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Residential Property
TRIBUNAL SERVICE

Ref: LON/00BE/LSC/2009/0657

LEASEHOLD VALUATION TRIBUNAL

LONDON RENT ASSESSMENT PANEL

DECISION ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Property:	64 Simla House, Kipling Estate, Weston Street, London SE1 3RN
Applicant:	Mr SC Turton
Respondent:	London Borough of Southwark
Hearing Date:	6th May 2010
In attendance:	Mr Turton (the Applicant) Mr O Strauss (Legal Officer for the Respondent) Mr G Dudhia (In-House Accountant for the Respondent) Mr A Bates (Head of the Respondent's Tenant Management Board)

Members of Tribunal

Mr P Korn (chairman)
Mr J Avery BSc FRICS
Mr O Miller BSc

INTRODUCTION

1. This is an application under Section 27A of the Landlord and Tenant Act 1985 (as amended) ("**the 1985 Act**") for a determination of reasonableness of and liability to pay service charges under the Applicant's lease.

2. The Applicant is the joint leaseholder of the Property pursuant to a lease ("**the Lease**") dated 20th November 2000 and made between the Respondent (1) and the Applicant and Mr I Francis (2).

3. The Respondent had previously issued proceedings in the Lambeth County Court in connection with arrears of actual service charge for 2006/2007 and arrears of estimated service charge for 2007/2008 and 2008/2009. Those proceedings were not defended and the District Judge awarded judgment in default to the Respondent. The Applicant applied to have the judgment set aside but that application was then dismissed.

4. The Applicant then made an application to the LVT for a determination of reasonableness of and liability to pay the following service charge amounts:-

	2006/7	*2007/8*	*2008/9*	*2009/10*
Care and upkeep	*£308.08*	*£347.89*	*£329.64*	*£372.25*
Lifts	*£56.97*	*£112.48*	*£115.18*	*£137.83*
Unitemised repairs	*£217.15*	*£593.64*	*£232.35*	*£577.41*

5. A Pre-Trial Review was held on 4th November 2009. Ms C Baptiste (Litigation Officer for the Respondent) attended but the Applicant was not present and was not represented.

6. At the Pre-Trial Review the Procedural Chairman said that in her view the LVT had no jurisdiction under Section 27A of the 1985 Act in relation to 2006/7 as the service charge in respect of that year had already been the subject of a County Court judgment. However, she considered that the LVT did have jurisdiction in respect of the 2007/8 and 2008/9 **actual** service charges (the County Court judgment having been in respect of the estimated service charge for these years) and the 2009/10 **estimated** service charge. She added that representations could be made at the hearing in respect of the jurisdictional issue. No specific representations were made on this issue at the hearing and the Tribunal confirms that it agrees with the Procedural Chairman's analysis.

7. Directions were issued following the Pre-Trial Review, although (maybe in part because he was unable to attend the Pre-Trial Review) the Applicant did

not properly comply with directions in that his statement of case was very brief and did not address some specific points set out in the directions.

APPLICANT'S CASE

8. Mr Turton said that his primary concern related to the level of service rather than to the cost of services in itself. In other words, he conceded that if the services were of an acceptable standard then the amount that he was being charged might be reasonable. However, in his view the level of service was generally 'appalling'. In addition, he had requested information from the Respondent over a considerable period of time to help him to make sense of the service charges but this information had not been forthcoming.

9. Specifically in relation to the lifts, Mr Turton said that they were refurbished in 2001/2002 at considerable expense but nevertheless there have continued to be problems with them. He had personally monitored the lifts between January and June 2008 and had found that both lifts were out of order between 12th and 15th January, and one of the lifts was out of order between 5th and 19th March and between 8th and 14th April despite his having reported on 26th February that the lift in question was making scraping noises but seemingly having elicited no response. He was also puzzled by certain additional charges relating to the lifts which were over and above the cost of the lift maintenance contract.

10. In relation to 'care and upkeep' charges, Mr Turton said that the cleaning of the block was not satisfactory. The downstairs lobby was often in a poor state and there was sometimes urine in the lift. The Respondent did not take responsibility for cleaning communal lobby areas immediately outside individual flats and leaseholders had been told that it was their responsibility to clean these areas, although Mr Turton found this puzzling. There had been a problem with overflow pipes dripping for months on end, a problem with the intercom system, the front door not always working properly, a delayed response to a complaint that chutes were blocked, and also some non-matching tiling in one of the lobby areas.

11. Mr Turton also produced a copy of a petition that he had circulated amongst other leaseholders and occupiers. The petition complained that the Respondent's official cleaning schedule did not reflect the level of cleaning that actually took place and it was signed by 17 different people.

