3540

LON/00AL/LSC/2007/0368

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

Property: **72 Ruddstreet Close, Woolwich, London SE18 6RP**

Applicant: Joseph Rwanjagarara

Respondent: The Mayor and Burgesses of the London Borough of Greenwich

Date heard: 22 November 2007 (inspection 11 December 2007)

Appearances: Joseph Rwanjagarara

Annemarie Bester (legal officer, Home Ownership Services)
Hardev Sandhu (Principal Property Charge Officer) for the landlord

Members of the leasehold valuation tribunal:

Lady Wilson
Mr F Coffey FRICS
Mrs G J Clarke JP

Date of the tribunal's decision: 13 February 2008

Background

1. This is an application under section 27A of the Landlord and Tenant Act 1985 ("the Act") made by Mr Joseph Rwanjagarara ("the tenant") against the London Borough of Greenwich ("the landlord") to determine his liability to pay service charges in respect of the occupation of his flat, 72 Ruddstreet Close, Woolwich, which he holds from the landlord under a long lease. He has occupied the flat for some nine years and bought the lease under the Right-to-Buy scheme on 27 November 2006. The landlord's accounting period for service charge purposes runs from 1 April to 31 March in each year. It is agreed that the tenant owned the lease for 125 days in the service charge year 2006/2007 (equivalent to 34.246% of the full year) and the application relates to some of the service charges demanded for those 125 days and to the estimated service charges for the year 2007/2008. The tenant's proportion of the costs payable for services provided to the block is based on rateable values of £143 for the flat, £4576 for the block and £52,425 for the estate, which he accepts to be accurate. The proportions which he must pay in a full year are thus 3.125% of the block costs and 0.273% of the estate costs. Accordingly, for 2006/2007 he must pay 34.246% of 3.125%, which is 1.07%, of the block costs, and 34.246% of 0.273% and 0.094%, which is 34.246% of 0.273% of the estate costs.

2. 10 - 72 Ruddstreet Close ("the block") is a four storey block of 62 flats, built in or about the 1970s, on an estate comprising, in all, some 272 units of accommodation in four blocks of flats and a number of two storey houses, all owned by the landlord. Haven Lodge and Green Lawns, two other blocks on the estate, together contain 80 units of sheltered accommodation occupied mainly be elderly people. Within the estate are a number of grassed and planted areas.

3. By the tenant's lease, the landlord covenants to maintain the structure and exterior of the flat and of the building in which it is situated and to provide the services listed in the fifth schedule to the flat, the building and the estate. The estate is defined by clause 1.1 of the lease as *the building* [ie the block] *and the out-buildings gardens and grounds thereof (if any) and any other neighbouring building or land (including roads and paths) for the time* [sic] *and from time to time being managed by or on behalf of the Landlord as an administrative until together with The Building*. By

clause 5, the tenant covenants to pay a service charge in accordance with the terms of the fourth schedule.

The statutory framework

4. By section 27A of the Act an application may be made to the tribunal to determine whether a service charge is payable and, if it is, the amount which is payable. A "service charge" is defined by section 18(1) of the Act as *"an amount payable by the 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 costs of management, and, (b) the whole or part of which varies or may vary according to the relevant costs*". Relevant costs are defined by section 18(2) and (3). By section 19(1), *"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"*. By section 19(2), *"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 of subsequent charges or otherwise"*.

The hearing and inspection

5. At the hearing on 22 November 2007 the tenant appeared in person and gave evidence and the landlord was represented by Ms Bester, a legal officer in the landlord's Home Ownership Department, who called Mr H Sandhu, a principal property charge officer, to give evidence. We would like to pay particular tribute to the tenant, who presented his case with skill and moderation and has continued to pay the disputed service charges throughout. Mr Sandhu did his best to assist the tribunal, but was hampered by his lack of detailed knowledge of the facts of the case. Mr Matthew Saye, Home Ownership Services Manager, had submitted a written

