



**Residential  
Property**  
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**

**Case Reference: LON/OOAC/LSC/2009/0107**

**DETERMINATION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN  
APPLICATION UNDER SECTION 27A and 20C of the Landlord and  
Tenant Act 1985**

**Applicant: Barnet Homes**

**Respondent: Ms A. Haselhorst**

**Premises: 16 Mowbray House, Oak Lane, London N2 8LU**

**Date of Pre-Trial Review: 22 April 2009**

**Date of Hearing 18 June 2009**

**Appearances for Applicant: Mr Gatty of counsel  
Miss Ferguson, Judge and Priestley, Solicitors  
Ms McGuire, Barnet Homes**

**Appearances for Respondent Mrs Creer of counsel  
Ms Haselhorst**

**:**

**Leasehold Valuation Tribunal: Mrs B. M. Hindley LL.B  
Mr R. Shaw FRICS  
Mrs L. Walter MA(Hons)**

**Date of Tribunal's Determination 23 June 2009.**

1. This application was transferred from Barnet County Court by order of District Judge Rea, dated 13 January 2009, for consideration under Section 27A of the Landlord and Tenant Act 1985.
2. Directions were issued on 22 April 2009 after a telephone pre trial review and the hearing took place on 18 June 2009.
3. The costs in dispute are as follows:-
  - (a) Annual service charge for the year ending 31 March 2005 - £426. 55p.
  - (b) Annual service charge for the year ending 31 March 2007 - £777. 77p.
  - (c) Estimated service charge for the year ending 31 March 2008 - £1,297.69p
  - (d) Interim costs of the major works - £5,699. 23p.
4. The respondent holds under a lease made on 12 March 1990 for a term of 125 years from 1 January 1989. She purchased the flat in February 2006 and lived there until September 2006 when she moved to Sydney Road, London, N10 and sublet the subject flat.
5. Under the terms of the lease the year end is 31 March and the service charges are payable by quarterly instalments after an estimated annual service charge schedule has been certified to lessees before 1 April in each year for the year ensuing with necessary adjustments made by subsequent charges or repayments.
6. Service charge costs are payable as set out in the Third Schedule for both management of the Block and the Estate, with apportionments of 16.173% and 0.342% respectively.
7. The demise is not excluded from the description of the Block but the internal surfaces of the windows and door frames of the flats are excluded from the Structure.
8. By clause 11 of the Third Schedule service charges are payable if the applicants carry out 'any improvements or alterations to the Block'.
9. Mr Gatty said that the applicants had become aware of the assignment to the respondent on 26 October 2006 and wrote to her at the subject flat on 27 October 2006 advising her of arrears of service charges.
10. In her statement of case the respondent said that sometime after the assignment she had contacted the applicants to enquire about her service charge liability but was told that she could not be provided with the information because the records did not show that she was the lessee.
11. Mr Gatty also produced copies of notes made on the applicant's computer system, on 26 October 2006 through to 9 October 2008, of telephone conversations during the course of which the respondent said that she would pay only the current service charges.
12. The only demand for service charges produced by the applicants related to the major works for which an interim demand was made on 13 November 2006. In all other cases the applicants were able to produce only a schedule of breakdown of charges for the financial years in question. Mr Gatty explained that copies of the actual demands were not kept. He also explained that the copies available to the Tribunal were automatically updated by the computer system to show the currently registered lessee and, therefore, he could not establish to whom and where they had originally been sent.
13. The Tribunal considered each of the disputed costs in turn

Annual Service Charge for the year ending 31 March 2005 - £426. 55p.

14. Mrs Creer contended that, as a matter of law, if monies reserved as rent were not paid this amounted to a breach of covenant and that following the assignment of the lease the respondent was not liable for the breach of the previous lessee for non payment of the service charge which had been notified on 29 November 2005. She drew the attention of the Tribunal to Woodfall's Law of Landlord and Tenant.
15. Mr Gatty accepted the validity of the submission but argued that it would be 'proportionate and sensible' for the Tribunal to determine that the respondent was liable since non payment was a ground for forfeiture as provided by Section 81 of the Housing Act. 1996. He said that the Right to Buy lease contained no provision permitting the landlord to refuse the assignment until all service charges had been paid and he admitted that no steps had been taken to pursue the previous lessees.
16. Mrs Creer responded that the application to the county court had been made on the basis of a debt not forfeiture. The Tribunal agrees with this view and, accordingly, makes no determination in respect of the service charge costs for the year ending 31 March 2005.

