

**RESIDENTIAL PROPERTY TRIBUNAL
REASONS FOR DECISION
REF: MAN/00CG/LSC/2006/0002**

**Northern Rent Assessment Panel
Leasehold Valuation Tribunal**

Landlord and Tenant Act 1985, Section 27 A and 20 C

Property: 104 Raeburn Road, Sheffield, S14 1DB
Applicant: Mrs J E Evans (represented by Mr T Evans)
Respondent: Sheffield City Council
Chairman: Mrs J E Oliver
Surveyor Member: Mr R Wormald
Lay Member: Mr J Tonks
Date of Hearing: 5 May 2006

1. Application

The Applicant, Mrs J E Evans made an application to the Tribunal on the 6th March 2006 to determine whether a service charge was payable in respect of the property at 104 Raeburn Road, Sheffield (the property) for the 2002/2003, 2003/2004 and 2004/2005, and if so, the amount payable. The Applicant also sought an Order under Section 20 C of the Act that the costs incurred or to be incurred by the Respondent should not be regarded as relevant costs to be taken into account when determining the amount of service charge payable. The Applicant further sought an Order that the Respondent should pay the Applicant's costs to the application.

2. Inspection

The Tribunal members inspected the property on the morning of the hearing. The Applicant's representative, Mr T Evans together with his son, Mr Mark Evans who occupies the property were present. Mr Parker on behalf of the Respondent was also present as was Mr Whiteley and Linda McDonald from

Transport and Commercial Services (TCS) who are responsible for the cleaning of the common areas.

The property forms part of a block of flats comprising of 8 flats. There are a number of similar blocks of flats within the immediate vicinity. The access to the flats is by a stairway to which there is access from a path leading to the road. The hall and stairway are not enclosed and are therefore open to the elements.

The Common areas showed signs of requiring repainting and general maintenance. The paint to the handrails and window frames was flaking as was much of the paint work to the ceiling of the hallway. The stairs in the hallway had been painted on each side and all showed signs of requiring repainting. The Tribunal noted during the inspection that the hallway was free of debris as was the bin store but there was evidence of cobwebs both on the window frames and stairs themselves. The paint on the stairs was worn and had ingrained dirt. The handrails and metal frames around the window were dirty in parts.

The estate of which the property forms part is served by public transport and is convenient to local amenities.

3. The Lease

The property is subject to a Lease granted by Sheffield City Council for a term of 125 years from the 24 April 1989 subject to a yearly rent of £10.00 per annum.

In addition to the rent there is a service charge payable under the Lease being "a fair proportion to be determined by the City Treasurer or other duly authorised officer of the Council..... of all costs, expenses and outgoings incurred or estimated to be incurred by the Council in respect of, or for the benefit of the building".

Within the terms of the Lease it is specified that the services may include, amongst others, the provision of caretaking and cleaning (including window cleaning).

In addition to the rent and service charge, the Lease also provides for a further charge "the estate charge", "being such reasonable contribution as the Council shall from time to time require to the cost, expenses and outgoings lawfully incurred or to be incurred in respect of the following:-

- Upkeep of landscaping and play areas.
- Provision of TV ariel facility
- Administration charge"

4. The Issues

The issue for determination by the Tribunal was whether the cleaning, as provided for within the Lease, was of a sufficient standard to justify the level of service charge being demanded by the Respondent. If not, the Tribunal were asked to determine what service charge should be levied.

5. Submissions by the Applicant

The Applicant advised that the purchase of the property was completed in 2000 and Mr Mark Evans, the son of the Applicant began his occupation of it in June 2000. At that time no cleaning was provided by the Respondent and consequently no provision for cleaning was made within the service charge. In 2002 the cleaning of the common parts began and the Applicant received her first demand for the payment of service charge in or around January 2004. At that time the Applicant sought details of the cleaning specification and also raised an issue with regard to the estate officer's charge. The Tribunal were advised that the Respondents accepted that due to the lack of provision of the service, there should not have been a charge for the estate officer and a refund was made. It appeared that at the time of the refund the Applicant also received a copy of the cleaning specification relevant to the property. The Applicant states that at that time it was hoped that the cleaning would improve but no discernable improvement was made. Consequently, when the second

service charge demand was received for the year 2003/2004 the Applicant again raised her concerns. The Tribunal had the benefit of the correspondence from Mr Evans on behalf of the Applicant dated the 23 March 2005.

