(2664)

LON/00BE/LSC/2005/0343

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER THE LANDLORD AND TENANT ACT 1985: SECTION 27A, AS AMENDED

Address:	72 Columbia Point, Neptune Street, London, SE16 1BG
Applicant:	Southwark Council
Respondent:	Mr C R Hawney
Application:	25th November 2005
Inspection:	21st April 2006
Hearing:	21st April 2006

Appearances:

Southwark Council	**Landlord**
Mr J Joseph	Home Ownership Unit
Ms R Murray	Home Ownership Unit
Mr A Hunt	Electrical Projects Officer

For the Applicant

Mr C R Hawney	**Tenant**
Mr J Sykes	Modsons Solicitors (Consultant)

For the Respondent

Members of the Tribunal: Mr S E Carrott LLB
Mr J C Avery BSc FRICS
Dr A M Fox BSc PhD MCIArb

1. **Background**

This is an application under section 27A of the Landlord and Tenant Act 1985 for a determination as to the reasonableness and liability to pay service charges. The Applicant is the London Borough of Southwark and the Respondent is Mr Christopher Richard Hawney who is the lessee of the Applicant at 72 Columbia Point, Neptune Street, London SE16 1BG.

2. The Applicant issued proceedings in the Lambeth County Court in August 2005 for alleged arrears of service charge in the sum of £1025.90. That sum related to the cost of a contract for the rewiring of a number of blocks of flats, including Columbia Point.

3. On 6 September 2005 the Respondent filed a defence to those proceedings, which asserted that the work that had been carried out was 'shoddy', minimal and that the landing was in disrepair with wires hanging down from the ceiling.

4. By order of District Judge Zimmels dated 17 November 2005, the action was stayed and the service charge issues were transferred to the Leasehold Valuation Tribunal for determination.

5. At the hearing of the Application, Mr Jeffrey Joseph of the Applicant's Home Ownership Unit represented the Applicant and the Respondent was represented by Mr J Sykes, a consultant with Modson's Solicitors.

4. **Hearing**

On behalf of the Applicant, Mr Joseph informed the Tribunal that the outstanding service charge related solely to electrical works carried out to Columbia Point. He took the Tribunal through a bundle of documents, which detailed the chronology of events. He explained that in October 2001 the Applicant undertook a comprehensive survey of the electrical

wiring on the Canada Estate including Columbia Point. That survey revealed that there were a number of deficiencies to the main fuse boards and the landlord's main distribution boards and that the properties required an effective LV system of earthing. The original scheme included the full rewire of internal, lateral and rising mains. However owing to budgetary restrictions, approval was given in respect of the external rewiring works only.

5. In March 2003 a specification of work was put out to tender and the contract was originally awarded to EK Mechanical Services Ltd in the sum of £417,382. On 28 July 2003 the Respondent served on the tenants including the Applicant, a section 20 notice claiming a payment of £758.66 as a contribution to the works based upon the EK Mechanical Services Ltd tender. However it was subsequently discovered that EK Mechanical Services Ltd were no longer on the Respondent's approved list of contractors. Mr Joseph explained that a second stage tender appraisal had been carried out on EK Mechanical Services and was found to be satisfactory but that as the contractor had applied to expand its list of work categories and additional references were outstanding, it did not at that time appear on the approved list of contractors. Since the Applicant's standing orders required that major works contracts could only be awarded to approved contractors it was therefore decided that the tender process should be declared void. The Applicant took this decision in January 2004 and notice of intention was sent out to all tenants who would be affected by the works in August 2004.The contract was awarded to PA Finlay & Co Ltd at a cost of £504,218 and the new estimate of the Respondent's contribution was £1,041.65, which was later, revised to £1025.90. The works commenced in late 2004 and were completed by June 2005. The defects period ended in June 2006 although the Applicant was satisfied that the works were carried out properly and to a reasonable standard.

5. Mr Sykes, on behalf of the Respondent, raised four grounds of challenge to the service charge in dispute -

(1) the Applicant was in breach of the requirements of the lease as to the manner in which it sought to recover the disputed service charge;

(2) there was no valid section 20 notification;

(3) the sum was not reasonable having regard to the earlier section 20 notification dated 28 July 2003 calculating the charge as £758.66 and the Applicant was estopped from denying that the true charge was £758.66; and

(4) the work was not carried out to a reasonable standard.

