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Ref: LON/00AY/LIS/2005/0111

**LEASEHOLD VALUATION TRIBUNAL**  
**LONDON RENT ASSESSMENT PANEL**

**DETERMINATION**

OF ISSUES UNDER SECTIONS 27A AND 20C OF LANDLORD AND  
TENANT ACT 1985 (as amended)

**PROPERTY: FLAT 2 128 CHRISTCHURCH ROAD,**  
**TULSE HILL, LONDON SW2 3DF**

**Applicant:** Samantha Barnes (Tenant)

**Respondent:** Michael Richards & Co (Managing Agents)

**Meeting:** 23 May 2006

**Inspection:** N/A

**Attendances:** None

**Tribunal:** Professor J T Farrand QC LLD FCI Arb Solicitor

1. The Application made to the Tribunal under s.27A of the 1985 Act, dated 19 November 2005, sought a determination, in effect, as to liability to pay a service charge demand of £486.25 for the year ending 24 December 2004.
2. An incidental application has also been made for an order under s.20C of the 1985 Act preventing the landlord from including any costs in connection with these proceedings as a future service charge.
3. The Applicant indicated in her Application that she was happy for the case to be dealt with on paper. At a pre-trial review, held on 29 November 2005, it was determined that the Application should be dealt with without an oral hearing and on the basis of written representations only. Neither party has requested a hearing.
4. The Application related specifically to a letter received by the Applicant from the Respondent dated 7 June 2005 and headed 'Statement of Service Costs – 24 December 2004'. This letter stated: "Please find enclosed a copy of the above accounts for your information, together with a copy of the invoice/credit note in respect of the supplementary service charge and details of how it is calculated."
5. Enclosed with that letter was an Invoice for a Total Due of £486.25; the Due Date was stated as 25 Dec 2003 (sic) and the Description was "End of year balancing charge (25 Dec 2003-24 Dec 2004)".
6. Attached to the Invoice was a "Statement of Service Cost for the Year Ended 24 December 2004". This comprised only two items. One was: "EXPENSES Insurance £2,556.69". The other was: "MANAGEMENT/SUPERVISION Harman Healy's fees £945 VAT @ 17.5% £165.38", totalling £1,110.38. Then Total expenses for the year were stated as £3,667.07. After this "INCOME Total demanded 'on account'/Total income for year" was left blank. Finally it was stated: "Balance to be collected £3,667.07." No details of how the Applicant's service charge was calculated were included.
7. That Statement of Service Cost was supported by the Respondent's statement that it had been prepared from and was in accordance with "the books records & information held by us". There was also a certificate from Glazers Chartered Accountants that the Statement was in their opinion "a fair summary complying with [statutory requirements]"

and that "the information contained therein has been sufficiently supported by accounts, receipts & other documents produced to us".

8. The Applicant, who had not previously heard of the Respondent, questioned the costs items as well as the proportion payable by her and asked to see receipts and documents. She did not pay the £486.25 demanded.

9. From correspondence, the facts have emerged that the Respondent had taken over as new managing agents as from 25 December 2004, stating that the accounts had been prepared "from the records passed to us by the previous agents" (letter dated 23 December 2005). The Respondent added: "We are not dealing with any insurance issues in relation in relation to this property. The freeholder deals with the insurance, and we understand that its Broker deals with collection of insurance premiums etc." The Respondent was unable to provide a copy of the previous Management Agreement with Harman Healy and, despite Directions given on 29 November 2005, has not provided the Tribunal with copies of any records, invoices, receipts, notices or other documents supporting the accounts and service charge demand.

10. The Respondent has, however, provided a statement showing the apportionment of service charges for the Property (ie Flat 2, there being seven flats at 128 Christchurch Road) as 13.26% (letter to Applicant dated 19 April 2006). Also a copy of the Lease of the Premises (described as "the residential Flat situate on the First Floor Front") has been provided to the Tribunal by the Respondent (letter dated 23 December 2005).

