5053

Residential
Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

DECISION ON AN APPLICATION UNDER SECTION 27A LANDLORD AND TENANT ACT 1985

Ref : LON/00AN/LSC/2010/0088

Property:	Flats 20-23 Clarke Court, Great West Road, London W6 9AP
Applicants:	Ms I Drenhaus (Flat 20), Mr S Du Plessis (Flat 21), Mr K Miller (Flat 22) and Mr D Murphy (Flat 23)
Respondent:	A2 Dominion Housing Group
Decision date:	24th May 2010
Tribunal:	Mr P Korn (Chairman) Mr I Thompson BSc FRICS

BACKGROUND

1. The Applicants are the leaseholders of the Property and the Respondent is the landlord.

2. On 3rd February 2010 the Applicants made an application under Section 27A Landlord and Tenant Act 1985 (the "**1985 Act**") for a determination of liability to pay and reasonableness of service charges.

3. The issues raised in the application were as follows:-

    - The service charge having increased by 82% in 2008/2009

- Non-return of a service charge surplus of £453.99
- Concerns about a £2,450 lift maintenance contract charge
- Five leaseholders each being required to pay 16.64% of the lift contract costs despite there being 25 flats
- Concerns about the fact and level of the managing agent's fee.

4. A Pre-Trial Review was arranged for 3rd March 2010 but neither party attended nor was represented. Directions were subsequently issued by the Procedural Chairman.

5. The parties have agreed for the matter to be determined by the Tribunal on the basis of the papers alone without an oral hearing.

6. Prior to the date of the Tribunal's determination the Applicants advised that the 2007/2008 surplus of £453.99 has been deducted from the 2009/2010 service charge and therefore it was no longer a disputed issue.

THE APPLICANTS' CASE

7. The Applicants submit that they have tried to resolve this dispute by contacting the Respondent or its managing agents direct but that they have had little or no response.

8. In relation to the increase in service charge in 2008/2009, the Applicants case is that this is a very large increase, and that the much lower amount charged in 2007/2008 was determined as a 'fair' amount by an independent audit.

9. As regards the lift maintenance contract, the Applicants' case was that this should not have been charged at all as there **was** no lift maintenance contract. In the alternative, the Applicants should not each have been charged 16.64% of the cost as there are 25 flats and therefore each flat should bear 4% of the cost.

10. In relation to the managing agent's fee, the Applicants are seeking clarification as to who the managing agent is and why they are expected to pay 4.76% of the fee (as against 4%).

THE RESPONDENT'S RESPONSE

11. In relation to the 82% increase, the Respondent's response is that the figure for 2007/2008 is not based on a full year and that this is why it increased so sharply in the 2008/2009 year.

12. As regards the lift maintenance issue, the Respondent concedes that there were not any lift maintenance costs in the relevant year. When the estimated service charge was set the Respondent **believed** that it would be incurring lift maintenance costs in that year but it subsequently transpired that no such costs were incurred. The Respondent has confirmed that the statement of actual expenditure for the year in question will make it clear that no such costs were in fact incurred and that therefore the balancing adjustment at the end of the service charge year will reflect this (i.e. if the overall actual expenditure is less than the estimated expenditure for that year then the Respondent will either make a refund or deduct the excess from the next service charge bill).

13. In relation to the percentage of the lift maintenance costs charged to the Applicants, the Respondent's written submission is a little unclear but it appears that the Respondent is conceding that this was an error and that the percentage chargeable to each Applicant should have been 4% (not 16.64%).

14. As regards the managing agent's identity and fee, the Respondent has stated that Hallmark Property Management Limited is the managing agent of the estate within which the Property is located, having been appointed by the private developers (the Property itself is managed by the Respondent direct). The 4.76% fee is an error and has now been revised to 4%.

