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THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL
LANDORD AND TENANT ACT 1985 – SECTION 27A & 20C

LON/00BG/LSC/2009/0767

Premises: Gordon House, Glamis Road, London E1W 3ED

Applicants: Nurjahan Begum (Flat 63)
Mr. M Ali & Mrs. S Chowdhury (Flat 34)
Lorraine Denney (Flat 87)
Jan Anstey-Hayes (Flat 79)
Salima Khatun (Flat 84)
Komorun Khanam (Flat 26)
Ali Ahmed (Flat 33)
Terry Naude (Flat 53)
Houssein Ali (Flat 20)

Represented by: Ms. F Dewar, counsel

Respondent: Eastend Homes Limited

Represented by: Mr. Roger Brayshaw, Services Manager
Ms. J Lebile-Holo, Leasehold Services Manager

Tribunal: Ms. LM Tagliavini, Barrister & Attorney-at-Law (NY)
Mr. P Casey, MRICS
Mr. L Packer

Hearing Date: 19 July 2010

1. This is an application made pursuant to section 27A of the Landlord and Tenant Act 1985 seeking a determination of the reasonableness of service charges for the period 2007/08 (part), 2008/09 and 2009/10. The subject premises comprise a purpose built block built circa 1965 consisting of maisonettes and flats over 21 stories with communal entrance and hallways, served by two lifts and fire escapes (staircases) located at the end of each hallway, and also accessed from internal staircases within the maisonettes. The subject premises form part of a larger estate known as The Glamis Estate, which the Respondent acquired from the London Borough of Tower Hamlets in October 2007. The Applicants do not seek to dispute the service charges for any period when LBTH were the freeholders but confine their case to the period since the Respondent acquired the freehold.

2. Specifically, the Applicants challenged the reasonableness of the service charges for the period 2007/08 (part), 2008/09 and estimated service charges for the year 2009/10. Individual items challenged are:
 - Caretaking costs
 - Block repairs and maintenance
 - Estate repairs and maintenance
 - Lift repairs and maintenance
 - Heating repairs and maintenance
 - Communal boiler fuel
 - Leasehold services and administration charges
 - Housing management
 - Methodology of calculation of service charges and apportionment.

3. Before the start of the hearing the Tribunal carried out an inspection of the building and immediate estate. It found the block to be as described above with evident signs of cleaning, caretaking and gardening, although the block itself presented as a functional high-rise concrete purpose built block.

4. It is accepted by the Applicants that the relevant clauses of their leases require them to contribute in their proportion to the Service Charge attributable to their own flat and block. "Services" are defined in the lease in accordance with Ninth Schedule and the "Service Charge" and the "Service Charge attributable to the flat" is defined in the Eight Schedule. The "Heating Charge" is defined in the Tenth Schedule of the lease but is not included in the definition of Services. Although only one copy lease was produced to the Tribunal it was accepted by Ms. Dewar on behalf of all the Applicant lessees that this copy was identical in all substantive matters to the leases for all the Applicant lessees and the relevant clauses, which the Tribunal had to consider were in effect, identical. The Respondent did not seek to challenge this reliance on one copy lease only in respect of all the Applicants.

5. The Tribunal was provided with five lever arch files compiled by the Respondent. However, the Tribunal found these bundles extremely difficult to work with, as the order in which the documents were placed was illogical and not separated into definite sections in a coherent order. The Tribunal was provided with a useful report from Engineering Design Consultants, which although dated 2004 described clearly the layout of the building and the services provided including the three boilers situated in the basement, which supplied a wet heating system to the flats. This was supplemented by a 2009 report from Waterstone Design entitled "Boiler Room and Pipework Modifications".

The Applicants' Case:

6. The Applicants also sought to rely upon a witness statement, which in fact was more of a Statement of Case from Ms. Anstey Hayes on behalf of all Applicants. This detailed the reasons for the challenges to the individual service charge items;

Cleaning: Said to have been historically neglected resulting in ingrained grime and dirt to the communal arrears. Limited and in the Applicants' view inadequate cleaning took place from October 2007. A deep clean was programmed, but was not fully carried out until January 2010, although a thorough clean of the staircases was carried out in September/October 2008. Core cleaning tasks have not been carried out and records of cleaning tasks are incomplete. Deep cleaning of lifts and bin chambers is not recorded. The Applicants did however comment that the standard of cleaning had improved in recent months.

Block Repairs & Maintenance: The cost of removing pirate T.V. aerials too high and could have been done more cheaply. The GEM maintenance contract (heating) should be included under the Heating Maintenance and Repairs head of charge as on the face of it, it appears that the lessees of Flats 1-12 Redcastle Close, who benefit from the service are not contributing to it.

Drainage Costs: Unreasonably high costs incurred.

Lifts: Inadequate repair and maintenance carried out. Repeated call outs for the remedy of the same or similar problems.

Heating Repair & Maintenance: A lack of maintenance and repair has led to increased fuel charges.

