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Case reference: LON/00BB/LSC/2012/0479

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

Premises: 58 Trinity Gardens, Canning Town, London E1
4QA

Applicant: Habtom Tsegaye Misgena

Respondent: The London Borough of Newham

**Determination without an oral hearing in accordance with regulation 13
of the Leasehold Valuation Tribunals (Procedure) (England) Regulations
2003**

Tribunal: Margaret Wilson
Trevor Johnson FRICS

Date of decision: 22 October 2012

Background

1. This is an application by the leaseholder ("the tenant") of a flat in a block of flats under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine his liability to pay estimated service charges for the year 2012/2013. The respondent landlord is the London Borough of Newham.

2. Neither party having asked for an oral hearing, the application is dealt with on the basis of the papers alone in accordance with the procedure set out in regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003. After a pre-trial review on 21 August directions were made for the preparation of the determination with which both parties have complied.

3. The issue in this case relates to the estimated charge for what is described as a concierge service, which the tenant says is not provided. The estimated charge which the tenant has been asked to pay for the concierge service in the year in question is £1247.21, the same amount as the actual charge made for the same service in the previous year, although the estimated charge for the previous year was £600.

4. The tenant says that to justify a charge for a full concierge service there ought to be CCTV in the building, monitored by someone in the same building or in another building, and there should be a security or reception officer at the entrance to the building. He says that in his block there are CCTV cameras which are monitored from another building but there is no security or reception officer at the entrance. He says that, for that reason, the charge should be half of what it is. He says that when he challenged the charge he was informed that there was a security officer on the door and the full charge should therefore be paid, but when he informed the landlord that there was no security officer he was told that whether he received a full or partial service the full charge was payable. He says that when he purchased his lease in January 2011 under the Right to Buy provision there was no charge for concierge services in the information he received.

5. The landlord says that when the tenant bought the lease the service charges disclosed to him were incorrect in that, in error, they did not include any charge for the concierge service, although such a service was in fact provided. It says that there is a concierge lodge based in Trinity Gardens from which concierges monitor the entrance to the blocks, including the tenant's block. It says that the service is provided borough-wide and the cost is then broken down to a block cost, and then to individual flats on the basis of rateable value. The block costs are, it says collated by a finance manager using an apportionment method which takes into account the staffing levels and material required for each block. It says that the costs of the concierge service take account of all duties carried out by the concierge staff and include the costs of employees, equipment and materials. The duties of the concierges are said to be ensuring the security of the building and controlling access to it, preventing and deterring crime and vandalism, dealing with emergencies and emergency repairs, assisting residents in difficulty, and assisting with nuisance and unauthorised occupation.

6. Included in the landlord's case is a document headed "Calculation of Caretaker and Concierge Cost" in which the writer says that "the majority of Concierge [sic] also provide the caretaker service so the charge is inclusive of this service". The landlord's case also includes an email, the date of which is illegible, to the tenant from the Service Charge and Systems Team Leader which includes "regardless of whether you receive a full or partial concierge service the costs are calculated as follows ...". The actual service charges for the year 2011/2012 included not only a concierge charge, but also a charge of £83.69 for caretaking and the estimated service charge for 2012/2013 also includes not only a charge for concierge services but also a charge of £82.31 for caretaking.

7. By section 19(2) of the Act, *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.* By 27A(3) of the Act, an application may be made to the 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 ...the amount which would be payable.

Decision

8. Our task is to determine whether an estimated charge is reasonable. The estimated charge which the tenant disputes is the same amount as the actual charge for the same service for the previous year, 2011/2012. In our view, in those circumstances it cannot be said that the estimated charge is unreasonably high. We emphasise, however, that the actual charges for the concierge service delivered in 2011/2012 seem high, and it is open to the tenant to challenge the actual charges for 2012/2013 when they are demanded. We would add that the fact that future service charges may not have been made plain to the tenant when he bought the lease does not affect their reasonableness.

9. The tenant has asked for an order under section 20C of the Act to prevent the landlord from placing the costs it has incurred in connection with these proceedings on any service charge. We assume that the landlord's costs in this respect are minimal, but we see no reason to make an order under section 20C. The tenant has not applied for reimbursement of the fee of £70 which he paid in respect of the application, although the directions made provision for representations on the issue. We see no reason for ordering reimbursement in this case.


CHAIRMAN.....

DATE: 22 October 2012