6. Mr Sykes referred the Tribunal to Parts I and II of the Third Schedule to Mr Hawney's lease. He submitted that Part I required the Applicant to reasonably estimate before the commencement of each year the amount payable by Mr Hawney in service charge in that year and required Mr Hawney to pay that sum in advance by equal payments on the following 1 April, 1 July, 1 October and 1 January. This however did not include major works.

7. Part II of the Third Schedule required the Applicant to reasonably estimate before the commencement of each year the amount payable by way of service charge in the future for major expenditure, which included major repairs or renewals to any part of the building. Having so estimated the Applicant could then require could require Mr Hawney to pay a reasonable contribution in advance towards the expenditure and had to notify him of the amount. The contribution by clause 9(3) was payable in equal amounts on the payment days as explained above.

8. On 3 August 2004 Mr Hawney was advised that his contribution would be £1,041.65. This was amended to £1025.90 by way of letter dated 4 January 2005. The whole of the sum was demanded 29 March 2005. Mr Sykes submitted that neither the sum sought on 28 July 2003, or 3 August 2004 or 4 January 2005 was required to be paid according to the payment terms set out in Part II of the Third Schedule. The sums were treated as one sum payable rather than under the terms of the lease payable on the payment days. In fact Mr Joseph conceded that the entire sum only became payable from 1 January 2006.

9. Mr Sykes further submitted that, since the section 20 notification advised the Respondent of the lower figure and not the higher figure and that the Applicant had waited so long to inform the Respondent of the new figure, there was no compliance with section 20 of the Landlord and Tenant Act 1985. He did not go so far as suggesting that the section 20 notification procedure should have been started again but submitted that having given an estimated figure, the Applicant could not now rely upon an increased figure. He also submitted that part of the increase was due to the lapse of time and that the Applicant did not go back to the same parties to the tender.

10. As to the works being carried out negligently, he relied upon lighting, which was installed in the communal hallway, which was not completed properly and argued that the work was not carried out to a reasonable standard.

11. Mr Joseph stated that so far as the hallway lights were concerned they did not form part of and were not chargeable under the present contract. Thus, they were not included in the service charge in dispute. The Applicant also gave an undertaking to the Tribunal to ensure the

neighbourhood housing office was informed as to the condition of the communal hallway on the 18th floor.

12. **Inspection**

The Tribunal inspected the subject property on the day of the hearing, and found that it comprised a flat situated on the 18th floor of a tower block. The Tribunal noted the works, which were carried out under the terms of the specification, and, in addition, also inspected the hallway lights and noted that the area in which the lights and a mains cable were installed, had not been made good.

13. The Tribunal found that generally the communal hallway was scruffy, unattractive, in need of decoration and that the wiring was untidy. The Tribunal gained the overall impression that the Applicant had neglected its obligations with regard to the maintenance of the common parts on the 18th floor.

14. **Determination**

Nevertheless, these criticisms do not embrace the work that was the subject of the present application and the Tribunal determined that the Respondent was liable to pay the sum of £1025.90 and that this sum was reasonable. There could be no criticism of the section 20 notice procedure. The Applicant had written to the Respondent in accordance with section 20, the first stage being on 17 November 2003 inviting the tenants amongst other things if they so wished to nominate a contractor for the works. Mr Hawney made no observations with regard to this. A second stage letter was written on 3 August 2004 which invited further written observations. Mr Hawney made no observations. This letter advised him that his contribution would be £1,041.65 which was later revised downwards to the sum now in dispute. Although this figure was higher than the figure which was originally notified to the Respondent it did

not give rise to any estoppel. It was clear that Mr Hawney did not make observations during the consultation process even when he was advised that he was going to pay a significantly higher sum. There was no evidence that he had relied on any representations made by the Applicant in either 2003 or indeed 2004 or that he had in any way altered his position.

15. The Tribunal found that Mr Hawney's main concern was the lighting that had been installed in the communal hallway on the 18th floor and the general finish to the works. Although Mr Hawney may have had a legitimate complaint in this regard, based on the Applicant's evidence and perusal of the specification, which did not include this element of work, the Tribunal found the communal lighting did not fall to be considered in the present dispute. It was hardly surprising that Mr Hawney had complained about the untidy wiring in the communal hallway and its general state of poor decoration. Nevertheless the Tribunal noted the undertaking given by the Applicant to notify its neighbourhood housing office of the situation.