The Tribunal were advised by the Applicant that in May 2005 he received a reply from the Respondent which did not address the issues raised and as a result of which the Applicant suggested a meeting with the Respondent which subsequently took place on the 14 September 2005. The Applicant states that at that time it was thought that progress had been made but a further letter, which was copied to the Tribunal was then sent on the 28 November 2005 to again state that despite the site meeting there was again no improvement in the cleaning services to the property. Due to the failure by the Applicant to resolve his issues with the Respondent, an application was made to the Tribunal.

At the hearing the Applicant produced photographs taken of the condition of the stairs and hallway at around the time the Application was made to the Tribunal. These photographs clearly showed cobwebs around the window frames and the rubbish in troughs in front of the windows, dirt on the window ledges and walls. It was stated by the Applicant that in the weeks prior to the hearing there had been a marked improvement in the level of cleaning to common parts.

In his submissions to the Tribunal Mr Evans, referred to the cleaning specification which had been forwarded to him by the Respondent in 2004 which showed that until the new Contract between the Respondent and TCS came into effect in 2005, the cleaning of the common parts was as follows:-

1. Tasks: twice weekly
 - Clean (remove litter, soilage and free absence of odour and foul smells)
 - Clear free of obstruction, sweep, wash down, mop and deodorise
 - Spot clean steel surrounds and lift doors on each floor

- Spot clean (walls, light covers, communal doors, door glazing and all glazing)
- Spot clean all surfaces (floors, walls, tables, chairs and soft furnishings)
- Remove spillages and deodorize and disinfect
- Spot clean all surfaces (floors, walls, doors and ceilings) from soilage and free absence of odour and foul smells.
- Remove litter, soilage, and free absence of odour and foul smells.
- Reporting of all graffiti (that cannot be removed by spot clean)
- Remove black sacks, dump rubbish and other items
- Remove of all needles and syringes
- Reporting of all defects observed, past on from tenants and members of the public

2. Tasks: Weekly

- Spot clean (walls, light covers, communal doors, door glazing and all other glazing)
- Clean free of dirt, soilage, deodorise and disinfect
- In depth clean of all surfaces (floors, walls, doors and ceilings) deodorise and disinfect
- In depth clean of steel surrounds and lift doors on each floor.

Mr Evans, on behalf of the Applicant stated that the level of cleaning provided for within the block did not meet the service specification. It was submitted that there was little evidence of stairs being washed down and observations of the cleaning service indicated that the operatives removed rubbish, swept down and deodorised but, there was no evidence of cleaning to the extent described within the specification.

On behalf of the Applicant, Mr Mark Evans gave evidence. Mr Evans is the son of the Applicant and lives at the property. He confirmed that between 2000 and 2002, no cleaning services were provided and the cleaning and

maintenance of the stairs and hallway was undertaken by him and the other tenants within the same block. He stated:-

- The specification is not complied with
- The cleaning service usually only attend once a week.
- He has never seen anybody mopping the stairway in accordance with the specification.
- He has seen evidence of the stairs being deodorised by water from a watering can.
- There has been no wiping down of the hand rails until quite recently.
- There has been an improvement in the cleaning services but only in the very recent past
- For the past 3 years, namely until 2005 no mopping down of the stair cases at all.

Mr Evans advised that in his written submissions he had suggested that a service charge of £25.00 per year for the cleaning services would be reasonable but at the hearing conceded £45.00 would be appropriate.

6. Submissions by the Respondent

Mr Parker attended on behalf of the Respondent who submitted that the service charge for the element of cleaning was reasonable. There is in place a system of monitoring which has been improved. Monitoring takes the form of spot checks on individual properties. The Respondent accepts that the block in which the property is situate is in need of refurbishment and the programme for the area in which the property is situated is likely to commence during 2007 but it is not known when improvement work on the block itself will commence. Due to the refurbishment which is required it was stated on behalf of the Respondent that it is difficult to clean to a high standard but nevertheless the service which is provided is reasonable for the charges which are made. He stated that the service charge, equivalent to £2.62 per week represents value for money.

Mr Whiteley from the Transport and Commercial Services (TCS) gave evidence on behalf of the Respondent and confirmed that until 2002, no cleaning services were provided by the Respondent. TCS were awarded the contract in 2002 and the specification which is referred to in paragraph 5 above was issued. However, in 2005 the contract between the Respondent and TCS was re-negotiated resulting in a different specification. Linda McDonald, attending on behalf of TCS confirmed that the current cleaning specification (but not evidenced in writing) for the property is as follows:-

1. Monday

- Check stairs, landing
- Check for glass, urine and remove items as are necessary
- Rotate bins (as needed)

2. Thursday

- Sweep stairs
- Mop stairs
- Wash edges, ledges and hand rails
- Damp wipe of internal windows
- Sweep out the bin store

The difference between the new contract and the old contract is that under the old contract the property had the benefit of two cleans per week (as referred to above). The new contract provides for a spot check each Monday and then for a deep clean on a Thursday. The Leasehold/Tenants then, under the cleaning specification have access to a responsive service 7 days per week. This enables the Leaseholders/Tenants to contact TCS to remove for example, any items which have been dumped or to clean where necessary. This responsive service was not available under the old contract, other than in certain limited services.

