LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985, section 27A

LON/00AG/LSC/2007/0498

Address: 8B Cotleigh Road, London, NW6 2 NP

Applicant: **Tim Earl - Tenant**

Respondent: **London Borough of Camden- Landlord**

Paper Determination:

Tribunal:

Ms M W Daley (LLB Hons)
Mr T Sennett MA FCIEH
Mr E Goss

Date of decision: 11 February 2008

DECISION ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

1.Background

(a) The property, which is the subject of this application, is one of two flats situated within a converted Victorian Terrace off street property. Comprising the first and second floor.

a) The applicant holds a long lease of the property. The lease was dated 12 March 1990.

b) The Lease requires the landlord to provide services and the tenant to contribute towards their costs by way of a service charge. The relevant clauses are: the Particulars and Definitions which define the "Building" "Estate" and the category of services under "Category A" "*Management and maintenance of the estate for which the landlord is responsible and for which expenditure has been properly incurred.*" This included inter alia Services, lifts, entry-phones and television aerials etc. "Category B" "... *Otherwise than as set out in Category A Services or Category C Improvements) being in the nature of general repairs.*" And Category C; "*These include all works carried out to the estate in the nature of improvements.*"

c) On 12 December 2007, the applicant applied to the tribunal under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine his liability to pay service charges.

d) On 21 December 2007 directions were given which included a direction that the matter be dealt with by way of written representations without an inspection.

2. Matters in dispute

a) The Tribunal at the direction hearing determined that the sole matter in issue was the amount to be charged for a door entry system.

b) Both parties were invited to provide written representations.

3.Matters agreed

(a) The Respondent in their statement of case identified the fact that the works were the subject of statutory consultation and that Schedule 5 clause 10 of the lease enabled the Respondent to charge by way of service charges for the cost of fitting a door entry system.

(b) The Applicant did not dispute the fact that the Respondent had complied with the statutory consultation (under section 20 of the Landlord and Tenant Act). The Applicant asserted in his statement of case that the installation of a door-entry system was not necessary in a two flat Victorian terrace.

4.Evidence

I. The Tribunal were provided with a bundle of documents, which included the statutory consultation, the correspondence between the parties and the Respondent's estimate of cost and copies of an estimate that was obtained by the Applicant.

II. The estimate of the cost of the door entry system was set out at page 69 in the sum of £2,348.86(this included supervision and management charges). The Applicant had objected to this item and had obtained his own estimate for an audio entry system in the sum of £495 plus vat. This was at page 11 of the bundle, from a specialist contractor, Woodside security systems ltd.

III. Mr. Hughes, a project manager employed by the Respondent, in his witness statement, set out that the installation of the Door Entry System was part of Camden's "Pride of Place Programme- Raising the Standard initiatives, and

that as part of the brief to consultants it was requested that simple security measures such as simple door entry systems be recommended where appropriate.

IV. The Consultants Bailey Partnership in their report at page 183 point 15.1.0 under Condition and Recommendation state: -" *A door entry System is not currently fitted and we recommend that a system be fitted as part of the works."*

V. Mr Hughes also stated that the Respondent had reconsidered this item of work in properties were residents agreed not to have this system installed. In his statement Mr Hughes asserted that the Applicant verbally notified the Respondent's of his objections to the door entry phone in July2007. However they id not hear from him until emails sent on 29 October 2007.The Respondent had not received objections in writing from the other occupier, who was a secure tenant).

VI. The Applicant asserted that the secure tenant (of the ground floor flat) had telephoned to confirm her objections to the landlord, however she had not sent in written objections. The Tribunal also noted that the Applicant had first raised his concerns about the entry-phone system via an email sent on 3 July 2007.

VII. The Tribunal also considered a series of emails that set out the reasons behind their choice of entry-phone. The Respondent had had difficulties in obtaining a system, which was suitable for street properties, as the "GDX system" was unsuitable for street properties. They had however found a suitable digital series, which was compatible with their desire to standardise maintenance, which was the EIS 2600. At page 59 of the bundle the Respondent's consultants set out that the Applicant's quote, falls short of LBC requirements.

VIII. In reaching its decision the Tribunal have considered the relevant statutory provisions, which are set out below.

The law

Section 18(1) of the Act provides that, for the purposes of the relevant parts of the Act, "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

Section 19(1) of the Act provides that relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

Section 19(2) of the Act provides that, where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A(1) of the Act provides that that an application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to –

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

[**Section 27A(3)** of the Act provides that an application may be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.]

The tribunal's decision

I. The tribunal determines that the cost of the door entry phone system in the sum of £2,348.86. is not a cost which if incurred would be reasonably incurred under section under section 19 of the Landlord and Tenant Act 1985.

II. In reaching this decision the Tribunal acting as an expert tribunal have considered the reason for the work being undertaken and the evidence presented.

III. The Tribunal have not been presented with any evidence, which sets out a history of security concerns at the premises. The Respondent in their evidence have stated that where blocks which have been occupied solely by lessees who have, indicated that they did not require this work, it has not been undertaken. The Tribunal accordingly considered that there was a discretionary element concerning this item of work.

IV. The Respondent has not relied on concerns raised by their tenant that this work was necessary for her security. Rather the Respondent has placed the onus on the Applicant to obtain her written agreement.

V. The Tribunal have also carefully considered the costing of the work for this item and do not consider that the breakdown given was sufficiently detailed to enable the Tribunal to be satisfied that the cost of the work was reasonable. The Respondent did not provide a detailed specification of work and no justification other than reciting the council initiative was given.

VI. The Tribunal have also considered the consultant's report, and find that nothing in the report sets out a need for this item of work to be undertaken.

VII. Accordingly the Tribunal have determined that the Applicant's contribution to the major work should exclude all cost associated with the entry-phone for the premises known as 8 Cotleigh Road, London NW6

CHAIRMAN.....

DATE.....11-2-08.....