



**Residential
Property**
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION BY LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985 Sections 27A(1) and 20C

Ref : LON/00AB/LSC/2008/0138

Address: 192 Bastable Avenue, Barking, Essex IG11 OLH

Applicant: Mrs Comfort Tata

Represented by: Mr Panesar of Beacon Solicitors

Respondent: London Borough of Barking and Dagenham

Represented by: Mr Allison of Counsel

**Tribunal: Mrs Sonya O'Sullivan
Ms Marina Krisko BSc FRICS**

Background

1. By an application dated 1 April 2008, the Applicant as lessee of the flat known as 192 Bastable Avenue, Barking, Essex IG11 OLH (the "Property") sought a determination under section 27A of the Landlord and Tenant Act 1985 as amended (the "Act") as to her liability to pay service charge.
2. The Applicant holds the Property further to a lease dated 16 September 2002 (the "Lease"). The Property is a maisonette situated on the second and third floor of the building known as 176 – 198 Bastable Avenue (the "Block"). There are twelve flats contained within the Block.
3. The service charge year runs from 1 April to 31 March in each year.
4. The Respondent had previously issued proceedings against the Applicant in the county court which had been transferred to the Tribunal and were subsequently withdrawn shortly before the application was due to be heard in March 2008.
5. The Applicant originally raised an issue with almost every aspect of the service charge. A pre trial review was held on 7 May 2008 following which directions were issued by the Tribunal. These provided in particular for the Applicant to send a statement itemising the service charges in dispute, the reason for the challenge and any alternative figures put forward. There then followed a series of failure by both parties to comply with the directions which culminated in the Tribunal giving notice under paragraph 11 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations that it was minded to dismiss the application. Following a hearing held on 1 April 2009 the Tribunal did not dismiss the application as much of the failure to comply with the directions was acknowledged by her solicitors to be due to inaction on their part. Further directions were made which provided for a full and detailed statement to be provided by the Applicant. In accordance with those directions statements of case were exchanged and a bundle was prepared by the Respondent and lodged with the Tribunal.
6. After hearing the evidence the Tribunal considered and the parties agreed that the Tribunal would not benefit from any inspection of the Property and thus no inspection took place.

The Hearing

7. The hearing in this matter took place on 8 June 2009. The Applicant was represented by Mr Panesar of Beacon Solicitors. The Respondent was represented by Mr Allison of Counsel. Mr Odoch, leasehold

manager, Ms Stanbridge and Ms Atfield also attended on behalf of the Respondent.

8. In his skeleton argument Mr Allison had submitted that since considerable time had elapsed since some of the charges had been demanded the Respondent was prejudiced and he invited the Tribunal to strike out the application as frivolous or otherwise an abuse of process. However at the hearing Mr Allison confirmed that he would not be pursuing this application.
9. The service charge years in question were the service charge years 2003/04, 2004/05, 2005/06, 2006/07 and 2007/08.
10. The Tribunal began by clarifying the items which remained in dispute. The categories disputed were as follows:
 - responsive block repairs
 - the maintenance of the amenity green
 - the TV Aerial
 - the Reserve Fund
 - Door entry system
 - Major works costs from 2003
 - Method of apportionment
11. The Applicant had disputed the cost of the caretaking service in her statement dated 1 May 2009 for the service charge years 2003 to 2008. The Respondent had conceded the caretaking costs for the years 2003/04, 2004/05 as it now accepted that these charges should not have been charged to the Applicant for the duration of the reference period. The Respondent agreed to credit these back to the Applicant and for the avoidance of doubt the Tribunal makes an order that these charges be credited.
12. A summary of the evidence heard and the Tribunal's decision is set out below. For the sake of brevity the Tribunal does not set out the entirety of the evidence heard which in any event contained in the various statements of case before the Tribunal but only the most salient points.

Maintenance of the greens

13. The Applicant disputed the sums claimed by way of the maintenance of the amenity greens. In her statement the Applicant simply stated that "the grass was not cut and the green was not kept tidy". In response the Respondent produced a log of all times the amenity greens had been inspected together with a specification of the works at pages 150 -151 and 135 to 149 of the bundle.