Communal boiler fuel: Charges are excessive and in part due to a lack of maintenance.

Administration Charges: Excessive.

Housing Management: Service provided has been poor and differed little from the less than adequate service provided by the former freeholders, despite the promises of improvement. The first estate manager had been ill and absent for some time, and the quality of management had suffered.

Fire Safety: Provision made has been inadequate, delayed and not cost effective.

Calculation and apportionment of Service Charges: Inaccurate and not transparent.

The Respondent's Case:

7. The Respondent maintained that on the whole the service charges had been correctly calculated and apportioned in accordance with the terms of the leases. It was accepted that there were some inaccuracies but these had now been remedied. Specifically, it was conceded that the 39.82% figure for the building's share of Estate costs should have been used for all the categories of expenditure throughout 2007/08 but had not been done. These figures would be recalculated and where necessary refunds given and no increases charged. Thereafter, the correct apportionment percentages had been used. Mr. Brayshaw asserted that the Respondent is entitled to include sums for "accruals" even though there were as yet no invoices. In respect of the drainage charges, it was often difficult to know where these had emanated from and therefore it was

reasonable to treat them as Estate charges. Fuel charges had been apportioned between Redcastle Close and Gordon House as both blocks benefitted from the communal heating system.

The Tribunal's Findings:

Apportionment Issues:

8. Rateable values – the rateable value basis of calculation of the proportion of service charges in accordance with Part II, clause 2 of the lease is a reasonable method of calculating service charges notwithstanding that the use of rateable values was ended in the early 1990's.* Whilst the lease provided for a switch to floor area, there is no evidence to show that the use of floor areas would produce a significantly different result. The fact that water companies make charges on historic rateable values – (there being no gross values) lends weight to the reasonableness of this method for calculating service charges. RV might be an unfair method of calculation where there were also improved or new build properties dating after 1988 which never had a rateable value, but this was not the case at Gordon House. We accept that an alternate to rateable values is provided for in the leases(s) but the Tribunal is not persuaded that the continuation of the use of rateable values was unreasonable, or had resulted in an unfair apportionment of individual charges.

**Rateable values are a reflection of the gross values reached by applying a statutory formula to the gross values.*

9. The Tribunal finds that there is no formula in the lease for apportioning Estate costs to the lessees although there is a requirement that a contribution is made. The Respondent does not use the rateable values for Estate costs but the gross values. In law, rateable value is not the same as gross value (rounded figures), and there is no such entity as gross rateable value. It is arguable that even with the abolition of domestic rating, rateable values still exist to the extent that they are used as a basis for calculating water charges. The Tribunal finds that the use gross values for the apportionment of the Estate costs to be a reasonable method of calculation so long as the Respondents apply consistency to this approach to all the headings of service charge that properly appear under this heading, which the Respondents had not always done in the past, but have corrected their practice and the past charges, as noted above.

Heating Charge:

10. This is defined in the lease and charges and should be apportioned to each flat/lessee. Heating is specifically excluded from the definition of service charge in the lease, which refers to the *“expense to the lessor of complying with the lessor’s covenants to supply heating”*. The charge has also been calculated by reference to gross values. The Tribunal accepts that there may be other reasonable methods of calculating this charge, but in the present absence of any reasonable alternative, the Tribunal finds this is an acceptable method of apportionment. Ideally, the lessees should be charged for individual usage by way of individual meters, although the cost and viability of these installations were not something the Tribunal heard any evidence about, although the Tribunal is of

the opinion that it would be prudent for the Respondent to explore individual metering.

11. Although the lease specifically refers to heating charges as being distinct from service charges, nevertheless the Tribunal's jurisdiction to deal with this as a service charge pursuant to section 19 of the 1985 Act was not disputed. However, the Tribunal considers it inappropriate for the Respondent to add 10% to the heating charge for management, as this is not a service charge item within the terms of the lease. Therefore the Respondent is not entitled to charge 10% of the heating costs as part and parcel of the management fee. Until the Respondent charges this item properly, the lessees should not have to pay anything for the management of the heating supply, but finds that repairs to the system are included within the service charge definition and can be subject to management fees.

12. The Tribunal finds that there are inadequacies in the explanation of the methodology used for the calculation of the heating charges and found there are inefficiencies within the existing system. However, there is no evidence to show that the costs of modifying and improving the existing system would necessarily produce a net saving to the lessees once they had contributed their share of the costs modifying the system.

13. The suggested apportionment of heating charges between Gordon House and Redcastle Close based on gross values makes sense and is accepted by the Tribunal as reasonable. With 12 flats out of 103, the 11% allocated to Redcastle Close does not look unreasonable. At the hearing the Landlord accepted it had failed to properly apportion those costs at all

times but would correct the situation although both the applicants and the Tribunal continued to query if they had made all the necessary corrections.

