8206

HM Courts & Tribunals Service

Residential Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	**LON/00AL/LSC/2012/0231**
Property:	30 Wigeon Path, Broadwaters, Thamesmead West, London SE28 0DS
Applicant:	Mr William Hammerton
Represented by:	In person
Respondent:	Gallions Housing Association Limited
Represented by:	Mr R. Stevens of Counsel
Also Present:	Mr M. Smith, Revenue Officer, Gallions Mr I. Barclay, Contracts Manager, Gallions Mr M. Huggett, Service Delivery Manager (For part of hearing) Mr T. Broad
Tribunal:	Mr L. W. G. Robson LLB(Hons) Mr K. M. Cartwright JP FRICS Mrs G. V. Barrett JP
Hearing Date:	11th September 2012
Date of Decision:	20th September 2012

Decisions of the Tribunal

(1) The Tribunal determines relating to the Annual Service Charges for 2006/7; Cleaning; NIL (as demanded) Management: £133.92 (as demanded)

(2) The Tribunal determines relating to the Annual Service Charges for 2007/8; Cleaning; NIL (as demanded) Management: £115 (as demanded)

(3) The Tribunal determines relating to the Annual Service Charges for 2008/9: Cleaning; £271.29 (£536.79 demanded); Management: £130 (as demanded)

(4) The Tribunal determines relating to the Annual Service Charges for 2009/10: Cleaning; £271.29 (£522.12 demanded); Management: £130 (as demanded)

(5) The Tribunal determines relating to the Annual Service Charges for 2010/11: Cleaning; £271.29 (as demanded); Management: £150 (as demanded)

(6) The Tribunal notes that the cost of the Major Works relating to the block entryphone is limited to £100 (£948.69 demanded) pursuant to the Respondent's admission at the hearing that the Section 20 Notice procedure had not been followed. This point had not been raised by the Applicant. Upon being given notice of the Respondent's intention to make an application under Section 20ZA relating to this matter, it directed that such application and written submissions in support be made by 25th September 2012.

(7) The Tribunal makes the other decisions as set out under the various headings in this Decision

(8) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 limiting the Respondent's costs of this application chargeable to the service charge to NIL.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to

   a) the amount of the cleaning and management elements of the annual service charges payable by the Applicant in respect of the Service charge years commencing on 1st April 2006, 2007, 2008, 2009, and 2010 and

   b) the amount of service charges payable by the Applicant in respect of a major works contract for renewal of the entryphone to the block, carried out in 2011.

both matters to be decided by reference to the terms of a lease (the Lease) dated 5th August 2002.

2. The relevant legal provisions are set out in Appendix 1 to this decision.

The hearing

3. The Applicant appeared in person. Mr Stevens represented the Respondent. At the start of the hearing, the Applicant disclosed that he was recovering from pleurisy, and still felt uncomfortable so he might need to move and stretch during the hearing. The Tribunal noted this, and invited him to ask for a short adjournment if he felt it necessary. The chairman mentioned that Mrs Barrett was not as well as she would have liked to be, and that she might also need to ask for a short adjournment. In the event, there were several short adjournments.

4. The Applicant also mentioned his concern that the Respondent had instructed Counsel without informing him. He felt at a disadvantage because of this, and also because a number of the Respondent's employees were also present, while he was alone. The Tribunal pointed out that the Tribunal was used to dealing with cases where one or both parties was a lay person. Parties were entitled to bring representatives if they wished and the Tribunal hearing procedure was relatively informal. The Tribunal tried to reassure him that the Tribunal was aware of his lack of legal representation, and that lack of representation should not affect the outcome. The Applicant seemed content with this reassurance. In the event, the Applicant behaved with great decorum and considerably assisted the Tribunal in gathering and understanding the evidence, particularly when dealing with the highly unusual circumstances mentioned below. The Tribunal records its appreciation of the constructive approach and good humour adopted by both the Applicant and Mr Stevens throughout the hearing.

5. Mr Stevens, who had been instructed only very recently, disclosed that he had advised his clients of an error in the Section 20 procedure relating to consultation on the door entry system. After the Notice of Intention, dated 4th May 2011, the Applicant had written a letter making a number of observations dated 1st June 2011. His clients agreed that the letter had been received within the statutory period, ending on 3rd June 2011, but had omitted making a reply to it. His clients admitted the error. Thus he wished to make a Section 20ZA application, requesting dispensation from the strict requirements of Section 20. This matter is dealt with further below.

