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Residential
Property
TRIBUNAL SERVICE

Case reference: LON/00BG/LSC/2010/0440

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

Property: **27 Noble Court, Cable Street, London E1 8HS**

Applicant: Ares Zaimes

Respondent: Eastend Homes Limited

Date heard: 19 October 2010
(followed by written representations as to costs)

Appearances: The applicant

Roger Brayshaw FCA
Josie Lebilé-Holo, Home Ownership Manager,
for the respondent

Tribunal: Margaret Wilson
Sarah Redmond BSc (Econ) MRICS
Paul Clabburn

Date of the tribunal's decision: 1 December 2010

Background

1. This is an application by Ares Zaimes ("the tenant") who is the leaseholder of 27 Noble Court, against the landlord, Eastend Homes Limited, a registered social landlord, under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine his liability to pay service charges for the years 2007/2008, 2008/2009, 2009/2010 and 2010/2011. The application is supported by the leaseholders of 12 other flats in Noble Court although they are not parties to it.

2. 27 Noble Court is a two-storey maisonette in Block D, which is a block of eight similar maisonettes on the St George's Estate, a large estate of blocks of flats and houses, including three high-rise blocks, built in the 1970s. The landlord acquired the estate by stock transfer from the London Borough of Tower Hamlets in 2007. In the low-rise blocks collectively called Noble Court we understand that there are 87 maisonettes of which 60 are owned by long leaseholders. The other flats are occupied by assured tenants of the landlord.

3. By clause 4(4) of his lease the tenant covenants to pay an interim service charge and a service charge at the times and in the manner provided by the fifth schedule. The fifth schedule requires the tenant to pay as a service charge such "reasonable proportion" as is attributable to the flat of the total expenditure of the landlord as defined by paragraph 1(1) of the schedule. The proportions demanded of the tenant are in fact based on rateable value, although the tenant does not accept that the method of apportionment is accurately applied. The "total expenditure" means the total expenditure incurred by the landlord in any accounting period in carrying out its obligations under clause 5(5) of the lease and in insuring the block. Paragraph 1(3) of the fifth schedule defines the interim service charge as "such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Lessors or their Managing Agents shall specify at their discretion to be a fair and reasonable interim payment". By paragraph 3 of the fifth schedule the interim charge is to be paid on 1 April, 1 July, 1 October and 1 January in each year and, by paragraph 5 of the fifth schedule, if the actual service

charge for the year exceeds the interim charge, together with any surplus carried forward, the tenant must pay the excess to the landlord within 28 days of service upon him of a certificate as described in paragraph 6 of the schedule. The certificate is required to be signed by the landlord and to contain the information set out in paragraph 6, but is not required to be certified by an accountant. It must contain the amount of the "total expenditure" for the relevant accounting period and the amount of the interim charge paid by the tenant, together with any surplus carried forward from the previous accounting period. The services which the landlord covenants to provide and in respect of which the tenant must pay a service charge are listed in clause 5(5) of the lease.

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

5. At the hearing on 19 October 2010 the tenant appeared in person and the landlord was represented by Roger Brayshaw FCA, an independent consultant, and by Josie Lebilé-Holo, the landlord's Home Ownership Manager. In view of the nature of issues and the evidence we heard we did not consider it necessary to inspect the estate.

6. The service charges for the year 2007/2008 which the tenant disputed in his application were the subject of a previous tribunal determination, and the tenant's case in relation to the charges for that year was that the landlord had not yet reimbursed those charges which had been found to be excessive. At the pre-trial review he acknowledged that he had now been correctly reimbursed the amounts found not payable and that there was no outstanding dispute in respect of the charges for that year. The disputed charges for 2009/2010 and 2010/2011 are based on estimated figures, but the accounts for the year 2009/2010, although not the invoices which supported them, became available the landlord's representatives on the day before the hearing and were supplied to the tenant and the tribunal at the hearing. The disputed charges for 2009/2010 remained the on account charges based on the estimated costs but with the parties' consent we had regard to the actual figures as part of our consideration of the reasonableness of the estimated costs, and in some instances Mr Brayshaw conceded that the on account charge should not exceed the actual charge as shown in the accounts.

