

8413



HM Courts
& Tribunals
Service



Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
LANDLORD AND TENANT ACT 1985
SECTION 27A

Case Reference: LON/00AH/LSC/2012/0592

Premises: 13, Redwood House, 30, Thornton Road,
Thornton Heath, Surrey CR7 6BA

Applicant: Gateway Property Holdings Limited

Representative: Gateway Property Management Limited

Respondent: Mr David Law-Kwang

Representative: In Person

**Date of Transfer from
County Court** 28 August 2012

**Date of Pre-Trial Review
and Directions** 26 September 2012

Date of Hearing: 28 November 2012

Date of Decision 30th November 2012

**Members of
Tribunal:** Mr S. Shaw LLB MCI Arb
Mr C. Gowman MCIEH MCMI BSc
Ms S. Wilby

DECISION

Introduction

1. This case involves a claim transferred from the Croydon County Court to the Tribunal by order dated 28 August 2012. The Claimant in the County Court proceedings is Gateway Property Holdings Limited (“the Applicant”). In fact that is a mistake by the Claimant’s agents, Gateway Property Management Ltd.. The correct freehold proprietor (as conceded by Mr Ben Day-Marr of Gateway Property Management Limited) is Westleigh Properties Limited. The Tribunal has no jurisdiction to make the amendment of what is a County Court case, but if the matter reverts to the County Court, no doubt that substitution will take place. For present purposes the Tribunal will refer to the existing Claimant or Applicant as “the Applicant”. As mentioned, the managing agents for the Applicant are Gateway Property Management Limited. The Respondent is Mr David Law-Kwang (“the Respondent”). The Respondent is the leasehold owner of Flat No. 13 at Redwood House, 30 Thornton Road, Thornton Heath, Surrey CR7 6BA (“the Property”). The Property comprises a block of flats set out over three floors (including the ground floor) and comprising 14 flats. The Respondent’s flat is one of two penthouse flats on the upper floor.
2. The claim in the County Court was for alleged arrears of service charge and other sums totalling £2,519.72. However, that sum includes sums other than service charges, and in respect of which the Tribunal has no jurisdiction. The figure, as explained at the hearing and at the Pre-Trial Review, which the Tribunal has jurisdiction to deal with, is the sum referable to the service charges

and that sum can be found at page 15 in the bundle of documents with which the Tribunal was supplied. At page 15 is a statement of anticipated service charge expenditure for the period 24 June 2011 to 23 June 2012. The Tribunal was informed that it was that budget or estimate of forthcoming expenditure, in respect of which the Respondent was in arrears, and for which he was sued in the County Court.

3. By the time the matter came before the Tribunal, there had been a series of payments, and the undisputed position between the parties was that £1,000 had been paid off the service charge contribution referred to at page 15 in the bundle, leaving a balance of only £618.95 outstanding. However, although the greater part of the sum demanded for that period had been paid by the Respondent, it had been paid, in a sense, under protest, because the Respondent's case is that ever since the present managing agents, Gateway Property Limited, (represented at the hearing by Mr Day-Marr - Director of Operations, and James Collingwood - Property Manager) had taken over management of the Property in February 2010, the state of the flats and common parts generally had declined rapidly. The Respondent's case is that these agents have thoroughly mismanaged the property, have failed to maintain it, and failed to allocate the funds collected properly upon the building, so that it is now in a state of neglect and decline. For its part, the managing agents resist this contention and say that they have properly discharged their management duties.

4. The result of this dispute (which the parties tried unsuccessfully to resolve before coming into the hearing before the Tribunal) was that much of the hearing bundle contains details of alleged historic neglect and complaints, which the Respondent asserts have gone either unanswered or if answered, not properly acted upon. The Respondent's case is supported by some other tenants or leaseholders who have similar complaints against these managing agents.
5. To an extent, it would have been desirable to try to resolve these disputes in some way because this is the essence of the current controversy between the parties. However, as explained both at the Pre-Trial Review and at the hearing, the jurisdiction of the Tribunal in a transferred case of this kind is strictly limited. It is even more limited in this case because the alleged arrears sued for in the County Court arise out of estimated (rather than actual) expenditure of an anticipated kind for the service charge year 24 June 2011 to 23 June 2012.
6. In other words, the Tribunal is being asked to determine not actual costs, but estimated costs based on the budget referred to and appearing at page 15 in the bundle. As mentioned, this in some ways is a pity, because it does not enable the Tribunal to get to grips with the essence of the dispute between the parties as referred to above. However, this is the case with which the Tribunal has been presented and with which it will now deal.
7. The proceedings before the Tribunal took the form of the Respondent explaining which figures in the service charge budget were challenged. It is

proposed to deal with the submissions on both sides in respect of those items for which budget provision has been made, and to give the Tribunal's finding accordingly.