6. It became clear early in the hearing that the Respondent's staff and documents did not have any specific figures or invoices showing how the charges were made up. Mr Huggett and Mr Barclay considered that they were unqualified to assist. It was pointed out that paragraph 4 of the Directions had made it very clear that the issues to be determined were:

(i) window and cleaning costs incurred during the service charge years 2006 to 12 (inclusive).
(ii) management fees for 2006 to 2012 (inclusive)
(iii) Reasonableness of works and costs of door entry system in 2010/11.

In addition the Directions made a quite specific Direction at paragraph 5 for disclosure of relevant documents. The documents bundle was highly deficient in this regard. After taking instructions, Mr Stevens informed the Tribunal that Mr Broad was the appropriate witness to bring and give the necessary evidence. Examination of the relevant part of his witness statement showed it was directed towards the tasks and process of doing the work without providing any of the figures needed by the Tribunal to decide if the cost of the work was reasonable. He was available to give evidence if asked.

7. Mr Broad's statement and the documents bundle disclosed that in the past there had been personal difficulties between the Applicant and certain members of the Respondent's staff which had resulted in a Court conviction against the Applicant for harassment of Mr Broad in 2010. In 2011, he had given undertakings to the Court to restrict his methods of contacting the Respondent's staff after an application by the Respondent for an Anti-Social Behaviour order. Mr Broad indicated in his statement that he did not wish to attend and give oral evidence unless the Applicant was not in the building.

8. Without prompting, the Applicant helpfully volunteered to leave the building while Mr Broad gave evidence, immediately after 2pm. He said that he did not think he would be good with the figures and would leave it to the Tribunal to decide on that matter. However, the Tribunal voiced its concern that it was highly undesirable for one party to be absent for an important part of the proceedings, which might lead to its decision being questioned. The Tribunal explored a number of possible alternatives with the parties. The favoured alternative, for a member of the Leasehold Advisory Service (who was reported to be in the building) to sit in the hearing during examination of Mr Broad, and report back to the Applicant, turned out to be impracticable as the person concerned was found to have left before he could be contacted. The Tribunal, having regard for the anxiety which was likely to be caused to the Applicant and Mr Broad by an adjournment, as well as the relatively small sums in dispute, decided that the most practical way to deal with the matter was to accept the Applicant's offer to be absent while Mr Broad gave evidence, but that the members would keep as full a note as possible of the evidence, summarise it for the Applicant, and ask Mr Broad any questions which the Applicant notified to it during the lunch break.

9. Mr Broad duly attended shortly after 2pm. The Tribunal had expected the Applicant to return to the hearing to hand over the questions he wished to ask, but in the event, he departed without returning to the hearing room, leaving on the desk a note of his questions, and his mobile telephone number. Mr Broad was then examined, which took some time. Contrary to expectations, he did not have any of the missing figures, and could only answer questions about

tasks and processes of which there was evidence in the bundle. Mr Stevens applied for an adjournment for the figures to be procured. The Tribunal rejected this for the reasons noted in paragraph 7 above. The Tribunal telephoned the Applicant and he returned to the hearing. The Chairman then summarised the answers to the Applicant's questions and events during the period the Applicant had been absent. The summary could not be a verbatim account, but the chairman checked with his colleagues and Mr Stevens in case there was anything important he had omitted.

10. The parties made written and oral submissions, with witness statements for the Respondent from Mr Broad, Mr Huggett and Mr Barclay. The Applicant offered no witness statements beyond his statements of case, but gave oral evidence and answered questions.

11. The Applicant in his statements and evidence did not question his obligation to contribute to the service charges levied under the terms of the Lease, but he considered that the cleaning, and particularly the communal window cleaning, had been done inadequately since Gallion had taken over in 2006. Prior to that date the work had been done satisfactorily. The cleaners appeared to have no access to hot water, and even the break and toilet arrangements for the cleaners themselves were unsatisfactory, leading to misuse of the bin stores. General cleaning was done inadequately, leading to a build-up of cobwebs in the common parts.

