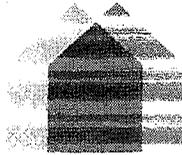


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**Residential
Property
TRIBUNAL SERVICE**

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION BY LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985 Sections 27A(1) and 20C

Ref :LON/00AH/LSC/2007/0046

Address: 8 Billsley Court, Dagmar Road, London SE25 6HZ

Applicant: Yasmin Lalani

Represented by: BPP Legal Advice Clinic (Mr R Elliott and Mr N Pacheco)

Respondent: Porter & Smart, Managing Agent

Represented by: Mr John Coates

Background

1. On 14 February 2007 the Applicant applied to the Leasehold Valuation Tribunal for determination of the reasonableness of and liability to pay service charges for the service charge years ending 24 December 2004, and 24 December 2005, 24 December 2006 and 24 December 2007.

2. On 2 March 2007 the Tribunal held a Pre-Trial Review at which the Applicant was present and the Respondent represented by Mr John Coates of Porter & Smart, Managing Agents. The Tribunal issued Directions identifying the principal questions to be determined by the Tribunal the service charges for the service charge years 2004-5 and 2005-6 for cleaning, gardening, general maintenance and management fees, and setting the case down for hearing on Wednesday 9 May 2007.

The Hearing

3. At the hearing on 9 May 2007 the Tribunal had not inspected the property and it was considered that no inspection was necessary.

4. It appeared that the subject property was a 1 bedroom flat in a purpose built block of 16 flats and was held on a Lease dated 25 May 1989 made between (1) Clare Homes Limited and (2) Ian David Williams (and assigned to the Lessee) by which the property was demised for a term of 125 years from 1 June 1988 at a rising ground rent during the first two periods of 45 years of £80 and £120 p.a. respectively, with a ground rent of £180 p.a. for the final 35 years. The Lease had been vested in the Respondent since 2003.

The Applicant's Case

5. On behalf of the Applicant, Mr Elliott said that there had been ongoing correspondence with the managing agents over a protracted period. There had been some improvements since the application to the LVT had been made in February 2007. The Applicant, who did not live at the property, had nevertheless attended on site on numerous occasions to satisfy herself that her investment was being protected, and had spent so much time and effort, including making many telephone calls to the managing agents, that they had at one stage remunerated her directly for her reports which had saved them time and trouble in redoing the same work. Nevertheless the Applicant had been concerned that items she reported were not acted upon, either promptly or sometimes at all, especially as she had commissioned an estate agent's valuation of her flat which had been adverse to her interests due to the condition of the grounds and common parts for which the managing agents had responsibility. For example, there was a regular gardener, but the gardens were still weed infested, with weeds between the pebbles and paving slabs which were supposedly installed for low maintenance, and there was a list of outstanding items which required attention: a fallen fence and a second fence about to fall, damp in the common hallway, moss on the car park and on paving slabs, weeds in garden, leaves in the drains, windows not cleaned properly, guttering falling off, the back door handle loose, a light on the first floor which had not been working since 24 April 2007 and a black bag of rubbish left at the rear of Flat 4.

6. Mr Elliott called the Applicant to speak to these issues. Ms Lalani said that she had telephoned and written often to the managing agents but it had taken a long time before she had received any response. Despite the fact that certain things had now been attended to there were still problems. The grounds were not well kept and the estate agent's valuation of her flat had suffered a deduction of £10,000 for this. Those items which had been addressed as a result of her reports showed that improvement was possible. There was a low maintenance affordable budget which provided for the necessary care and attention. She said that, for example, she would like the hedges trimmed when they were blocking the windows of the ground floor and the porch cleaned properly.

7. Asked by the Tribunal if there was a Residents' Association, Ms Lalani

said there was not, although she had tried to form one, but no one had been interested. Cross examined by Mr Coates, who said he had been pleased that she had taken an interest, Ms Lalani conceded that gardeners and window cleaners attended regularly (as if the gardeners did nothing she accepted that the garden would be a jungle) but confirmed that she had requested Mr Coates to look into the possibility of security gates as a defence against the fly tipping which was prevalent as the subject block was close to Crystal Palace Football Ground. She conceded that the other Lessees were not interested in having such gates due to cost and that the ground floor Lessees had not wanted the hedges trimmed back or removed since they were of thorn and were a security deterrent to intruders. She accepted Mr Coates' explanation that the fallen fence had been repaired but that the neighbour had taken away the prop, and also that there was in fact lack of clarity as to whether the block was responsible for repairing the fence(s) mentioned, although he had in fact assumed responsibility and effected the repairs. She also accepted that Mr Coates was using her own recommended contractors for cleaning and grounds maintenance. He added that the damp mentioned in the common hall had been addressed as the Lessee responsible had arranged repair of the defect within the adjacent flat and as a result Mr Coates was arranging to redecorate the hall. Ms Lalani commented that it would have been appropriate for him to tell her of this proposed repair, although Mr Coates considered that this was not necessary since the Lessees were not going to be asked to pay for the work so that it was necessary to await the convenience of the Lessee of the adjacent flat where the original damage had been caused.

8. Asked by the Tribunal whether he could not install the suggested security gates on the basis of his managing agent's status, Mr Coates replied that he would not feel comfortable in doing so without the express approval of at least 50% of the Lessees, which was the approach he had taken when the new windows had been installed in the block a few years before. He said that the problems that arose from security gates were themselves a deterrent to installation unless everyone wanted it. They were expensive, they were often vandalised or pushed open which damaged them. He added that "obviously" he could do more with more money. He added that he would be pleased if Ms Lalani could persuade the Lessees to agree to installation of security gates.

