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Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00AL/LSC/2010/0125

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A & 20C OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Premises: 134 Nightingale Place Woolwich London SE18 4HE

Applicant: Rosanna Muller

Respondent: London Borough of Greenwich

Appearances for Applicant: In person

Appearances for Respondent: Ms C White

Date of Hearing: 10 and 11 June 2010

Date of Decision: ...20 June 2010.....

Leasehold Valuation Tribunal: Mrs F J Silverman Dip Fr LLM
Mr N Martindale FRICS
Mrs S Justice

DECISION

The Tribunal assesses the service charges payable by the Applicant for the years 2005-10 inclusive as detailed in paragraphs 13-18 and 20 below
The Tribunal makes an order under s20C Landlord and Tenant Act1985.
The Respondent is ordered to refund to the Applicant the sum of £200 being the fee which the Applicant paid to the Tribunal on filing her application.

REASONS

1 The Applicant made an application to the Tribunal on 17 February 2010 asking the Tribunal for a determination under s27A and S20C Landlord and Tenant Act 1985 in relation to service charges for the years 2004-5 to 2009-10 (inclusive) .

2 The Applicant only challenged certain identified items in each year's service charge as detailed below. Those items which were unchallenged (and thus not the subject of this determination) remain payable by the Applicant in the sums as shown on the Respondent's service charge invoices.

3 The Tribunal inspected the property on 10 June 2010.

4 The property is a four bedroomed split level flat/maisonette on the first and second storeys of a block of flats situated on the edge of a large estate in Woolwich and bordered by a busy main road. The estate comprises a large development of flats, houses and commercial premises owned and managed by the Respondent. A few of the units , including the subject property, have been purchased on long leases and are subject to service charge provisions contained in their leases.

5 The ground floor of the block in which the subject property is situated had at some time been converted from an underground car park and now contains workshop type units and a youth club. There are a few car parking spaces at the front of the block together with an untidy and unkempt grass area where some uncleared rubbish was in evidence. Part of the brick wall separating the block from the road had fallen and had not been repaired. A pedestrian path at the side of the block led into the main estate areas which included several shops. The pathways and surrounding areas were in a poor state of repair with graffiti and many weeds in evidence. There appeared to have been no attempt to maintain the common grounds and the block and its surroundings were in a depressing and unkempt state.

6 A security camera covers the main entrance door to the block and a second camera sited in the ground floor lobby also shows the entrance to the block. The remainder of the front of the block , including the frontage and car park area were not covered by cameras.

7 The Tribunal was shown the concierge offices which were a short walk from the subject property and contained the room where cctv surveillance was carried out. Some of the cameras, which covered the block entrance and other parts of the estate including the shops (but did not provide total coverage of the estate) were not working. The Tribunal was told that the system was old and subject to repeated failure and that spare parts for the system could no longer be obtained.

8 Entrance to the block in which the subject property is situated is via a main entrance door at ground floor level which is opened via a numeric key pad (or residents' swipe card) or entryphone system connected to the concierge office. The Applicant said that this

system frequently did not work and that the main door was sometimes left open allowing strangers to access the block. The Respondent conceded that the front door system had at one stage been unusable for two years because mice had chewed through the cables.

9 A lift is situated in the ground floor lobby. The Applicant had complained that this was often broken and was not cleaned. On the day of the Tribunal's inspection the lift was out of service. A staircase leads to the upper floors of the block from which access is obtained to each level of the flats. The walls and ceilings of the staircase and lobbies were dirty (there was evidence of bloodstains on one wall) , and in an unacceptable state of decoration and disrepair. Windows were broken and had not been replaced. Plaster was hanging off the walls and ceilings. The lobby floors at each level appeared to have been washed on the morning of the Tribunal's visit but the facia of the parapet bordering the walkway to the flats was black with dirt . The rubbish chute area on the first floor was smelly. The whole block was in a very poor state of repair and gave the impression of not being cared for or managed to a reasonable standard . The Tribunal did not inspect the interior of the subject property as this was not relevant to the issues in dispute.

10 The Applicant conceded that all the disputed items fell within the service charge provisions of her lease but challenged the reasonableness of the amounts charged to her.

11 The first item which the Applicant asked the Tribunal to determine related to the charge for concierge services and cctv . This item related to each of the years under discussion.

12 The Respondent levies service charge for these two combined items based on a complex formula (page 120) which had not been fully explained to the residents and was not satisfactorily explained to the Tribunal. The formula was based on a proportion of rateable values which would need to be based on 1973 rateable values since this was the latest date on which domestic property was assessed. The Respondent did not produce in evidence a list of rateable values to show the Tribunal how they had made their calculation. In response to a request by the Tribunal the Respondent brought to the second day of the hearing an incomplete list of 1973 valuations and some (affecting commercial property) from a later date. Since the formula on which this charge is supposedly calculated rests upon those rateable values and the Respondent do not appear to have a complete and accurate list of those values it is difficult to understand how they have achieved their apportionment of this element of service charge. According to the Respondent the charge is shared between those parts of the estate which enjoy the services which are subject to the charge. However , this statement by the Respondent is inaccurate because the shops which form part of the estate benefit from cctv coverage (but not concierge services) but do not pay any part of the service charge for this service. In the light of this contradictory evidence from the Respondent the Tribunal attempted to make its own

calculation of the service charge for this item. On the assumption that all the relevant parts of the estate were covered by cctv, and that the system was in working order, the Tribunal assesses that the amount of service charge attributable to the Applicant's share of the charge would be the rateable value of the estate (£294374) divided by the rateable value of the Applicant's flat (£300). This calculation would give a figure of **0.**10191% of the total bill for these services (£468888 for 2004-5) being payable by the Applicant (£477.84 for 2004-5).

