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LONDON RENT ASSESSMENT PANEL

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

**Case Reference:** LON/00AY/LSC/2011/0557

**Premises:** 101 Wimborne House, Dorset Road, London SW8 1AJ

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**Applicants:** Miss Dreenagh Lyle and Miss Odyssey Lyle

**Respondent:** Lambeth Living/LB of Lambeth Home Owners-hip Services

**Representative:** Mr Lee Robinson – an employee of the Respondent

**Date of hearing:** 27 January 2012

**Appearance for Applicants:** Miss Dreenagh Lyle

**Appearance for Respondent:** Mr D Pearson - Operations Manager at Mears  
Mr G Whitely - Concierge Manager at Mears

**Leasehold Valuation Tribunal:** Mr P M J Casey MRICS  
Mr R Potter FRICS  
Mrs L Hart

**Date of decision:** 1<sup>st</sup> March 2012

## **Decisions of the Tribunal**

The Tribunal makes the determinations as set out under the various headings in this Decision

### **The application**

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the Act”) as to the amount of service charges payable by the Applicants in respect of the service charge years 2009/10, 2010/11 and 2011/12 .
2. A pre-trial review hearing was held on 31 August 2011 and directions for the conduct of the application were issued the same day. The parties did attempt to resolve the matters in dispute through the RPTS mediation service but were unsuccessful and the application was set down for hearing.
3. The relevant legal provisions are set out in the Appendix to this decision.

### **The hearing**

4. The Applicant appeared in person at the hearing and the Respondent was represented by Mr Lee Robinson employed in its Home Ownership Services.
5. The parties provided an agreed hearing bundle containing amongst other documents the Applicants’ statement of case, the Respondent’s reply and a copy of the lease. During the hearing the Applicant handed up a copy of a letter to her dated 17 May 2011 from the Respondent relating to the Statutory Consultation undertaken in respect of the contracting out of concierge services among others and a copy of a letter dated 21 February 2011 from the Respondent to one of its concierges about the transfer of his employment to the new contractors.

### **The background**

6. The property which is the subject of this application is a three bedrooed purpose built ground floor flat. It is said to be one of four such flats built in the ground floor void area beneath a 1960s built block of maisonettes originally containing 100 dwellings over 10 floors. The ground floor infilling took place some considerable time after the initial construction of the block which is now known as 1-104 Wimborne House and is part of a larger local authority estate known as the South Lambeth Estate.
7. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. The Applicants hold a long lease of the property dated 2 April 2004 for a term of 125 years from 13 August 1990 which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The provisions of the lease relied on by the Respondent Landlord are contained in Clause 2.2 and the Fourth and Fifth Schedules. The service charge year runs from 1<sup>st</sup> April in every year to 31 March in the following year. The Applicant does not dispute that the lease allows the Respondent to seek a contribution from her through the service charge provisions in respect of the matters in dispute; it is the reasonableness of the amounts sought that she challenges.

### **The issues**

9. At the start of the hearing the parties identified the relevant issues for determination as follows:
  - (i) The payability and/or reasonableness of service charges for the years 2009/10, 2010/11 and 2011/12 relating to estate repairs and concierge services
  - (ii) The adequacy of consultation in respect of the concierge service

10. Following the attempted mediation Mr Robinson wrote to the Applicant on 9 January 2011 responding to the points raised regarding the South Lambeth Estate definition, confirmation of repairs calculations, statutory consultation, confirmation of concierge cost and Final Account 2010/11. The Applicant agreed these were the issues with which she was concerned though the Final Account for 2010/11 had now been provided in the bundle (page 44).

### **Estate repairs**

11. The estate definition/repairs calculation issues relate to estate, as opposed to block, repairs carried out in 2009/10. Mr Robinson explained that part of the estate had been transferred but nothing had been done to change the definition in the lease. The apportionment of estate costs for service charge purposes was on the basis of Rateable Values of each dwelling and the estate., The estate Rateable Value, following the transfer should have reduced substantially but had not thus the leaseholders contributed less to estate costs than would otherwise have been the case. They were not however charged for work done on the transferred part of the estate. The two jobs challenged by the Applicant should not have been charged to her service charge account and he calculated that she was entitled to a credit of £14.73 against the amount included as Estate Services in the 2009/10 Final Account. The Applicant accepted this concession and so we do not need to make a determination.

