provisions of the lease are as follows:-

1. (iii) ... Yielding and paying therefore during the said term the yearly rent of Ten pounds and Service Charges hereinafter mentioned such rent and service charges to be paid by equal quarterly payments in advance on 1st April 1<sup>st</sup> July 1<sup>st</sup> October and 1<sup>st</sup> January in every year each of which dates is hereinafter referred to as a payment date....

2. (ii) To pay without any deduction whatsoever the corporation's expenses and outgoings as set out in the third schedule hereto (hereinafter together called "the Service Charges") at the times and in manner aforesaid but subject to the terms and provisions set out in the fourth Schedule hereto ....

(xvii) To pay to the corporation on demand all reasonable cost charges and expenses (including legal costs and surveyors' fees) which may be incurred by the corporation or otherwise become payable by the corporation under or in contemplation of any

proceedings in respect of the flat under section 146 of the Law of property Act 1925 or in the preparation and service of a notice there under notwithstanding that forfeiture may be avoided otherwise than by relief granted by the court.

THE THIRD SCHEDULE above referred to  
THE CORPORATION 'S EXPENSES AND OUTGOINGS OF  
WHICH THE LESSEE IS TO PAY A PROPORTIONATE PART  
BY WAY OF SERVICE CHARGES

As to the block in which the flat is situated (save as otherwise appears in paragraph 2& 3 below)

All costs and charges and expenses incurred or expended or estimated to be incurred or expended by the Corporation (whether in respect of current or future years) in or about the provision of any service or the carrying out of any maintenance repairs and renewals reinstatements rebuilding and cleaning and decoration to or in relation to the Block .....

The Fourth Schedule

Other terms and provisions relating to services charges

1. Subject to the provisions of paragraph 2 of this schedule the amount of the Service Charges payable by the Lessee shall be the total of:-
  - (i) 25 per centum of the estimated cost and expenses to be incurred by the Corporation under part 2 of Section A of the Third Schedule
  - (ii) 25 per centum of the estimated cost and expenses to be incurred by the Corporation under part 2 of the section A of the Third Schedule
  - (iii) A fair and proper proportion of the estimated costs and expense to be incurred by the Corporation under part 3 of section A of the Third Schedule.

## **5. The Hearing**

### **(i) The Applicant's case**

Ms Lamb submitted on behalf of the Applicant that service charges had been raised in accordance with the lease and that the Applicant had responded to each issue that had been raised on the Respondent's behalf. The premises was situated in a small block of 4 flats, there was a local authority office below, there were two doors which served the Tenants of the block and the estate was defined in the lease. At the beginning of the financial year estimates of expenditure were sent out to the Tenants. The estimates are all gone through by repairs and maintenance and by the home ownership team.

Ms Wallace from Barnet Homes did not have details of actual invoices or bills such as the Electricity bill for the block but were these amounts were demanded, they would be based on the bills that had been sent to the London Borough of Barnet for payment. Copies of the meter readings had been supplied to the Respondents.

Insofar as the Respondents complained that a payment that he had made of £500 on 6<sup>th</sup> February 2006 was not reflected in the credits to the Respondents, this was because the details of charges only went up to December 2005 and credit would be given for this amount once a determination of what was payable had been made.

The Respondents had asked for details of the insurance paid by the Applicant. Ms Wallace had asked the Applicant local authority's insurance section to provide this information, unfortunately this had not been provided to her by the hearing date, as a result no further information was available about these figures. She could not assist as to the level of cover or excesses to the policy.

The Respondents had set out in a letter dated, 19.3.07 (their response to the claim) found at section 2 of the bundle paragraph 8, which stated that he considered that certain estate charges had been wrongly attributed to the block, as the block had no lift or playing area.

Ms Wallace stated that credits had been made in relation to these items. The Respondents had also queried a charge of £500, which Ms Lamb asserted was payable. The Tribunal asked for details of what this item of work related to. The Tribunal was informed that it was in relation to a feasibility report which had been commissioned concerning the building.