14. Similarly, the costs of the maintenance and repair to the boiler should be apportioned between the two blocks (Gordon and Redcastle). The Tribunal has great difficulty in saying that works to the boiler(s) have been carried out to a reasonable standard, as there are large sums of accruals for unspecified items of work totaling in excess of £14,000 for the service charge year 2008/09. The Tribunal disallows this sum until such time as the Respondent can establish what these sums are in respect of. At that point the Respondent will be in the position to make the relevant charges (but these will be open to challenge).

15. Maintenance and repair of heating installations are charged as Estate costs but apportioned to the individual building e.g. Redcastle Close and Gordon House, in accordance with the terms of the lease (clause 6G). Gordon House clearly receives a heating service and the Tribunal finds that these costs are reasonable where they are clearly attributable to these items. It was accepted by counsel for the Applicants that the GEM contract was not required to be subject to section 20 consultation procedures and this issue was not pursued further.

Insurance:

16. The Tribunal accepts that the estimated cost of insurance has escalated significantly, but the Tribunal accepts the Respondent's explanation that as the new landlord they are no longer able to access the same sort of deals available to the

LBTH as a local authority. This change of landlord coupled with a poor claims record has led to the increased insurance costs and the Tribunal accepts the quoted insurance premiums as reasonable.

Drains/Soil Stacks

17. The Tribunal finds that the costs of these items should have been down to the individual blocks concerned. The Tribunal disallows the challenged costs, as it finds that Gordon House has had little problems with its drains and therefore the lessees of that block should not be required to contribute towards the costs incurred by repairs to another block.

Parking:

18. Individual lessees seeking to take advantage of the parking system, including the painting of bays and the signage needed, should be charged to cover these items. They are not recoverable through the service charge.

Fences:

19. On inspection the Tribunal were of the view that the replacement of parts of fencing to specific areas of individual gardens were not Estate costs. They should be chargeable to the specific flats concerned and not to the lessees of Gordon House.

Cleaning:

20. The Tribunal finds the Estate and Building cleaning costs are reasonable. Although the Applicant queried whether the work

had been done, as the work sheets filled in were not on all occasions completed properly or at all. However, it appeared to the Tribunal that regular cleaning had been carried out, and it was a common ground that the internal common parts had required a deep clean before the overall appearance improved. This had been carried out, but given the rather austere nature of this block, the Tribunal is of the view that, without major works of refurbishment, it is likely that the appearance of this block will not be markedly improved. Although the cleaning costs were a little on the high side, the Tribunal was satisfied that these included the cost of the deep cleaning that had been carried out.

Block Repairs:

21. It was conceded by the Respondent that for one year the wrong percentage had been charged to the lessees but this had now been rectified. The Tribunal finds the cost of the works of removing aerials put up for pirate radio purposes are reasonable and does not accept the Applicant's argument that it is a simple job requiring only one person and a ladder.

22. The Tribunal finds that the cost of works to the lift are reasonable as they are old lifts and may be coming to the end of their useful life. Although there have been regular breakdowns these were dealt with rapidly, and at all times except for one bank holiday weekend one lift at least has been kept running. Replacement of the lifts would have involved lessees in significant capital outlay, and there was no evidence before the Tribunal to show that the lessees would have saved costs by replacement works. The Tribunal found the lifts to be clean on their inspection and accept the Respondent's case that in view of their heavy use, the lifts require and are cleaned twice a day.

Door entry system:

23. The Applicant made no challenge to this and therefore the Tribunal makes no findings in respect of this item.

Fire Signs:

24. The Tribunal finds these costs are reasonable and have been reasonably incurred.

Communal T.V aerial:

25. Of the £2,511.00 claimed, the Tribunal disallows £750 for jobs said to have been carried out, but for which invoices have not yet been received. If and when those invoices are received the Respondent may seek to recover those costs from the lessees.

Estimated Service Charge 2009/2010:

26. The Tribunal deducts £68, representing a 10% charge on the boiler fuel. It was also conceded by the Respondent that the audit fee of £25.84 should be deducted. As stated above the Tribunal finds that a 10% charge on the heating charge item is not chargeable under the terms of the lease. Further, the Respondent is not permitted to add 10% management charges to the housing management fee as this amounts to double recovery. The lessee is entitled to view it as a total management charge. The Tribunal limits to £250, the combined management fee. The Tribunal finds that this is a difficult block to manage and that the Respondent requires a reasonable degree of "hands on management". Otherwise the Tribunal finds that the

2009/10 service charge estimate is reasonable, subject to the Tribunal's above specific items.

27. The Tribunal found much of the manner in which the case was presented by the Respondent, and the explanations for certain items of service charge to be poor. Overall there was a lack of transparency which led to the suspicion and confusion voiced by the Applicants. It is the Tribunal's view that the Respondent should address this, and ensure clear and fair service charge bills.

Section 20C costs.

28. The Respondent indicated that it would not seek to recover the costs of this litigation through the service charges and therefore the Tribunal was not required to consider this matter further.

Chairman: LM Tagliavini

Dated: 06/09/10