

LVT/SC/009/163 & 176/98
LVT/SCC/009/049/98

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON
APPLICATIONS UNDER SECTIONS 19 AND 20C OF THE LANDLORD AND
TENANT ACT 1985

Applicant: Mr Mark Watts

Respondent: Longmint Ltd

Re: Flat 2, 27 Elsinore Road, London, SE23 2SH

Application Dates: 25 August 1998 and 14 September 1998

Hearing Date: 15 March 1999

Appearances: Mr Mark Watts	Applicant
Longmint Ltd represented by:	Respondent
Ms Kathryn Purkis	Counsel
Mrs Juliet Bellis	Solicitor
Ms Lucy Cummings of Cambridge Property Services	Managing Agent
Mr I Thompson BSc, ARICS of Haywards, Chartered Surveyors	

Members of the Leasehold Valuation Tribunal:

Mr M Chapman FRICS
Mr G I Coe BSc (Est Man) FRICS
Miss A Seifert

Date of the Tribunal's Decision

APPLICATION

1. This was an application by the tenant, **Mr Mark Watts** under section 19 (2A) and 19(2B) of the Landlord and Tenant Act 1985 requesting the Tribunal to determine the reasonableness of service charges incurred and to be incurred between 1996 and 1998 and reasonableness of specification of works.

BACKGROUND

2. The subject premises is the first floor flat in a converted two storey end terrace Victorian house in Forest Hill. There is one other flat on the ground floor. At the Hearing, where a set of photographs showing front and rear of the house were produced in evidence, both parties agreed that the Tribunal would gain little if anything from an inspection, which would be helpful in making their determinations.

3. **Mr Watts** occupies his flat under a lease dated 6 March 1989 for 125 years commencing 25 December 1988. He purchased the leasehold interest in 1994. The freehold reversion was purchased by the respondent, **Longmint Ltd** in September 1996.

4. Under clause 4(3) and the Third Schedule of this lease the landlord covenants to maintain, repair, rebuild, and redecorate the main structure and pipes and cables, not included in the demise of the flats, and the main entrance and common hall. Under clause 2 (l) (i) the tenant covenants to contribute and pay on demand the appropriate proportion (50%) of all costs incurred by the landlord in this respect. The same clause provides that the tenant if so required will pay £ 100 in advance and on account of the contribution or such **further** sum or sums as the landlord shall **specify** to be fair and reasonable.

5. In the **THIRD SCHEDULE** ~~the~~ landlord also covenants to keep the property insured on a comprehensive basis and clause 1 of the lease provides for the tenant to pay by way of **further** rent half the sum expended in discharging the premium such sum to be paid to the landlord on the twenty fifth of March in each year.

6. In clause 2(f) of the lease the tenant covenants to paint the interior of his demised premises in every seventh year and as to outside work in every fourth year.

MATTERS IN DISPUTE

7. These were stated by the applicant to be as follows:

- a) Accountant's charges.
- b) Management fees.
- c) Legal charges.
- d) Interest.

e) Proposed building works.

HEARING

8. At the Hearing Mr Watts, the applicant, appeared in person and for the respondent Miss Purkis appeared as advocate and Miss Cummings and Mr Thompson gave evidence.

9. In evidence it was established that the costs associated with the matters in dispute were incurred as follows:

Accountant's charges -	£60 for period 24.09.96 to 28.02.97 £70 for period 01.03.97 to 28.02.98 £75 for period 01.03.98 to 28.02.99 £205	
	Tenant's share at 50%	<u>£102.50</u>
Management fees -	£61.41 for period 24.09.96 to 28.02.97 £165.15 for period 01.03.97 to 28.02.98 £188.00 for period 01.03.98 to 28.02.99 £62.50 for period 01.03.99 to 23.06.99 (prospective) <u>\$477.06</u>	
	Tenant's share at 50%	<u>£238.53</u>
Legal charges -	£250.00 for the costs of the preparation and service of a notice under Section 146 of the Law of Property Act 1925	
Interest -	£25 as at 21 August 1998 (the date of the S. 146 Notice) plus 33p per day thereafter.	
Building works -	£239.99 Surveyor's inspection and report invoiced November 1997. £4 13.17 Surveyors' interim fee account for contract works invoiced May 1998	
	Tenant's share at 50%	<u>£326.58</u>

THE TRIBUNAL'S DECISION

Accountant's Charges

10. The lease provides for the recovery of the sum expended in respect of insurance premium by way of further rent on the 25 March in each year. Otherwise the tenant is under a duty to pay a proportion of any expenditure incurred by the landlord in

complying with his covenant to maintain, repair and decorate the structure and main entrance and common hall.