It was also asserted on the Applicant's behalf, that whilst items such as changes to the door lock were queried by the Respondents, this work would not have been carried out if it was not necessary. The Applicant also reiterated that service charges were due for each of these disputed items.

The Applicants considered the management charges to be justified, and stated that the Respondents should explain why they were unhappy with these charges. Ms Wallace stated that the charges were a percentage based on what the authority were allowed to charge, linked to the expenditure on the block, and that she did not personally work out the charges. An example of how the charges were calculated was given in a letter written to the Respondents on 12.6.03 by Sinead Clifford at section 5 of the bundle. This letter stated at paragraph 4-:

*"The management fee is currently being reviewed in 2006/2007 as the last review was completed in 1996. The formula used since 1<sup>st</sup> April 1998 is as follows: Total contribution towards the block & estate costs minus £50.00 multiplied by 23.7% plus the minimum charge equals the management cost..."* This was the only explanation Ms Wallace had for the calculations.

Under the service charge amount for 2001/02 there were payments that related to damp treated in the block. The Applicant's representative stated that no further charges would be made for re-occurring treatment in relation to the damp. Of amount due under invoice X732926T02, (2001/02) the Applicant stated that this had been re-credited to the Respondents, This was also the case for amounts relating to invoice X749885R02 and X824582M03 (2003/04) and X838043N04 (2004/2005) . The Tribunal asked the Respondents' representative to show the Tribunal the amounts that had been re-credited and how these were shown in relation to the demand and the Tribunal was shown how the amounts were

credited. Of the charges due under the invoiced service charges dated 2003/04, the Applicant in their statement of case detailed that an amount invoiced was for a block cost which was for boarding up an electric intake cupboard. Under the service charges for 2004/05 three items related to a defective lock to the main entrance door (X851404P04, X866495D04, X878612A04) and one invoice to a blocked gulley. These were considered by the Applicants representative to be a valid charge. There were charges in relation to the following invoices.

The Respondents in their letter in response to the claim had queried the charges that related to the Caretaker. The Applicant's representative informed the Tribunal that there was a mobile caretaker who worked on the estate. This was the reason that the Respondents had been invoiced in relation to these items.

**(ii) The Respondents case**

The Respondents' representatives stated that The Respondents were willing to pay the service charges but considered that the charges were not in accordance with the terms of the lease, and that they had been charged for services which were not provided. There was one occasion where a charge had been made and although the Respondents had queried the charge it had not been settled until the Respondents had involved their MP.

They stated that the premises were above offices which belonged to the Applicant which were now empty; it was difficult to establish the cost that had been incurred to the office premises or whether the total cost for the building was only paid by the leaseholders. For example the Respondents considered the Electricity charges excessive, in that, the electricity charges for the block for 2001/02 were £947.45, in 2002/03 the charges were £373.27. In 2003/04 £182.57, in 2004/05 £606.39 and in 2005/06 the sum was £192.27.

The Respondents asserted that there must have been an original electricity bill with detailed information, as the Applicant would have seen it, in order to claim

the amounts sought. Given this, the Respondents representative queried why the Applicant was unable to produce it on request.

The Respondents' representative in their letter in response to the claim showed examples of invoiced amounts which they say were not applicable to the premises; for example in 2001/2002 charges for items X639358G01 to X629855D01 (2004/2005), identified under point 11.3 of the letter the Respondents claimed that the following invoices X749885R02 to X824582M03 were not applicable to the Respondents' estate. The Respondents also raised detail queries concerning the applicability of charges relating to 2004/2005 (invoices X851404PO4- to X878612A04 and 2005/2006 (invoices X938124Po5-X928312A05)

The Respondents' Representatives also informed the tribunal that on occasions where re-credits had been agreed, no confirmation of the re-credit was received. One example was in relation to scaffolding, where a credit had been agreed but there was no proof that this had been given, and was not included in the amount claimed in these proceedings.