statement which was lacking in detail and unfortunately he did not attend the hearing and so was unable to be cross-examined or to provide information which might have been helpful. Mr Dave Rackstraw, a supervisor for Cleansweep, the landlord's environmental services department, had made a written statement which Ms Bester put before us, with the tribunal's permission and the tenant's consent, but was not available to answer questions. It was thus a feature of the case that no witness was tendered by the landlord who had any detailed knowledge of the relevant facts, which was unfortunate, particularly because the tenant's case was, broadly, that the landlord had made mistakes and failed to provide relevant information, including invoices, which he had reasonably requested. Pursuant to the tribunal's directions a written statement from Mr Sandhu, which supplied some of the relevant missing information, was submitted after the hearing although later than we had directed. The tribunal inspected the estate and the block in the presence of the tenant and Mr Sandhu on 11 December 2007, on which date the tenant provided his written submissions in answer to the landlord's further evidence and listing the items remaining in dispute, as we had directed.

The issues

6. Some of the service charges made in the relevant period were not disputed by the tenant, and others he accepted as having been reasonably incurred when the appropriate information was provided to him by the landlord's representatives during the course of the hearing. The issues which remained for determination, as listed in the tenant's representations dated 11 December 2007 at the tribunal's request, were as follows:

i. the cost and standard of cleaning the block;

ii. the cost and standard of cleaning the estate;

iii. the cost of grounds maintenance;

iv. fuel charges;

v. the cost of servicing the boilers;

vi. the cost of servicing the lift; and

vii. the cost of clearing blockages to the refuse chute.

i. Cleaning the block

7. The costs of cleaning (described in the documents as "caretaking") were £6653.43 (excluding refuse storage) in 2006/2007 and the estimated charges for 2007/2008 are £6889. These charges ere said by the landlord to be based on eight hours cleaning per week at £15.95 per hour.

8. The tenant did not dispute that some cleaning was done but he considered £15.95 to be "a bit excessive" as an hourly rate and believed that about £10 would be more reasonable; but, although he agreed that 8 hours would be a reasonable time in which to do the necessary work, he was not satisfied, in the absence of any evidence such as time sheets, that eight hours' cleaning was in fact carried out. He considered the standard of cleaning to be generally poor. He said that the internal common parts of the block had been covered with graffiti and generally neglected in appearance, the lifts, particularly, in a filthy condition for much of the time for three years, and he produced photographs to prove it, but he said that the landlord had thoroughly cleaned the block, carried out minor repairs and painted over the graffiti a few days before the hearing, and he wondered whether that was coincidental or as a result of the tribunal's imminent inspection.

9. Mr Saye in his written statement said that cleaning services were provided by a department of the landlord known as "Cleansweep" and that the hourly rate was calculated by using the total number of caretaking activities to all properties owned by the landlord for the whole year, and that the number of hours worked at the block was based on information provided by Cleansweep's area managers. Mr Sandhu said that he did not know why the landlord had thoroughly spruced up the block just before the hearing but he said that it would not have been because of these proceedings because

the work would have taken time to organise. He said that there was a supervisor whose job it was to over-see the cleaning to the block, but no time-sheets or other evidence was available to demonstrate that eight hours were spent on cleaning the block each week. Nor did he know whether residents of the block other than the tenant had complained about the standard of cleaning the block, because, as far as he was aware, no record of complaints was kept; or at any rate none was available.

10. We accept that £15.95 is a reasonable hourly rate for cleaning a council block, given that the amount must include insurance and other administrative expenses. We accept, as the tenant did, that eight hours would be reasonable for cleaning this block. However we are not satisfied on the evidence put before us that eight hours was in fact spent on this work in the relevant period. There was no evidence that the work was properly supervised, no records were made available to us to support the eight hours claimed, and we accept the tenant's evidence, including the photographs, that the block was often dirty and neglected in appearance until a few days before the hearing when it was comprehensively cleaned and smartened up. We cannot be satisfied that the thorough cleaning carried out just before the inspection was designed to impress the tribunal or was a coincidence, but it may have been a coincidence and we make no finding about it. On the basis of the evidence we consider that no more than five hours was spent each week on cleaning the block in the relevant period and we therefore determine that the reasonable costs of cleaning were 0.625% (5/8) of the of the sums claimed, or £4158.39 n 2006/2007 and £4305.63 (estimated) in 2007/2008. Of these charges the tenant is liable to pay £44.50 (34.246% of 3.125%) for the year 2006/2007 and £134.55 for the year 2007/2008.