12. In reply to questions from the Tribunal, he considered that there were a total of 9 windows and two plastic panels over the veranda. There were 4 flight of stairs in the block with 3 landings on each, all covered with lino. There were two communal doors. Three of the windows were described to us as communal "tilt and turn" windows. The outside face of one tilt and turn in particular was never cleaned, as the Respondent's staff considered it was obstructed by a conduit, and thus never cleaned. The windows only seemed to be cleaned once a year. The plastic panels always looked uncleaned. He did not know who were the resident inspectors noted by the Respondent. He had never received a copy of their findings. Another issue was the waste chutes which were also left uncleaned, as were the surfaces in the bin rooms where the waste went into the paladin bins. The cleaners cleaned the outside of the chute doors, but not the inside or the mechanisms, leading, in the Applicant's view, to a health and safety hazard. The Applicant, who had a background in construction site maintenance, had complained on many occasions about the cleaning, and asked to see work sheets and records, without success. He considered that the Respondent's staff were being deliberately unhelpful. The overall effect of the cleaning made the building look patchy. However he noted that the situation had improved since July 2012. He was satisfied with the new system of work, whereby a particular caretaker was assigned to the job, and it was now being done satisfactorily. He praised the new caretaker.

13. Relating to the management, he considered it was very inefficient. He was not good with figures, but considered that that some items of management were being duplicated or improperly charged to leaseholders, rather than to the

other tenants. He had a very poor opinion of the area managers. He referred to the cleaning problems noted above, and produced a number of photographs of particular areas in the block.

14. When asked about his suggested worth of the work concerned, he said that it was not based on any estimate, but was generally a figure of 10% of the costs demanded.

15. The Applicant considered that the Respondent had not answered his questions [about the major works], and originally considered that the work was unnecessary, as the existing system was in good condition. At the hearing he accepted the explanation given, that there was a problem with obtaining spare parts, but considered that he should have been properly informed at the time. He thought the entryphone system was only 5/6 years old. The Tribunal explained to him that the effect of the Respondent's admission in this matter was that unless he agreed not to take the point, the Section 20 consultation procedure was invalid, and the Respondent could only legally charge £100, instead of £948.69. However the Respondent intended to make a Section 20ZA application asking the Tribunal to dispense with the requirements of Section 20, so it was likely that in the end the Tribunal might have to consider the dispensation issue also. The Applicant was clearly unsure of his best course of action, so the Tribunal directed that the Respondent should make its application within 14 days of the hearing, and allow 14 days for the Applicant to take advice and make a written reply. (Subsequently the Tribunal reconsidered paragraph 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003, and now considers that the Applicant will be entitled to at least 28 days from the date of the Section 20ZA application, rather than from the date of this hearing, to reply to the application, and also ask for an oral hearing if he wishes).

16. The Respondent disputed the claims of inefficiency and bad work. Relating to the cleaning, its witnesses described the detailed systems of work in operation, by reference, particularly to a schedule of Routine Annual Maintenance on P.315 (dated 28/02/2011). The property was within the estate of Thamesmead West comprising approximately 930 units. The Wigeon Path block totalled 20 units, comprising 8 one bedroom units on the 1st and also the 2nd floors, with 4 disabled units on the ground floor. Gallions was a Direct Labour Organisation, which allowed it to give additional services not required by the Lease when the opportunity arose. The service charge contribution paid by the Applicant was one twentieth. In 2006, the service had been operated using an Excel spreadsheet, but this had changed in 2009, when Gallions started to use a more sophisticated system, CONFIRM. In 2006/7, and 2007/8 management had been charged, but cleaning had not, although relevant work had been carried out. The reasons for the failure to charge were unknown as no member of staff with knowledge of that matter now worked for the Respondent. In 2008/9 the new system had come into operation. In July 2011(not 2012 as submitted by the Applicant), the Respondent had added some minor enhancements to the service not required by the Lease, e.g. mopping the lino floors, and cleaning the bin rooms, polishing floors and some

walls at no charge to the leaseholders. In 2008/9 the charge for cleaning was £536.79, in 2009/10 it was £522.12, in 2010/11 it was £271.29. There were resident inspectors from the block who inspected and reported back on the work. They were volunteers who received some training and inspected quarterly.

17. In answer to questions, Mr Broad, considered that the reduction in cost in 2010/11 was due an instruction to prioritise the finding of cost savings. He considered that the organisation was "working smarter". Estate costs (e.g. grounds maintenance) were charged by reference to the whole estate cost, whereas cleaning was charged on a block by block basis. If any staff were absent, either contract workers were brought in, and if that work was not done it was not charged to the service charge. Work was costed by applying a scale of "Standard Minute Values" to the relevant rate in the contract. Regrettably no breakdown of the costs as they related to the block for the relevant years were available to support his evidence. Asked why he thought Mr Hammerton was now happy with the service, Mr Broad suggested that it was due to having a dedicated cleaner for the block. The cost charged in later years had not been increased to make up for the failure to charge in earlier years, as alleged.

