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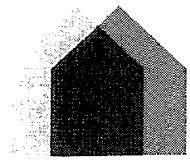


Residential
Property
TRIBUNAL SERVICE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

REF: LON/00AL/LSC/2007/0330

SECTION 27A LANDLORD & TENANT ACT 1985

FLAT 3, CLAYMILL HOUSE, RAGLAN ROAD, LONDON SE18 7HX

MR STEPHEN FARRIS **Applicant**

LONDON BOROUGH OF GREENWICH **Respondent**

Dates of hearing: 30 October 2007 & 15 January 2008 (inspection and hearing)

Date of decision: 29 January 2008

Tribunal: Mr M.A. Martynski - Solicitor
Mr J. Power MSc FRICS
Mr C. Piarroux JP CQSW

Present: Mr S. Farris
Ms Jacobs (Mr Farris's partner) (30.10.07)
Ms A. Bester (Legal Officer – L.B. Greenwich)
Mr M. Saye (Home Ownership Service Manager – L.B. Greenwich)

Summary of decision

1. The estimated sum of £25.00 for ground maintenance is reasonable and if incurred would be payable.

2. The estimated sum of £67.00 for lift servicing is reasonable and if incurred would be payable.

3. The estimated sum of £576.00 for heating is not reasonable and if incurred in any sum over £500.00 would not be payable.

4. The estimated sum of £1594.00 for CCTV and concierge services is reasonable and if incurred would be payable.

5. No order is made pursuant to section 20 Landlord and Tenant Act 1985 in respect of the costs incurred by the Respondent in these proceedings.

6. No order is made regarding the reimbursement of the fees paid by the Applicant.

Background

7. This is an application made by the Applicant under section 27A Landlord and Tenant Act 1985 in respect of service charges estimated for the service charge year 2007/8.

8. The Applicant's flat is on the ground floor of a tower block ('the Building') which is situated on an estate ('the Estate') comprising low and high rise blocks. There are 91 flats in the Building.

9. The Applicant is one of just two tenants in the Building who have exercised their right to buy. The Applicant purchased the long leasehold interest of his flat in 2004 having previously been a secure tenant of that flat for many years.

The issues and the Tribunal's decisions

10. By the time of the hearings, the points of dispute between the parties were as follows;

(a) The estimated amount for Ground Maintenance of £25.00
(b) The estimated amount for Lift Maintenance of £67.00
(c) The estimated amount for Heating of £576.00
(d) The estimated amount for Concierge and CCTV services of £1594.00
(e) The effect of the notice served on the Applicant pursuant to section 125 Housing Act 1985 prior to his purchase of the flat.

Ground maintenance

11. The Tribunal finds against the Applicant on this item. The Applicant complained that holes in the pedestrian walkway near the Building had not been filled in or otherwise dealt with and that there was an issue of rubbish being strewn around the communal dustbins and in hedges which was not collected. Further, the cost of ground maintenance had increased sharply over the years without explanation.

12. The local authority explained that Ground Maintenance was concerned with organic matters such as grass cutting and tree pruning and was not concerned with roadway repairs and rubbish collection. The Applicant's complaints were therefore misconceived. As to the sharp increase in the costs of Ground Maintenance, this was due to the fact that the cost was in previous years being wrongly subsidised from the Respondent's general funds. That subsidisation has now stopped.

Lift maintenance

13. The Tribunal finds against the Applicant on this item. The Applicant complained that he never had to use the lift because he was on the ground floor and therefore should not have to pay for its maintenance.

14. It is the case that under the terms of his lease, the Applicant has an obligation to contribute to the costs of the lift regardless of whether or not he actually uses it.

Heating

15. The heating for the flats within the Building is supplied by a central boiler house. In fact the boiler house in question serves five blocks in total. There are other blocks on the estate that are not served by this boiler house. The estimated amount of service charge objected to by the Applicant for this item represents the cost of fuel supplied to the boiler house, that fuel being gas.