14. The Tribunal was referred to the witness statement of Mr Odoch which explained how the charges were calculated. At paragraph 5 he explained that over time the charges had been calculated on three different bases. In 2003/04 the cost of the service was calculated on a ward by ward basis with the respondent being divided into 20 wards. This method of apportionment resulted in a charge to the Applicant of £33.59. The same method was used in 2004/05 which resulted in a charge of £41.70.
15. In 2005/06 the method of apportionment was changed to an area basis, the 20 wards being grouped into six Community Partnerships. This method resulted in a charge to the Applicant of £61.95. The method remained the same in 2006/07 resulting in a charge of £47.04.
16. In 2007/08 the method of apportionment was changed to being based on the amenity green around the estate around which the Property is situate. This method resulted in a charge of £35.50.
17. Mr Odoch's evidence was that the Respondent was constantly monitoring the situation to assess which method represented the fairest way in which to apportion the charges.
18. The Applicant's challenge to the cost of the maintenance of the greens was purely on the basis that the work was not done. However she was unable to put any evidence before the Tribunal to evidence the alleged lack of garden maintenance. She also confirmed that she had never made any complaints about the alleged lack of maintenance to the Respondent. She suggested a figure of £15 per annum was a reasonable figure for the work done.

The Tribunal's decision – maintenance of the greens

19. The Tribunal noted that there was no evidence before them in relation to the alleged poor maintenance of the greens save for the oral evidence of the Applicant. In contrast the Respondent had provided the Tribunal with an inspection log and works specification. The Tribunal considered the various methods of apportionment used over the relevant period. The Lease provides at clause 2 of the Fourth schedule that the service charge means "a reasonable and proper proportion (such reasonable and proper proportion to be ascertained by the Corporation by a reasonable and proper method which may vary in relation to different items) of the aggregate of the costs expenses and outgoings". The Tribunal considered that the most reasonable method of apportioning these costs was on the charge being based on the estate as used in 2007/08 and considers that it is this method of apportionment which should be adopted for all of the service charge years in question. The Tribunal therefore allows the sum of £35.50 for each of the service charge years in question save for 2003/04 when the lower charge of £33.59 is allowed.

20. It was noted that the Lease provides that the landlord ascertains the "reasonable and proper proportion" of the service charge in relation to what is defined as the "Estate" in the Lease. The Tribunal considers that any higher charge based on an area larger than that defined as the Estate would not be reasonable.

TV Aerial

21. The sums charged by way of the TV aerial were challenged for each of the service charge years. These sums were challenged on the basis that the Property does not have a TV aerial socket and that she has never therefore used the communal TV aerial. The Tribunal heard that the Applicant had complained to the Respondent that she had no aerial socket roughly three years ago via the repairs helpline. When she was unable to locate a socket she had done nothing further to resolve the issue.

22. The Respondent's position was that the aerial benefits the Building and it is reasonable that all properties contribute to this cost irrespective of whether the Applicant actually uses the socket. Counsel for the Respondent informed the Tribunal that the Respondent had first heard of this complaint after the instigation of these proceedings and the Respondent was taking steps to investigate and had written to the Applicant to try and arrange an inspection (see pages 133-4 of the bundle). This offer had not been taken up by the Applicant until that morning.

The Tribunal's decision – TV Aerial

23. The Tribunal considered that the charge for the TV aerial was reasonable in principle. However this should only be payable if it could be established that the Property does in fact have a socket. Accordingly the Tribunal orders that should following an inspection it be found that there is no socket at the Property the charges in respect of the aerial should be credited to the Applicant's account

Reserve Fund

24. The Applicant complained about the level of her contribution to the reserve fund. She did not question her liability to contribute towards the reserve fund but rather was concerned at the level of her payments in contrast to the payments being made by her neighbours.

25. The Tribunal were referred to a copy of the section 125 Offer Notice under Housing Act 1985 at pages 67-71 of the bundle. The Offer Notice provided that the Applicant would pay the annual sum of £1709.39 in respect of payments to the reserve fund in the initial period, that is, broadly speaking the first five years of the Lease. It is this sum which has been demanded. The initial period has now ended.

The Applicant's liability to make the payments at the annual rate of £1709.39 for the initial period is clearly set out in the Offer Notice.

26. The Tribunal appreciated that it may seem unfair to the Applicant that neighbouring lessees may be making lower contributions to the reserve fund. These lessees may however have purchased their properties at different time and have already built up sufficient reserve funds in respect of the anticipated works. As the initial period has now ended and the Applicant has built up a substantial reserve fund in respect of the contributions due in respect of the Property. Mr Allison explained that the no contributions to the reserve fund were currently demanded from the Applicant. In view of the level of the reserve fund now held the Tribunal would expect to see any future reserve fund demands to make allowance for the amount currently held in the fund and to reasonable reflect a planned future maintenance plan.