On behalf of TCS it was explained that the teams of operatives are trained and are aware of the specification for cleaning. The monitoring system is now on a self monitoring basis in that the operatives have a device which reads a bar code within the block to monitor when they enter the property when they leave. The information provided by this system was not available to the Tribunal. In addition, there are supervisors who go out to the properties periodically and it is within their remit to advise if the cleaning is failing to meet the appropriate standards.

Mr Parker, on behalf of the Respondent advised that having checked with the ALMO for the relevant area, no other complaints have been received in respect of the standard of cleaning to the block in which the property is situated.

7. The Law

1. Under Section 27A (1) of the Landlord and Tenant Act 1985 provides 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 the amount which is payable

2. Section 19 of the Landlord and Tenant Act 1985 states
“relevant costs should be taken into account in determining the amount of 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 of work are of a reasonable standard;

and the amount payment shall be limited accordingly.

3. Section 20 (C) of the Landlord and Tenant Act 1985 states that
“the Tenant may make an application for an Order that all or any of the costs incurred, or to be incurred by the Landlord in connection with the proceedings before a Court..... are not to be regarded as relevant costs to

be taken into account in determining the amount of any service charge payable by the Tenant or any other person or persons specified in the application.

8. The Tribunals Findings

The Tribunal considered the application brought by the Applicant with particular reference to the service charge and acknowledged that this comprised of two components which are as follows:-

1. TCS Services
2. Estate Officer's Services

The Applicant, in her application confirmed that that element relating to the Estate Officer's charges was not in dispute and the Tribunal were asked to only consider that element relating to the cleaning services (by Transport and Commercial Services) for the years 2002/2003, 2003/2004 and 2004/2005. The sums in respect of that element of cleaning for those years were in the sums of £135.03, £138.77 and £133.64 respectively.

The Tribunal noted that whilst there were no doorways to the block preventing the stairs and hallway being exposed to the elements, nevertheless the standard of cleaning and caretaking were not of a standard sufficient to justify the service charges being incurred for the relevant years. The Tribunal noted from the photographs which were produced by the Applicant of the state of the stairs/hallway prior at the time of the application showed maintenance to a much lower standard than that which the Tribunal had noted on the inspection. The evidence given by Mr Mark Evans and that of Mr T Evans on behalf of the Applicant inclined the Tribunal to the view that the condition of the stairs/hallways on inspection was considerably improved to that which had existed prior to the application being brought to the Tribunal.

The Tribunal considered what would be a reasonable charge for the relevant years and considered the costings provided by the Applicant within his submissions. The method of calculation had not been challenged by the

Respondent albeit the conclusion of the amount which could be reasonably charged in the sum of £45.00 was in dispute.

The Tribunal determined that a charge for cleaning services for the year 2004/2005 be in the sum of £65.00 thus reducing this charge from the figure of £133.64 but to which should then be added the charge for the Estate Officer giving a total service charge for the year 2004/2005 in the sum of £98.49. This represents a reduction of approximately 51.4% in the cleaning services. The Tribunal determined that the service charge for the years 2002/2003 and 2003/2004 should also be reduced proportionately, i.e. by 51.4%, giving a service charge for those years as follows:-

1. 2002/2003 - cleaning £61.82, estate officer £30.99
Total: £92.81

2. 2003/2004 - cleaning £64.89, estate officer £37.27
Total: £102.16

In his oral submissions to the Tribunal the Applicant proposed that to avoid further applications to the Tribunal, an arbitrator be appointed to deal with future disputes regarding the provision of cleaning services and the service charge. The Tribunal have no jurisdiction to appoint an arbitrator under the provisions of the Landlord and Tenant Act 1985.

9. Costs

The Applicant sought an Order pursuant to Section 20 (C) of the Landlord and Tenant Act 1985 that the Respondent be prevented from recovering the costs of the proceedings through the service charge. The Respondent stated that there would be no intention to pursue such an Order. Accordingly, the Tribunal determined that the Respondent shall not include within the service charge any costs incurred in connection with the proceedings.

The Applicant also sought an Order that she be entitled to recover the costs of the application. The Tribunal determined that the Respondent shall pay the Applicant's costs limited to the sum of £200.00.

Dated this 17th May 2006

.....*Oliver*.....

Mrs J E Oliver (Chairman)