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LON/00AE/LSC/2005/0314

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER SECTIONS 27A and 20C
OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Applicant: Ms L Anienwelu

Respondent: London Borough of Brent

Re: Flat 4, 91 Dartmouth Road, London, NW2 4ER

Application received on 14 November 2005

Hearing date: 18 January 2006

Appearances: Ms L Anienwelu (for Applicant)

Mr A Meagher (for Respondent)
Mrs I Lawrence
Miss K Bond
Mr S Anderson

Members of the Leasehold Valuation Tribunal:

Mrs T Rabin JP
Mr P Roberts DipArch RIBA
Mrs S Baum JP

FLAT 4 91 DARTMOUTH ROAD LONDON NW2 4ER

FACTS

1. The Tribunal was dealing with an application by the Applicant Tenant, Ms Laura N Anienwelu, for a determination whether the service charges levied by the Respondent Landlord, London Borough of Brent Housing Partnership, in service charge years 2003 and 2004 in respect of external and internal cleaning of common parts and the replacement of a perimeter wall at 91 Dartmouth Road London NW2 4ER ("the Building") were payable by the Applicant. The application has been made under Section 27A (1) Landlord and Tenant Act 1985 as amended ("the Act"). The Applicant is the long leaseholder of Flat 4 91 Dartmouth Road aforesaid ("the Flat").
2. A copy of the lease of the Flat had been produced to the Tribunal. The Applicant's obligations in relation to the payment of the service charge are set out in Clauses 4(A) and (B) of the Lease and in the Respondent's obligations in relation to the provision of services are set out in Clauses 6(2)-(7) of the Lease.

INSPECTION

3. The Tribunal inspected the Building on 18th January 2006, immediately prior to the hearing. The property is a large 2 storey plus attic storey reconstructed, converted building situated in a quiet residential street. It is in style matching the adjacent semi-detached residential properties c.1920 and consists of 17 self contained units of studio and 1 bedroom flats. There is a narrow common entranceway with entryphone access. The flats are off an internal corridor with a main stairway to the 1st and 2nd floors with links at each level to a secondary escape stair. The floors are covered with studded rubber flooring and appeared to be reasonably clean on inspection. The painted walls were in a fair decorative state; however it was noted that a number of the entrance doors to the individual flats were of primed plywood and that some were damaged and that the decoration had not been completed.
4. There is side access to the large rear garden area which was partly laid to lawn and partly covered in tarmac with a storage shed to one side. The Tribunal noted that the area was free of rubbish. The front boundary wall had been rebuilt in a style to match the adjacent houses and was adequately constructed, although a loose coping stone was noted and an open void between the wall and the existing concrete retaining wall at the rear.

HEARING

5. The hearing took place on 16th January 2006 at 10 Alfred Place London WC1E 7LR, following the inspection. The Applicant attended in person and the Respondent was represented by Mr A Meagher and the Tribunal heard evidence from Mr Sam Anderson, the Estates Services Monitoring Officer employed by the Respondent. Mrs I Lawrence, a Senior Leasehold Management Officer also attended but did not give evidence. Ms K Bond, assistant leasehold officer, also attended.

THE LAW

6. The Tribunal's jurisdiction is set out in Section 27A (1) of the Act as follows:-

(1) Where an amount is alleged to be payable by way of service charge an application can be made to a Leasehold Valuation Tribunal for a determination whether or not any amount is payable and, if so, 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 payment has been made

EVIDENCE AND DECISION

Cleaning

7. The Applicant had produced a Bundle of documents relative to her claim. The Tribunal first considered the question of the complaint about the standard of the cleaning. There was history of the Applicant complaining to the Respondent about the standard of cleaning in the Building throughout the service charge years in question. The Respondent had appointed the current cleaning contractors, Connaught Cleaning Ltd, in August 2004, and had issued the Applicant with a copy of the agreement with the contractors, which included the conditions of the contract and the work to be undertaken in the Building in the cleaning of the common parts. The standards and cleaning frequency of this contract are set out in the agreement at pages 276 -280 of the Bundle. These standards include daily checking of the internal common parts to ensure that the lift, intercom and other communal facilities were in working order and that the area was clean. Rubbish to be removed on a daily basis with bulk items being removed within 24 hours, the bin sheds to be swept daily and litter picked up and removed. Entranceway, floors, walls and intercoms are to be cleaned daily. The floors are to be mopped once a week, the floor is to be buffed weekly and left with an even sheen. Unsightly marks are to be removed and hard surfaces are to be swept weekly. The cleaners are required to attend between 8 am and 5 pm on Monday to Friday and

between 8 am and 12 noon on Saturdays. The common parts are to be left in an acceptable condition between cleaning.