16. The Applicant's first complaint was that he had to pay a set proportion toward the cost of fuel for the boiler house regardless of how much use he made of the heating. The Tribunal finds that the Applicant is obliged to contribute a set proportion to the cost of heating to the Building under the terms of his lease. The amount of actual heat used by the Applicant is irrelevant and accordingly the Tribunal finds against the Applicant on this point.

17. The Applicant's next complaint was that the cost of the fuel was too high. He was paying over £500 per year for a one-bedroomed flat. The Respondent showed evidence to the Tribunal of the way in which it procured the gas and of the cost of that gas used to power the boiler house. The Tribunal and the parties also had regard to some figures produced by the Tribunal for the costs of gas procured by a large social landlord for supply to a block of flats. The Tribunal was satisfied that way in which the Respondent went about obtaining the gas and the price paid for the gas was reasonable. It was clear that some thought had been given as to the best way to obtain gas at a competitive price and it was clear that the gas supply market had been tested.

18. However, a further issue regarding this item became apparent during the course of the inspection. It was assumed by all parties that the gas supplied to the boiler house was used directly to provide a heating system to the Building and four other neighbouring blocks. The Tribunal and the parties were told at the inspection that in fact some of the gas supplied to the boiler house was used to power a machine that generated electricity for the first to the top floors of the Building (excluding the ground floor where the Applicant's flat is situated). That electricity was then used by each flat for heating. The machine in question had in fact been out of use for some three to four months prior to the inspection and during that time the electricity needed by the flats in question was being taken from the national grid. When the machine is working, if there is excess electricity generated, that excess is fed into the national grid. As to the remainder of the gas supplied to the boiler house, this was used to power boilers within the boiler house providing heat to the flats on the ground floor of the Building and to the other four blocks served by the boiler house.

19. Mr Saye, the Respondent's home ownership manager, was not aware that the boiler house operated in this way prior to the inspection and told the Tribunal that he

would have to go back to the service charge and re-consider the way in which the charge for gas supplied to the boiler house would be apportioned to the Applicant.

20. As to the cost of the gas, whilst accepting, as stated above, that the price paid for the gas by the Respondent was reasonable, the Tribunal noted that the cost of providing heating to the Applicant was high given that the Applicant's flat was a small one bedroomed flat. The Tribunal however considered that; (a) the thermal insulation properties of the Building were probably reasonably poor, and; (b) other tenants in the other blocks, given that they paid a set charge for heating in any event, probably made full use of what heating there is. Accordingly the cost of providing heat for the flats in the Building was going to be high. The Applicant is obliged to pay a proportion of that cost.

21. Taking all the above into account and in particular the confusion over the way in which the boiler house serves the Building, the Tribunal accepts that even if the Applicant is paying a high charge for gas, that charge in the circumstances is reasonable but only to the extent that the charge does not exceed £500.00. Accordingly if costs of over £500.00 were incurred for the service charge period 2007/8 for gas (which now seems unlikely), any amount over £500.00 would be unreasonably incurred and accordingly not payable by the Applicant.

Concierge and CCTV services

22. Both these services were in operation prior to the Applicant's purchase of his flat and the cost of these items could, since the year 2006/7, be shown separately on the service charge account. As to the disputed estimated amount for the service charge year 2007/8, of the gross figure of £1,594, the Respondent estimated that the sum of approximately £1497 was attributable to the concierge service.

23. The Applicant had no real comment to make in respect of the CCTV service. This service provided estate wide CCTV coverage in order to combat crime and anti-social behaviour and to improve safety.

24. The Applicant was however concerned about the very high cost of the concierge service. The Applicant said that whilst he accepted that the concierge service made the Building safer, there were still problems despite the very high cost of that service. People would still from time to time gain access to the Building who should not be there. There were people to be found hanging around the inside of the Building who clearly not supposed to be there. Some concierge staff challenged those people, however some did not. There had been two occasions when the concierge failed to stop fraudsters from gaining access to the Building. On one occasion, someone had been sick in the ground floor foyer area on a Friday and this had not been cleared away until the following Monday.

