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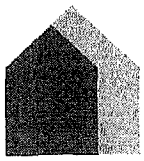

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 Section 27A

REF: LON/00OAY/LSC/2009/0831

Property:	3 Cherry Close Tulse Hill London SW2 2EY
Applicant:	Ms Caroline Henthorne
Respondent:	London Borough of Lambeth through its "ALMO" Lambeth Living
Date of Application:	29 November 2009
Date of Pre-trial Review and Directions:	1 April 2010

Date of Inspection:	6 May 2010
Date of Paper Determination:	12 May 2010
Members of Tribunal:	Mr S Shaw LLB (Hons) MCIArb Ms S Coughlin MCIEH

DECISION

INTRODUCTION

1. This case involves an application made by Caroline Henthorne ("the Applicant") in respect of 3 Cherry Close, Tulse Hill, SW2 2EY ("the property"). The property is part of the Tulse Hill Estate, which is a council housing estate owned by the London Borough of Lambeth ("the Respondent"). The property is effectively managed by the Statutory Arms Length Management Organisation ("ALMO") appointed by it, that is to say "Lambeth Living". The application made is for a Determination as to the liability to pay, and reasonableness of, certain service charges levied by the Respondent in relation to the property. The Determination is to be made pursuant to Section 27A of the Landlord and Tenant Act 1985 ("the Act"). Specifically, the Applicant seeks a Determination in respect of the service charges claimed for the service charge years 2007/2008, and the estimated service charges for 2008/2009 and 2009/2010.

2. A Pre-trial Review took place in respect of the application on 1 April 2010. A Hearing took place and the Respondent was represented by Mr Lee Robinson; the applicant did not come to the Hearing but attended, as it were, by telephone. Directions were given by the Tribunal on that day to the effect that the detailed case already submitted by the Applicant dated 30 January 2010, coupled with a further letter of the Applicant dated 6 March 2010 to which the Respondent had replied by letter dated 16 March 2010, read together, were sufficient explanation of the Applicant's case. It was directed that "*it is for Lambeth to answer the case put forward by Mrs Henthorne*". The Respondent was

directed to prepare an indexed bundle of any additional documents on which it wished to rely, which had not so far been disclosed, upon which a further opportunity was afforded for the Applicant to comment. Both parties had agreed that the matter was to be determined as a "paper determination" without an Oral Hearing, although it was directed that an inspection of the property would take place.

3. That inspection indeed took place on 6 May 2010, when this Tribunal visited the property and was shown around by the Applicant. The Respondent did not attend on that occasion. Insofar as may be necessary, the inspection will be referred to in the findings of the Tribunal below. It is proposed to deal with each of the service charge years in question separately, and in relation to each such year to give the Tribunal's Determination.

SERVICE CHARGE YEAR 2007/2008

4. One of the repeated complaints made by the Applicant in the various letters and statements she has prepared which appear in the bundle, some of which are referred to in the context of the Directions above, is that the documentation supplied to her by or on behalf of the Respondent, detailing her service charges, has often been confusingly presented. Moreover, it is alleged that it has been presented very late in the day, so as to make budgeting on her own behalf difficult if not impossible. In relation to the service charge demand for the service charge year 2007/2008, the certified summary account was presented by the Respondent to the Applicant under cover of a letter dated 26 January 2009. The service charge year runs from 1 April 2007 to 31 March 2008,

and thus the certified account was not presented until 10 months after the close of the service charge year. The Applicant had already paid various sums, it is thought by standing order, on account, and the balance of the sum outstanding as alleged by the Respondent at the date of the letter was £322.77. The letter included an apology for the delay in sending the account. A part of the problem it was suggested, was a new computer system, the use of which apparently delayed the account. At page 90 in the bundle there appears laid out the estimated service charge for that year and the actual charge. The estimated sum was £782.63. The sum in fact demanded at the end of January 2009 was nearly double that sum, that is to say £1,377.37. It appears that almost all of the expenditure was greatly under-estimated but in particular the sum referable to repairs and maintenance. The estimated cost in this respect was £97.36, whereas the actual expenditure was £693.32. A computerised printout of the maintenance costs which have resulted in this sum accumulating, has been supplied to the Tribunal (it is not known whether it was originally supplied to the leaseholders).

