



**Leasehold Valuation Tribunal
London Rent Assessment Panel**

LON/00AE/LSC/2008/0362

(transferred from Barnet County Court)

Landlord and Tenant Act 1985 sections 27A and 20C

Address: 9 Richmond Court, Forty Avenue, Wembley,
Middlesex HA9 8LL

Applicant/ Claimant: Quadron Investments Limited (freeholder)

Represented by: Andrew Sheriff, counsel (instructed by Altermans
Solicitors); Lisa Lee & Rebecca Selby, paralegals &
Mr Simon Lewin, property manager (Salter Rex)

Respondents/ Defendants: Mr Wasser Abassi (lessee Flat 9)

Represented by: in person, assisted by Mr F Abassi (lessee Flat 10)

Tribunal members: Mr T J Powell LLB
Mrs J Davies FRICS
Mrs G Barrett JP

**Date of Transfer from
the County Court:** 16th June 2008

Directions: 28th August 2008

Hearing: 24th November 2008

Decision: 23 January 2009

Decisions of the Tribunal

- (1) Of the £6,141.15 claimed by the Applicant in county court proceedings 8BT00779, the only amount remaining to be claimed before the Tribunal at the hearing on 24th November 2008 was the interim demand for £4,519.23 raised on 5th July 2007 in respect of the "Reserve Fund Account" to cover future major works;
- (2) The Tribunal determines that the whole interim demand of £4,519.23 is reasonable and payable by the Respondent;
- (3) There should be no refund of Tribunal fees by the Respondent to the Applicant;
- (4) There should be no order under section 20C of the Landlord and Tenant Act 1985;
- (5) The Tribunal has no jurisdiction over county court costs and fees, in what now appears to be a small track claim;
- (6) This matter should now be transferred back to the Barnet County Court.

Background facts

1. This is an application pursuant to section 27A of the Landlord and Tenant Act 1985, seeking a determination of the payability and reasonableness of the service charges for the period 17th March 2006 to the 17th January 2008, i.e. up to the date of issue of court proceedings in the Barnet County Court on 15th February 2008 (under Case No. 8BT00779). The amount claimed by the Claimant/ Applicant freeholder was £6,141.15.
2. As a result of a defence dated 3rd March 2008 and filed by the Respondent/ Defendant lessee, District Judge Steel made an order dated 16th June 2008, transferring the case to the Leasehold Valuation Tribunal.

Attendance

3. At the hearing on 24th November 2008 the Applicant was represented by Mr Andrew Sheriff of counsel, and the Respondent appeared in person.

The property

4. The property concerned is a ground floor flat, situated within one of three blocks which together comprise Richmond Court, Forty Avenue, Wembley HA9 8LL. Blocks 1 and 2 each contains four flats, while Block 3 contains two flats (those of the Respondent in Flat 9 and his neighbour Mr F Abassi in Flat 10 on the first floor). Neither party requested an inspection and the Tribunal did not consider that one was necessary.

The lease

5. The lease to Flat 9 was granted on 2nd December 1980 for a term of 99 years from 25th June 1980. The Respondent purchased the flat March 2006.

6. By clause 2(2)(a) of the lease the Lessee covenants:

"to pay and contribute to the Lessor TEN per centum (10%) (hereinafter referred to as "the Lessee's Maintenance Contribution") of:..

(iii) maintaining repairing decorating renewing:

(a) the structure of all buildings on the Estate including the main walls drains roofs foundations chimney stacks gutters rainwater pipes and any boundary walls and fences...

(c) the entrance drives pathways driveways entrance halls staircases and landings of the buildings within the Estate ...

(viii) such sums as the Lessor shall in its absolute discretion consider necessary from time to time to put to reserve to meet the future liability in carrying out major works to the Estate or the flat...

(ix) the fees of the Lessor or the Lessor's Managing Agents for the collection of the rents of the flats in the Estate and for the general management thereof or so long as the Lessor does not employ Managing Agents the sum of TEN per centum (10%) of the total sums under paragraphs (i) to (viii) above for administration expenses."