9. Asked by the Tribunal if there was a reserve fund, Mr Coates replied that there was and that it might be that some of that fund could be used towards the installation of gates.

The Respondent's case

10. On behalf of the Respondent, Mr Coates said that most of the points he had wished to make in answer to Ms Lalani's complaints had been dealt with. However he emphasised that Health and Safety Regulations meant that the upper windows of the block could only be cleaned with poles as it was no longer possible for contractors to use ladders above a certain height. However he said that the cleaning company was a good one which cleaned properties all over London and he doubted if any one else could be found to deliver a better result. He said that he realised that the rubbish was a problem and that the appearance of the grounds if it were not addressed did affect value but repeated the problems in preventing fly tipping when there was relatively easy access to the grounds without gates. He added

that the Applicant was the only Lessee who was complaining about his services, and that he had 7 letters from other Lessees recording that they were content with the present arrangements and did not wish their managing agents to be changed. Two other Lessees had agreed to write in similarly when he had canvassed their opinions, but he had not pursued them when they had failed to do so. He pointed out that he was technically employed as managing agent not by the Lessees but by Berkeley Homes, the Lessors, who had acquired the property from the developers Clare Homes, although he would accept that he should be replaced if the Lessees wanted it. He emphasised that there was a scheme of work for routine maintenance of the block, including a gardening specification, but that he could not call the contractors out for one small item as Ms Lalani appeared to want. He was in fact steadily upgrading the cleaning and gardening but that improvement would be constant rather than sudden, and added that his firm had been managing agents for about 12-14 years when they had taken over from other property managers in Croydon. He said he managed several blocks of different sizes and types and his management fees varied with the services provided and the type of property but in the present case were just over £200 per flat p.a. (£3,328 p.a. including VAT in total) which he considered to be at a middle to lower rate. For this the Lessees had inspections about once a month. He had 3 office staff for routine paperwork, 1 of whom did the book keeping and the rest worked on contracts, budgets and routine processing, a building contractor who did all the construction related and repair work, and he himself also worked on whatever claimed his attention.

11. Cross examined by Mr Pacheco, Mr Coates said that there was an annual budget to which he referred in the file, and a substantial sum of well over £4,000 in a contingency sinking fund for which nothing was at present scheduled. He agreed that the Lessees might be willing to spend this or some of it on the suggested security gates, which Mr Coates had said would cost at least £6,000 (plus ongoing maintenance which was where the true expense lay as maintenance contracts were expensive at around £1000 pa). He did not consider that owner occupiers would expect a higher standard than Ms Lalani, although it was usually true that those who let their flats tended not to concern themselves further with the service charges or the standard of maintenance once their flats were let, simply collecting the income unless responding to specific complaints by their tenants. He said that he appreciated that many people were unhappy with upper window cleaning by poles but it was not open to him to provide any alternative as he had already explained. He had passed on her complaints about the condition of the windows, but reiterated that there had been no other complaints, written or oral, from Lessees, apart from Ms Lalani's. With regard to the moss, he said that this was an ongoing situation and that the affected parts might need power washing. He had spoken to the gardener, asking him to be "more active" in this connection, and to apply fungal killers, which would be done very shortly if not already effected. The gardener was also to take up the pebbles and to lay a black membrane to deter weeds, although keeping the garden tidy was an ongoing problem with the fly tipping. He was not sure of the location of the guttering complained of but accepted that it was to the soffit boards and identified in one of the photographs on the file. With regard to the ivy on the defective fence(s) he was not sure that maintenance of that fence was the block's responsibility (in which case an alternative option might be to take it down) but he insisted that the ivy was not responsible for any problems and had sourced a contractor to put the fence back into repair effectively. Similarly the light which was not working, the rear door handle

and the damp in the hall were being addressed, as he had already partly explained. He pointed out that he had waived the 15% management fee which the Lease permitted.

Final submissions

12. Mr Coates said that he had little to add in final submissions, save that he did not believe that the management fees were excessive and that the costs, in particular for window cleaning and gardening, were properly incurred. He conceded that insurance (at £4,300) was expensive but this was due to past claims. He did not believe that his service was poor and he had heard nothing which justified a refund of fees. The service charges claimed were outstanding and should be paid. With regard to the fees for the application and hearing, he considered that these should be paid by Ms Lalami, as some items in issue were under way before the application and some not realistic to address more promptly in any case. He said he would not be charging for attendance at the Tribunal so that a s 20C order would not be necessary.

13. For the Applicant, Mr Elliott said that there had been some improvement which showed that the application had been necessary and justified. It had been demonstrated that Mr Coates could have been more communicative about action being taken and the problems could clearly be resolved by specific instructions to the contractor. He submitted that it might be beneficial to the Lessees to use further sums from the reserve fund to clear up the grounds and then to institute a low maintenance programme.

Decision

14. Following consideration of the evidence the Tribunal determined that the sums claimed are reasonable and reasonably incurred. Individually the items are fairly charged for. They in fact noted that the management fees were under £200 in 2004/5 (£168 per unit plus VAT £29.40 = £197.40) and only £208 in 2005/6 (£177.02+ VAT £30.98). These are not substantial sums in the context of the market rate for this work. Accordingly the outstanding service charges are duly payable and there is no outstanding dispute within the Tribunal's jurisdiction.

**Tribunal: Mrs F R Burton LLB LLM MA
Mr P S Roberts Dip Arch RIBA
Miss I Persadsingh LLB**

Chairman: 

Dated: 12/06/07