25. The Applicant also stated that despite the service being advertised as a 24-hour service, the service was only there for around 12 hours a day leaving no service the rest of the time. The concierge office was dark after around 10pm with no sign of anyone there. Approximately a year before the hearing there used to be a sign up at the window to the concierge office saying that the office was closed from 10pm to 7am. The Applicant took this up with a woman called Jackie at Home Ownership. She looked into the matter and told the Applicant she was not aware that the sign had been

put there. Soon after this, the sign was taken down. Approximately six to seven months prior to the hearing, the Applicant tried to telephone the concierge office at around 2am to complain about someone repeatedly kicking a neighbour's door. He got no response and had to go out and deal with the matter himself. At the cost that he was having to pay, the Applicant would expect a 24 hour service.

26. The Tribunal inspected an office situated on the ground floor of the Building. Approximately half of this office served as a concierge office with a window through which the person on duty could be seen and from which that person could communicate with persons coming in and out of the Building. The other half of the office served as a control centre for CCTV covering the Estate.

27. The Tribunal was told by the Respondent's employees that during the day from early morning until very late evening, there was in this office someone employed to staff the concierge office and others to deal with the CCTV covering the estate. The day cover for the concierge service was a double shift, so two people were needed to provide the concierge service each day, every day of the year. At night, there were no dedicated concierge staff, there was just one member of staff principally monitoring the CCTV screens. That person would sit in the other half of the office away from the concierge area and so it would appear to persons passing the office that no-one was there. The night time staff in this office were expected to undertake concierge duties as and when needed during the night. Given that the amount of time to be given to concierge duties during the night was very small, when costing the concierge service for the building, just 5% of the cost of the night staff was apportioned to the concierge service, the other 95% was apportioned to the CCTV service.

28. There was no question that the concierge and CCTV services dramatically improved life on the estate. The Applicant told the Tribunal that he can remember a time before these services when there were not many people living in the Building because no-one wanted to live there. Mr Saye, for the Respondent, told the Tribunal that despite the scarcity of affordable housing, the flats in the Building at this time were very difficult to let, which is not so now. The Tribunal was presented with the detailed costings for the service, none of the costings in themselves appeared to be unreasonable. The Tribunal takes account of the problems with the service that the Applicant has had. Problems are bound to occur from time to time but the Tribunal was not shown evidence of any major failings in the service.

29. Despite its obvious benefits, the Tribunal was deeply concerned about the high cost of the concierge service especially given that the concierge office was dark and appeared closed or empty during the night. It appeared to the Tribunal that given that the majority of tenants benefiting form the concierge service were weekly tenants who did not have to pay the high charge for the service, there was little real pressure on the Respondent to investigate whether the same level of security and deterrent could be achieved at a cheaper unit cost or by cheaper methods. Unfortunately there was no evidence before the Tribunal as to alternative and cheaper methods of achieving the same result as the concierge service. Had there been such evidence, the Tribunal may have reached a different decision. However with considerable reluctance the Tribunal finds that the estimated charge for the service is reasonable and payable.

The terms of the lease as to service charges

30. The Applicant's lease contains clauses specifying the way in which his contribution to the service charge is to be calculated. Essentially the lease provides that service charge costs relating to the Estate shall be apportioned to the Applicant by reference to the rateable value of the Estate as against the rateable value of the Applicant's flat and that service charge costs relating to the Building shall be apportioned to the Applicant by reference to the rateable value of the Building as against the rateable value of the Applicant's flat.

31. These lease clauses (paragraph 3, 3.1 & 3.2 Fourth Schedule) also contain the proviso that service charges could be apportioned "*on such other calculation as the Landlord shall reasonably require*".