ii. Cleaning the estate

11. These charges are for cleaning the estate by Cleansweep, and are said by the landlord to be based on 16 hours' work at £15.95 an hour. One of the tenant's main concerns was the area of the estate used for the purpose of the landlord's calculation of these costs. He had several times before the hearing asked the landlord to define what it meant by "estate" for this purpose, but it was not until the hearing that a plan of the estate was produced, the only description provided in the landlord's written

evidence before the hearing being that it meant "the external areas around the building and other buildings which form an administrative unit" (Mr Saye's statement at paragraph 4). Having seen the plan, the tenant accepted it as accurate. However, as with the charges for cleaning the block, it was difficult for the tenant and the tribunal to discern how the charges were arrived at or what was actually done. The total charge for 2006/2007 was £11,643.50 and the estimated charge for 2007/2008 £12,056. Mr Saye's written statement said merely that Cleansweep provided a list of charges incurred on the estate and the cost of all the sites was totalled and gave the estate cost, which was not helpful. Mr Rackstraw's statement said that the time allocated to cleaning of the estate was 16 hours a week, although the schedule of charges for the work produced by the landlord for the purpose of the hearing had said that the work took 14 hours at £15.95 per hour. Mr Rackstraw said that the work comprised road sweeping, litter picking and removal of bulk rubbish on a daily basis. In the absence of any hard evidence from the landlord the tenant suggested that figures were being plucked out of the air. However, he did not dispute that the estate was kept reasonably clean. He had in his written statement of case asserted that some areas of the estate were public areas for which no service charge was appropriate but having seen the plan he accepted that he was liable to contribute to its cleaning and maintenance in accordance with his lease.

12. Having seen the estate and considered the evidence we are satisfied that 14 hours per week which the landlord's schedule indicated that this work took would not be an unreasonable time in which this work could be carried out to a reasonable standard, although in our view it could be done in less. In the absence of satisfactory evidence to support the calculation of this charge we estimate and determine that no more than ten hours a week was spent on this work and we therefore reduce the charges by one third. Accordingly we allow as reasonably incurred the sum of £7762.33 in 2006/2007 and £8037.25 (estimated) for 2007/2008. Of these sums the tenant is liable to pay £7.26 for 2006/2007 and £21.94 for 2007/2008.

iii. Grounds maintenance

13. The total charges for this item as given by the landlord were £42,801.90 for 2006/2007 and £30,820 (estimated) for 2007/2008. Again, one of the tenant's main concerns was the extent of the estate for the purpose of calculating these charges, particularly because the schedule of costs for grounds maintenance produced by the landlord for the hearing included a cost of £2637 in 2006/2007 for Raglan Road/Durham Rise and, whereas Raglan Road is agreed to fall within the estate, Durham Rise is some distance away and does not. In his statement submitted after the hearing (see paragraph 5 above) Mr Sandhu agreed that the amount of £2637 should have been omitted because Durham Rise is outside the estate.

14. The tenant said that, again, the figures appeared to be plucked out of the air. He drew our attention to the costs of this service in previous years which had been supplied to him by email by an officer of the landlord. These were: for 2002/2003: £10,030; for 2003/2004: £5475; for 2004/2004: £16,597; and for 2005/2006: £29,075.15. He asked for an explanation of the large increase in the years under consideration, but none was supplied. At his request, we invited the landlord to supply some information to demonstrate what the charges comprised, but no information whatsoever was supplied other than Mr Sandhu's concession that Durham Rise should have been excluded.