11. Works in this latter respect have amounted to two **attendances** for minor repairs (mainly cleaning) of gutters for which receipts were received by the landlord and an exercise to arrange for the periodic repair and decoration of the exterior and common parts which will be supervised by **Haywards** who will also certify payments. No services in the usual way and on a regular basis e.g. cleaning, lighting and heating of common parts, portage, gardens maintenance, lifts etc, are provided by the landlord.

12. We note that Miss Cummings feels that the provision of independent verification of expenditure is good management practice. However, bearing in mind that the cost is borne by the tenant we consider that having regard to the minimal services provided in the years in question and indeed in the foreseeable **future**, that Accountant's services are inappropriate and that the charges totalling £205 shown in **para. 9** above are not reasonable. **We therefore determine that no charges in this respect should be recoverable as a service charge.**

Management Fees

13. Unlike the circumstances in **Lloyds Bank v Bowker Orford**, to which our attention was drawn by Miss Purkis there is no reference in the subject lease to the provision of services as such by the landlord and certainly no specified services in the way of resident caretaker, cleaning and lighting of common parts, heating and hot water, lifts etc., are provided. Arguably therefore, there is no requirement for the management of services. Moreover, as far as the responsibility to insure is concerned it was established that the landlord obtains commission at 20% of the premium which we consider a quite adequate remuneration for the duty to insure.

14. Nevertheless, we accept that some element of management does arise **from** the landlord's covenant to maintain and repair the structure. This however, is minimal in terms of normal property management and we consider that the fees outlined in **para. 9** above are not reasonable. **We therefore determine a management fee of £50 per annum for the property (£25 per flat) as a reasonable charge. Thus the tenant's share for the period from 24.09.96 to 23.06.99 would be £68.75.**

Legal Charges

15. Legal charges of **£250** have been demanded by the landlord for the preparation and service of a Notice dated 21.08.98 served on the tenant under Section 146 of the Law of Property Act 1925. Specific provision for the payment of Section 146 costs are made in clause 2(s) of the lease and Miss Purkis submits that an obligation to pay such costs is not within the service charge mechanism under the lease nor is it within the meaning of 'service charge' or 'relevant costs' as defined in Section 18 of the Landlord and Tenant Act 1985. It was submitted by Miss Purkis that these charges are not and would not be service charge items. **We concur that under the provisions of this lease the Tribunal does not have jurisdiction in the matter of legal charges which are not included in the service charge.**

Interest Charges

16. The Section 146 Notice referred to above also contains a claim for statutory interest but Miss Purkis accepted that there is no entitlement to claim the same as a matter of the lease contract. Further it was submitted that as interest would not be a service charge item, the Tribunal does not have jurisdiction. **We concur with Miss Purkis and a decision is therefore not made in the matter.**

Proposed Building Works

17. As recently as 1996 the respondent company acquired the freehold reversion of about 117 years in this modest two storey Victorian end terrace property subject to leases in respect of the two flats which commenced only in December 1988. In 1997 they instructed Haywards, Chartered Surveyors, to undertake an inspection of the condition of the fabric of the building and communal parts, an exercise more commonly undertaken prior to purchase. The cost of this survey was £239.99 inc VAT. Subsequently Haywards were instructed to prepare a specification, obtain and analyse tenders and prepare a report with a recommendation for appointment of contractor. An invoice in this respect was submitted in May 1998 based on 50% of the fees to be charged at the rate of 12.5% of net project costs in accordance with RICS standard scale. This invoice totalled £4 13.17 inc VAT.

18. Mr Watts's grievances were not so much concerned with the quantum of these Surveyors' fees but he questioned their necessity and he queried the need for some of the works and the itemised costs of others. Furthermore, having been invited in March 1998 to nominate three VAT registered contractors for the purpose of tendering and having done so, none were included by Haywards when they reported to him in August 1998. It was established that due to an oversight Haywards had misfiled Mr Watts's letter which was not traced until after he had made his application to the Leasehold Valuation Tribunal. His three nominations were invited to tender on 9 February 1999 and one firm did so by the closing date of 5 March 1999. The lowest tender received, from PMI Construction, was for a total price of £4,575. This was by one of the original tenderers and submitted in August 1998, but despite the time lag we understood that the figure was to be honoured by the builder if accepted.