7. By clause 2(2)(b):

"the amount of the Lessee's Maintenance Contribution shall be ascertained and certified by the Lessor or the Lessor's Managing Agents (if any) whose Certificate (hereinafter referred to as "the Certificate") shall be final and binding on the parties hereto once a year in respect of the year to the Twenty-fourth day of June in each year (hereinafter referred to as "the Maintenance Year") the certificate to be prepared and served on the Lessee as soon as practicable at any time after the Twenty-fourth day of June in each year and during each Maintenance Year the Lessee shall pay to the Lessor on the Twenty-fourth day of June and the Twenty-fifth day of December on account of the Lessee's Maintenance Contribution one half of the estimated amount thereof notified to the Lessee by the Lessor or the Lessor's Managing Agents prior to the commencement of each Maintenance Year for the ensuing Maintenance Year..."

8. By clause 5(2) the Lessor covenants:

"subject to the payment by the Lessee of the contributions hereinbefore provided to maintain repair redecorate and renew

(a) the structure and in particular the main walls drains roofs foundations chimney stacks gutters and rainwater pipes of the Estate...

(c) the main entrance driveways passages landings and staircases and other parts of the Estate so enjoyed or used by the Lessee or the Lessees of the other flats in common as aforesaid and boundary walls and fences of the said Estate."

The law

9. Service charges and relevant costs are defined in Section 18 of the Landlord and Tenant Act 1985 (as amended). The amount of service charges which can be claimed against leaseholders is limited by a test of reasonableness which is set out in Section 19 of the Act. Under Section 27A an application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable, including an advance service charge.

The hearing

10. The sums claimed by the Applicant before the county court included some £1,621.92 for arrears of service charges and ground rents, and some £4,519.23 in respect of an interim demand for the cost of future major works, described as being a demand for a payment to the reserve fund. The Respondent claimed that he had paid all the service charges and ground rents claimed, except for the £4,519.23 interim demand. Prior to the Tribunal hearing the claim for the service charges and ground rents was withdrawn by the Applicant, leaving only the issue of the payability of the interim demand to the Tribunal.

Section 20 consultation procedure

11. A notice of intention to carry out major works was contained within a consultation letter sent by the managing agents Salter Rex to lessees and dated 30th June 2006 (page 119 of the bundle). The specification of works was prepared in September 2006 (page 128 of the bundle). It proposed some fairly extensive exterior works to the three blocks on the estate. The second stage consultation letter was sent to lessees by Salter Rex on 7th June 2007, providing details of the estimates received from those contractors invited to tender. On the basis that the lower tender price from Barttons Partnership Ltd would be accepted, the likely total cost was stated to be £45,192.27. The Respondent's 10% contribution to those costs was £4,519.23, the amount in dispute before the Tribunal.
12. Before the hearing on 24th November 2008, there had been no prior challenge to the section 20 consultation procedure either in the Respondent's defence before the county court, or in the Respondent's statement of case before the Tribunal. However, at the hearing the Respondent claimed that he had not received the original notice of intention letter dated 30th June 2006, and neither had his neighbour Mr F. Abassi in flat 10.
13. Understandably, counsel for the Applicant complained that this issue had not been raised before. The Tribunal heard oral evidence from Mr Lewin, the property manager at Salter Rex, who described the procedure for sending out letters to leaseholders. He said that letters addressed "To All Leaseholders" are put into plain envelopes at his office, to which personalised name and address labels to each leaseholder are affixed, before posting.
14. It was clear from the papers that at least one other lessee known to the Respondent had clearly received the notice of intention letter dated the 30th June 2006: Ms A M Ewan, the owner of Flat 3 responded to it by letter dated 17 July

2006 (page 121 of the bundle). She also wrote to Salter Rex on 17th July 2007 in response to the stage 2 letter (page 179 of the bundle). The Respondent's evidence was that he had completed the purchase of his flat in March 2006, but that he was not able to take up occupation immediately because sub-tenants were still in the flat after completion, until mid-June. The Respondent took up occupation at the end of June 2006 and, in the meantime, had not given any alternative address to the managing agents. Although the notice of intention letter is dated the 30th June 2006, and therefore in the normal course of events would have arrived on the 1st July 2006 or later, the Respondent still maintained that he had not received it. However, he did receive the 'stage 2' letter dated 7th June 2007, which was also addressed "to all Lessees."

15. Having heard the evidence the Tribunal determined that on the balance of probabilities the notice of intention letter dated 30th June 2006 had been delivered to the Respondent's flat. The Tribunal found it surprising that the Respondent and Ms Ewan in flat 3 knew each other, but had never mentioned or discussed the proposed major works with each other. The Tribunal therefore determined that there was no evidence to say that the section 20 consultation procedure was defective in any way.

