

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

Property: 98 Barnes House, 220 St Mary's, Barking, Essex IG11 7SZ

Applicant: Mr Alan Deabill (leaseholder)

Respondent: The London Borough of Barking and Dagenham (landlord)

Date heard: 7 June 2007

Appearances: The applicant

Mr Shaun Murphy (Edwards Duthie, solicitors)
Mr Jackson Odoch, Leasehold Manager

for the respondent

Members of the leasehold valuation tribunal:

Lady Wilson
Mrs E Flint DMS FRICS IRRV

Date of the tribunal's decision: 7 June 2007

Background

1. This is an application under section 27A of the Landlord and Tenant Act 1985 (“the Act”) to determine the liability of the applicant leaseholder (in this decision called “the tenant”) to pay service charges to the landlord, the London Borough of Barking and Dagenham. The tenant holds a long lease of a flat in a 16 storey block of 100 flats on the Gascoigne Estate which comprises a large number of multi-storey and low rise blocks containing, in all, over 2000 units of accommodation occupied by council tenants and leaseholders. Five flats in Barnes House, the block in which the tenant’s flat is situated, are owned by leaseholders and the remaining 95 are occupied or available for occupation by weekly tenants of the landlord.
2. By his lease, the tenant covenants to pay a service charge which is, by paragraph 2 of Part 1 of the Fourth Schedule, “a proportion (such proportion to be ascertained by [the landlord] by a reasonable method which may vary in relation to different items” of the costs and expenses and outgoings described in Part 2 and Part 3 of the Fourth Schedule. It is common ground that these costs expenses and outgoings include the services of which the tenant challenges his liability to pay the amounts asked.
3. In his application the tenant challenged his liability to pay charges for caretaking, repairs to door entryphone, and dog patrols. Based on a preliminary consideration of the application a tribunal decided that it was suitable for determination on the basis of written submissions and without an oral hearing. However it subsequently appeared that the issue raised as to, particularly, the costs of the caretaking service, was of wide implication and that an oral hearing was required, and such a hearing was therefore convened in accordance with regulation 13(3)(b) of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003.
4. The hearing was held on 7 June 2007. The tenant attended and gave evidence, and the landlord was represented by Mr Shaun Murphy of Edwards Duthie,

solicitors, who called Mr Jackson Odoch, a Leasehold Manager employed by the landlord, to give evidence.

5. At the hearing the tenant withdrew his challenges to the costs of repairs to the door entryphone and dog patrols, so that the only issue for determination was the cost of the caretaking service.
6. By section 19(1) of the Act, relevant costs are to be taken into account in determining the amount of a service charge payable for a period only to the extent that they are reasonably incurred and, 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.

The issue

7. The annual costs of caretaking services charged to the tenant in each of the years 2001/2002 to 2005/2006 were as follows:

2001/2002:	£238.32
2002/2003:	£238.33
2003/2004:	£245.48
2004/2005:	£436.20
2005/2006:	£529.05

8. Prior to 1 April 2004 the caretaking service to the Barnes House was provided by a resident caretaker who lived in the block and cleaned it on a daily basis from Monday to Friday. In addition, major items of bulk rubbish were cleared by the landlord's employees when required. Apparently a similar service was provided to each of the tower blocks (ie those with more than five storeys) on the Estate but no cleaning was provided to any of the low rise blocks (ie those with five or fewer storeys). In 2003 the landlord decided to introduce, with effect from 1 April 2004, a new system, the main changes being that there were no longer to be resident caretakers in the tower blocks but that the low

rise blocks were to be provided with a caretaking service, and that there was to be a system of monitoring the caretaking services and liaison with the residents. What were considered to be the advantages of the new system were set out in a report of the Director of Housing and Health which is exhibit C to Mr Odoch's statement. It was conceded by Mr Murphy for the landlord that the author of the report did not envisage that the costs of the caretaking service would increase under the new system. Notwithstanding that, it is common ground that the costs of the service increased very significantly after the new system was introduced and that they increased by over 115% between 2003/2004 and 2005/2006.

9. The tenant said that he considered the charges made for the years 2004/2005 and 2005/2006, when the new system was in operation, to be wholly excessive. He said that the standard of the service provided to his block had not increased along with its cost. He said that the service was of a reasonable standard both before and after the new system was introduced and that he had never been given any proper explanation why the charges had increased by such a large amount. He would, he said, have understood if the charges had increased by a small amount to take account of inflationary or other changes, but that such a large increase was inexplicable. He said that under the old system the resident caretaker had looked after the block reasonably well, and that the landlord had provided a reasonable service for the removal of graffiti and bulk items and by way of response to other emergencies. He said that he had perceived no difference between the service formerly provided by the landlord at weekends and the service provided under the new system and that the provision of a cleaning service to the low rise blocks was of very marginal benefit to the occupants of the tower blocks. If anything, he said, it had been an advantage under the old system to have a resident caretaker in the block. He said that landlord's own documents, including a letter to him (exhibit H to Mr Odoch's statement) confirmed that the level of service provided to the tower blocks such as Barnes House was to remain the same under the new system and that it was only the service to the low rise blocks which was to change for the better.