5. In the context of that printout, it is clear that some of the bigger items of repair occurred a very long time previously. In particular:-

- Job number 843761; issue date 21/09/2006; completed 23/10/2006; cost £539.08.

- Job number 96559/1; issue date 20/10/2006; completed 20/11/2006; cost £1,450.09.

- Job number 95861/1; issue date 02/11/2006; completed 19/12/2006; cost £4,125.78.

- Job number 66838/1; issue date 27/07/2006; completed 14/09/2006; cost £556.25.

6. By virtue of Section 20B of the Act, it is provided that;

> *(1) "If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to sub-section 2) the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.*
>
> *(2) Sub-section (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by payment of a service charge."*

7. It appears to the Tribunal (there is no explanation to the contrary) that the sums referred to above should all have been demanded by mid-2008, and certainly long before this presentation of the summary account in 2009, given that the costs were incurred (they had been requisitioned and completed during 2006) beyond the 18 month period referred to in Section 20B of the Act. There is no evidence before the Tribunal to the effect that the position was saved by some earlier notification under Section 20B(2) of the Act and indeed it is noteworthy that

the estimated costs about which some notification may have been given, were hopelessly inaccurate by reference to the actual cost incurred. The Tribunal takes the view that, on the evidence before it, the Applicant is justified in complaining that the service charge costs in this respect were not notified to her until a period way beyond that which is reasonable in all the circumstances and that accordingly, either because Section 20B of the Act was not complied with, or because this demand was not reasonable under Section 19 generally, the costs for these four invoices referred to should not be allowed.

8. The result of this is that the accumulated total cost of these invoices is £6,671.20 of which the Applicant's contribution under her lease by applying her percentage of 3.51% would be £234.16. There is also a charge for £178.86 by way of management charge for this year. Given that the management because of these delays was in the view of the Tribunal poor, the Tribunal considers that this should be reduced by 50%, thus requiring a further reduction of £89.43. The addition of these two sums of £234.16 and £89.43 means that there should be a total deduction from the sum demanded for that year of £323.59, leaving a balance of £1,053.78. The Respondent will have to carry out a reconciliation of the account to take in to account the sums already paid by the Applicant for that year, in order to determine whether there remains a small balance outstanding or whether there is any refund to be made to the Applicant.

SERVICE CHARGE YEAR 2008/2009

9. The estimated charge for the period 1 April 2008 to 31 March 2009 has been revised by the Respondent at least once. So far as is understood by the Tribunal the most

recent demand for this period is under cover of a letter dated 15 May 2008 which is headed *"This is an updated estimated service charge bill for 2008/2009"*. After the Pre-Trial Review on 1 April 2010 and receipt of the Directions on 7 April 2010, the Respondent wrote to the Tribunal in an effort to explain some of the documentation sent. In that letter it was said that *"we are currently working on the final accounts which will be released in June"*. This only serves to underline the repeated assertion made by the Applicant in the various documents submitted to the Tribunal, that she is notified of her service charges only after very prolonged delays, thus making budgeting impossible, and that moreover far from the standard of service and administration improving since the appointment of the ALMO, both have diminished. The specified estimated charges totalling £405.57 mentioned in the letter of 15 May 2008 do not, on the material before the Tribunal appear especially exceptionable (this is a preliminary view without seeing the final accounts and hearing submissions about the quality or reasonableness of the service). The tribunal notes that there is no estimated charge for window cleaning for this year which seems to confirm the applicant's contention that the windows were not cleaned during this period. However the management fee applied to this total estimated expenditure is £108.56 which amounts to 26.76% of the estimated expenditure. This seems to the Tribunal to be very high, particularly when, as observed, the administration in this case appears not to have been of the highest order. The Tribunal would allow a 10% management fee amounting to £40.56 which when added to the total estimated expenditure and together with the insurance of £89.93 would give a total figure of £536.06 for that year. This is the sum determined on an estimated and interim basis to be the reasonable sum for that period.

