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**Residential
Property**
TRIBUNAL SERVICE

Ref: LON/00BG/LSC/2010/0004

LEASEHOLD VALUATION TRIBUNAL

LONDON RENT ASSESSMENT PANEL

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

Property: 31 Loweswater House, 22 Southern Grove, London E3 4PY
Applicant: East End Homes Limited
Respondent: Mr K Mahmud
Hearing Date: 1st June 2010
Inspection Date: 10th June 2010
Appearances: Mr R Brayshaw (Consultant Accountant to the Applicant)
Ms J Lebilé-Holo (Leasehold Services Manager for the Applicant)
Mr K Mahmud (the Respondent)

Members of Tribunal

Mr P Korn (chairman)
Ms S Coughlin MCIEH

INTRODUCTION

1. This is an application under Section 27A of the Landlord and Tenant Act 1985 (as amended) ("**the 1985 Act**") for a determination of liability to pay service charges under the lease of the Property.
2. The Respondent is the current leaseholder and the Applicant is the Respondent's current landlord. The lease of the Property ("**the Lease**") is dated 19th August 1991 and was entered into between The Mayor and Burgesses of the London Borough of Tower Hamlets (1) and Irene Ann Geraro (2).
3. Proceedings were originally issued in the Bow County Court (Claim Number 9BO03407) by the Applicant for alleged arrears of service charge and ground rent totalling £1,310.29.
4. The proceedings were then transferred to the Leasehold Valuation Tribunal (LVT). It was explained to the parties at the hearing that the LVT does not have jurisdiction to make a determination in respect of the claims for ground rent and therefore this element will need to be referred back to the County Court for determination.
5. The amounts being claimed by the Applicant by way of service charge are £1,280.29, being the alleged arrears of service charge as at 31st March 2009 (i.e. excluding alleged arrears of ground rent of £30.00). The alleged arrears break down as follows:-

2006/2007 balance of actual service charge	£106.78
2007/2008 estimated service charge	£860.54
2008/2009 estimated service charge	£890.17
2007/2008 balance of actual service charge	£164.80
<i>Less amounts paid</i>	<i>(£742.00)</i>
TOTAL	£1,280.29

APPLICANT'S CASE

6. Mr Brayshaw gave the Tribunal an overview as to how service charges were dealt with by the Applicant. Caretaking was run on an estate-wide basis and was therefore charged on this basis. It was conceded that there had been a significant increase in caretaking charges, and this was mainly put down to an increase in salary costs as a result of a more intensive approach to cleaning and caretaking being taken.
7. Generally, service charge proportions were based on rateable values.

8. The housing management charge related to estate management and running the estate office and the amount was fixed each year by looking at general costs. The Tribunal pointed out that the documentation supplied by the Applicant seemed to indicate that increases were based on inflation; Mr Brayshaw said that the increases were not in fact inflationary and conceded that the information supplied was slightly unclear. He said that, historically, housing management costs had actually been less than actual costs but the Applicant had been criticised by the audit commission for undercharging and had therefore increased these costs.
9. Mr Brayshaw considered that the service charge provisions in the Lease were wide enough to cover the housing management charge. He referred the Tribunal to the definition of "Common Parts" which referred (amongst other things) to "all ... areas included in the [Lessor's] Title ... or comprising part of the Lessor's Housing Estate". He also referred to the lessor's covenant in clause 5(5)(j) "(i) to employ its servants or at the Lessor's discretion a firm of Managing Agents to manage the Building and discharge all proper fees salaries charges and expenses payable to such agents or such other person who may be managing the Building including the cost of computing and collecting the rents in respect of the Building or any parts thereof [and] (ii) to employ direct or enter into contracts with all such surveyors builders architects engineers tradesmen accountants or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the Building".
10. As a general point, Mr Brayshaw said that the arrears of service charge were clearly all payable in full, that there had not been any challenge to them other than in response to the Applicant issuing proceedings in the County Court, and that the Respondent had effectively admitted in his letter of 18th February 2009 that the arrears were properly payable by stating the following: "I am aware of the [service charge] arrears. I have enclosed a cheque for £400.00 and am hoping to clear the arrears in the next few months. Could you send me an updated statement showing the adjustment of actual service charge for the year 2008/2009. Please do not hesitate to contact me if you need to discuss the above matter further".