12. As regards unitemised repairs, Mr Turton said that these accounted for an unacceptably high proportion of the total service charge and that he had experienced real difficulties in getting the Respondent to break it down and itemise the repairs. At a leaseholders' meeting on 31st March 2009 the Respondent had promised to provide an itemised breakdown within 4 weeks of that meeting but the breakdown had not materialised. In response to a

question from the Tribunal he said that he had sent letters and emails of complaint to the Respondent but had not included these in the bundle of documents for the hearing.

13. Mr Turton conceded that some information had now been provided, although this gave rise to further questions, such as why there were separate management costs under the repairs heading. There was a £17,460 charge for redecoration of the walls and ceilings of the stairwells, which seemed rather high, and he had not seen any supporting invoices. He was also concerned that there seemed to be two separate charges relating to repair and replacement of a water tank.

14. Mr Turton conceded that the 2008/2009 figure for unitemised repairs did not seem too bad compared to previous years.

RESPONDENT'S RESPONSE

15. In relation to the lifts, Mr Strauss submitted that the costs relating to the lifts had been legitimately incurred and that the amount was reasonable. Whilst he was not in a position to comment in detail on the 2001/2002 refurbishment works as the point had only been raised for the first time at the hearing, he noted that refurbishment was not the same as replacement and that it was not surprising that an old refurbished lift has given rise to further periodic problems which have needed to be fixed. Specifically as regards the problems experienced in the first half of 2008, his recollection was that this coincided with a period of particularly bad weather and he suggested that this might have exacerbated the problems (for example, it may have affected response times).

16. As regards the extra lift costs over and above the maintenance contract, Mr Strauss said that the maintenance dealt with regular inspections, servicing etc but not with specific repairs.

17. In relation to care and upkeep, Mr Strauss called Mr Bates as a witness. Mr Bates said that the Respondent had a system in place and the cleaning supervisor checked that the cleaning was being carried out as per the cleaning schedule. The cleaning costs included an element of cleaning (as opposed to maintenance) of the grounds. Mr Bates that a price comparison test was carried out in 2008 to check that the Respondent and the leaseholders were getting value for money on the cleaning contract. Whilst Mr Bates acknowledged the existence of the petition, he had periodically checked the standard of cleaning himself and was happy with it and he had not received any significant complaints from leaseholders.

18. Mr Strauss and Mr Bates confirmed that it was the Respondent's policy to require the leaseholders to take responsibility for the lobby area outside their

front doors but they were unable plausibly to justify this policy by reference to the terms of the Lease.

19. In relation to unitemised repairs, Mr Dudhia for the Respondent made some comments by way of explanation as to how management charges had been calculated. Overall, management charges were about 20%, which in Mr Strauss's view was consistent with the provisions of paragraph 7(7) of the Third Schedule to the Lease. Specifically regarding the £17,460 charge for decoration, Mr Strauss said that it was below the £250 limit per flat for compulsory consultation with leaseholders but that nevertheless it had been price-tested before the chosen contractor was awarded the contract (at least three quotations had been obtained). Because of the height of the ceilings scaffolding had been needed, and this had significantly increased the cost of the work. As regards the water tank, Mr Bates commented that the first charge was probably a routine clean-out and then it was presumably later decided that the tank actually needed replacing.

20. In summary Mr Strauss submitted that the service charges were all based on costs incurred under the terms of the Lease. The management fee was properly chargeable and the services had been provided. The Applicant's evidence was largely anecdotal and he had not provided any hard evidence to support his case.

INSPECTION

21. The Tribunal members inspected the block of which the Property forms part. The block itself appeared to be in a fair condition and both lifts were working and clean. The grounds were in good condition. The Applicant conceded at the inspection that the block and grounds did seem to be in a reasonable condition on the day of the inspection.

THE LAW

22. Section 19(1) of the 1985 Act 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 shall be limited accordingly."

23. "Relevant costs" are defined in Section 18(2) of the 1985 Act as *"the costs or estimated costs incurred or to be incurred by or on behalf of the landlord...in connection with the matters for which the service charge is payable"*.

"Service charge" is defined in Section 18(1) of the 1985 Act as *"an amount payable by a 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 cost of management, and (b) the whole or part of which varies or may vary according to the relevant costs"*.

24. Section 27A of the 1985 Act gives a leasehold valuation tribunal jurisdiction to determine (on an application made to it) *"whether a service charge is payable and, if it is, as to...the amount which is payable..."*.