8. It should be stated that, at an early stage of the proceedings and indeed on more than one occasion during the course of the proceedings, Mr Day-Marr on behalf of the managing agents, informed the Tribunal that he wished to apply for an adjournment because he had not come to the Tribunal with any primary invoices or documents necessary to support the budget. This was apparently, on his case, because the Tribunal had directed that a Scott Schedule be prepared in which the Respondent would record his comments upon the items in the budget claimed for. That Scott Schedule had not been completed by the Respondent (instead he had set out his case in Statements and documents) and therefore, said Mr Day-Marr, he had come to the Tribunal without any supporting invoices. If he were to be asked to supply any such invoices, he requested that the matter be adjourned. He also stressed that the Tribunal's jurisdiction was clearly limited to considering the reasonableness of the budget that had been presented.
9. The Tribunal deliberated upon Mr. Day-Marr's request for an adjournment suggestion and declined to grant one. . It seemed to the Tribunal that it would involve a wholly disproportionate further expenditure of costs for the matter, now listed and being heard before the Tribunal, to defer the Tribunal's determination. Both parties had had ample opportunity to prepare their respective cases. Although the Scott Schedule had not been completed by the

Respondent, the Respondent had instead prepared very full statements of case and witness statements, all appearing in the bundle and a large number of photographs and other documentation to support his general complaints. However the main reason for not adjourning this case was that the Tribunal did not consider it to be its function to carry out a meticulous examination of actual expenditure, in respect of the period concerned. As already observed, the Tribunal is dealing with a budget for the period referred to, and the Tribunal's approach to this matter has to been to consider whether, at the date that that budget was prepared (shortly before May 2011) the figures included in the budget were reasonable figures, based on the material then before the managing agents, and the previous year's expenditure. On this basis, the Tribunal has proceeded with the case and will now deal with the individual items as referred to.

10. The first item on the schedule refers to cleaning of the communal areas. The figure claimed is £2,077. This computes to a sum of £3.73 per week as far as the Respondent is concerned. The Tribunal did not understand the Respondent to be saying that this in terms of quantum was an unreasonable figure. The thrust of his complaint was that in the past a cleaner used to attend every week and a reasonable job was carried out. However, since the current managing agents took over, cleaners have attended only once a fortnight and carry out a very poor job. They arrive when they want to, on no particular day, they fail to clean properly either the landings or the car park area, which is also supposed to be covered by them. They do not change the light bulbs and the lift is often in a sullied and unsavoury state. Windows are not cleaned and generally the

interior is an embarrassment for residents. The Respondent told the Tribunal that often he has to do the cleaning himself because of the poor state of the interior.

11. In response to these assertions, the Applicant, through Mr Day-Marr, told the Tribunal that in response to the complaints, the cleaning contractors had now been changed and new contractors were doing the job which previously had been carried out by Lancaster Cleaning Services for a charge of £173.04 per month, for the reduced price of £52.80 per month. Mr Collingwood, who has only relatively recently taken over periodic inspection of the property, said that at his last inspection in September this year, the interior was marked in various ways but that the tiles in the communal area are inappropriate household tiles (rather than more heavy duty tiles) and have been permanently stained and therefore cannot be cleaned well.
12. As indicated, the Tribunal is not in a position to determine the level of service given. Nor in this case, as transferred to the Tribunal, is an exercise of this kind possible. The Tribunal notes that for the previous service charge year (in respect of which accounts have been certified) this cleaning involved expenditure of £1983. In the circumstances, the budget of £2,077, involving only a marginal uplift, appears appropriate. The Tribunal will comment on the complaints made later in this Decision. For present purposes the figure budgeted for seems to the Tribunal reasonable.

13. A sum of £1,500 has been provided by to account for electricity. The sum in the previous year's accounts was £1,532 and again, and accordingly, this sum seems reasonable. The Respondent's contention was that the expenditure could only relate to the communal lighting, which was very limited, and possibly to security gates and security lights, but that these gates had not been functioning properly for 2 years. He conceded that the lift would also require electricity to run.

14. Again, given the previous year's expenditure, this budget does not seem unreasonable and no adjustment is made of this figure.