The Respondent's case

16. The Respondent's main complaint was that a lot of the work which the Applicant proposed was unnecessary. He also said that the works were over-priced. He complained that the Applicant had not built up a reserve fund over the years in order to cover future major works, and that he was being required to pay the full amount of his share of the cost of major works in one go. He was unable to say when the external decoration of the blocks had taken place but a letter in the bundle suggested that it had been the least 6 years ago.
17. The Tribunal went through the specification of works with the Respondent item by item, but there was very little, which he agreed was necessary. The Respondent did not produce any independent evidence from a surveyor or builder to support his assertions; nor did he produce any alternative quotes for the cost of those items that he considered were too expensive. By reference to the numbered items in the specification (pages 163 onwards in the bundle) the Respondent did accept that the following works were necessary:
- 4.17 - "timber care repairs" - although the Respondent said that only flat 4 had timber windows and therefore he accepted only a part of the £900 cost;
 - 4.21 - "repair to left-hand side flank elevation of block one" - £190;
 - 4.22 - "prepare and clean steps of blocks 1 and 2" - although the Respondent accepted only that the steps outside flat 5 and 6 needed work and therefore only accepted half of the £450 cost);
 - 4.25 - "renew 3 garage doors" - the Respondent only accepted that the door to garage number 1 needs renewing and therefore only accepted a proportion of the £2,100 cost;

4.28-4.29 - "laying new concrete hardstanding" - the Respondent stated that only blocks 2 and 3 needed doing and that block 1 had been done in 2001 (but that appeared already to have been taking into account in item 4.28) - total cost of these items was £15,280;

4.30-4.31- "above ground drainage" - although the Respondent stated that block 3 dealt with its own pipe connections and guttering, he accepted that this work was necessary for blocks 1 and 2, and therefore accepted the bulk of the £1,050 claimed for this item, but not all;

4.32 - "roof works" - the Respondent accepted and agreed to the £3,000 provisional cost of overhauling the main roof slopes;

4.33-4.35 - "site clearance" - the Respondent accepted the £200 provisional cost of washing and cleaning the site after the works;

5.01 - "contingencies" - the Respondent accepted the £2,500 provisional sum for contingencies to be included in the specification of works (but if not used this will be deducted from the final account).

18. The Respondent accepted that there was a leak in the roof above flat 7 and the scaffolding would be needed to access the roof to repair that leak.
19. The Respondent laid great stress on not being able to afford the interim demand in respect of the major works. He said that other leaseholders were in the same position and he produced a letter dated the 16th June 2008 signed by 6 of the 10 leaseholders to this effect. He complained that the Applicant had not laid down reserves in previous years, although the Tribunal noted that the landlord was not obliged to do so under the lease.

The Applicant's case

20. Mr Sheriff on behalf of the Applicant relied upon the landlord's obligation under the lease to maintain the buildings on the estate. The lease set down no timescales for such maintenance, but it had now become necessary through the passage of time. Having followed the statutory consultation procedure under section 20 of the Act, the leaseholder in Flat 3 nominated a contractor, whose eventual estimate was almost £20,000 more than the lowest estimate obtained by the landlord. The lease contained no obligation on the part of the landlord to lay down reserves year on year, though Mr Sheriff accepted that it might have been preferable from the leaseholders' point of view, had the landlord done so. The landlord had raised an interim charge under the lease because of the major works now required.
21. Mr Sheriff accepted that the demand for the interim charge had not been claimed in two half-yearly tranches, as required by the lease, but this fact had been overtaken by time: that is to say, both half-yearly payment dates had passed by when court proceedings were issued. Apart from the fact that the sum demanded was a high amount, the Respondent had taken no point about that the issue of timing.
22. Mr Sheriff said that the Respondent was really complaining that the interim charge was too much. He also referred to the letter dated the 16th June 2008 signed by 6 of the 10 leaseholders, upon which the Respondent relied. That letter, which had

been drafted by the Respondent himself, included the words "We believe that this work should be carried out and it should be reimbursed from the service charges we pay [Salter Rex]. We cannot afford to pay these demand charges on top of the service charges, which we are paying already." Mr Sheriff said that this letter supported the Applicant's view that the works were necessary, and that the Respondent's case only had to do with cost.

