

## Leasehold Valuation Tribunal: corrected decision

### Landlord and Tenant Act 1985 section 27A

#### Address of Premises

Ground Floor Flat,  
108 Fleet Road,  
London NW3 2QX

#### The Committee members were

Mr Adrian Jack  
Mr D Banfield FRICS  
Mrs R Turner JP

The Landlord 108 Fleet Road Ltd

The Tenant: Ms Georgina Lynette Teimourian

1. By application dated 29<sup>th</sup> May 2008 the landlord sought a determination of the sums (if any) owed by the tenant in respect of her flat.
2. The property has been converted into three flats. The landlord company is owned by the tenants of three flats. Ms Teimourian holds the long lease of the ground floor flat. Ms Nakouzi holds the long lease of the first floor flat and Ms Pratt of the second floor flat. Ms Nakouzi and Ms Pratt are the directors of the landlord, because Ms Teimourian declines to be a director.
3. The amounts claimed in respect of the block were as follows (the tenant's contribution being one third, as set out in the last column):

2005	£1,305.00	£435.00
2006	2,913.00	971.00
2007	18,014.00	6,005.00
2008 Interim service charge	2,400.00	800.00

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£8,211.00

The following sums were also claimed in respect of building insurance:

2005	£138.60
2006	142.54
2007	142.54
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	£423.68

In addition, as a discrete issue, the Tribunal is asked to determine whether the tenant is liable to contribute one third of the cost of the building insurance under a policy with the Norwich Union from 31<sup>st</sup> July 2007 to 30<sup>th</sup> July 2008. The tenant's one third share is said to be £142.54.

#### **The law**

4. Section 27A of the Landlord and Tenant Act 1985 provides that an application may be made to the Tribunal "for a determination whether a service charge is payable and, if it is" by whom, to whom, when, how and in what sum.
5. Section 19(1) of that Act provides that "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.."
6. Section 20 of that Act provides:
  - (1) Where this section applies to any qualifying works... the relevant contributions of tenants are limited [to £250] unless the consultation requirements have been either:
    - complied with in relation to the works..., or
    - dispensed with in relation to the works... by (or on appeal from) a leasehold valuation tribunal."
  - (2) In this section 'relevant contribution', in relation to a tenant and any works... is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works..."
7. The consultation requirements are set out in Part 2 of Schedule 4 to the Service Charges (Consultation Requirement) (England) Regulations 2003. Regulation 8 provides for the landlord to serve on tenants an initial notice

which describes in general terms the works proposed to be carried out, and invite within 30 days the making of observations and the nomination by the tenants of a contractor to tender for the work. This we shall describe as the stage one consultation.

8. Under regulation 10 the landlord is obliged to have regard to any observations made by the tenants.
9. Regulation 11 imposes an obligation on the landlord to obtain a quotation from any contractor nominated by the tenants and for the landlord to obtain at least one quotation from an independent contractor. Regulation 11(5)(b) provides that the landlord shall “supply free of charge, a statement (‘the paragraph (b) statement’) setting out:
  - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
  - (ii) where the landlord has received observations to which... he is required to have regards, a summary of the observations and his response to them.”The landlord is also obliged to make all of the estimates available for inspection and to invite observations from the tenants. This, we shall describe as the stage two consultation.
10. Regulation 12 imposes an obligation on the landlord to have regard to any observations made as part of the stage two consultation. Regulation 13 provides for the landlord to inform the tenants once a contract for the works has been entered.

### **The lease and background**

11. The tenant holds her flat under a lease made 9<sup>th</sup> February 1977 for a term of 99 years from Michaelmas 1976. The lease provides for the tenant to pay “by way of further or additional rent from time to time an amount equal to one third of the amount incurred by the Lessor in the Insurance of the Building.” By clause 4(c) the tenant covenanted to pay the interim service charge and the final service charge at the times and in the manner provided in the Fifth Schedule to the lease. The Fifth Schedule provided that the service charge year was to run from Christmas to 24<sup>th</sup> December. The tenant was obliged to pay as an interim charge on account of service charges, “such sum... as the Lessor or his managing agent shall specify at their discretion to be a fair and reasonable interim payment.” There is provision for the making of a certificate of expenditure at the end of the service charge year and for adjustment of the amounts paid by way of interim charge. The landlord was under the usual obligations to keep the building in good repair and condition.

12. A peculiarity of this case is that the original landlord disappeared. The current landlord was incorporated by the then tenants in late 2001 and enfranchised the freehold. Up until the enfranchisement, therefore, repairs to the property were carried out on an *ad hoc* basis by the three tenants. Ms Teimourian held her lease prior to the enfranchisement, whereas Ms Nakouzi and Ms Pratt purchased their leases after the enfranchisement. All the tenants lease their respective flats out. None are owner-occupiers.