18. Relating to management charges, the Respondent considered these to be reasonable for all years in question. It was a low charge by industry standards. A great deal of time had been spent on the complaints made by the Applicant.

19. For ease of reference the Tribunal has constructed a brief synopsis of the amounts in dispute below:

Year	Cleaning (inc. windows)	T's offer	Management	T's offer
2006/7	Nil	N/a	£133.92	£70
2007/8	Nil	N/a	£115	£60
2008/9	£536.79	£107	£130	£50
2009/10	£522.12	£55	£130	£50
2010/11	£271.29	£27.12	£150	Nil

Decision

20. The Tribunal considered that the evidence in fact showed a number of problems after Gallions took over maintenance, despite the Respondent's portrayal of the situation in a very positive light. Clearly there were management problems in 2006/7 and 2007/8 resulting in failure to collect at least some maintenance charges. Nevertheless the Applicant had benefited from these failures. Some cleaning had been done, although the standard was questioned. The fairest and most reasonable course was to allow the management charges for these years to stand, on the basis that no charge would be made for cleaning.

21. Relating to the cleaning generally, the landlord's case suffered from lack of figures which it admitted were in its possession. Despite allowing the Respondent time to summon Mr Broad, and the highly generous offer by the Applicant to allow the Tribunal to take evidence in his absence, the figures

were not produced. The Tribunal Directions were very clear about the possible consequences of failure to produce documents. Mr Stevens had suggested that the Applicant had not complied with many Directions either. However the Tribunal decided that a professional manager should have been easily able to comply with the Directions given. Whatever the Applicant's failures, he was not a professional, and in fact no crucial part of his case was missing. His written statements were vague, but were sufficiently clear by the time of the Pre-Trial Review to be noted by the Tribunal in Directions.

22. In the absence of the relevant figures, the Tribunal did its best with the evidence it had to decide what was a reasonable charge for the years in question. The Respondent in answer to questions, considered that the charge for 2011/12 would be similar to that of 2010/11. The Tribunal considered it was significant that the total figure had almost halved between 2009/10 and 2010/11. The Respondent's view via Mr Broad was that it had become "smarter" in line with progress in the rest of the industry. The Tribunal considered that the evidence showed a history of difficulty with supervision, costs capture and accounting within the Respondent's organisation. It found it significant that the new system instituted in 2011/12 and praised by the Applicant was apparently costing £270 per annum or thereabouts. This was a reasonable sum for the types of work being done, equating to just over £5 per week. In the end the Tribunal decided that for each of the years 2008/9 and 2009/10, reasonable cleaning charges payable by the Applicant would be reduced to £271.29.

23. Relating to the management charges for all years, the Tribunal accepted that some management was inadequate, certainly prior to 2010/11. Again no specific figures were available. The Respondent's evidence was that there was no significant duplication or subsidy of the services to tenants. The Tribunal considered that these charges seemed low when compared with current charges in the area, where charges of £200 would be more normal. The Tribunal decided that the management charges as demanded were reasonable, taking into account the type of property concerned, and the loss already incurred by the landlord from its self-inflicted failure to produce documents to prove its case. No further diminution of the management charges seemed appropriate.

24. The Tribunal noted the admission of error made by the Respondent relating to the Section 20 procedure for the door entry system. The work had apparently been done under a long term contract, thus the maximum chargeable at this time is £100 under the Service Charges (Consultation Requirements) (England) Regulations 2003, paragraph 4 and Schedule 3, rather than the £946.69 demanded. This will remain the position unless decided otherwise in the proposed Section 20ZA application

Costs and Fees

25. The Directions referred to a possible Section 20C application, and the Respondent submitted at the hearing that it considered it had the right under the Lease to add its costs of this application to the service charge. However

Mr Stevens confirmed that in this case it would not seek to charge such costs to the Applicant. The Tribunal duly noted this concession, and accordingly orders that any such charge shall be reduced to NIL.

Signed: Lancelot Robson

Mr L. W. G. Robson LLB ~~(Hons)~~
Chairman

Dated: 20th September 2012

Appendix 1 - relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means 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 costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

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 provisions 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.

(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 or subsequent charges or otherwise.

Section 27A

(1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the Tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

(1) 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, residential property tribunal or leasehold valuation

tribunal, or the Upper 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.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Section 20 **Limitation of service charges: consultation requirements**

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either-
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on an appeal from) a leasehold valuation tribunal.

Section 20ZA **Consultation requirements: supplementary**

(1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.