The Two major items for all of the years in question were the Electricity bill and the Management Charges.

#### The Electricity

The Respondents' Representatives were of the view that the amount claimed by way of service charges was excessive and had worked out the figure that they thought should be charged in paragraph 14.2 of their reply which stated "We provide the following calculation to support our claim for the communal lighting. There are approximately 20 lights in the block- 8 watts each multiplier of two and one sodium light 70 watts=20x2x8=320 watts. Therefore for 320x9hrx365 days=1,051,200 watts per year divide 1000=1051.2kw hr per year x4.75p per unit =£49.93@ economy 7 and sodium light 70 watts x 9hrx365=229950 watts per year divide 1000=229.9kw hr per year x4.75p per unit=£10.92. 6hrsx2x8x365=35,040watts per year divide by 1000=35kw hr per yearx17.5p=£6.13... 6hrx70x365=153300watts per year divide by1000=153.3kw

*hr per year x 17.5p per = £6.13. 6hr x 70 x 365 = 153300 watts per year divide by 1000 = 153.3 kW hr per year 17.5p per unit = £26.83 = £93 using the total electricity price the total charge for communal lighting would be £49.93 + £10.92 + £6.13 + £26.83 = £93.27 per year for the whole block at current price.*

The Respondents also queried the Management Charges, which they stated were not stipulated under the lease and had not been set out in the indicative charges prior to purchase. They also considered that the charges were not due as the block was not well managed and there was little evidence of the mobile caretaker, and they referred to photographs, which were included in the bundle which showed rubbish in the common parts.

It was stated on behalf of The Respondents that The Respondents were not unwilling to pay charges which were due, but they were unhappy with the lack of information. The Respondents' representative also felt that they had only received information after prolonged querying rather than as part of the necessary information supplied about service charges due.

(iii) The Tribunal noted that concessions had been made by the Applicant's representative in the course of the hearing and also that the Respondents' Representative was not querying the insurance element of the charges (although they were unhappy about the level of information on what the policy covered). The Tribunal asked for details of what was now being claimed. The Applicant informed the Tribunal, that they had calculated that the following sums were now due-:

Original claim

£2897.07 less £500 for a sum which was paid (but no shown on the statements).

£2397.07 less £207.90 as a credit for the scaffolding

£2189.17 less £1310.24, the sum admitted by the Respondents (at the county court)

The outstanding service charges claimed is £878.93

## 6. Decision of the Tribunal

The Tribunal noted that the Directions, given pursuant to the pre-trial review on the 7<sup>th</sup> February 2007, required the applicants to-: “...*serve on the Respondents any documents which are relevant or relied upon in support of the amount claimed.*” The Tribunal noted that whilst a bundle of documents had been prepared, that included a statement in support of the claimants claim, correspondence between the parties, the legal documents in support of the claim (brought by the Applicants at the Barnet County court), together with break downs of Actual charges for the financial years in question, this was not in itself, proof that the amounts claimed as expenditure had been incurred neither was it sufficiently detailed to enable the Tribunal to see why or how the expenditure had been incurred.

The Tribunal considered that there was an onus on the Applicant to prove the matters which were asserted in their claim. The Tribunal decided that the Applicant was not able to substantiate the amounts claimed, to the satisfaction of the Tribunal. Accordingly the Tribunal had to decide the reasonableness of the charges (in the absence of details such as invoices and records of why items such as management charges had been charged at the rates set out in the demand). The Tribunal had to determine (a) whether the cost was a *Relevant cost* within the meaning of section 19 (1) of the Landlord and Tenant Act. (A Relevant cost being one which was payable in accordance with the terms of the lease, or relevant, by reason that the Applicant could demonstrate that the cost had been incurred in relation to the Tenants premise.) and (b) *the extent that they, the cost were reasonably incurred.*

The Tribunal in reaching its decision, considered the total service charges for each of the periods demanded, and the extent to which the amount of service charges

could be verified as a relevant cost and whether such cost had been reasonably incurred.

