

**Leasehold Valuation Tribunal: reasons****Landlord and Tenant Act 1985 sections 27A and 20C****Address of Premises**

28 Consort Road,  
London SE15 2PU

**The Committee members were**

Mr Adrian Jack  
Mr Hugh Geddes

**The Landlord:****London Borough of Southwark****The Tenant:****Marcellinus Uwawughike Iwuji****Procedural**

1. By an application received by the Tribunal on 13<sup>th</sup> October 2009 the tenant sought determination of his liability to contribute to the cost of heating from 2007 to date.
2. The Tribunal issued directions on 22<sup>nd</sup> October 2009 and these were substantially complied with.
3. The Tribunal held a hearing on 29<sup>th</sup> January 2010. The tenant appeared in person. The landlord was represented by Ms Baptiste, Mr Dudhia and Mr Manchester. In the light of representations made at the hearing the Tribunal considered that an inspection of the property was desirable and one was held after the hearing.

**The law**

5. The Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

**Section 18**

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-
  - (a) which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.
- (3) for this purpose
  - (a) costs includes overheads and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or

in an earlier period

### **Section 19**

- (1) 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 works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
- (2) 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.

### **Section 27A**

An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-

- (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether 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---
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable."

### **The evidence and the inspection**

6. The tenant explained that he had been a secure tenant of the council and occupied the property as such from the end of 2003 until 28<sup>th</sup> February 2008, when he exercised his right to buy. From the outset he said that there had been no heating in the flat. He showed us correspondence which showed that from an early point he had been complaining about the heating.
7. It was common ground between the parties that there was a communal space heating system in the block (but not a communal hot water system). We were shown it on our inspection. The block itself consists of some thirty flats on the ground and first floors laid in a straight line. At the back of each ground floor flat there is a small garden. At the front is a concrete walkway. The upstairs flats are entered via a balcony walkway at the front of the building.

8. In the centre of the block, below ground level, is the communal heating system. There are two gas-fired boilers, which provide the heat. The boilers heat water, which is then pumped around a system of external pipes to individual flats. The pumps are run by electricity and there is also an air fan to ensure that there is no build-up of carbon monoxide. Apart from these fans and the lighting, there is no use of electricity. In particular there is no electrical back-up heater.
9. The pipes from boilers go along a gully just below the walkway in front of the ground-floor flats. At each flat there is a pipe running into the ground floor flat which goes to a fan driven heat exchanger in the ground floor flat.
10. The tenant's flat when it was initially built comprised a kitchen and bathroom/WC toward the front and a studio room at the back. At some point prior to the tenant taking up occupation, the studio room had been divided by partitioning so that there was a small separate bedroom.
11. We were able to see the piping in the flat. It came from under the floor. We were also able to see the point at which it was originally attached to the radiator. The tenant said in evidence that the radiator had never worked whilst he had been in the flat and that he had removed it. This is consistent with the correspondence he showed us.
12. On the inspection we were able to inspect the radiator in the tenant's back garden where he had stored it. It was a heat exchanger with an electrically powered fan to distribute heat.
13. The tenant also showed us a piece of piping which had been removed from under his flat by workmen in late 2009. It was heavily corroded and was clearly incapable of carrying hot water to heat the tenant's flat and the flat above.
14. The state of this pipe was consistent with what we saw in the basement boiler room. The duct which held the pipe which ran out to the tenant's flat had been the subject of repeated leaks which had left tell-tale staining of the wall immediately below the gully.
15. The landlord explained the basis on which heating charges were demanded. Flats were classified as having full heating, partial heating or hot water only. A calculation was then made on the basis of the number of bedrooms. In the current case the bed-weighting is 4 and because it has (or at least should have) heating, but not hot water, it was given a factor of 2.5. The total weighting of all the 30 flats in the block is 335, so the tenant was charged  $10/355$  (i.e.  $4 \times 2.5 = 10/355$ ).
16. The landlord's case, as set out in Mr Manchester's witness statement, was that the tenant had wanted to be disconnected from the heating system and that he had refused access to the landlord to fix the heating system.
17. In the event at the hearing Ms Baptiste conceded that the landlord had not given the tenant proper notice to gain access, so that the tenant was not in breach of his lease in not giving access to the landlord to carry out necessary repairs.
18. The landlord produced the breakdown for heating charges in the block. We can take the

year 2007-08 as typical. It comprised:

Gas Boiler	£6,619.42
PPM Boiler	9,955.62
Electricity Boiler	31,981.30
Repairs Boiler	1,935.90
Repairs non-Boiler	3,155.56
Overhead Boiler	671.38.

19. The figure for "Electricity Boiler" had been nil prior to 2006-07. The landlord had no explanation for how the electricity bill came to be so enormous, when there was no electrically-heated boiler at all.

#### **The Tribunal's determination**

20. The Tribunal accepts the tenant's evidence that he had never had any heating during the time he was first a secure tenant and then a long leaseholder. In the light of the landlord's concession that the tenant was never in breach of the terms of his lease by refusing access to the landlord's workmen, in our judgment the landlord can recover nothing in respect of heating. It has simply not provided the service, although it was well aware that the heating system for the tenant's flat was not working.
21. Accordingly we find that up to the date of the hearing on 28<sup>th</sup> January 2010 the tenant owes nothing in respect of heating.
22. The tenant is obliged to accept heating from the landlord under the terms of his lease. Thus once the landlord carries out repair works, he will be obliged to contribute. His reluctance to allow the landlord to carry out works is due to the obviously excessive charge in respect of the non-existent "Electricity Boiler". Now that it is clear that that charge (which represents more than half the amounts demanded of him) will not be levied, he is likely to be much happier with being attached to the communal heating system. Indeed the past charges for heating (once the electricity is stripped out) would in the Tribunal's judgment have been reasonable, if the landlord had actually supplied heating to the tenant.
23. Issues as to when the landlord will carry out the work and what a reasonable figure for heating once those works are carried, are matters for the future. The Tribunal is unable to speculate on what will occur. Thus we make no determination regarding any period after the date of hearing on 28<sup>th</sup> January 2010.

#### **Costs**

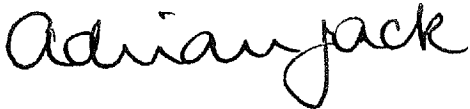
24. The Tribunal has a discretion as to who should pay the fees payable to the Tribunal by the applicant tenant. In the current case the tenant has substantially won. Accordingly in our judgment the fees should fall on the landlord. The landlord indicated that it did not intend to pass the cost of attending the Tribunal to the service charge account. Accordingly the Tribunal need make no order under section 20C of the Landlord and Tenant Act 1985.

## DECISION

**The Tribunal accordingly determines:**

- a. that the tenant is obliged to pay nothing in respect of the heating of his flat from 28<sup>th</sup> February 2008 to 28<sup>th</sup> January 2010;
- b. that the landlord do reimburse the fees paid to the Tribunal by the tenant.

**The Tribunal makes no determination as to the amount payable by the tenant in respect of heating after 28<sup>th</sup> January 2010, because the issues cannot yet be determined and accordingly the refusal to make a determination is without prejudice to either party's right to bring an application in respect of any period after 28<sup>th</sup> January 2010.**



Adrian Jack, chairman

16<sup>th</sup> March 2010