RESPONDENT'S RESPONSE

11. In relation to caretaking and horticultural maintenance, the Respondent felt that this should be charged as part of housing management rather than being charged separately.
12. As regards the method of apportionment of the service, the Respondent did not think that apportioning on the basis of rateable values was reasonable.

13. The Respondent said that he was concerned about the significant variations in caretaking charges as between different service charge years. In relation to the standard of caretaking, the Respondent said that the caretakers did not even come as often as once a week (Ms Lebilé-Holo for the Applicant said that the caretakers were in the block more or less every day). The Respondent provided some undated photographs, which he said had been taken over the past two to three years, showing staining to floors in the common parts and rubbish outside an entrance door to the block.
14. When asked by the Tribunal why he had appeared to accept that all of the arrears were payable in his letter of 18th February 2009 and had not disputed the charges until the Applicant issued County Court proceedings, the Respondent said that he had done this for 'tactical' reasons. He accepted that prior to the issuing of County Court proceedings by the Applicant he had not written to the Applicant to complain about the service charge and/or the standard of services since April 2006 (the only occasion on which he lodged a complaint).
15. The Respondent raised concerns about the fluctuation in the insurance premium; why was it so much lower in 2008/09 than in 2007/08 – did this not show that the Applicant paid too much in 2007/08? Mr Brayshaw's answer to this was that the decrease was a result of the Applicant having received some excellent insurance advice when it came to renew the policy and it should not be penalised for this. The Respondent commented that the insurance premiums were lower under the previous landlord but he did not have any documentary evidence to support this.
16. The Respondent queried the fluctuations in the aggregate percentage payable by the leaseholders as a whole. Mr Brayshaw said that this was simply because tenants have a right to buy and periodically tenants exercise that right, thereby increasing the number of leaseholders.
17. In relation to the drainage charges, the Respondent suggested that as the invoices were from the Council the drains concerned might be public drains and therefore their maintenance should not form part of the service charge. Mr Brayshaw said that the drains concerned were definitely part of the Applicant's estate and therefore its responsibility; the invoices were from the Council simply because the Council offers a drainage maintenance etc service, but it charges for that service where (as here) it relates to drains which are on private property.
18. The Respondent objected to the maintenance charges for the lifts as he felt that they were serviced too frequently, but Mr Brayshaw said that the Applicant was following standard industry practice.

19. The Respondent objected to the level of charges for grounds maintenance on the basis that there was only a limited area of grass with a few trees directly outside the block. Mr Brayshaw said that grounds maintenance was an estate-wide cost, that the Respondent was charged a due proportion of the estate cost and that the actual cost per leaseholder was quite modest.

INSPECTION

20. The Tribunal inspected the estate of which the Property forms part on 10th June 2010. The estate as a whole (i.e. the external areas) was found to be in a fair condition. The block of which the Property forms part was found to be generally in an adequate condition given the age and nature of the block, although certain problems were noted. There was quite a lot of staining on the steps; the Applicant said that this was mainly due to residents dragging wet and oily items up and down the steps. There were also a few broken floor tiles.

THE LAW

21. Section 19(1) of the 1985 Act provides:

“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 shall be limited accordingly.”

22. Section 19(2) of the 1985 Act provides:

“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.”

23. “Relevant costs” are defined in Section 18(2) of the 1985 Act as *“the costs or estimated costs incurred or to be incurred by or on behalf of the landlord... in connection with the matters for which the service charge is payable”*.

“Service charge” is defined in Section 18(1) of the 1985 Act as *“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 cost of management, and (b) the whole or part of which varies or may vary according to the relevant costs”*.

24. Section 27A of the 1985 Act gives a leasehold valuation tribunal jurisdiction to determine (on an application made to it) "*whether a service charge is payable and, if it is, as to...the amount which is payable...*".