The Tribunal accordingly finds that the amounts set out below were relevant costs which were reasonably incurred for each of the periods -:

<b>The year</b>	<b>Service charges due</b>	<b>Total</b>
2000/01	£162.62	
2001/02	£318.49	
2002/03	£250.42	
2003/04	£218.81	
2004/05	£397.84	£1348.18

The Tribunal reached its determination for the following reasons:-

The Tribunal found that the charges, for Electricity could not be justified in the absence of detailed bills. The amount charged was considered excessive given the current pricing and the size of the block (a small block of four flats) and the fact that the sum due was for lighting in the common parts and the exterior of the building. No information had been given on the apportioned of electricity charges between the commercial user and the residential common parts of the premises. . The Tribunal considered that charges such as £947.45 could not be justified. There was also an obligation on the Applicant as Landlord to investigate such an anomaly. The Tribunal decided to adopt the calculations of the Respondent as a

starting point to be used to calculate the amount due, for payment of electricity under the service charge.

The Tribunal also found that the management charges for the block could not be justified in accordance with the terms of the lease. The explanation for the charge was extremely complicated and difficult to follow. The Tribunal also accepted that the standard of management was poor, by reference to the standard of care of the common parts, and also in respect of the level of information provided for tenants on how the charges had been incurred. The Tribunal also found that the level of information on insurance for the building was not adequate however both parties were prepared to agree the sum claimed for insurance.

For 2000/01

The Tribunal found that £99 was due for electricity and that the Respondents share was £24.75

The amount due for Insurance was £112.87.

The Tribunal also considered the sum of £25 (given as indicative charges) was reasonable for the management charges.

2001/02

The Tribunal considered that the charge for electricity was excessive and considered that the charge at its highest should be no more than £49.50

The amount due for Insurance was £116.55.

The Tribunal also considered the sum of £25 as reasonable for the management charges.

The Tribunal had no evidence of why the feasibility report was undertaken or why it cost £500. Given this the Tribunal considered that it should not form part of the charges for the year 2001/02 however, block repairs apportioned at £127.44 were considered reasonable.

For 2002/03

The Tribunal considered the charge for electricity at its highest should be no more than £52

The amount due for Insurance was £123.90

£1810.24 (including the £500 which has not been shown on the Respondents' service charge account). The Applicant have also by letter dated 21.4.07 sent to the Tribunal after the hearing had a credit of £257.17 for scaffolding were it was previous agreed that they should not be charged for this item.

The Tribunal determined that the amount due for the period 2000-2005 was £1348.18. The sum of £1391.39 was admitted by the Respondents.

The Tribunal finds that the balance of £878.93 was not reasonably due, and therefore dismisses the Applicants claim.

#### **7. The Respondent's application under section 20 of the Landlord and Tenant Act 1985**

The Applicant and Respondent were asked to address the Tribunal on the issue of costs; The Applicant considered that they were entitled to their costs by virtue of the lease. They also considered that legal costs had been incurred in attempting to recover the service charges.

The Respondents by their representatives criticise the Applicant and state that they would have paid if the information to support the demand had been provided and accordingly make an application under section 20c of the Landlord and Tenant Act.

Tribunal determined that the terms of the lease did not provide for the legal cost of the proceedings to be charged by way of service charge and that the onus for proving that the service charges were due was on the Applicant. The Respondent had withheld payment of the service charges because of legitimate concerns about the reasonableness of the service charges.

The Tribunal, in deciding the issue of cost considered section 20c of the Landlord and Tenant Act 1985, in particular subsection 3 which stated "*the court or Tribunal to which this application is made may make such order on the application as it considers just and equitable in the circumstances*"

In considering this question of costs, the Tribunal, finds that in the circumstances, in which this claim was brought, and the conduct of both parties. And in

particular, the findings of the Tribunal, the Tribunal has determined, it is just and equitable, to grant to the Respondents the order sought under section 20(C)

Signed-----

Chair

Dated-----