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LON/00AG/LIS/2007/0004

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985 SECTION 27 & 20C

Applicant: Mr Pietro Vecera

Respondent: London Borough of Camden

Re: 35 Seymour House, 58-6- Tavistock Place London WC1H 9RH

Application received: 4/1/2007

Hearing date: 1 March 2007

Appearances: Mr Pietro Vecera (Applicant)

London Borough of Camden (Respondent)
Miss R Patel
Mr Harry Yates

Members of the Leasehold Valuation Tribunal:

Mr Adrian Jack
Mr T N Johnson FRICS
Mrs G V Barrett

London Leasehold Valuation Tribunal File Ref No.	LON/00AG/LIS/2007/0004

Leasehold Valuation Tribunal: decision

Landlord and Tenant Act 1985 sections 27A and 20C

Address of Premises	The Committee members were
35 Seymour House, 58-60 Tavistock Place, London WC1H 9RH	Mr Adrian Jack Mr Johnson FRICS Mrs Barrett JP

The Landlord: **London Borough of Camden**

The Tenant: **Mr Pietro Vecera**

Background

1. The tenant is the holder of a 125 year lease from 5th June 1989 of the property. He and his wife purchased the property under the Right-to-Buy legislation. The lease contains standard provisions for the payment of service charge on account with a balancing charge after the end of each service charge year. Service charge years run from 1st April to 31st March.
2. By an application received on 4th January 2007 the tenant sought determination of the amount payable by him in respect of service charges for the service charge years 2004-05 and 2005-06. In his application he queries the figure charged for heating of £518.36 in 2004/05 and £914.44 in 2005-06 and complained of the frequent breakdowns experienced in the flat.
3. The block is provided with hot water and heating by communal boilers. The tenant complains that the landlord does not permit him to install his own boiler.

The law

4. Section 19(1) of the Landlord and Tenant Act 1985 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 payable shall be limited accordingly."
5. Section 27A gives the Tribunal jurisdiction to determine by whom, to whom, when, in what matter and how much is to be paid.

Inspection and hearing

6. Neither party requested an inspection, so the Tribunal did not inspect the property. At the hearing on 1st March 2007 Mr Vecera appeared in person.

The landlord was represented by Ms R Patel, its court officer, and Mr Harry Yates, its mechanical and electrical manager.

The parties' submissions and evidence

7. The figures for heating charges were set out at pages 56 and 111 of the bundle. Mr Vecera explained that (save for one point) he was not making an attack on the individual figures but rather that his concern was a general issue as to the total, which he considered to be too high.
8. Mr Yates explained that heating and hot water was provided by a central boiler system. The season for heating ran from 1st October to 31st May. Hot water was provided during the whole year.
9. A detailed explanation of how the gas supply contract came to be negotiated through the agency of Kent County Council was given in the papers. Mr Vecera accepted that he could not criticise the way in which the landlord had sought to obtain the cheapest supply possible.
10. Mr Vecera explained that there were, however, serious problems with the supply of water to the flat and that the response of contractors was poor. Sometimes it took several days for them to fix the problem.
11. Mr Yates explained that the premises were on the top floor of the building. The water in the flat was kept in a Nelson tank. When problems occurred they were generally caused by the low mains water pressure. This was the responsibility of Thames Water. There was nothing Camden or the contractors could do when the mains water pressure dropped. Camden contracted with Seaflame for maintenance. There were two elements: a planned preventative maintenance programme, for which a lump sum was charged, and an individual call out fee for each flat. He explained how the contract had been designed in order to minimise the cost to tenants and was based on many years experience of such contracts.
12. Mr Yates said that the landlord had a robust system of maintenance and that a good service was provided with repairs being carried out in a reasonable way.
13. On the number of call-outs, Mr Yates was able to give precise figures. Over 10 years there had been 634 call-outs to individual flats, a total of 9 repair orders per flat. In 2004 there had been 8 repair orders placed by Mr Vecera. Over the 10 year period there had been 137 boiler repairs, but Mr Yates explained that many of these were caused by the "fail safe" device operating.
14. The particular point Mr Vecera attacked was a figure of £303.55 for repairs in 2005-06. The corresponding figure in the previous year was only £1.65. Mr Yates explained that this figure comprised two elements: an annual service charge of £433.37 for the block and a major item of some £18,000 for the replacement of two boilers which had broken down. This, he said, was an emergency.
15. The amount charged the tenant in respect of the boiler exceeded the £250 limit, beyond which a landlord needs to carry out the consultation requirements contained in section 20 of the Landlord and Tenant Act 1985. After discussion with the tenant, however, he accepted that, because this was emergency situation, this was a case where the Tribunal would grant the