10. The tenant said that the cost of caretaking in 2005/2006, which was £529.05, equated to £52,905 for his block, which was wholly excessive. He said that he was quite sure that an effective cleaning and caretaking service could be provided for no more than £30,000 per annum at most.

11. When asked by the tribunal to explain how the cost to the tenant of the caretaking service was calculated, Mr Odoch said that he understood that it was based on a proportion of the cost of providing caretaking services throughout the whole of the Borough of Barking and Dagenham. He was not able, on the basis of the information available to him at the hearing, to give either the total cost of the provision of these services or the divisor upon which the proportion payable by the tenant or other leaseholders was based. He said that he was aware that the costs attributed to caretaking services provided to tower blocks was assumed to be six times the cost of providing such services to low rise blocks.

12. Mr Odoch said that in his opinion the quality of the service provided to the residents of tower blocks had improved under the new system because such residents benefited from the improved environment which could be attributed to the better service provided to the low rise blocks. He also said that the service had improved generally because the landlord now provided some caretaking services, such as attention to the paladin bins and the removal of large items of rubbish, at weekends. He also considered that the supervision, checking, training and involvement of residents which was provided under the new system were of considerable benefit to the residents.

13. The tenant said that he had never before been informed that the charges demanded of him were based on a proportion of the cost of providing caretaking services to the entire borough. Mr Murphy said that this information was also new to him, and he very fairly conceded that it would not be appropriate in these circumstances for the tribunal to take, as a starting point, the sums demanded of the tenant for such services. He agreed, therefore, that the proper approach was for the tribunal to consider what would be the reasonable costs of providing the service to tenant. Such reasonable

costs would, he submitted, exceed £300 per annum (ie 1% of the £30,000 which the tenant had said might be the maximum) that a firm of contract cleaners would cost, because, in addition to wages, incidental costs such as national insurance, materials, holiday and sickness cover, and supervision had to be allowed for, although he conceded that no allowance should be made for the profit that a commercial cleaning contractor would expect. He submitted that the costs in fact charged were reasonable for the service provided.

Decision

14. We are satisfied that the charges demanded of the tenant for caretaking services in the years 2004/5 and 2005/2006 were excessive and outside the range of possible reasonable charges for the service provided. The tenant did not appear to us to be prone to exaggeration and we accept his evidence that the service provided was reasonable both before and after the new system was introduced. We do not accept that the provision of cleaning services to low rise blocks measurably improved the quality of the service to the tower blocks. Indeed we note (paragraph 2.1 of exhibit C to Mr Odoch's statement) that under the new system each caretaker was intended, and presumably is, responsible for 150 units, whereas under the old system the caretaker for, at any rate Barnes House, was responsible for 100 units. Nor do we accept that the system of checks, monitoring, training and "staff development" and the involvement of residents justified any significant increase in the level of cost for the service. We do not accept that the apportionment of the caretaking charges of the whole borough of Barking and Dagenham is a reasonable method of apportionment even if it were to be established, as it was not, that that method had been accurately applied. Whether it had or not been accurately applied it was not possible to discern from the evidence, which did not include either the total such costs or the basis of division. Given that, as Mr Murphy acknowledged, it was not in the circumstances appropriate to use the amounts demanded of the tenant as a starting point in the ascertainment of the reasonable costs, we have no real alternative but to consider what, based

on our experience, be a reasonable charge for cleaning and caretaking in a 16 storey block of 100 flats or thereabouts of mixed tenure and in this location.

15. Doing the best we can, and taking into account the helpful submissions made by the tenant and by Mr Murphy, and bearing in mind as we do that a reasonable cost is not necessarily the cheapest, and that a local authority landlord must provide a reliable service but that no allowance should be made for the profit which an outside contractor would expect, we have come to the conclusion that a reasonable charge for the caretaking service provided to Barnes House in the year 2004/2005 would have been £27,000 (ie the cost for the previous year plus 10% to reflect the costs of implementing a new system), equating to £270 per flat. The equivalent charges for 2005/2006 would be £28,350, which is 5% more than in the previous year to allow for inflation and other possible increased costs (equating to £283.50 per flat). Although we were not asked to determine the costs for the year 2006/2007, based on a further 5% increase, a reasonable cost would appear to be £29,800 for the block. While these figures are slightly lower than those proposed by the tenant, his proposal was a rough figure only and included an element of profit.
16. Accordingly, we determine the reasonable caretaking charges which the tenant is liable to pay for the years 2004/2005 and 2005/2006 to be £270 and £283.50 respectively.

Section 20C

17. Mr Murphy said that his instructions were that the landlord's costs in connection with the proceedings would not be placed on any service charge, and on that basis we make no order under section 20C of the Act.

Reimbursement of fees

18. The tenant having succeeded on the main issue he raised we consider it appropriate that he should be reimbursed by the landlord in accordance with regulation 9(1) of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003, with the whole of the fees, namely £200, which he has paid in respect of this application. It was conceded that such an order would be appropriate.

CHAIRMAN.....

A large, handwritten signature in black ink is written over the dotted line. The signature is highly stylized, starting with a large loop, followed by several smaller loops and a wavy tail.

DATE: 7 June 2007