APPLICATION OF LAW TO FACTS

25. Whilst the Tribunal notes the concerns raised by the Applicant, as explained to the Applicant at the hearing his case included very little by way of hard evidence.

26. The Applicant's summary as to the number of occasions in the first part of 2008 when one or both lifts was/were out of order – even assuming his records to be 100% accurate – is not proof that the amounts spent by the Respondent on lift repair/maintenance between 2007 and 2010 were not reasonably incurred. The Applicant could, for example, have brought evidence to show that a specific repair or series of repairs for which he was being expected to pay was ineffectual or he could have brought independent evidence of a substandard service, but the Applicant brought no such evidence.

27. As regards the Applicant's submission that there should not have been any lift charges over and above the maintenance repair contract, the Respondent has provided a plausible explanation to rebut this point, and therefore to have succeeded on this point the Applicant would have needed to produce some evidence that, for example, the maintenance contract itself was not value for money.

28. In relation to the 'care and upkeep' issue, there was no evidence of poor cleaning or poor maintenance when the Tribunal inspected. It is of course possible that the block and grounds were cleaned up in anticipation of the Tribunal's visit, but it is still the case that the Tribunal did not see any evidence of a lack of cleaning or maintenance. Neither has there been much else in the way of actual evidence to support the Applicant's case. There were no other leaseholders willing to be joined as applicants or to appear as witnesses or even to write letters of support, there were no photographs and no evidence that the amount being charged was higher than on comparable blocks. It is true that the Applicant produced a copy of a petition, but it was only produced on the day of the hearing, leaving the Respondent no time to check whether the signatories really were so unhappy with the service.

Although *some* evidential value can be ascribed to the petition, it is insufficient by itself to demonstrate that the charges were not reasonably incurred.

29. In relation to unitemised repairs, the Tribunal has some sympathy with the Applicant in that there is some evidence of the Applicant having tried to obtain information from the Respondent and having only received a limited amount of information which itself was supplied very late. Mr Dudhia's evidence on this subject at the hearing was at times unclear, and he did not offer a particularly satisfactory explanation as to why some of the management charges were included within itemised repairs. One was almost left with the impression that they were included within itemised repairs so as to lessen the chances that leaseholders would ask questions about them.

30. Nevertheless, the Applicant has not brought any real evidence to demonstrate that any of the unitemised repair costs were not reasonably incurred. It is *arguable* that the £17,460 figure for decoration *might* be slightly on the high side, but in the absence of comparable quotations or other relevant hard evidence the Tribunal is not in a position to determine that these costs were not reasonably incurred. The other challenges to this head of charge were somewhat half-hearted, and it seems to the Tribunal that the Applicant's main complaint – and with some justification – was that the supply of information by the Respondent was poor.

31. In relation to the management charge generally, this is not a head of charge that was being disputed by the Applicant and so its reasonableness or otherwise does not fall to be determined by the Tribunal. Mr Strauss for the Respondent nevertheless chose to make the point that, in his submission, a 20% management charge was permitted under paragraph 7(7) of the Third Schedule to the Lease. As Mr Strauss chose to raise the point, the Tribunal would just comment that although the provision in the Lease quoted by Mr Strauss does not expressly preclude the Respondent charging as much as 20%, it certainly does not expressly sanction it and the charge does seem to be on the high side. In addition, the problems experienced by the Applicant in obtaining information from the Respondent and the Respondent's difficulty in explaining aspects of the service charge clearly at the hearing are all management failings which cast some further doubt on whether the management charges were value for money.

32. Whilst this point is also not part of the formal determination, the Tribunal would just note that the Respondent appears to have taken a unilateral decision that the cleaning of the lobby area outside the front door of the Property is not the Respondent's responsibility, but there seems to be no justification for this decision based on the terms of the Lease.

33. For the sake of completeness, it should be noted that the years of challenge are limited to 2007/2008, 2008/2009 and 2009/2010. Even if the Tribunal had been inclined to rule in the Applicant's favour on the disputed charges, the other hurdle for the Applicant would have been that the **estimated** amounts for 2007/2008 and 2008/2009 have already been accepted as payable by the County Court. So to be successful in challenging the actual service charges for these years the Applicant would, in the Tribunal's view, have needed to establish how the actual charges differed from the estimated charges in a way that made them unreasonable, notwithstanding the reasonableness of the estimated charges.

DETERMINATION

34. The items challenged by the Applicant are all **payable in full.**

35. No cost applications were made by either party. The application form did not contain any Section 20C cost application and both parties expressly confirmed at the hearing that they did not wish to make any cost applications.

CHAIRMAN.....
Mr P Korn

25th May 2010