7. The tenant had very helpfully listed the disputed charges in schedule form (appendix 22A to his statement in reply). As appears from that schedule, the factual accuracy of which Mr Brayshaw did not challenge, the landlord conceded on 16 April 2010 that some of the charges for the year 2008/2009 were not payable. At the hearing Mr Brayshaw said that there were no charges for block repairs and maintenance in 2009/2010.

8. The outstanding disputes which required determination related to:

a. caretaking (2008/2009, 2009/2010 and 2010/2011);

b. estate repairs and maintenance (2008/2009 and 2010/2011);

c. communal energy (2008/2009 and 2009/2010);

d. administration and management (2008/2009, 2009/2010 and 2010/2011);

e. block repairs and maintenance (2009/2010 and 2010/2011);

f. insurance (2009/2010 and 2010/2011); and

g. horticulture (2010/2011).

The issues

General

9. The tenant's chief complaint was of a lack of accuracy and transparency in the way that service charge costs were recorded, apportioned to his block, and apportioned to him. In the service charge demands for the year 2008/2009 he had found a number of obvious errors, such as charges for underground garages and communal gas heating, both services which his block did not receive. The landlord had admitted these errors in a letter to him dated 16 April 2010 from Nebeel Ahmed, one of its accountants, but it is not surprising that in these circumstances the tenant has remained sceptical about the landlord's accounting procedures. Having heard the evidence we too are not convinced that the expenditure relating to the block is always fully and accurately recorded, although we do not consider that any individual is responsible for the failures, or that the errors have been deliberate. The problem is in the system, whereby expenditure for a very large number of different properties is aggregated at the point when it is incurred and sub-divided later by the landlord's accounting department. It does not surprise us

that with such arrangements, mistakes are made. These may not matter unduly in relation to the tenanted properties, but we can well understand that to the leaseholders they are a source of frustration, irritation and mistrust.

10. Furthermore, neither the tribunal nor the tenant was helped during the hearing by the fact that no-one was present from the landlord who had personal knowledge of the management of the estate. Ms Lebilé-Holo gave such evidence as she was able to give and did her best to help the tribunal, but she admitted that her personal knowledge of the estate was very limited. Mr Brayshaw tried to help as best he could, but he is not involved in the management of the estate and cannot give evidence about it. Again, the problem is, we suspect, systemic, because no individual or individuals appear to be responsible for the management of this estate. This may not be a matter for which the landlord can be blamed, but it does add to the frustration of leaseholders and tribunals in such cases, which are relatively frequent.

Caretaking (2008/2009, 2009/2010 and 2010/2011

11. The charge demanded of the tenant for caretaking in 2008/2009 was £455.27. The way this amount was arrived at is shown in a spreadsheet which is appendix 4 to the landlord's statement of case. It was arrived at by breaking down costs such as salaries, agency staff, mobile telephones and the like, incurred, as we understand it, for a large number of estates, to arrive at a total for St George's Estate, and then further breaking it down according to rateable values to the block containing 16 - 34 Noble Court and to Flat 27. The cost also included the actual cost of a "blitz" cleaning of 16 - 34 Noble Court. The estimated cost demanded of the tenant for caretaking in 2009/2010 was £459.67 and for 2010/2011 it was £444.15. The actual caretaking charge for 2009/2010 in the accounts produced at the hearing by Mr Brayshaw was said to be £363.73, and Mr Brayshaw said that the landlord was prepared to agree that the reasonable estimated charge was no more than that sum. The caretaking provided was limited to cleaning the block and litter picking from the estate.

12. The tenant said that the standard of the caretaking was adequate but that the cost was excessive by comparison with the other similar developments. He considered that a reasonable charge for the service provided in 2008/2009 would have been £215, based on charges made by other registered social landlords. He said that Tower Hamlets and Notting Hill had, to his knowledge, excellent management and accounting procedures, and for a medium rise block of eight flats in Bernardo Gardens, similar in size and type to his block in Noble Court, the cleaning charge made by Tower Hamlets in 2008/2009 was £215 per leaseholder for a service which included estate cleaning, window cleaning and bulk rubbish removal. He said that Notting Hill Housing had in the same year charged £210.61 per leaseholder for cleaning Lulworth House, a medium rise block of 80 flats. He provided details of the frequency of the cleaning services provided to these two blocks by comparison with those provided at Noble Court, and submitted that in these circumstances it was clear that the costs for cleaning his block in Noble Court were excessive.