NO INSPECTION

15. No inspection was requested by either party and the Tribunal did not consider that an inspection was necessary.

THE LAW

16. Under Section 18 of the 1985 Act "service charge" is defined as "an amount payable by a tenant ... as part of or in addition to the rent ... payable for services repairs, maintenance, improvements or insurance or the landlord's costs of management, and the whole or part of which varies or may vary according to the relevant costs". "Relevant costs" are defined as "the costs or estimated costs incurred or to be incurred by or on behalf of the landlord ... in connection with the matters for which the service charge is payable".

17. Under Section 19(1) of the 1985 Act, "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 provision of services or the carrying out of work, only if the service or works are of a reasonable standard".

18. Under Section 19(2) of the 1985 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".

APPLICATION OF LAW TO FACTS

19. The point relating to the surplus of £453.99 is no longer in dispute and therefore no determination needs to be made by the Tribunal.

20. The complaint about the 82% increase has been dealt with by the Respondent. Whilst it would have been helpful to see details of the 2007/2008 expenditure and to have received a fuller explanation for the increase from the Respondent, the explanation provided is plausible on the face of it and no further arguments or evidence have been brought by the Applicants to demonstrate or suggest that the increase is unreasonable.

21. In relation to the lift maintenance charges, the Respondent has conceded that no actual charges were incurred in the relevant year but it will nevertheless have been reasonable for these charges to form part of the estimated costs if at the time the decision to include them was made it was a reasonable decision to make. No evidence has been brought to show or suggest that this was an unreasonable decision. In the application form the year in question is described as 2008/2009 but an analysis of the service charge information provided by the Respondent indicates that the year in question is 2009/2010.

22. The Respondent has conceded (or at least appears to have conceded) that the percentage of the estimated lift maintenance costs charged to the Applicants was much higher than it should have been, and in the Tribunal's view it does seem that an incorrect percentage was charged as part of the estimated service charge for 2009/2010. The Applicants have stated the percentage charged as being 16.64% but an analysis of the service charge information provided by the Respondent indicates that it was 16.67%. Therefore, the lift maintenance charge forming part of the estimated service charge for 2009/2010 for each flat should be 4% of £2,450 instead of 16.67% of £2,450 and therefore it should be reduced from £408.33 per Applicant to £98.00 per Applicant. As the Respondent has conceded that no actual lift maintenance costs were incurred in that year the Applicants may decide that rather than seeking an immediate refund of £310.33 (as is their technical right) they will be content to wait for the Respondent to make an overall adjustment once the actual service costs for 2009/2010 are known.

23. As regards the managing agent's fee, the Respondent has provided the information sought by the Applicants and the leases allow for recovery of managing agents' fees (assuming that they are reasonable). In the absence of any evidence or arguments from the Applicants to show or

suggest that the amount of the fees is unreasonable the Tribunal is not in a position to disallow these fees in whole or in part.

24. There are two additional observations that the Tribunal considers worth making. The first is that the information provided by the Respondent in this case has not been of a very high quality. The accounts seem to contain a number of errors and the Respondent's written submissions could have been much clearer. The second is that having neither attended the Pre-Trial Review nor requested an oral hearing the Applicants placed themselves in a position in which it was difficult for them to know what evidence to bring in order to present their case in the best light.

DECISION

25. The estimated service charge for 2009/2010 is reduced by £310.33 per Applicant to reflect the incorrect percentage having been used when charging each Applicant a proportion of the estimated cost of lift maintenance.

26. All other charges which are the subject of this dispute are payable in full.

27. The Applicants have applied for a Section 20C order that any costs incurred by the Respondent in connection with these proceedings should not be added to the service charge. It is anticipated that the Respondent will have incurred minimal (if any) costs. On balance, in the light of the accounting errors and poor provision of information that are at least partly responsible for this case having been brought, the Tribunal is happy to make a Section 20C order and to determine that none of the costs incurred by the Respondent in connection with these proceedings may be added to the service charge.

Chairman:  (P Korn)

Dated: 24th May 2010