APPLICATION OF LAW TO FACTS

25. The Tribunal notes the Respondent's submission that caretaking and horticultural maintenance should be charged as part of housing management but he was unable to explain why this would make any difference to the actual aggregate charges nor did he bring any evidence to show that the charges themselves were unreasonably high.
26. The Respondent has objected to the use of rateable values as a method of apportioning the service charge. Whilst there are other possible ways, the use of rateable values is common enough that it is hard to argue that it is intrinsically unreasonable in the absence of any evidence whatsoever being brought to support this assertion.
27. The Applicant has dealt with the Respondent's concerns regarding the fluctuation in caretaking and insurance charges and in the aggregate percentage payable by the leaseholders as a whole, and it has also dealt with the concerns raised about drainage charges and about lift maintenance and grounds maintenance charges. Whilst not all of the points made by the Applicant were overwhelming in their force, in the Tribunal's view they were sufficient to show that on the balance of probabilities the charges had been reasonably incurred in the absence of a stronger challenge from the Respondent.
28. As regards whether the caretaking charges were value for money, there was disagreement as to how often the caretakers serviced the block. However, whilst it is possible that the block had been cleaned in anticipation of the Tribunal's inspection, it did seem to be in an adequate condition. There were clearly some problems with staining on steps but there was some evidence that the Applicant had tried to tackle this and although there had been a sharp rise in 2008/2009 the Applicant had given an explanation for this and even in 2008/2009 it was still only £379.06 (equivalent to £7.29 per week) which is not considered to be unreasonable in the absence of any comparative or other evidence being provided by the Respondent.
29. As a general point, the Tribunal was not impressed with the Respondent's claim that his failure to make any complaint about service charge costs or the standard of service between April 2006 and the issuing of County Court proceedings by the Applicant was purely 'tactical' and that in fact he had many concerns but chose not to raise them.

30. In relation to the housing management charge, Mr Brayshaw impliedly accepted that there was a possible issue with its recoverability as a matter of construction of the Lease, given that the charge related to estate management and running the estate office but the service charge provisions in the Lease generally referred to the block or building of which the Property forms part rather than the wider estate.

The Tribunal has considered the service charge provisions in the Lease and unfortunately for the Applicant has concluded that they are not wide enough to cover the housing management charge. Clause 5(5)(j) of the Lease allows for the charging of the sorts of items that comprise the housing management charge save that the clause is clearly confined to the building and does not extend to the wider estate. It is true that the Lease contains certain hints that the building is part of an estate, and it is also the case that the service charge includes the cost of keeping the 'Common Parts' in good condition and that the definition of Common Parts – whilst imperfect – probably means the common parts of the estate, but there seems to be no specific provision allowing the landlord to include an estate management charge in the service charge. The general rule is that any service charge must be clearly provided for under the lease and that any ambiguities are construed in favour of the tenant.

31. Therefore, somewhat reluctantly, the Tribunal is of the view that the housing management charge is not properly payable under the Lease.

DETERMINATION

32. The following **housing management charges are not payable** by the Respondent:-

2006/2007 (based on actual service charges)	-	£102.37
2007/2008 (based on actual service charges)	-	£92.03
2008/2009 (based on estimated service charges)	-	£95.89

Whilst the actual service charges for 2008/2009 are now available they did not form part of the County Court claim and therefore it is outside the Tribunal's jurisdiction (as this is a County Court referral) to make a determination in respect of the actual figures for 2008/2009.

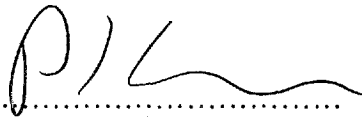
33. All other service charge items forming part of the County Court claim are payable in full. Therefore, **of the £1,280.29 claimed in the County Court proceedings (not including the ground rents), the amount payable is £990.00.**
34. The Respondent has applied for an order under Section 20C of the 1985 Act that none of the costs incurred by the Applicant in connection with these

proceedings should be recoverable as service charge. However, the Tribunal has found in favour of the Applicant on most points, and the only point on which it has found in favour of the Respondent is for technical reasons relating to the construction of certain ambiguous wording in the Lease rather than any failing on the Applicant's part. The Tribunal considers that it was reasonable for the Applicant to commence County Court proceedings to recover the arrears, having first pursued other less aggressive ways of claiming the arrears, and therefore taking all the circumstances into consideration the Tribunal **declines to make an order under Section 20C**. However, Mr Brayshaw said that in practice the Applicant did not intend to add its cost to the service charge as it would not be fair to other leaseholders to do so.

35. No other cost applications were made by either party.

36. The Tribunal does not have jurisdiction to determine the payability or otherwise of the ground rents and refers this element back to the County Court for determination.

CHAIRMAN.....
Mr P Korn



2nd July 2010