

LON/00AG/LSC/2008/0317

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 27A
OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Applicant: Mr L GOLDSTEIN

Respondent: Mr R CONLEY

Re: Hall Floor Flat, 27 Belsize Park Gardens, London NW3 4JH

Application received: 24 July 2008

Hearing date: 27 November 2008

Appearances: Mr L Goldstein Applicant

Ms E Crowther for the Respondent

Members of the Leasehold Valuation Tribunal:

Mr S E Carrott LLB

Mrs E Flint DMS FRICS IRRV

Mr A Ring

1. **Background**

This is an application under section 27A for the determination of the reasonableness and liability to pay service charges.

2. The subject property is the Hall Floor Flat, 27 Belsize Park Gardens, London NW3 4JH. The Applicant landlord is Mr L. Goldstein. The Respondent tenant is Mr R Conley.

3. At the hearing of this application the Applicant appeared in person and the Respondent although not appearing was represented by a friend, Ms Crowther.

4. At the commencement of the hearing the Tribunal was provided with additional papers including a useful two page document which set out which items were now agreed, a list of items which remained in dispute and a list of items which the Respondent sought to set off against any outstanding service charge payments.

5. **Items in Dispute**

Only four items remained in dispute -

(1)	Roof Repair	£740.25
(2)	Certificate	£705.00
(3)	Replacement Window	£650.00
(4)	Roof Repairs	£600.00

6. Items (1) and (2) were in respect of the service charge year ending 2007 whilst items (3) and (4) related to the service charge year ending 2008.

7. **Roof Repair 2007**

On behalf of the Respondent, Ms Crowther first sought to argue that the roof repair in 2007 had been the subject of an insurance claim and payout. When the Applicant demonstrated that this was not the case then she argued that it

should have been the subject of an insurance claim because it was evident from the invoice that the repairs were necessitated as a result of storm damage.

8. The invoice was rendered by Storm Plumbing and Roofing Services Limited on 27 March 2007 and referred to removal of debris from the front dormer, the replacement of missing slates and the repair of flashings which had become loose due to high winds. The total cost including VAT was £740.25.
9. Mr Goldstein explained the chronology of events. He stated that there was indeed an insurance claim on 9 May 2007 but that this did not relate to the roof repairs. He said that he had consulted other leaseholders who had agreed that it was a matter of routine repair rather than an insurable event.
10. The Tribunal was not persuaded that the Applicant ought to have made an insurance claim. Indeed it was only when the Respondent's original challenge was found to be demonstrably wrong that Ms Crowther sought to put forward the case that the works should have been the subject of an insurance claim. Under Clause 2(3)(i) of the lease the Applicant's proportion was £150.05. This sum was reasonable and payable.
11. **Certificate - 2007**

Although this item was referred to as a certificate the sum claimed by the Applicant was in relation to the audit fee, the total amount of which was £705.00, the Respondent's proportion being £141.00. Ms Crowther referred to the terms of the lease and argued that although the landlord was obliged to certify the amount of service charges under the terms of the lease before such charges became payable, the certificate was to be provided to the tenants free of charge. Ms Crowther referred in particular to Clause 3(ii)(a)-(c) which provided as follows –

- (ii)(a) The amount of the service charge hereinbefore covenanted to be paid shall be ascertained and certified by a certificate ... signed by the Lessor's agents annually...
- (b) A copy of the certificate for each such twelve month period shall be supplied by the Lessor to the Lessee on written request and without charge to the Lessee...

12. The Tribunal determined that since the certificate was to be provided to the lessee free of charge that the Respondent was not liable for the sum of £705 under the terms of the lease and accordingly the sum was irrecoverable.

13. **Replacement Window - 2008**

Ms Crowther drew the attention of the Tribunal to Clause 2(4) of the lease which placed an obligation on the lessee to 'repair ... maintain and keep the interior of the flat including the windows and the glass there of...' She contrasted this with Clause 3(1) of the lease which placed an obligation on the Applicant as landlord to repair and maintain the main walls timber and main structure (including the roof and foundations). From this she argued the windows were clearly part of the demise and therefore the repair of the window was not an obligation upon the landlord and therefore could not properly fall to be considered under the service charge provisions.

14. The Tribunal accepted the evidence of Mr Goldstein that the work had been carried out to the window but considered that Ms Crowther's argument was correct. In this case the wording of the lease placed the obligation upon the tenant to repair the flat window and therefore the cost of repair could not properly fall to be considered under the service charge provisions. Different considerations may have arisen if the window concerned was a common part. Accordingly, the Respondent was not liable to make a contribution towards the repair of the window.

15. **Roof Repairs 2008 - £600**

Ms Crowther sought to raise the same argument as to whether or not the roof repairs ought to have been the subject of an insurance claim. The Applicant explained again that the works were works of repair, not an insurable event and emphasised the fact that he consulted with the other leaseholders concerning this particular item of repair. The Tribunal determined that on the evidence the Respondent had failed to discharge the onus upon him demonstrating that the repair was one which could properly have been claimed under the insurance and accordingly under the terms of the lease he was liable for one fifth of this sum, namely £120.

16. **The Set Off**

Ms Crowther argued that the following sums should be set off against the outstanding service charges –

Asbestos Removal	£188.00
Advance Service Charge	£100.00
Front Bay Roof Repairs	£140.00

17. Mr Goldstein accepted that the sums of £188 (asbestos removal) and £100 advance service charge should be credited to or set off against the service charges outstanding. So far as the front bay roof repairs are concerned Ms Crowther explained that the Respondent had carried out these works owing to an urgent situation of water penetration in order to prevent further damage to the fabric of the premises. The work was carried out on 27 October 2008 at a cost of £140. The Tribunal accepted that it was prudent of the Respondent to have carried out the repair in the circumstances. The obligation to carry out this particular repair was the landlord's obligation and the tenant having carried out the repair was entitled to be reimbursed. The sum of £140 however was one that should have been borne by all of the tenants by way of service charge. Divided by all of the lessees it therefore meant that each tenant would have to pay £28. Accordingly the Respondent was entitled to a credit less £28 which he would have paid in any event by way of a service charge.

18. The Tribunal further determined that in this case it would not order the reimbursement of the application and hearing fees. The Tribunal noted that concerned that both parties had troubled the Tribunal at regular intervals over disputes concerning relatively trivial amounts. However the present hearing had demonstrated that the parties were able to reach agreement when an effort was made by both parties to enter into dialogue. This was amply demonstrated during the course of the hearing when the parties were not only able to reach agreement on a substantial amount of the items in dispute but also to make important concessions during the course of the hearing itself. The Tribunal expresses the hope that the parties will continue this approach well into the future.

19. **Decision**

(1) The following sums are reasonable and payable by the Respondent –

Roof Repairs 2007 -	£750.00 (£150.05)
Roof Repairs 2008 -	£600.00 (£130.00)

(2) The following sums are not payable –

Certificate 2007	£705.00
Replacement Window 2007	£650.00

(3) The Respondent is to be given credit for the following sums –

Asbestos Removal	£188.00
Advance Service Charge	£100.00
Front Bay Roof Repair	£140.00 (less £28.00)

Chairman SEC

Date 24/3/09