11. This Lease was originally granted in 1986 in consideration of a premium and rents for a term of 99 years from 25 December 1985 and was acquired by the Applicant during 2004. The rent payable expressly includes as an addition a proportion of the Landlord's insurance premiums (Clause 2). There is also a Tenant's covenant (Schedule Part 4 para.(ix)) as follows:

To pay and contribute a proportion of the expenses incurred by the Landlord in managing or administering the building and in complying with his obligations under paragraphs (ii) and (iv) of Part 5 hereof in the proportion which the rateable value of the demised premises bears to the total or aggregate rateable value of the building and in like manner to pay and contribute a like proportion of the expenses of cleaning and lighting the common parts of the building and of the cost of maintaining or replacing any fire extinguishers located in the said common parts and of the

installation hire and maintenance of any entryphone system  
and of insuring the building

12. The Respondent has highlighted the first six lines of this covenant as obliging the Tenant/Applicant to contribute to management fees, helpfully explaining that these are "the fees paid to the managing agent for looking after the property" (letter to the Tribunal dated 23 December 2005). However, no evidence has been made available as to what was done or even supposed to be done by the previous managing agents in the way of "looking after the property" in the year in question (ie 2004) or, indeed, as to their fees. The Respondent appears to accept that no work was carried out to the interior or exterior of the building in that year (see letter to the Applicant dated 17 August 2005).

13. In contrast, the Respondent appears to think that the covenant provides for payment of service charges in advance (letter to Applicant dated 16 September): this covenant plainly does not impose any liability on the Tenant/Applicant make payments in advance. There is a provision for advance contributions towards the Landlord's estimated costs or repair works, not as an enforceable covenant by the Tenant, but as a condition precedent to the landlord's liability to commence the works (Schedule Part 5(iv) proviso). Similarly, the proportion payable plainly depends upon comparative rateable values and the Tribunal specifically requested evidence as to these and as to the calculations but none has been provided. As an incidental aspect, it may also be noted that the Lease does not provide for service charge years and that the rental years of the term run from 25 December (ie starting on 26 December) to 25 December in each year, that date being quarter day, not to 24 December (see Schedule Part 3).

14. By statute service charges are only payable "to the extent that they are reasonably incurred" and "only if the services are works are of reasonable standard" (see s.19(1) of the 1985 Act).

15. Here the service charge demand in issue related to only two items. Evidently, insurance should not have been included since this is dealt with separately by the Landlord. As to the other item, Harman Healy's fees (+ VAT) for management/supervision, the Tribunal has seen no evidence whatsoever that these were actually incurred at all or that any services were performed or of a reasonable standard.

16. In these circumstances, it is completely impossible for the Tribunal to find that the any amount or proportion of the service charge demanded is properly payable. Accordingly, the Tribunal hereby determines that the

Applicant is not liable to pay the sum of £486.25 demanded by the Respondent as a service charge for the year 2004.

***Section 20C Order/Fees***

17. The Applicant also made an application, in effect, for an order that the costs incurred by the Respondent in connection with the proceedings should not be included in any future service charges account (ie under s.20C of the 1985 Act). The Tribunal considered the application in the light of the guidance given in *Langford Tenants v Doren Ltd* 2001, at para.23, (LRX/37/2000). There HH Judge Rich QC emphasised that the only applicable principle was what was just and equitable in the circumstances, ie in accordance with s.20C(3).

18. It is not necessary for the Tribunal now to consider whether the costs incurred by the landlord in these proceedings were excessive and, therefore, not payable by the Applicant and other tenants. Nor should the Tribunal consider whether the terms of the Leases enable recovery of such costs from Tenants. What has to be considered in accordance with the above guidance is whether it would be just and equitable to make an order. In the circumstances of this case, including the Tribunal's determination, the Tribunal has no hesitation in concluding that it could properly be considered just and equitable to make the s.20C order sought. Accordingly, it is hereby ordered that no part of the Respondent's costs incurred in connection with the present proceedings is to be taken into account for service charges payable by the Applicant or other Tenants.

19. In addition, the Tribunal considered its jurisdiction to require reimbursement by the Respondent of the Applicant's £70 fee (ie under para.9(1) of the LVT (Fees) (England) Regulations 2003). There are no specified statutory criteria for imposing such a requirement but, following the approach indicated in the previous two paragraphs, the Tribunal finds ample grounds justifying an exercise of its jurisdiction. The Application was rendered necessary almost entirely because of the Respondent's failure to address competently the Applicant's legitimate questions about the service charge demand in issue. Accordingly, it is hereby also ordered that the Respondent shall forthwith refund to the Applicant the £70 fee paid by her on applying to the Tribunal.

**CHAIRMAN**

*Julian Fawcett*

**DATE 24 May 2006**