landlord a dispensation under section 20ZA of that Act. Accordingly the tenant expressly waived any reliance on the absence of consultation.

Reasons

16. The Tribunal accepted the evidence of Mr Yates. He was a transparently honest witness, who was clearly extremely experienced in the area of heating engineering and in Camden's management of heating on its estates. When he was asked questions outside his field of expertise he was quick to explain that this was the case.
17. Mr Vecera's case by contrast was based largely on generalities. Where he made a specific complaint, in respect of the replacement of the boilers in 2005-06, he was forced to accept that the works were necessary.
18. The Tribunal accepted Mr Yates' account of the efforts the landlord went to ensure that the maintenance contracts minimised the cost to tenants. The amounts charged in respect of the boiler replacement were in the Tribunal's judgment reasonable and reasonably incurred. As noted above, Mr Vecera waived any reliance on section 20 of the 1985 Act.
19. So far as Mr Vecera's general point that the charges in respect of heating and hot water were high, the Tribunal can of course only sympathise with him. However, it is a fact that over the relevant period fuel prices did increase substantially. The Tribunal is satisfied that the landlord took all reasonable steps to keep the cost of fuel as low as possible.
20. Similarly the Tribunal can understand Mr Vecera's view that an individual boiler in his flat might be cheaper than the communal system, although he had no evidence to this effect. The lease, however, provides for the communal system and the landlord is, in the Tribunal's judgment, entitled to refuse to permit individual tenants to opt out. An opt out would result in the economies of scale being lost.
21. The landlord has produced detailed accounts showing the sums expended. The actual way in which the sums expended are allocated between individual flats is complicated. Neither Ms Reena Patel nor Mr Yates were able to give a full explanation of how the precise allocations were made.
22. The Tribunal has experience of the way in which local authorities allocate expenses in buildings such as the present. In the absence of a specific attack by Mr Vecera on the method of allocation, the Tribunal accepts that the allocation is reasonable. Ms **Reena** Patel was prepared to bring someone from the accounts department to explain the allocation, but in view of Mr Vecera's position, the Tribunal did not consider this was necessary. It is, however, surprising that Camden do not prepare a short document which explains how the allocation is made.
23. Accordingly the Tribunal considered that all the elements of the service charges for 2004-05 and 2005-06 were reasonable in amount and reasonably incurred. No items are disallowed.

Costs

24. The landlord indicated that it did not intend to make any claim for costs against the tenant. Accordingly the Tribunal makes no order under section 20C of the Landlord and Tenant Act 1985.

25. The tenant paid the fee for the application to the Tribunal and for the hearing. The Tribunal has a discretion as to who should pay these costs. The tenant has, however, comprehensively lost. In these circumstances the Tribunal considers that the tenant should bear these costs. Accordingly the Tribunal makes no order for costs, leaving these costs where they lie, namely on the tenant.

DECISION

The Tribunal disallows no items claimed by the landlord for the service charge years ending 31st March 2005 and 31st March 2006. The Tribunal makes no orders for costs..

The Tribunal confirms that the heating charges for 2004/05 of £518.36, and 2005/6 of £914.44 charged by the London Borough of Camden are reasonably charged and properly payable by Mr Vecera.

Adrian Jack

Adrian Jack, chairman 27th March 2007