13. He also questioned whether the charges had been accurately apportioned and submitted that in any event the apportionment on the basis of rateable value across the estate was inequitable because it did not take account of the differences in design of the blocks, some of which were high rise. In the circumstances he invited us to conclude that the significant difference in the cost of caretaking to his block by comparison with blocks owned by other registered social landlord was likely to have been due either to incorrect apportionment or inefficient management, or both.

14. The landlord's case was that the proper charge for caretaking in blocks owned by other social landlords would depend on the design and nature of the common parts, and on all the relevant circumstances, which would include whether policy considerations had dictated the amounts charged or whether other landlords had made mistakes in accounting. Asked why the actual charge for 2009/2010 was less than the actual charge for 2008/2009, Ms Lebilé-Holo said that the cost of materials and equipment was likely to vary from year to year, and that some of the cleaning was reactive rather than planned.

15. We accept the accuracy of the tenant's evidence as to cleaning costs in other blocks, and we accept that the blocks on which he relies for comparable costs are similar to his block and that the extent of the services provided to them are similar. We have sympathy with his concern that the charge to him for what appears to be a similar service is more than double the charge imposed by other social landlords. However, we do not have detailed information as to how other social landlords arrive at their charges for cleaning. In the end, and with no great enthusiasm, we have found ourselves unable to say that the cleaning charges in the present case are outside the range of what is reasonable, and we determine that the charge for 2008/2009 was reasonable. We accept Mr Brayshaw's offer and determine that the reasonable estimated charge in 2009/2010 was £363.73 but determine that the reasonable estimated charge for 2010/2011 was £444.15 as demanded.

Estate repairs and maintenance (2008/2009, 2010/2010 and 2010/2011)

16. The charge made to the tenant for this service in 2008/2009 was £122.94. The landlord conceded in Mr Ahmed's letter dated 16 April 2010 that the charge included costs relating to an underground car park which should not have been charged to the tenant because the occupants of his block did not have the use of such a facility; and in its statement of case the landlord conceded that a charge of £58.75 for a sign to the Housing Office reception area had also been wrongly charged to the service charge account for the tenant's block. That left a balance attributable to the tenant of £77.63, of which the tenant disputed £52.80, comprising £27.56 for signage and £25.24 for drainage charges. The disputed charge of £27.56 was the tenant's alleged share of a cost of £12,413.88 shown in a spreadsheet which was appendix 4 to the landlord's statement, said to have been paid to Morris and Laken Signs but for which the landlord was unable to produce an invoice or otherwise to explain where the signs were placed and why they should be the subject of a service charge. The tenant had asked the landlord's representatives at a meeting on 22 January 2010 for the landlord to produce the relevant invoice. Given that it was able to produce other invoices for

much smaller sums but was unable to explain or justify this large amount, we find ourselves unable to be satisfied that this cost related to the St George's Estate and we disallow it as not falling within the recovery provisions in the tenant's lease.

17. The charge of £25.24 was the proportion attributed to the tenant of a number of charges listed in the landlord's spreadsheet at appendix 4. The tenant said that the charges suggested that they had been made for multiple visits which were almost certainly responsive services for clearing blockages in other parts of the estate, and very probably in tenanted flats in one of the three high rise blocks on the estate. He did not object to a charge for jetting the drains which he accepted as reasonably attributable to the common parts, but he objected to contributing to the cost of what he considered to be responsive works to deal with blockages in tenanted flats in other blocks. He said that he had asked for but been given no evidence as to the works carried out and was dubious about whether he was properly liable to contribute to them, and that he had asked for but not been shown the service agreement covering the clearing of blockages in tenanted flats.

18. Mr Brayshaw said that his instructions were that wherever the blockages had occurred, they were in the communal drainage system and were properly the subject of a service charge.