16. Although the Tribunal accepted that the service charge was now payable and was reasonable and that the works on the whole were carried out to a reasonable standard, it considered that the proceedings in the County Court were premature because the whole of the sum did not become due until 1 January 2006 because of the mechanism for payment in Part II of the Third Schedule to the lease which required payment in instalments on the payment days specified in the lease. This point was conceded by Mr Joseph at the hearing. Moreover the Tribunal noted that the Applicant's Claim Form itself requirement payment of interest at the rate of 8% per annum when in fact under the terms of clause 3(b) of the lease the rate of interest was to be 5% above the National Westminster base rate. These were matters which would need to be resolved either by agreement between the parties or by the County Court.

15. **Costs**

With regard to the question of costs three issues remained to be considered. First, there was an application under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. This arose from an aborted hearing before a differently constituted Tribunal on 31 March 2006. Shortly before that date the parties became aware of a decision in Jimenez v London Borough of Southwark (LON/00BE/LSC/2005/0248) which concerned the same works although in respect of a different block, Glebe House. That case was chaired by Mr Andrew a Vice President of the Tribunal. Mr Andrew also chaired the hearing on 31 March 2006. Mr Sykes who appeared before the Tribunal on 31 March drew that decision to Tribunal's attention. Mr Sykes rather than asking for a differently constituted Tribunal took a rather unusual course. He asked the Tribunal to consider as a preliminary issue whether or not the Applicant was entitled to recover through the service charge, costs in excess of those estimated b EK Mechanical Services Ltd. If the decision went against the Respondent, then submitted Mr Sykes this would indicate bias on the part of the Tribunal and then Mr Sykes would then apply for the matter to be heard by a differently constituted Tribunal. Not surprisingly the Tribunal declined to deal with the application in that manner. The Tribunal left open the question of whether or not the Respondent would have been entitled to claim costs of that hearing under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.

16. Before this Tribunal Mr Sykes sought to blame the Applicant's representative on that date, Ms Murray for not drawing to the attention of the Respondent the decision in Jimenez. As the previous Tribunal accepted and as was urged upon us by the Applicant, Ms Murray only became aware of that decision shortly before the hearing on 31 March

2006. In the event neither party relied upon that decision before this Tribunal. Mr Sykes submitted that it was the responsibility of the Applicant to ask for a differently constituted Tribunal and that had this been done the hearing could have taken place. This Tribunal disagrees. Mr Sykes wanted the Tribunal to hear the application and it was only when the Tribunal refused to deal with the application in the manner that he suggested, did he then make an application for an adjournment.

17. The Tribunal noted that no blame could be attached to the Applicant in this regard and that in fact had it not been for the specific non-compliance with directions by the Respondent, the application would have proceed by way of paper application thus avoiding the costs of the 31 March 2006. There was no unreasonable conduct on the part of the Applicant, which could justify the making of a costs order under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002. In fact there could be no criticism of the manner in which the Applicant had conducted the application before this Tribunal.

18. The second issue with regard to costs concerned the reimbursement of fees. The Tribunal did not consider that it was just to make an order reimbursing the Applicant with its fees. The Tribunal found that the Applicant ought to have explained in particular the difference between the major works and the other works that had taken place to the common parts. The Tribunal noted the undertaking by the Applicant to notify the neighbourhood office of the poor conditions of the common parts and hoped that the neighbourhood office would take remedial action as soon as reasonably practicable.

19. Thirdly, and for the same reason as stated above, the Tribunal determined that the costs of this application and the proceedings before the Tribunal should not be added to the service charge and the Tribunal would

therefore make an order under section 20C of the Landlord and Tenant Act 1985 limiting the Applicant's costs.

20. **Decision**

(1) The sum of £1025.90 is now payable to the Applicant by the Respondent and this sum is reasonable.

(2) The Respondent's application for costs under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 is not allowed.

(3) The Applicant is not entitled to the reimbursement of fees of this application.

(4) The Respondent's application under section 20C of the Landlord and Tenant Act 1985 is allowed and the costs of this application shall not be added to the service charge.

Chairman S E Carroll

Date 3/8/06