



Residential  
Property  
TRIBUNAL SERVICE

**DIRECTIONS BY LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL**

**LANDLORD AND TENANT ACT 1985 Sections 27A & 20ZA**

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**LON/00AG/LSC/2009/0081**

**Property:** 113 Fordwych Road  
London  
NW2 3NJ

**Applicants:** (1) Mark & Gail Oxlade  
(2) Claire & Alex Kwiatkowski  
(3) Glynnis Joffe

**Respondent:** Antony and Penelope Struck

**Tribunal Members:** Mrs E Samupfonda  
Mr M Cairns  
Mrs S Justice

1. This is an application under S27A Landlord and Tenant Act 1985. The Applicants seek a determination as to the reasonableness of, and a declaration as to the Respondent's liability to pay, service charges. The three Applicants are freehold owners and manage the property. There is some dispute as to whether the Respondent is also a freeholder but that is not central to the matters that the Tribunal has been asked to determine.
2. A Pre-trial review was held on 17 March 2009 at which Directions for the conduct of this application were made.
3. The hearing of the application took place on 18 June 2009. Mr & Mrs Oxlade, Mrs Joffe and Mr & Mrs Kwiatkowski attended the hearing. The Respondent did not attend and was not represented. He submitted written responses to the application under section 27A of the Act, which were before the Tribunal. During the course of the hearing, the Applicants acknowledged that they were not familiar with the consultation requirements under section 20 of the Act. Given the implications for non-compliance, the Tribunal drew their attention to its powers to dispense with the requirements under section 20ZA. It decided that in the interest of justice it could not consider the Applicants' application under s20ZA in the absence of the Respondent. It therefore decided to invite the parties to make written representations on the question of dispensation under section 20ZA. The Tribunal went on to hear the application under s27A of the Act. It reconvened on 14<sup>th</sup> August to determine on the basis of written representations the application under section 20ZA.
4. In summary the Applicants seek to recover the sum of £1,893.85 from the Respondent for non-payment of service charges. They allege that the Respondent has a history of non-payment. Their claim is clearly set out behind Tab 4 of file number 1 of the papers that they submitted.
5. The Respondent has raised a number of issues concerning his obligations and the scope of his liabilities to contribute towards the service charge under the terms of the lease in respect of works to the common parts, in the light of the fact that he uses a separate side entrance. He particularly objected to contributing towards the decoration of the porch and front door. In determining this issue the Tribunal considered the terms of the lease for flat 1 dated 16 March 1984 as this was the only lease produced by the Applicants for the Respondent's flat 1.
6. The Tribunal was informed that the Applicants sought advice from the Leasehold Advisory Service, "Lease", on the question of the Respondent's liabilities. That advice was set out in the letter from Lease dated 4 August 2006, which was included in the bundle. In construing the terms of the lease, the Tribunal agreed with Lease. In particular the Tribunal considered clause 4(3)(iii) which provides that the landlord is obliged to; "keep the porch entrance hall staircases side

entrance and other parts of the building used in common cleaned and properly lighted and decorated every 3 years of the said term".

7. Further in the definition clause it grants the owner of flat 1 at clause 2(b) a "right of access thereto and use of entrance hall, passages, staircases and passages leading to the premises and any other part of the building used in common with the lessees of the other premises including the garden areas."

From this, the Tribunal concluded that the Respondent is liable to contribute to the reasonable service charge costs incurred in respect of all of the common parts irrespective of whether he actually make use of them himself. Therefore the costs incurred in respect of the porch ad door are payable in principle.

8. Having dealt with the question of liability, the Tribunal then went on to consider the question of whether the costs that have been incurred in each service charge year have been reasonably incurred as the Respondent is only liable to pay reasonable costs.
9. Turning to the years in question the Tribunal heard evidence from the Applicants as to how the costs were incurred in each year and considered the documentary evidence submitted by the parties.

The Tribunal examined the invoices and records provided in respect of each expenditure and reconciled these with the financial records in the bundle.

The amounts claimed by the Applicants in each year were as follows:-

Year Ending

31.01.05	£ 92.07
31.01.06	£ 81.09
31.01.07	£960.00
31.01.08	£960.00
31.01.09	£199.31 credit

The total amount claimed by the Applicants is £1,893.85. Having examined the figures, the Tribunal concluded that the costs incurred in respect of each service charge year in question were reasonably incurred and reasonable in amount and are therefore payable. The Applicants explained that the sum of £199.31 arises from the credit of £2100 attributed to the Respondent's account for the reasons set out

and explained behind Tab 4 at page 2 of file 1. The balance for that year only is a credit. The amounts for previous years are all debits.

10. The Tribunal's jurisdiction is limited to considering the reasonableness and/or liability to pay service charges as set out under S27A Landlord and Tenant Act 1985 for the service charge years in question, 19.1 2005 to 31.1 09 and also the current year end 2010.