15. A figure for £2,724 has been included for building insurance, which was not challenged. A figure of £1,050 was included in the budget for repairs and renewals. This amounts to the very modest sum of £20 a week approximately, for day to day repairs to this 14 flat block. The Respondent conceded, as he did in respect of most of the heads of the budget, that if the services had been properly provided, the reserve or budget would have been reasonable. His contention was that in fact although this figure had been budgeted for (and the demand based upon it), no repairs had been carried out, nor any renewals and indeed nothing had been done at the property of any significance for the past 2 years. The photographs he said spoke for themselves and indeed the photographs do show evidence of vandalism at the block and graffiti, and in some respects poor items of repair. In response, Mr Day-Marr said that he had not tabulated the actual expenditure, for the reasons indicated above but that

that expenditure had in fact exceeded by some way the provision made in the budget.

16. The Tribunal considers that the budgeted figure cannot be criticised and indeed, it is rather less than perhaps might have been expected. No adjustment is made in this regard.
17. A sum of £208 has been reserved for maintenance of the TV satellite system. The Respondent complained that the system does not work properly and no maintenance had occurred because access to the satellite dish can only be achieved through his flat, and no access had been asked for or given.
18. So far as the Tribunal is concerned, the provision in the budget is similar to that of the previous year and seems reasonable, and no change is made.
19. The same comment can be made in relation to the sum of £312 reserved for maintenance of the door entry system. The Respondent said that nothing had been done to maintain the door entry system and showed photographs to the Tribunal to illustrate his point. This complaint refers to the quality of the service provided more than the question of whether or not a proper figure has been reserved in the budget. The Tribunal is satisfied that it is a proper figure and makes no change.
20. Similar comments can be made in respect of the reserve of £500 made to maintain the fire alarm and smoke ventilation system. The Respondent again

conceded that if the service had been provided, the £500 reserve would have been perfectly reasonable. He told the Tribunal of a series of complaints that had been made about the system however, that the pipes for ventilation had perished and there were unpleasant smells coming into the whole block and especially rising to the top floor. He said that many of the tenants have been complaining for about 2 or 3 years, and that it was not simply himself who was concerned in this regard. He said hitherto he had always paid his service charges in one lump sum, and it was only this year that he withheld payment in order to try to make the point that the current scenario was entirely unacceptable. He stressed that the argument used by Mr Day-Marr was entirely fallacious, that argument being that unless the monies were paid, the agents could not properly maintain the block. He said that he had always paid the money but nonetheless no service of a satisfactory kind had been supplied. Mr Day-Marr accepted that there were no arrears when his company took over the management of the block, and that these arrears now claimed had only accumulated during the time that his company had been responsible for management. For the reasons indicated, the Tribunal makes no comment on the complaints as to the quality of the service because it is more concerned with whether or not the provision made in the budget is reasonable. It seems to the Tribunal that this is very similar to the preceding year's expenditure (£468) and is reasonable.

21. A sum of £1,695 has been included in the budget to provide for lift maintenance. This is a curious sum to appear because the figure for the preceding year, which included the maintenance of the lift phone (for which a separate provision

is made in the budget under question) was £299. The only explanation that Mr Day-Marr was able to give for this very significant disparity was that his company would have made this provision "*in anticipation of expenditure ...*". He was unable to assist the Tribunal with any information as to why such increased expenditure was suddenly anticipated for this year. So far as the Respondent was concerned, there was nothing special about this year, no more nor less was carried out by way of maintenance on the lift than in preceding years. In the absence of any satisfactory explanation on behalf of the Applicant, the Tribunal takes the view that this provision appears excessive. Mr Day-Marr told the Tribunal that the payments under the maintenance contract for the lift were £115 per quarter. This would amount to £460 a year. In order to provide for unexpected expenditure outside the terms of the maintenance contract, the Tribunal considers that a reasonable figure would be £1,000 under this head and the budget should be adjusted accordingly.

22. In the budget, a further sum is allowed for maintenance of the telephone in the lift. Again the Tribunal was informed that there is a quarterly telephone line fee of £78.62, which has to be paid. Again, following the pattern of earlier heads of claim, the Respondent and his witnesses say that the phone in the lift simply does not work, so they are bemused as to why they should be paying any money in this regard. For the reasons already indicated, the provision in the budget seems perfectly reasonable and is not adjusted by the Tribunal. The question of determination of whether or not the services have been provided will be dealt with below.