### **Major works**

13. The biggest issue between the parties was the costs associated with major works to the roof. The background to this is that in 2001, before Ms Pratt purchased her flat, the then tenant of the second floor flat, Mr Meeking, instructed a firm called Hi-Tec Roofing Co to repair a leak in the roof. Despite its name, Hi-Tec seems to have been a small firm which was not registered for VAT. The main part of the work carried out by Hi-Tec was putting down a single layer of bitumen which was then painted over with a solar reflecting finish. Hi-Tec gave Mr Meeking a ten year guarantee of the work.
14. Notwithstanding this repair, further problems of leaks occurred in 2004, including both the roof and a leak from the cold water tank on the roof. Ms Nakouzi and Ms Pratt considered that the best way forward would be to obtain a survey,. However, since this would incur a cost for which there were no funds, they decided instead to ask a number of contractors to advise on what needed to be done. Three contractors (not including Hi-Tec) quoted for works. Ms Teimourian's position was that Hi-Tec should be called back to do the works under the terms of their guarantee. The directors did ask Hi-Tec to attend and Hi-Tec did so in September 2004. They quoted for the roof works but could not do works to the tank, because they were not plumbers.
15. A serious leak occurred from the cold water tank. This had two causes. Firstly the ball-cock needed replacement. Secondly the housing of the header tanks (which fed from the large cold water tank) was rotten. Emergency repairs were carried out by a firm of plumbers, AllClear at a cost of £125.
16. So far as Hi-Tec was concerned, Mr Nakouzi and Ms Pratt were not satisfied as to their proposals. The work required was, they thought, more

extensive that that which Hi-Tec had done initially. Moreover Mr Meeking had not assigned the benefit of the Hi-Tec guarantee either to Ms Pratt or to the freehold company.

17. Further discussions with Ms Teimourian did not result in any agreed route forward. In consequence the directors in 2005 instructed a firm of surveyors, Ringleys, to advise on what works needed to be done, of which Ms Teimourian's share of the cost of the survey was £254.66. Subsequently in 2006 they instructed Ringleys to draw up a specification of works at a further cost, Ms Teimourian's share being £293.66. Tenders were then sought on the basis of that specification and the works were allocated to the cheapest tender.
18. Throughout the directors served the relevant notices under section 20 of the Landlord and Tenant Act 1985 for the works. Ms Teimourian accepted that the proper consultation procedure was followed. Her view, however, was that the instruction of Ringleys and the subsequent tendering process was unnecessary, because, she considered, all relevant matters had been the subject of the informal consultation in 2004. Hi-Tec, she said, should have been called back to do the work.
19. The Tribunal disagrees. The guarantee which Hi-Tec gave was personal to Mr Meeking. In the absence of any assignment of it, neither Ms Pratt nor the freeholder could enforce it. Further the works which Hi-Tec had done in 2001 might reasonably be described as a "cheap job". It is likely that Mr Meeking wanted a short-term solution so that he could sell his flat, rather than a long-term solution.
20. Since the parties had failed to reach any agreement in 2004, it was in our judgment reasonable for the directors to seek professional advice from Ringleys and then act on that advice by having a proper specification drawn up and a proper tendering process carried out. Ringleys' fees were in our judgment reasonable. In the course of carrying out the works the contractor discovered a problem with stone lintels. A structural engineer was instructed to report on the problem at a cost of £350. This in our judgment was wholly reasonable and the cost was also reasonable.

#### **Solicitors' fees**

21. Ms Pratt herself had worked as a solicitor, but did not specialise in property law. In consequence she and Ms Nakouzi sought advice from Rooks Rider, solicitors, on the consultation requirements and on the

recovery of monies from Ms Teimourian. Ms Teimourian's share of these costs were £62.66 in 2005 and £559.33 in 2006. The costs in our judgment were reasonably incurred and are reasonable in amount. It was clear that matters were becoming contentious and it was very sensible for the directors to obtain independent legal advice.

#### **Accountancy fees**

22. The lease allows the freeholder to charge the costs of preparing service charge accounts. Ms Teimourian pointed out that the freehold company had passed a resolution dispensing with the requirement for audited accounts to be prepared. In our judgment, however, this does not result in a dispensation from the requirement that service charge accounts be prepared. Ms Teimourian's share of the cost was £117.66 in 2005 and 2006 and £156.66 in 2007. These amounts in our judgment are reasonable in amount and reasonably required.

#### **Building insurance**

23. Ms Teimourian did not dispute the building insurance premiums in each of the years in question. However, she explained that she had paid £55 to a plumber for emergency works at Christmas 2006 in circumstances where the whole block was without mains water. In our judgment this money was reasonably and necessarily expended in an emergency situation and the landlord should give Ms Teimourian credit for this sum.
24. The building insurance for the period 31<sup>st</sup> July 2008 to 30<sup>th</sup> July 2009 was not raised in the application to the Tribunal and is thus not before us, so we are unable to make any determination in respect of it. Ms Teimourian was unwilling to waive this point, so we make no determination.

#### **Damp proof course**

25. These works were carried out in November 2007 pursuant to the later consultation. Ms Teimourian suggested that the works should have been carried out earlier, but for the reasons set out above the landlord was acting reasonably in only starting works once the proper statutory procedures were followed. The amount is reasonable.

#### **Interim charge**

26. The lease permits interim service charges to be raised and the amount sought in 2008 (two tranches of £400 each) in our judgment is reasonable.