15. We are not satisfied on the evidence that all these charges were actually incurred in connection with this service or that, if they were, they were reasonably incurred. If indeed that can be justified, the landlord only has itself to blame for failing to supply any evidence at all to justify them. Doing the best we can, and considering the sums charged in previous years for the same service, we determine that £20,000 is the reasonable sum for this service in each of the relevant years. Of that, the tenant is liable to pay £18.70 for 2006/2007 and £54.60 for 2007/2008

iv. Fuel charges

16. The charges made for supplying fuel to the communal system for the supply of heating and hot water were £34,335 in 2006/2007 and estimated at £76,973 for 2007/2008.

17. The tenant said, and we, having heard the evidence, agree, that this was the most disturbing item of all the service charges. He said that he could not discern a consistent formula used to calculate them. He said that the landlord's booklet explaining how service charges were calculated had said that the calculation would be based on the rateable value of the flat divided by the rateable value of the heating scheme, but that the rateable value of the heating scheme appeared to be what he described as a "moving target" because the (limited) documents with which he had been supplied showed that calculations in previous years had been based on a rateable value for the heating scheme of £19,322 but the actual calculation had been based on a rateable value for the scheme of £8224, so that the proportion which he had been asked to pay was over twice as high as it would have been in earlier years.

18. It emerged that the tenant was correct. In its statement of case dated 17 October 2007 the landlord said that the service charge for fuel attributable to the tenant's flat was calculated on the basis of "the rateable value of the flat divided by the rateable value of the estate x cost to the estate. Thus 143/52425 x £34,335.00 = £597.02. The applicant's part year contribution for 155 days from 27 November 2006 to 31 March 2007 amounted to £204.46". As it happens, 143/52425 x £34,335.00 = £93.66, not £597.02, and 27 November 2006 to 31 March 2007 is 125, not 155, days. But it emerged at the hearing that most of the input figures were also wrong, because the rateable value of the heating scheme which serves the tenant's block together with Haven Lodge and Green Lawns (which Mr Sandhu described as a "pseudo-estate") is £18,998, but had been treated in the calculation of the service charges as £8443 (not £52425). Mr Sandhu said in his evidence to us that this was a mistake which had been discovered the day before the hearing. He said that the figures payable by the tenant produced by the correct calculation were £258.44 for 2006/2007 and estimated at £579.83 for 2007/2008. Having heard the evidence the tenant accepted that the figures were now correct, although he questioned their reasonableness for the reasons considered in the next paragraph of this decision.

19. The tenant questioned whether it was entirely fair that he should be charged on the basis of rateable values when Haven Lodge and Green Lawns were sheltered accommodation occupied by elderly people who presumably, unlike him, might well be in all day, consuming more heat and hot water than he and other working people did. He submitted that paragraphs 3.1 and 3.2 of the fourth schedule to the lease enabled the landlord to base service charges on rateable values or "*on such other calculation as the Landlord shall reasonably require*", and that, in the circumstances, it would be reasonable to apply a lower proportion of these charges to his flat than that based on rateable values.

20. We accept that to base the calculation on rateable values of the flat and of the heating system is a reasonable approach and that to apply a different one would be difficult in practice since the system for the three blocks is a single one. We have no evidence that the average consumption of fuel by occupants of the sheltered accommodation is significantly higher than that of flats in the block and we accordingly accept that the fuel charges which the tenant is liable to pay for 2006/2007 and (estimated) for 2007/2008 are, respectively, £88.51 (being 34.246% of £258.44) and £579.83. The figure for 2007/2008 seems very high but in the absence of evidence that it is unreasonably so we allow it as an estimate. We expect the actual figures to be correctly calculated in due course and any adjustment made. The tenant will no doubt wish to see the basis of the calculations of the actual cost and service charge.