19. The tenant also asserted that the landlord ought to have sought a contribution to the estate charges from a housing association (Bethnal Green Housing Association, succeeded by Gateway Housing Association) whose tenants had the right to use roads and paths on the St George's Estate and whose freehold title contained a covenant to pay a fair proportion of the cleaning, maintenance, lighting and major repairs of the roads and paths. He suggested that the landlord's failure to assert its rights until he had reminded it of them was not untypical of the landlord's poor management. Mr Brayshaw acknowledged that the landlord had the right to claim a contribution to these costs and had not done so or sought to do so until the tenant had drawn the right to do so to its attention. He said that if any contribution was in due

course recovered from the housing association, the appropriate amount would be reimbursed to the service charge account.

20. On balance, and with misgivings, we accept that the drain clearing which forms the subject of these charges was carried out to the communal system on the Estate and was not the responsibility of individual tenants. It was thus, we consider, properly the subject of an estate service charge and was reasonably incurred. And, while we accept the tenant's submission that the landlord should have been more alert to assert its rights against the housing associations which were liable to contribute to the upkeep of the roads and paths, any loss is not yet quantifiable and do not consider that we would be justified in making any deduction from the estate maintenance charges under consideration on that account. We therefore determine that the reasonable cost of estate repairs and maintenance in 2008/2009 was £50.07 (£122.94 - £39.57 (agreed) - £5.74 (agreed) - £27.56 (determined)). In future it would be preferable if spreadsheets produced to support such charges identified the sites of blockages in the drains. We are satisfied that the production of such information is feasible because we have encountered it in other cases.

21. The estimated charge for this service in 2009/2010 was £47.61, and for 2010/2011 it was £129.09. We are satisfied that these estimates were reasonable and the costs payable as a service charge in advance.

Communal energy (2008/2009 and 2009/2010)

22. The charge for 2008/2009 was £32.27 and the estimated charge for 2009/2010 was £67.43.

23. The landlord could not provide invoices for communal energy but calculated them on the basis of accruals, using an estate-wide charge, broken down on the basis of rateable values, which the tenant considered to be unfair given the nature of the estate which included high rise blocks with lifts. But, he said, in any event the information supplied by the landlord in its appendix 6

showed a cost of £1240.40 for communal energy to his block, and that, on the basis of that information, the charge to him, based on rateable values, should have been £14.10 as shown in the calculations in his appendix 15A.

24. Mr Brayshaw submitted that to adopt the calculation suggested by the tenant would mean that the costs for his block would not synchronise with the costs for other blocks on the Estate.

25. We accept the tenant's case on this issue. The charges which he should pay, according to his lease, are those for his block, together with any costs referable to communal lighting on the estate. These charges should be calculated in the most accurate way reasonably available. The figures on which the tenant relies are those provided by the landlord and we adopt them. In our view the landlord ought to be able produce accurate figures which record actual energy consumption by each block and any estate lighting for which leaseholders are properly responsible, and, since it provided a figure for the cost of communal energy to the tenant's block, those should be used for the purpose of calculating the service charge, rather than generalised figures broken down according to rateable values.

26. We are not persuaded that the estimate for 2009/2010 was unreasonable, although the method at which it was arrived may be open to criticism when the balancing charge is demanded.

Administration and management (2008/2009, 2009/2010 and 2010/2011)

27. The administration charge, made for accounting, was based on 10% of the costs incurred (or estimated) in 2008/2009 and 2009/2010 and 12% of the costs estimated in 2010/2011, producing charges of £88.84 in 2008/2009 and estimated charges of £115.79 and £118.71 in 2009/2010 and 2010/2011 respectively. The management charge was £120.71 in 2008/2009 and the estimated charges for 2009/2010 and 2010/2011 were £100.76 and £154.66

respectively. The combined charges for management and administration in the relevant years were thus £209.55, £216.55, and £273.37 respectively.

28. The tenant, citing the mistakes he had uncovered, said that the accounting procedures were so defective that they did not justify the administration charges demanded. In relation to the management charges he said that the standard of management was poor and that he had found it difficult to obtain information and answers to his queries. He also questioned the methodology used to arrive at the management charge, which, the landlord had asserted in its statement of case, was increased annually in line with inflation but which he said, and we accept, was not in fact accurately done. He said that the landlord's statement that the management and administration charges were capped and were less than the actual charges was inaccurate and contradictory when compared with information provided by Mr Ahmed. He said that Tower Hamlet's annual charge to each leaseholder for managing similar premises to an acceptable standard was £52.41 which also suggested that the charges made by the landlord were excessive.