13 The Tribunal considers the sum of £1129.79 charged by the Respondent for 2004-5 to be totally unreasonable and not justified by the Respondent's evidence. If the system was working and in good order the sum of £477.84 would appear to be the appropriate proportion to be borne by the Applicant for this year. However as the system was not working properly and had consistent failures (front door not working, mice chewing through the cables, failed cameras, incomplete service due to lack of staff) the Tribunal considers that the amount of service charge payable by the Applicant for these services should be reduced by 50% giving a figure of £238.92 for this item for 2004-5.

14 Similar problems have affected both the Respondent's calculation of the charge and the supply of the service for each of the completed years under consideration. Applying the same logic and calculation as above the Tribunal assesses that the reasonable amount of service charge for each of the ensuing years (and in each case including a reduction of 50% because of the poor quality of service) is as follows: 2005-6 £ 256.45, 2006-7 £ 268.35; 2007-8 £301.59; 2008-9 £ 220.36 . The actual figures for 2009-10 are not yet available but using the same logic and calculation as above the Tribunal assesses that a reasonable service charge for this item would be £268.35 in view of the fact that the service provided is patently inadequate.

15 The next item raised by the Applicant was cleaning for years 2005-6 onwards. The Respondent's obligation under the lease is to clean the estate (not just the block). As noted above the state of cleanliness both of the estate and of the block left much to be desired. The Tribunal was told that the main cleaning of the block took place on a Tuesday. It was clear on inspection that the floors of the common areas of the block had been washed that morning (a Thursday) and we attributed this extra cleaning to the fact that the Tribunal was due to inspect. The Respondent said that they carried out deep clean annually but could not produce any evidence of such except for years 2004-5 and in 2008. The Applicant said that no deep clean had been done. In any event the Tribunal was told by the Respondent that the deep clean related only to the floor areas and not to walls or ceilings. The level of cleaning as evidenced by the Respondent's cleaning schedules is minimal . On the basis that the work as detailed on the schedules is carried out the Tribunal finds that the charges made by the Respondent for cleaning are reasonable for each year in question and are therefore payable in

full by the Applicant. The Tribunal is not saying that the amount of cleaning done is adequate (it is patently not so) , merely that the charge made for the low level of service supplied is not unreasonable.

16 The Applicant challenged the 2007 charge made by the Respondent for mechanical servicing which had been estimated at £133 and charged at £432.76. The Respondent said they thought this charge related to lift servicing and repairs but did not produce any evidence to justify this charge. The Tribunal therefore allows £133 , the estimated amount for this item .

17 In 2007 the Respondent had estimated repairs and maintenance at £16 but had charged an actual amount of £562.06. No invoices receipts or explanations were given by the Respondent as to the calculation of this figure. The Tribunal therefore allows the Respondent to recover £16 as per their estimate.

18 Energy charges for 2008 2009 and 2010 were challenged by the Applicant. In each case the estimated amount had been greatly exceeded in the actual amount charged to the Applicant at the end of the year with no evidence being provided by the Respondent as to how the charge had been calculated. In the absence of such evidence the Tribunal is prepared to allow the Respondent their estimated sums for 2008 (£138) and 2009 (£100) and for 2010 where the end of year figures are not yet available the Tribunal assesses that £100 would be a reasonable charge for this item which relates to communal lighting.

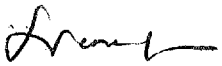
19 The remaining disputed item related to management charges which the Respondent had charged at 20% of the service charge bill. A previous Leasehold Valuation Tribunal decision relating to this property had criticised the Respondent's method of charging for management and had strongly recommended that the Respondent should adopt the accepted RICS practice of charging a flat fee per unit rather than a percentage of the total charge. That recommendation has been ignored by the Respondent. Similarly criticism by the previous Tribunal of the Respondent 's actual management of the estate appears not to have been heeded. Although the Tribunal accepts that the management of a large mixed estate is a complex and time consuming exercise it finds that the level of management services supplied to the Applicant is extremely poor. The Respondent appeared to be disorganised in their execution of their management role, in their billing and in their accounting practices. They came before the Tribunal with little or no evidence to show how the various figures under challenge had been calculated. The Respondent's only justification of their 20% charge was that they worked very hard , did their best, and needed this percentage to provide the service to the tenants.

20 The Applicant had set out in her schedule the figures which she was prepared to pay for management services, in each year this was a reduction on the amount actually charged by the Respondent. She had calculated her figures based on the amount allowed by the previous Tribunal in September 2005 of £176.50 pa including VAT

and had increased this figure by 3% each year to allow for inflation. The Tribunal accepts the Applicants figures as being a reasonable sum for each year based on the premise that the services provided were themselves of reasonable quality. In this case the level of service provided to the Applicant was patently unacceptable and therefore the Tribunal reduces the Applicant's figures by 50% to account for the poor standard of service. This results in the Respondent being allowed for the year 2005-6 the sum of £91; for 2006-7 £ 93.75; for 2007-8 £ £96.58; for 2008-9 £ 99.50 and for 2009- 2010 £102.50 (all figures include VAT) .

21 The Applicant made an application under s20C which was opposed by the Respondent . In view of the fact that the Respondent has been unable to justify most of the charges which were challenged by the Applicant the Tribunal considers that it would be prepared to exercise its discretion to make an order under s 20C.

22 Similarly the Tribunal uses its discretion to order the Respondent to refund to the Applicant her application fee of £200.



Frances Silverman
Chairman
20 June 2010