**Section 18(1)** of the Act provides that, for the purposes of the relevant parts of the Act, "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.

**Section 19(1)** of the 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;

and the amount payable shall be limited accordingly.

**Section 19(2)** of the Act provides that, 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.

**Section 27A(1)** of the Act provides that that an application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to –

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

11. The Applicants informed the Tribunal that they have managed the property themselves since 1996. The Tribunal accepted their explanation for this as reasonable because they said that they were anxious to keep the costs down. They did not charge a management fee as they would be entitled so to do under the terms of the lease. The Tribunal noted that the Applicants did not provide audited accounts and did not have a separate bank account as the account is in the name of Mrs Oxlade. Whilst their efforts at managing the property are commendable, they are not professional managers and are therefore not conversant with management practices. The Tribunal was sufficiently concerned to draw their attention to the RICS code of management practice and recommended that they familiarise themselves with correct industry practices.

The Tribunal was able to make a determination as to the reasonableness of the costs incurred because the Applicants were able to demonstrate the audit trail that they followed although the accounts were not certified.

12. The Applicants were concerned that the Respondent is not contributing his share of the maintenance costs. Since 2005 he has made minimal contributions apart from the insurance cost which he has paid consistently. The Respondent's basis for challenging the service charges was his own erroneous interpretation of the lease. As stated above, the Tribunal finds that the Respondent is contractually obliged under the terms of the lease as specified above to contribute towards the costs incurred in maintaining the common parts. He is bound by the terms of the agreement that he signed and if he wishes to vary these terms that is a matter that can be determined under a separate application.

The appropriate method of challenging the reasonableness of service charges is to apply to a Leasehold Valuation Tribunal and not to simply withhold payment.

#### **Application under Section 20ZA of the Act**

13. The Tribunal convened on 14<sup>th</sup> August to consider the application under section 20ZA. It had before it the additional documents submitted by the parties namely the Applicants' representations dated 19<sup>th</sup> June and 4<sup>th</sup> July 2009 and the Respondent's dated 13<sup>th</sup> July 2009.

14. The Tribunal's jurisdiction in determining applications for dispensation with the consultation requirements is set out under section 20 of the Act.

Section 20(1) provides "Where section 20 applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either-

- (a) complied with in relation to the works or agreements, or
- (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

If the consultation requirements have been neither complied with nor dispensed with, then the recoverable costs are limited to a maximum of £250 from each service charge payer in the case of qualifying works. In this context, qualifying works are defined as "works on a building or any other premises."

Section 20ZA(1) provides "Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

The consultation steps that a landlord must undertake are set out in The Service Charges (Consultation Requirements) (England) Regulations 2003 (S.I 2003 NO. 1987) "the Consultation Regulation." As a public notice is not required in respect of the proposed works, Regulation 7(4) applies. This provides "where qualifying works are not the subject of a qualifying long term agreement to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA, as regards those works.....are those specified in Part 2 of Schedule 4."

15. The Applicants carried out renovation works in the service charge year 1<sup>st</sup> February 2008 to 31<sup>st</sup> January 2009. The works were carried out by a company known as K2 and cost £8,514.00 with individual contributions of £2019.19. Although the Respondent has objected to the application to dispense, the Tribunal noted from the volume of documents submitted that the Respondent was fully aware of these works. The basis of the Respondent's objections is not about the failure to consult regarding the external works but rather he reiterates his complaints about his liability to contribute to the decoration of the porch and front door which were the subject matters of the application under s27A of the Act.

16. Having considered the documents provided, the Tribunal is satisfied that it is reasonable to dispense with consultation requirements as the Respondent was fully aware of the proposed work.
  
17. The Tribunal considered Applicants' application for expenses. The Tribunal has limited power to award costs in the circumstances set out under Commonhold and Leasehold Reform Act 2002 Sch 12 paragraph 10(3). It may order that one party reimburses the fees paid by another under Regulation 9 of Leasehold Valuation Fees Regulation 2003. The Tribunal finds that the Applicants had no option but to bring this application in an effort to have matters resolved. There has been an on going long history of non payment which was unlikely to be resolved without the intervention of a third party such as this Tribunal. In the circumstances the Tribunal consider it just and reasonable to make an order that the Respondent reimburses the Applicants' hearing and application fees of £250.00. The Tribunal is not satisfied that the circumstances under which it can make an order for costs under Sch12 paragraph 10 have been made out and therefore it does not make any order for costs. In order to exercise its discretion under section 20C of the Act, the Tribunal is of the view that the lease must contain an express term to that effect. The lease for flat 1 does not appear to allow the Applicants to recover the cost of these proceedings through the service charge account.

**Chairman:** E Samupfonda

**Date:** ...25. August 2009