29. Mr Brayshaw accepted that the management and administration had not been perfect, but said that administration and management services, which, he said (and we agree), should be aggregated for the purpose of comparison, had been provided at a cost which was lower than the equivalent charges in the private sector, and which was subsidised and lower than the true cost to the landlord.

30. We accept that the landlord has provided management services, including accountancy, for which some payment is required. The standard of its accounting procedures has, however, not been good and would not be considered acceptable in the private sector. While we accept (see paragraph 9 above) that this is a systemic failure rather than one for which individuals are to blame, we consider that the systems of accounting are so lacking in transparency and, in some instances, accuracy that a small reduction in the charges for management and administration is necessary to reflect the poor

standard. In our view a reasonable charge for these services, combined, in 2008/2009 would have been £175, and reasonable estimated charges for 2009/2010 and 2010/2011 were £200 and £225 respectively.

Block repairs and maintenance (2009/2010 and 2010/2011)

31. The charge for 2008/2009 for this service was £108.54 (lower than the actual charge as conceded in Mr Ahmed's letter dated 16 April 2010 to which we have referred above). The tenant said that in these circumstances the estimated charges to him for 2009/2010 and 2010/2011 of £268.19 and £163.37 respectively were unreasonably high. We are satisfied that these charges are not outside the range of reasonable estimated charges and determine that they are payable as charges on account.

Insurance (2009/2010 and 2010/2011)

32. The tenant submitted that the estimated charges to him for insurance in these years (respectively £137.92 and £156.52) were excessive, considering that the actual charge for 2008/2009 was £75.39, which he did not dispute (although he questioned the accuracy of the landlord's apportionment calculations).

33. Mr Brayshaw said that insurance premiums generally had increased substantially and that it could not be said that the estimated charges were outside the range of reasonable charges.

34. We accept the landlord's case on this issue and determine that the estimated charges were reasonable.

Horticulture (2010/2011)

35. The estimated charge to the tenant for horticulture in 2010/2011 was £33.80. The tenant said that only half that amount was reasonable given that a large proportion of the communal grounds have throughout the year been a building site for the construction of additional blocks of flats and houses on the Estate. He produced photographs showing the building works and their effect on the communal grounds. Mr Brayshaw did not dispute that the works had affected the amenity of the communal grounds, although he suggested that the unaffected parts of them had to be maintained. He said that the landlord would accept whatever reduction in this charge that the tribunal considered appropriate.

36. We accept that approximately half the communal grounds have been unusable in the relevant year and that the reasonable estimate of the cost of horticulture is one half of the amount demanded, namely £16.90.

Costs

37. Mr Brayshaw said that it was not the landlord's practice to place its costs incurred in connection with the proceedings on any service charge. In these circumstances, and bearing in mind the circumstances of the case, we make an order under section 20C that none of the landlord's costs of the proceedings shall be placed on any service charge.

38. The tenant asked that the application and hearing fees which he had paid should be reimbursed by the landlord under regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003. As this question was not addressed at the hearing we asked for written submissions on it after the hearing. In an email to the tribunal dated 20 October 2010 Ms Lebilé-Holo said that the landlord had dealt with the tenant's concerns before the application, but that he was difficult to deal with and the application to the tribunal was inevitable, given his attitude. She suggested that it would be fair for each side to bear its own costs. The tenant said that the correspondence

showed that many of his legitimate doubts and questions remained unanswered and agreed that the application and hearing were necessary.

39. We accept that some, but not all, of the questions raised by the tenant were answered before the application was made. We have concluded, in the exercise of our discretion, that the circumstances warrant an order that the landlord should reimburse one half of the application fee of £200 and of the hearing fee of £150 which the tenant has paid, namely that the landlord should reimburse £175 to the tenant in respect of the fees he has paid.

CHAIRMAN.....

DATE: 1 December 2010