SERVICE CHARGE YEAR 2009/2010

10. Once again an estimated demand has been sent for this period which, according to the Respondent's letter appearing at page 100 in the bundle and dated 12 April 2010 has now been reduced by the Respondent as a result of a review of her contributions from £1,585.03 to £1,010.56. No explanation has been given for this reduction, but the fact that it amounts to about a third, suggests that the original estimate was not especially accurate. The revised estimate appears under cover of a letter dated 21 December 2009 and in particular at page 148 in the bundle. One of the complaints made by the Applicant is that the cleaning at her property has been variable and often poor. On the inspection the quality of cleaning was observed not to be of the highest order, although it may be that the appearance was not enhanced by the fact that the general decorations and standard of repair of the common parts at the property is not good. Notwithstanding this, in the estimated sum claimed two separate sums have been included in the sum of £247.26 each for cleaning to the block and cleaning to the estate. There is no clear evidence before the Tribunal as to what the estate cleaning refers to. Moreover in the previous year the allowance for block and estate cleaning was £106.13 and £45.48 respectively, totalling £151.61. In the circumstances, to claim for almost £500 for cleaning against the Applicant (forming the best part of the £737.59 estimate for the whole of expenditure for that year) seems inflated. The Tribunal would allow one of

these claims for cleaning only in the sum of £247.26 and the second claim must be deducted at this stage.

11. Moreover, although a 10% administration fee of £73.76 has been allowed, a further management fee of £68 has been applied so as to bring the overall administration or management fee to £141.76. Once again, this seems to the Tribunal to be high in all the circumstances particularly given that there have been continuous administration and management problems demonstrated by the late charges and failure to supply intelligible explanations for the charges to the Applicant (of which she complains and with which the Tribunal sympathises). The addition of this "administration charge" is a case in point. Although a form of explanation given for this sudden new chargeis provided in the document titled 'Your Service Charge Explained' at page 86 of the bundle, it is hard to make sense of this explanation and in all the circumstances, and on an interim basis only, the Tribunal does not think it reasonable that this be levied at this stage.

12. Accordingly, in the view of the Tribunal, after deduction of the £247.26 a balance of £490.33 would be due on an interim basis, to which an administration fee at 10% should be applied in the sum of £49.03. Adding this sum and the insurance charge to the new balance produces a figure of £660.57 which is the figure determined by the Tribunal to be reasonable on an interim and estimated basis.

MAJOR WORKS

13. During 2008 some consultation documents were served by the Respondent on the Applicant in respect of external decorations and other work to the communal parts at the property. The second Notice under the Act appears at

page 14 in the bundle and, as understood by the Tribunal, at that stage, over two years ago, it was thought that the total cost of the works would be £39,572.17 of which the Applicant's contribution would be £1,526.04. Those works have not to date proceeded and, so far as the Tribunal is aware, no demand for a contribution on an estimated basis has been made to the Applicant. Certainly the Respondent has not put in the bundle any costed specification of these proposed works and the Tribunal is unable to determine that any sum is reasonable as payable by the Applicant in this respect at present. It may well be that since no demand has been made, none is payable in any event. No further comment is made by the Tribunal save to say that the sum intimated seems high given that the internal stairwell is not especially extensive (albeit it is proposed to re-paint with fire retardant paint) and the external walls are mostly ordinary brickwork with limited areas to be painted.

CONCLUSION

14. The service charge demands for the three respective years concerned referred to above should be reduced in the sums indicated. In relation to the service charge year 2007/2008 there is a further credit to be made in the sum of £97.36 (including administration at 10%) as referred to in the Respondent's letter to the Tribunal dated 12 April 2010. This further sum should be deducted from the £1,053.78 referred to by the Tribunal at paragraph 8 above. It is not known whether the Respondent was proposing to re-charge the costs of the Tribunal application to the Applicant, but in any event given the fact that the Applicant has been required to make this application, and that significant deductions have ensued, the Tribunal gives the Direction under Section 20C of the

Act to the effect that no such costs should be applied to the Applicant's service charge account. It is to be stressed that in relation to the two latter years, the Tribunal's finding are in respect of Estimates only, and it is open to either party to re-apply to the Tribunal if so desired, once the final accounts have been concluded.

Legal Chairman: S. Shaw

Dated: 12 May 2010