v. Servicing the boilers

21. The relevant costs were £2531 in 2006/2007 and (estimated) £5479 in 2007/2008. The landlord said in paragraph 6.8 of its statement of case that the charges made to the tenant were based on "the rateable value of the estate x cost to the estate. Thus 143/52425 x £2531.00 = £44.01". Once again, the arithmetic is wrong (143/52425 x £2531 is not £44.01 but £6.90) and it transpires that, as with the fuel charges, the rateable value which the landlord has in fact elected to use for the calculation is not that of the estate but of the heating system. Having been given the correct rateable values at the hearing the tenant accepted them, but he pointed out (in his

supplementary final submissions) that all the charges appear to relate to works to individual flats held by council tenants and not to the communal system. There is one charge for a boiler in his flat which was, he says, installed before he purchased the lease.

22. The tenant's evidence appears to be factually correct and supported by such documents as the landlord has produced. But clause 6.4 of his lease contains a landlord's covenant "*To ensure so far as practicable that the Services are maintained at a reasonable level and to keep in repair all machinery installations and apparatus connected with the provisions of the Services* ... " . "The Services" means "*such of the services listed in the Fifth Schedule ... as are, if at all, from time to time during the Term supplied by the Landlord to the Flat and/or the Building and/or the Estate*". These services include the supply of hot water and central heating. Since repair includes renewal when it is necessary, we conclude that renewal of boilers to flats is a service charge item and we have no reason to conclude that these costs were otherwise than reasonably incurred. The landlord's approach of treating the three blocks served by the communal system as a unit for the purpose of calculating the charge appears to be reasonable and we therefore conclude that the tenant is liable to pay £6.52 (34.246% of 143/18998 x £2531) for 2006/2007 and £41.24 (estimated) for 2007/2008.

vi. Servicing the lift

23. The tenant challenges one item, his challenge derived from documents made available to him after the hearing but not supplied to the tribunal. His challenge is to a charge of £318.35 described in a schedule of lift repairs as "materials". He said that the documents show that the charge was not for "materials" but was for the removal of rubbish outside the lift motor room which should not have been necessary if the block was cleaned regularly for eight hours a week as the landlord claimed. We are inclined to accept the tenant's evidence on this issue and to disallow the sum, but as the landlord has not commented upon it we will consider written submissions, on this point alone, if the landlord wishes to submit them in the near future. If nothing has been received in the 21 days after this decision is issued the landlord's claim that this

sum was reasonably incurred is rejected and the sum payable by the tenant must be adjusted accordingly.

vii. Clearing blockages to the refuse chute

24. The cost of "block repairs" for the year 2006/2007 was £9647.83 and for 2007/2008 it was £3373. A schedule of repairs carried out to the block in 2006/2007 produced by the landlord showed 22 separate charges for clearing blockages to the refuse chute, some of them for more than one chute.

25. The tenant said that this was an excessive number of callouts and that the charges made, which were generally £63.66 per clearance, were also excessive.

26. The tenant accepted that if the refuse chutes were blocked they would have to be cleared. We also accept this and, on balance, consider these costs to have been reasonably incurred. However there is clearly an underlying problem which needs to be addressed, and we would not be surprised if any tribunal considering service charges to this block in the future were to disallow as unreasonably incurred future such expenditure at this level unless steps are taken to deal with the problem.

viii. Management fees

27. The tenant had initially challenged management fees, which are based on 20% of cost, but given the small amount produced by this calculation, compared with the equivalent fees in the private sector, he accepted that 20% of the service charges costs which are determined or agreed to have been reasonable was not in itself unreasonable. Because he has not pursued his challenge to this item, and because the sums charged for management are so small, we accept that they are reasonable, although we feel bound to say that the management, particularly as shown by the landlord's attitude to this case, has been very poor.

Costs

28. It is clear that the tenant is entitled to the reimbursement of his fee and, in the exercise of our discretion given to us by regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 we make that order, the tenant by his application having uncovered some serious mistakes in the calculation of the service charges.

CHAIRMAN.................................

DATE: 13 February 2008