Responsive Block Repairs

27. The Applicant challenges the repairs carried out both to the Property and the Block. These repairs are divided into what are described as responsive block repairs and repairs to the Property. Mr Odoch explains the basis for these charges in his witness statement at page 115 onwards of the bundle.
28. As far as the responsive block repairs are concerned the Tribunal heard that the Applicant has not been charged for all the work carried out and that a significant reduction was made in the charges. The charges fall within the estimate of service charge contained within the section 125 Offer Notice.
29. The Applicant confirmed that she did not challenge the responsive block repairs for the year 2003/04 in the sum of £50.
30. The charge for 2005/06 at £53.81 was however challenged. The Tribunal were referred to page 125 of the bundle which was a breakdown of the responsive repairs. The Applicant confirmed that she only challenged items 1 and 2 on that breakdown which related to works to the tiles. The Applicant expressed concern at the frequency of the repairs to the floor tiles in the common parts. She was resident at the Property and had not seen any evidence of these repairs being carried out. In response the Respondent explained that the total repairs for that year had been £715.11 and the Applicant's charge should have been one twelfth of that being £59.59, this had been reduced to £53.81. As far as the specific complaint in relation to the tiles was concerned the Respondent pointed out that the tiles in the communal area do get broken from time to time as there is heavy usage of the staircase. When broken the tiles are dangerous and so their repair is a priority.

31. There were no block repairs in 2006/07. Block repairs for 2007/08 were also challenged. Again the Respondent explained that the charge should have in fact been £161.46 but this had been reduced down to £56.54. The estimate for this year in the section 125 Offer Notice was £79.65. The Tribunal noted that items 3 and 4 on the breakdown at page 130 did not appear to relate to the Block and this was conceded by the Respondent. Items 1 and 2 were challenged by the Applicant. item 1 related to the making safe of a roof hatch and item 2 related to the repair to a leaking roof. The Applicant first submitted that she was not responsible for contributing to the repair to the roof but on the advice of her solicitor then conceded she was liable to contribute towards the cost of repairs. He then challenged the works on the basis that they were not carried out and/or that the costs were not reasonable. The applicant's solicitor acknowledged that these complaints had not been made specific.

The Tribunal's decision -Block repairs

32. As far as the charges for 2005/06 were concerned the Tribunal accepted the Respondent's evidence and were satisfied that the works had been done. It noted that repairs to the tiles only appear in two of the service charge years before the Tribunal and allowed the charges as reasonable.

33. The Tribunal noted that there were clearly some problems with the roof at the Block as its repair or replacement was envisaged in the major works. The Tribunal were satisfied on the evidence before them that the works had been carried out and that the charges were reasonable. It therefore allowed the sum of £56.54 in respect of 2007/08. It noted however that it would expect to see these works taken into account in respect of any future major works to the roof.

Repairs to the Property

34. The Applicant also challenged the cost of works to the Property.

35. In 2004/05 the Applicant was charged the sum of £30.88 in relation to a window repair. The Applicant's evidence was that she had made no request for any such repair and no repair had been carried out to the Property.

36. The Respondent referred the Tribunal to a copy of a works order at page 131 of the bundle. This appeared to show a request made in respect of the Property for "repairs to window in bedroom". This order would have been prepared following a request by the lessee.

37. In 2005/06 the Applicant challenged the cost of the replacement of a letterbox on the front door of the Property in the sum of £80.20. The Applicant explained that a new door had been fitted by the Respondent to the Property and some 2 years later the letterbox had fallen off. She telephoned the Respondent to complain and the letterbox had then been replaced. She did not consider that she should be charged for the letterbox as the door was new and the letterbox must have been defective. Had she known she would be personally liable she would have hired her own contractor. The Respondent referred the Tribunal to a copy of a works order at page 132 of the bundle and could only say the repair was carried out following a request from the Applicant.

The Tribunal's decision – repairs to the Property

38. As far as the cost of the repair to the window in 2004/05 was concerned the Tribunal was faced with a clear conflict of evidence. The Applicant stated that the work had never been carried out, the Respondent relied on a works order. The Tribunal preferred the evidence of the Applicant in this regard. The details included on the works order may well have been due to an administrative error and the Tribunal had seen many examples of such errors in the documentation. On this basis the charge of £30.88 was disallowed.

39. As far as the cost of the replacement of the letterbox in 2005/06 was concerned the Tribunal noted that the Applicant had been charged £500 for a new door some two years previously. In such circumstances the Tribunal did not consider it was reasonable to charge the Applicant for a replacement letterbox and thus the sum of £80.20 was disallowed.