23. A sum of £208 has been included for insurance of the lift. In fact there is no such provision in the preceding year's accounts, in the sense that there has been no such expenditure listed. Mr Day-Marr told the Tribunal that there would have been some insurance the previous year, but for reasons which he was unable to explain, it did not appear as an itemised cost in the end of year accounts. He said that if it had not been expended on insurance, then it would have been taken into a reserve fund or credited back to the leaseholders, but he was unable at the hearing to demonstrate how this came about. The Tribunal considers that the reserve in the budget is perfectly reasonable and makes no change to this figure. Of course, if this matter proceeds further, as will be referred to below, one would expect to see some documentary evidence in relation to this expenditure.
24. A sum of £4,200 has been included in the budget to cover management fees. The sum in the previous year's accounts is £3,325. These figures amount to £237.50 inclusive of VAT per unit for the preceding year and £250 plus VAT for the year in question. That level of management fee seems, in the experience of the Tribunal, to be within the range of what one would expect for a property of this kind in this area. The Respondent conceded that if management had been properly carried out, that would have been a proper figure to appear in the budget. For reasons set out at length in his statement and in the supporting documentation including witness evidence from other residents, he told the Tribunal that there has been very poor management by Mr Day-Marr's company and that he did not feel that he had received value for money. He told the

Tribunal that he would never buy a leasehold property again and he had learned an expensive lesson by purchasing the property in question.

25. For the same reasons as already explained, the Tribunal is not determining in this case, whether the management has been satisfactory or otherwise. The issue is whether or not the sum contained within the budget is within the range to be expected by reference to the previous year's expenditure and the Tribunal's own experience of management fees charged for blocks of this kind. The answer to these questions is in the affirmative and no change is made to this budgeted figure.
26. The next three items in the budget relate to accountancy fees at £562, Health & Safety Report £500 and bank charges of £60. There was in effect no challenge to these by the Respondent and these sums are allowed in the amount budgeted for.
27. The final two items related to budgeted sums for car park maintenance (£500) and electronic gates (£300). Once again, in keeping with the general tenor of the case, the Respondent accepted that these were perfectly reasonable figures to set aside for these anticipated outgoings for that year.
28. His case however was that the monies had not been properly expended. The car park area was in a poor state of repair (he illustrated this by photographs) and the electronic gates were not working. The effect of the failure of the gates was that vandals and other undesirables entered into the car park area and

possibly the common parts of the property, and vandalised them in an unsavoury and unsightly way so that the whole character of the block has deteriorated. If this is so, and the Tribunal makes no finding in this regard, this would support a separate application by the Respondent under Section 27A of the Act.

Conclusion

29. For the reasons indicated above, the figures included in the budget seem to the Tribunal to be reasonable with the exception of the sum of £1,695 provided for in respect of lift maintenance. This figure should be £1,000 and the sum claimed against the Respondent adjusted accordingly. On the Tribunal's calculation, this would mean on the budget as presented, the Respondent's contribution under this head would have been £158.31, but this now should be reduced to £93.40, thereby reducing the overall sum due from him under the budget by £64.91 on the basis that there is a balance to be paid of £618.35. This would mean that the new figure due is £.553.44. It is this figure which the Tribunal determines would be the reasonable balance due on an interim basis, by reference to the budgeted expenditure for the year 24 June 2011 to 23 June 2012.
30. It will be apparent from the above findings, as alluded to in the opening paragraphs of this Decision, that unfortunately the Tribunal's finding does not get to the crux of the dispute between these parties. The reason for this is as already explained, because the Tribunal is dealing with budgeted rather than actual figures in relation to the specific service charge year before it.

Fundamental and serious complaints are made by the Respondent in respect of alleged management failings by Gateway Property Limited. The forum for these complaints to be decided is indeed the Tribunal, but not in the context of this referred case, on a budget, from the County Court. The Respondent may wish to take advice about whether, and if so how, to make his own application before the Tribunal in respect of specific service charge years under Section 27A of the Landlord & Tenant Act 1985. Alternatively, as is of course always more desirable, it may be that the reference of this case to the Tribunal, and some of the matters which have been ventilated, may enable the parties to work productively together in order to improve the situation, and deal with some of the problems existing at the building, which both parties told the court undoubtedly do exist at present. The parties mentioned that a meeting had been arranged between the management company and leaseholders, for early in the New Year, and it is earnestly to be hoped that that meeting is the start of a new dawn of mutual cooperation and a happier state of affairs for the property.

Legal Chairman: S. Shaw

Dated: 30th November 2012