Annual Service Charge for the year ending 31 March 2007 - £777. 77p. (This is with a deduction of £10 in respect of ground rent)

17. Mrs Creer contended that the by Section 4(1) of the Fourth Schedule of the lease the applicants were required to provide an estimate of the service charges prior to 1 April for the ensuing year and they had not done so until 16 June 2007. She regarded the use of the word 'shall' as imposing a condition precedent to the recovery of service charges.. In support of her contention she drew the attention of the Tribunal to Gordon and Another v. Selico Ltd and Another (1986 1 EGLR 71) where she considered the provisions of the lease to be similar to that of the subject.. The judge in that case interpreted 'shall' as an implied covenant against which there was no appeal.
18. She also referred to the documentation provided in support of the service charge costs and maintained that the applicants had not established that the necessary service charge demand had ever been served.
19. Mr Gatty said that the structure of the lease in the present application was different from that of the lease in Gordon v. Selico which, in any event, was an action in deceit rather than a service charge case. Moreover, in that case the lessors had failed to provide any calculations at all rather than merely providing them late. He cited the House of Lords decision in United Scientific v. Burnley Council (1978) in which Lord Diplock said that stipulations as to time in contracts were not, under the rules of equity, regarded as of the essence unless expressly so stated to be. He commented that were time of the essence then the provisions of Section 20B of the Landlord and Tenant Act 1985 would not be required.
20. As to the possibility that the demand had not been served, Mr Gatty acknowledged that he was unable to produce definitive evidence but said that the test was the civil

standard of a balance of probabilities and that, on the basis of the information now produced, it was more likely than not that the demand had been made.

21. The Tribunal is not persuaded that the provision in the lease, requiring an estimate of service charges for the ensuing year, is a condition precedent to their recovery. They also take the view that, on a balance of probabilities, the demand for the year was sent to the applicant either at her Sydney Road address or at the subject property since, by 26 October 2006, the applicants were aware of the assignment to the respondent.

Estimated Service Charge for the year ending 31 March 2008 - £1,297. 69p. (This is with a £10 reduction in respect of ground rent)

22. During the course of the hearing it was conceded by Mrs Creer, on behalf of the respondent, that this service charge cost was payable. She explained that the only issue had been whether or not the account had been rendered and this had not been established until the hearing.

Costs of Major Works - £5,699.23p

23. Mrs Creer said that not until the demand of 13 November 2006 had the costs of the major works been known.
24. She contended that since the internal surfaces of the windows were specifically, under the terms of the lease, part of the demised premises, then at least part of the costs of replacement windows was not recoverable for the respondent. She cited in support a Lands Tribunal decision on an appeal by Sheffield City Council in which the President expressed the hope that, regardless of the terms of the lease, a council would not, without the lessee's approval, carry out works of improvement to the demised premises for which the lessee is to be charged unless the works were no more than a limited extension of works of repair.
25. Mrs Creer also called into question the total costs of the major works because a document from David Kann Associates consultants to Barnet Homes Ltd, provided in the bundle showed an average unit cost for the subject block of £3,413. 97p. However, when Mr Gatty explained that this cost did not include preliminary costs, professional fees or VAT she withdrew her objection to the amount.
26. Mr Gatty said that practical completion of the major works had taken place in July 2006 and that the defects period had ended in July 2007. He said that on a straight forward reading of the lease money spent on the block could be recovered under the service charge provisions because the flat was not excluded from the block.
27. The Tribunal notes that the replacement windows had been installed by the end of 2005 and they are of the opinion that the cost was properly incurred and validly demanded. They note that Mr Gatty indicated that although the demand was described as an interim demand it was not anticipated that any further costs for this work would be demanded.

Apportionment of the Service Charge Costs

28. Mrs Creer queried the apportionment of the respondent's costs on the basis that they were not in accordance with the terms of the lease as set out at paragraph 6 above.
29. Mr Gatty responded that clause 1 of the Fourth Schedule of the lease enabled the applicants to change the specified percentages to 'such other percentage as in the opinion of the Corporation represents the lessee's reasonable contribution to the said costs and expenses'.
30. The Tribunal is satisfied that the applicants are able to vary the apportionment at their discretion provided that the apportionment remains reasonable.

Application under Section 20C of the Landlord and Tenant Act 1985

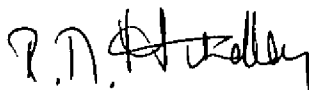
31. Mrs Creer said that there was no provision in the lease which enabled the applicants to charge the costs of the application to the service charge account and that, in any event, the applicants had been tardy in their production of necessary documents with many being provided only at the hearing. She drew attention to a letter from the respondent's solicitors, dated 10 October 2008, seeking from Judge and Priestley, documents in support of the costs and the response of Judge and Priestley, dated 13 October 2008, confirming that copies of invoices would be sent shortly. They had never been sent.
32. Mr Gatty said that the costs were recoverable under clause 8 of the Third Schedule which provided for the recovery of costs incurred by the Corporation in the management of the building. He acknowledged the late production of some documents.
33. The Tribunal is of the opinion that the poor record keeping and communication of the applicants contributed considerably to the cost of this application. They also considered that the respondent could, perhaps, have been more pro-active in discovering her liabilities and been better advised at the time of the assignment. In all the circumstances the Tribunal is of the opinion that it would not be just and equitable to allow the applicants to put their costs onto the service charge account and, accordingly, the Tribunal grants the application.

Conclusion

34. The Tribunal determines, as a result of all of the above, that the service charge costs set out below are reasonable, reasonably incurred and, therefore, payable by the respondent:

	£777.77p
	£1,297.69p
	£5,699.23p
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Total	£7,774.69p

Chairman



Date

23/6/09



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Apportionment of the Service Charge Costs