### **Concierge services - consultation**

12. There is a concierge service at Wimborne House. Prior to 1 April 2011 it was operated directly by the Landlord who subsidised the cost. Since that date the service along with most of the other services provided to the block and the estate has been contracted out to Mears Ltd and it is no longer subsidised. The contract is a qualifying long term agreement within the meaning of the Act and S20 requires the Landlord in such circumstances to carry out a consultation process with its leaseholders before entering into such an agreement. The Respondent says it did so and in the course of the hearing the

applicant accepted this was so. She had confused the statutory consultation prior to contracting out of the service with a voluntary consultation carried out by the Landlord regarding the level of service, ie extent of cover and hours worked, which it carried out in 2008 and which she had been dissatisfied with. We only have jurisdiction to consider compliance with the scheme of statutory consultation under S20 and as the Applicant does not dispute that this was undertaken properly, there is no issue for us to determine.

### **Concierge services – cost 2009/11**

13. The Applicant claimed that the cost of the concierge service in each of the three years included in her application had been unreasonably incurred. In 2009/10 her contribution had been estimated at £393.61 but the actual amount came out at £538.97. Similarly in 2010/11 the estimate had been £397.55 while the actual was £802.03. For 2011/12 the estimated figure was £727.34. She could not understand how the reduced level of service which had resulted from the “voluntary” consultation in 2008 and which was supposed to result in lower charges had finished up costing her a great deal more.
  
14. Mr Robinson sought to explain that part of the problem stemmed from the fact that he concierge service had operated jointly between Wimborne House and Holland Rise. The latter was now run by a Tenant Management Organisation (TMO) and it had decided it did not want the concierge service. He was not able to tell us precisely when this occurred nor when the reduced level of service (ie less hours covered) was introduced nor could he say whether there had been any change in the extent of the Landlord’s subsidy to the service between 2009 and 2011. He accepted that the estimates for those two years were probably based on the costs relating to the joint service and the longer hours. All the Landlord sought to recover were the salaries of the personnel involved, ie the concierges, and he had offered to reduce the 2010/11 cost by leaving out half the cost of one of the three concierges as he accepted the service at Wimborne House generally needed only two, with some cover for holiday and sick absences.

15. The Applicant had not fully appreciated what this offer related to and as Mr Robinson indicated he might be prepared to make further concessions we suggested to them both that they might like to discuss this further between themselves. They accepted this suggestion and we accordingly adjourned the hearing for a short while to allow them to discuss the matter.
16. As a result of their discussions, the parties advised us that they had agreed the Applicant's 2009/10 contribution in the sum of £393.61 and that for 2010/11 at £511.52. Mr Robinson said the agreement did not mean that he accepted the original charges were wrong but he did not for the purposes of this hearing have the evidence to justify them. No determination is required by us in the light of this agreement for 2009/10 and 2010/11 but we are required to determine the reasonableness of the 2011/12 estimate cost of the concierge service which could not be agreed between the parties.

#### **Concierge services – estimated cost 2011/12**

17. From 1 April 2011 the concierge service at Wimborne House has, along with other block and estate services been contracted out to Mears Ltd following a competitive tendering exercise and statutory consultation with leaseholders. The Landlord no longer subsidised the cost of the service but pays Mears the contracted sum included in the agreement and seeks to recover from its leaseholders the proportionate share of those costs as determined by the terms of their leases. We heard evidence from Mr Pearson and Mr Whitely on the new arrangements. Mears' bid for the contract included the sum of £65,942.50 for providing concierge services to Wimborne House and this sum is included in its contract with Lambeth. They cannot charge more than this certainly for 2011/12 and the Applicant was notified of this sum in a letter from the respondent landlord dated 17 May 2011 as part of the statutory consultation process. The Applicant's estimated contribution based on her lease is £727.34. Mr Robinson gave us an estimate based on figures supplied by Mr Pearson of what Mears' true cost for 2011/12 was likely to be. This showed that for two concierges with holiday and sick leave cover plus a share of management costs and profit the true cost would be nearly £89,000.

18. Given that the estimated amount to be charged to the Applicant as service charges in advance is based on a price achieved through competitive tender, that the full cost is highly likely to exceed the amount that can be charged and that the cost of the service is no longer subsidised, we determine that the estimated cost to the Applicant for concierge services in 2011/12 in the sum of £727.34 is reasonable and payable by her.
19. One further matter arose towards the end of the hearing when we asked the Applicant if she disputed any of the other heads of expenditure shown on her service charge statements, which she confirmed she did not. This concerned block lift services to which she contributes despite being on the ground floor. The Landlord covenants at clause 3.2.4 of the lease to maintain, repair etc "the passenger lifts lift shafts and machinery (if any) enjoyed or used by the Tenant in common with others" and the cost of doing so is recoverable through the service charge. Mr Robinson was not on notice of this as it formed no part of the Applicant's case but when we raised it with him promised to look into the question of whether or not she should so contribute.

Chairman:



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Mr P M J Casey

Date:

1<sup>st</sup> March 2012

## Appendix of 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.