Major works – door entry system

40. The Respondent had made a deduction from the reserve fund in respect of the installation of a door entry system. The Tribunal heard from Mr Allison that full consultation had been carried out in respect of these works to which the Applicant did not respond. Copies of the notice of intention and notice of estimate were included in the bundle at pages 110 to 113. The Applicant did not dispute that she had been consulted and the Tribunal accepted that proper consultation had taken place.

41. The Applicant's position in relation to these works was that a door entry system had simply been unnecessary. She did not challenge the cost of the works. The Tribunal heard that in the Applicant's view the door entry system was worthless as although it produced some security to the front of the building the rear of the building remained open and access could easily be gained.

The Tribunal's decision – door entry system

42. The Tribunal considers a door entry system to be desirable in principle. It considers that it will have some benefit in improving security even if as alleged access can still be gained via the rear to the building. The Tribunal also notes that Part III of the Fourth Schedule of the Lease allows for improvements. The Tribunal is satisfied that the cost of the works is reasonable and allows the sum claimed in full.

Major works – windows and doors

43. The Tribunal heard that the Respondent intends to deduct the sum of £5,575.93 from the reserve fund in respect of the major works carried out in 2003. A breakdown was included in the bundle at page 160.

44. The Applicant had originally raised an issue as to whether the Respondent fell foul of the "18 month rule" under section 20B of the Act. This was disputed by the Respondent on the basis that the deduction of this sum is not a demand for the purpose of section 20B per *Gilje & ors v Charlegrove Securities Ltd*. This point was conceded by the Applicant at the hearing.

45. The Applicant also raised a point as to whether the Applicant was liable as she claimed the works had been carried out under the "Shape up for homes" scheme which was funded by central government. The respondent confirmed that this scheme was entirely self funded and produced a copy report from the audit commission to confirm the same.

46. The Applicant also suggested that the Respondent failed to consult in relation to these works. The Tribunal were referred to the witness statement of Mr Odoch at page 45 onwards which sets out the consultation carried out. A copy of the letter of consultation was attached as an exhibit. The Tribunal is satisfied on the evidence before it that consultation took place.

47. In relation to the works themselves the Tribunal were referred to a breakdown of the works at page 160 of the bundle. The works carried out were the replacement of windows and a new door, external works and works to the communal doors and glazing. The total cost charged to the Applicant is £5,575.93.

The Tribunal's decision – major works

48. The Applicant challenges items 3, 4 and 5 on the breakdown contained at page 160. The Tribunal considered all of the items and considered

the estimate in relation to the works contained in the section 125 Offer Notice at page 154 of the bundle. As far as the cost of the windows is concerned the Tribunal were informed that 10 windows were replaced in all and it is satisfied that the sum of £2,999.40 is a reasonable cost for the supply and installation of the windows. It also allowed the sum of £499.78 in relation to the supply and installation of the door as reasonable.

49. As far as the external works were concerned charged at £717.57 the Tribunal heard that these comprised "minor concrete repairs". The Tribunal had very poor evidence before them in relation to these works but considered a total cost in the region of £8,611 (being 12 x £717.57) as excessive. It also considered the estimated cost to the Applicant had been £426.72. The Tribunal therefore allows approximately 50% of these costs as reasonable in the sum of £350.

50. As far as the works to the communal doors and glazing are concerned these are charged at £562.76 (as opposed to the sum estimated of £227.58) and £109.72. The parties agreed that there was only one communal door and in such circumstances the Tribunal was of the view that the cost appeared excessive. It had very poor evidence before it on this issue. The Tribunal therefore allowed the sum of £300 as reasonable in respect of both items.

51. The Tribunal is satisfied that the project management fee charged at 12% and the administration charge of £100 are reasonable and allows them in full.

52. The Tribunal therefore allowed the total of £4,747.08 inclusive of VAT and fees in place of the sum of £5,575.93 charged as shown on page 160 of the bundle.

Section 20C

53. The Applicant also made an application under section 20C of the Act. This was opposed by the Respondent on the basis that it had incurred substantial costs in dealing with the proceedings. Mr Allison pointed out that the Applicant had questioned every item of service charge and had pursued some of those unreasonably. Had some of those been conceded at an earlier point costs would have been much reduced. The Applicant argued however that she had encountered many problems in pursuing her claim due to the Respondent's inability to produce relevant documents. The Tribunal agreed that the Respondent had been slow to provide much of the information required. However it had succeeded in defending its position to a great extent and the Tribunal did not consider it appropriate to disallow all of the costs incurred. Accordingly the Tribunal orders pursuant to section 20C that

the Respondent be limited in the recovery of its costs to a maximum of £750.

Chairman: ...SONYA O'SULLIVAN.....

Dated: 16 JULY 2009