19. Furthermore, it was established at the Hearing that although Mr Watts does not dispute the need for external painting, the cost of such work is one of his grievances and much of this work should not have been included in the specification and tender documents without his consent. It is the tenant's responsibility to paint the exterior parts of his demised premises and the landlord had not served notice of wants of reparation on the tenant as required under the lease terms. On behalf of the respondent Miss Purkis accepted that should Mr Watts stand on his rights and does not agree to his windows being included, the contract will require to be amended and the fees will vary accordingly.

20. Subject to the foregoing possibility we found as follows on the matters in dispute:-

a) As to whether the surveyors' fees were reasonably incurred we had reservations about the need for the first survey but decided that it should not be

deemed unreasonable. We have no problem with the reasonableness of surveyors' services associated with the proposed contract but an arithmetical correction seems necessary to the invoice (document 59 in the bundle). The fees at 12.5% of contract sum amount to **£571.88**, not **£686.25** as shown. The total invoice sum based on 'first payment' terms of 50% should be \$345.97, a reduction of **£67.20**. We propose that in the event that, with **Mr Watts's** agreement, the contract is not amended, the second instalment of surveyors' fees be reduced to reflect a total fee at 12.5%.

b) As to the need for the front entrance pathway to be re concreted we deem this reasonable. As to the cost there is wide variation between the four contractors who have tendered but the item price of the recommended contractor of **£530** is neither the highest nor the lowest. **It is therefore deemed reasonable.**

c) The redecoration of the internal hallway is not disputed. Tender prices in this respect are close and competitive and whilst they may seem excessive-as compared to DIY cost, **the recommended contractor's price at £390 is deemed reasonable.**

d) As to the reasonableness of the cost of external painting, which includes parts which are the responsibility of the tenants, we noted that the recommended contractor's price at **£1300** was the lowest of the four tenders. **This cost is therefore deemed reasonable.**

APPLICATION UNDER SECTION 20C

21. The tenant also made an application dated 14 September 1998 to the Tribunal for an order that all the costs incurred by the landlord in connection with the proceedings before the Tribunal be not regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any tenant at the premises. In coming to our decision on this matter we have given careful consideration to the bundle of papers before us and the evidence submitted at the Hearing.

22. Between October 1996 and 1 September 1998 Mr Watts made exhaustive representations on the proper basis for paying his proportion of the annual insurance premium, repeatedly requested copies of insurance documentation and receipts (on no less than ten occasions) and frequently expressed his concern over whether the property was insured. Time and again he undertook to pay his proportion in accordance with the lease terms and upon receiving the copies to which he was clearly entitled under the lease. During this time Miss Cummings repeatedly refused to provide copy documentation and persisted in demanding interim payments on account towards insurance premiums. On 21 August 1998 Miss Cummings took action to recover arrears by the service of a Section 146 Notice.

23. Faced with such intransigence it seems to us not surprising that **Mr Watts** made an application to the Tribunal on 25 August 1998. He surely had no other option. Subsequently **Mrs Juliet Bellis** arranged for the requested documentation to be made available and **Mr Watts** promptly paid his proportions.

24. On the general question of arrears of service charges Mr Watts sought clarity and explanations in trying to make sense of the alleged arrears and invoices which he

received every six months or so. It was not forthcoming. At the Hearing he continued to seek clarity as did the Tribunal faced with a quite unnecessarily complex schedule of service charge moneys due and paid.

25. We are satisfied that had the respondent company not made errors in interpreting the lease, dealt with Mr Watts correctly and with understanding, particularly with reference to insurance and consultation on building works and possibly compromised on the more minor matters of accountant's charges and management fees, the Hearing before the Tribunal may well have been aborted. **We have therefore decided that it is just and equitable to make an order in accordance with the tenant's application. We order that all the costs incurred by the landlord in connection with the proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the tenant.**

CHAIRMAN... *W. Chan*

DATE... *13.4.99*...