32. The way in which the Applicant's service charge was calculated for heating was to take the rateable value, not of the Building or the Estate, but the rateable value of the five blocks that were served by the gas boiler. The way in which the Applicant's service charge was calculated for the CCTV was to take the rateable value, not of the Building or the Estate, but the rateable value of those parts of the estate that were served by the CCTV system.

33. The Tribunal finds that the Respondent is entitled by the terms of the lease to apportion the service charge in respect of heating and CCTV differently from the way in which it apportions other service charge expenditure.

Section 125 notice

34. Prior to his purchase of the flat, the Applicant was sent a notice pursuant to section 125 Housing Act 1985 dated 7 July 2003. That notice set out details of future service charges from 2003 to 31 March 2009 (the reference period). The notice set out three categories of service charges; (a) repairs; (b) improvements, and (c) other charges. There was no issue regarding the repairs and improvements sections of the notice. Section D of the notice which dealt with other service charges states;

> The Landlord estimates the average amount (at current prices) which will be payable under each head of service charge in the reference period specified below as follows:
> Services
> Please see attached statement for details £968.00

The statement attached contained a number of service charge heads with figures next to some of them and the total of those figures was £968.00. One of the service charge heads printed on the form was 'Concierge Scheme/CCTV', the figure for that head was 'nil'.

35. The Applicant stated that he relied on this notice when purchasing his flat and budgeted on the general service charges (excluding repairs and improvements) being in the region of £1,000 per year. In fact he was paying approximately three times that amount. Instead of there not being a charge for the concierge/CCTV, there was a charge of over £1,500.

36. It was the Respondent's case that they were only bound by the figures given in the repairs and improvements sections of the notice [paragraphs 16B and 16C Part III

Schedule 6 Housing Act 1985]. There was nothing in statute to bind them to the estimated figures given for other service charges.

37. Reluctantly, the Tribunal finds that it cannot take into account the notice in question in deciding whether the disputed service charges are reasonable and payable. Whether or not the Applicant has an arguable case on this point against the Respondent regarding his liability to pay the service charges in the County Court is a matter for him to consider further.

38. However the Tribunal has considerable sympathy with the Applicant on this point. He was told quite plainly in writing that he could expect service charges of in the region of £1,000 per year. In fact he has faced charges that are far higher. The Applicant is struggling to pay the service charges. Had he known about the true position he would not have bought the long lease of his flat. It was said during the hearing that the Applicant should have obtained proper legal advice on the issue prior to purchase. The Tribunal doubts whether any such legal advice would have been able to alert the Applicant to the fact that he was simply being misled as to the future service charges. The Applicant bought in good faith on the basis of information he was given. The fault for that information being wrong and misleading lies solely at the Respondent's door and it is hoped that the Respondent will consider the issue further and do what it can to remedy its wrongdoing.

Costs and fees

Costs

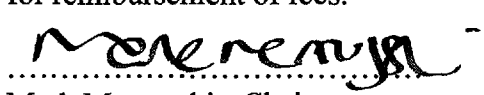
39. The Applicant made an application pursuant to section 20C Landlord & Tenant Act 1985. Section 20C (1) provides as follows;

> *A 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 proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, 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.*

40. Given that the Tribunal has found almost completely for the Respondent, it would not be right to make the order sought. The matter however is academic as the Respondent does not (in keeping with most other local authorities) place any costs in relation to the proceedings before the Tribunal on the service charge.

Fees

41. The Tribunal has the power to order a party to proceedings before it to reimburse the other party in respect of the Tribunal fees paid by that party[1]. The Applicant has paid fees of £250.00 to the Tribunal offices. Reluctantly, given the decisions made by the Tribunal it would not be appropriate for any order to be made for reimbursement of fees.



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Mark Martynski - Chairman

[1] Regulation 9 of the Leasehold Valuation Tribunals (Fees)(England) Regulations 2003