### **Conclusion**

27. Accordingly the Tribunal disallows nothing of the amounts sought against the tenant. She is, however, entitled to set off £55 against the amounts due. There is no provision in the lease for the payment of interest. In order to recover interest the landlord will have to issue County Court proceedings where interest can be claimed under section 69 of the County Courts Act 1984.

### **Costs**

28. The Tribunal has a discretion as to who should pay the fees payable to the Tribunal. In the current case the tenant has lost overwhelmingly. In our judgment she should reimburse to the landlord the application fee of £200 and the hearing fee of £150.
29. The landlord also asked for £500 costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 on the basis that the tenant had acted unreasonably in her conduct of the proceedings. The Tribunal agrees that the tenant acted unreasonably in failing to make any payments towards the service charges. However, no such objection can be made to her conduct of the litigation. In order to award costs under the 2002 Act a party's behaviour must reach a high threshold of unreasonableness. In our judgment, the tenant's behaviour does not reach this threshold. Accordingly we refuse any further order for costs.

### **DECISION**

- (a) None of the service charges or sums in respect of building insurance claimed by the landlord are disallowed, save that the tenant is entitled to offset £55 expenditure against the sums claimed.
- (b) The tenant shall pay the landlord £350 in respect of the fees paid by the landlord to the Tribunal.

Chairman: Adrian Jack

12<sup>th</sup> November 2008

This decision is corrected pursuant to regulation 18(7) of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003.

A handwritten signature in black ink that reads "Adrian Jack". The signature is written in a cursive, flowing style.

Chairman: Adrian Jack

4<sup>th</sup> December 2008

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20. Since the parties had failed to reach any agreement in 2004, it was in our judgment reasonable for the directors to seek professional advice from Ringleys and then act on that advice by having a proper specification drawn up and a proper tendering process carried out. Ringleys’ fees were in our judgment reasonable. In the course of carrying out the works the contractor discovered a problem with stone lintels. A structural engineer was instructed to report on the problem at a cost of £350. This in our judgment was wholly reasonable and the cost was also reasonable.

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21. Ms Pratt herself had worked as a solicitor, but did not specialise in property law. In consequence she and Ms Nakouzi sought advice from Rooks Rider, solicitors, on the consultation requirements and on the recovery of monies from Ms Teimourian. Ms Teimourian’s share of these costs were £62.66 in 2005 and £559.33 in 2006. The costs in our judgment were reasonably incurred and are reasonable in amount. It was clear that matters were becoming contentious and it was very sensible for the directors to obtain independent legal advice.

#### **Accountancy fees**

22. The lease allows the freeholder to charge the costs of preparing service charge accounts. Ms Teimourian pointed out that the freehold company

had passed a resolution dispensing with the requirement for audited accounts to be prepared. In our judgment, however, this does not result in a dispensation from the requirement that service charge accounts be prepared. Ms Teimourian's share of the cost was £117.66 in 2005 and 2006 and £156.66 in 2007. These amounts in our judgment are reasonable in amount and reasonably required.

### **Building insurance**

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24. The building insurance for the period 31<sup>st</sup> July 2008 to 30<sup>th</sup> July 2009 was not raised in the application to the Tribunal and is thus not before us, so we are unable to make any determination in respect of it. Ms Teimourian was unwilling to waive this point, so we make no determination.

### **Damp proof course**

25. These works were carried out in November 2007 pursuant to the later consultation. Ms Teimourian suggested that the works should have been carried out earlier, but for the reasons set out above the landlord was acting reasonably in only starting works once the proper statutory procedures were followed. The amount is reasonable.

### **Interim charge**

26. The lease permits interim service charges to be raised and the amount sought in 2008 (two tranches of £400 each) in our judgment is reasonable.

### **Conclusion**

27. Accordingly the Tribunal disallows nothing of the amounts sought against the tenant. She is, however, entitled to set off £55 against the amounts due. There is no provision in the lease for the payment of interest. In order to recover interest the landlord will have to issue County Court

proceedings where interest can be claimed under section 69 of the County Courts Act 1984.

### **Costs**

28. The Tribunal has a discretion as to who should pay the fees payable to the Tribunal. In the current case the tenant has lost overwhelmingly. In our judgment she should reimburse to the landlord the application fee of £200 and the hearing fee of £150.
29. The landlord also asked for £500 costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 on the basis that the tenant had acted unreasonably in her conduct of the proceedings. The Tribunal agrees that the tenant acted unreasonably in failing to make any payments towards the service charges. However, no such objection can be made to her conduct of the litigation. In order to award costs under the 2002 Act a party's behaviour must reach a high threshold of unreasonableness. In our judgment, the tenant's behaviour does not reach this threshold. Accordingly we refuse any further order for costs.

### **DECISION**

- (a) None of the service charges claimed by the landlord are disallowed, save that the tenant is entitled to offset £55 expenditure against the sums claimed.
- (b) The tenant shall pay the landlord £350 in respect of the fees paid by the landlord to the Tribunal.



Chairman: Adrian Jack

12<sup>th</sup> November 2008