The Tribunal's Decisions

23. The Tribunal considered that technically the method of demanding the interim charge by way of a single lump sum was not in accordance with the lease. However, that was not material because both half-yearly demand dates passed before the court proceedings were issued.
24. The Tribunal was satisfied that the section 20 consultation procedure had been followed.
25. This was a case in which the Respondent challenged the payability and reasonableness of an interim charge. That charge was based on a specification of works drawn up by chartered surveyors. The need for works was borne out at least in part by Ms Ewan's letters, and by the evidence at the hearing about the leaking roof and the need for some external works, and by a rather poor black and white photograph of a broken pavement in the bundle.
26. The Tribunal considered that the letter dated 16th June 2008 signed by 6 of the 10 leaseholders was a clear indication by them that external works were necessary, albeit that the leaseholders felt that they should be paid for out of the service charge account. There was no suggestion in this letter that the proposed works themselves were too expensive, only that the leaseholders could not afford the demanded charges on top of the normal, annual service charges.
27. Considering all of the paperwork and the oral evidence, the Tribunal felt that there was insufficient evidence on the Respondent's part to challenge either the need for works or the amount demanded by way of an interim charge, and the evidence that he did produce was inconsistent. If the Respondent had seriously intended to challenge the reasonableness of the interim charge, he should have obtained independent evidence from a surveyor as to the need for the works in the specification, or otherwise. He should also have obtained alternative quotes for the cost of works, whether or not he felt that they were necessary. He failed to do either.
28. Therefore, the Tribunal determines that the interim charge for the proposed external works is reasonable and payable on the basis of the information before it.
29. Nothing in the Tribunal's decision indicates that the actual works to be carried out are at a reasonable cost and there is nothing to prevent the lessees from making a further application as to the reasonableness of the actual works when completed.

Refund of Tribunal fees

30. Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 allows a Tribunal to order a party to reimburse the whole or part of any fees paid by another party.
31. Mr Sheriff applied for a refund of the £150 Tribunal hearing the paid by the Applicant. The Tribunal noted that the County Court proceedings had involved two elements in the original claim, one of which had been settled prior to the Tribunal hearing. The Respondent had sent several letters seeking clarification of matters from Salter Rex, which had not been provided. The Respondent had agreed to a meeting with the managing agents to mediate the dispute. Although the Tribunal does not know any of the details, the Respondent stated that the Applicant's managing agents had not provided the information he sought and had advised him to write to the Applicant's solicitors, who had also not provided what he wanted.
32. The Respondent's allegation of poor communication was not challenged by the Applicant at the hearing. As a result of negotiations prior to the Tribunal hearing, the amount of the service charge in dispute was reduced from £6,141.15 to £4,519.23 and it is the Tribunal's view that such a reduction could have been achieved much earlier, if there had been better communication by the Applicant.
33. Accordingly, the Tribunal does not require the Respondent to reimburse any of the £150 Tribunal hearing fees to the Applicant.

Application under section 20C

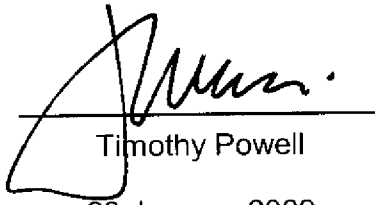
34. Section 20C of the Landlord and Tenant Act 1985 Act provides that a Tribunal can make an order preventing the Lessor recovering its costs of proceedings through the service charge, if the Tribunal considers it to be just and equitable.
35. The Applicant indicated that it would seek to recover its costs of the Tribunal proceedings through the service charge. Mr Sheriff stated that most of the cost might be covered by an insurance policy, but there was still an excess to claim through the service charge. He argued that this was a justified claim under clause 2(2)(a)(ix) of the lease (which has been quoted earlier in this Decision).
36. The Respondent applied for an order under section 20C, because only works that he considered necessary should be carried out.
37. The Tribunal considered that the Respondent's case was ill-conceived. The Tribunal also noted that the Respondent had not paid any part of the interim charge for those external works which he did not dispute. In the light of its Decision above, the Tribunal therefore does not consider it just and equitable to make an order under section 20C. Accordingly, the landlord is not prevented from charging reasonable costs of the Tribunal proceedings through the service charge.

The next step

38. The Tribunal has no jurisdiction over county court costs and fees, in what now appears to be a small track claim.

39. This matter should now be transferred back to the Barnet County Court.

Chairman:



Handwritten signature of Timothy Powell in black ink, written over a horizontal line.

Timothy Powell

Date:

23 January 2009