8. The Applicant stated that she had never seen the cleaners at the Building on a Saturday, even though they are supposed to attend. She does not accept that they come as regularly as required under the terms of the agreement between themselves and the Respondent, as she rarely sees them and is frequently at home. Even if she were out of the Building, she would have noticed that the cleaners had been and attended to the common parts on her return but she rarely saw any evidence of cleaners having attended. During the inspection, the Tribunal's attention was drawn to a cleaning schedule which was pinned to the wall, a copy of which is in the file but does not form part of the Bundle. The cleaning schedule showed that the cleaners were required to clean the internal corridors and lobbies on Monday Wednesday and Friday, the communal stairways and landings on Thursday and Friday, check for rubbish daily and mop the staircase, corridor and lobby on Tuesday, Thursday and Friday. Externally, they were required to clean the refuse chambers, chutes and paladins on Tuesday and Thursday and check for dumped rubbish and collect litter daily from Monday to Friday. The communal paths were to be swept on Monday, Wednesday and Friday, the pedestrian ways on Tuesdays and Thursdays and the car parks and roadways on Monday and Wednesday. The Applicant does not believe that these requirements are met by the Respondent's contractor. The applicant drew the Tribunal's attention to complaints that were made by her in writing from June 2005. She was unable to obtain a response and was obliged to send reminders and even consult her local councillor before she got a response. She requested a 50% discount on her cleaning bill to reflect the poor service she was getting. As a result of her complaints, the Estates Services Team Leader requested that the cleaners comply more fully with their obligations under the terms of the contract.
9. The Tribunal then heard from Mr Sam Anderson, the Estates Services Monitoring Officer with responsibility for the Building. His role includes monitoring the performance of the cleaning contractors in the Building and in other blocks for which he is responsible. He inspects the Building thoroughly on a monthly basis and stated that he sees the cleaning staff responsible for the Building on an almost daily basis, although not always at the Building. He considers that the Building is kept clean to a reasonable standard and that the cleaner was allocated a minimum of one hour per day to carry out his duties. In addition to the minimum of five hours a week, there are occasions when it may be necessary for longer to be spent; for example when there is a lot of refuse outside the Building which needs to be removed.
10. Mr Anderson referred the Tribunal to inspection sheets at pages 193-200 of the Bundle which had been signed by the local area manager for the cleaning contractors. These were checked by Mr Anderson twice a quarter and there are regular monitoring sessions in between. If there are any requests or complaints from the residents, then these will be

addressed and Mr Anderson referred the Tribunal to instructions at page 196 specifying removal of paint spilled during the internal redecoration. Specialist cleaners come in to the Building twice a year and use special machines to remove polish from the floor and deal with marks that cannot be removed by ordinary cleaning. He acknowledged that there was a report from his colleague, Wayne Flintham, at page 167 of the Bundle which confirmed that the standard of cleaning was poor. This was put down in part to extenuating circumstances which were explained by Mr Anderson as relating to the use of the Building to house people with learning difficulties and mental health problems. All the flats are single units, although there are some families living there. The cleaners have complained that there have been difficulties, such as the frequent breaking of the lock to the electrical intake cupboard.

11. The Tribunal found that the Building was reasonably cleaned. The floor had been swept and polished and the communal areas were swept. The rear garden had some rubbish deposited, but the removal of rubbish from the garden did not fall within the obligations of the cleaning contractors. The annual cost to the applicant in the year ending 31st March 2004 was £114.32 for the internal cleaning and £35.03 for the external cleaning. The cost to the Applicant for the year ending 31st March 2005 was £220.63 for the internal cleaning and £60.20 for the external cleaning. It was accepted that the cleaning services provided by the contractor fell below the requirements set out in the form of contract agreed with the contractors and the Applicant should not be charged in full for cleaning that falls short of that agreed between the contractor and the Respondent when the terms of the engagement were agreed. In view of the lack of compliance with the terms of the contract, the Tribunal determines that the cleaning costs should be reduced by 30% so that the total payable in respect of internal and external cleaning for the year ending 31st March 2004 should be £104.54 and the total for the year ending 31st March 2005 should be £196.58

Boundary Wall

12. The Tribunal then considered the complaint regarding the cost of the new front boundary wall. The Respondent accepted that the Section 20 consultation procedure had not been followed and that the Applicant's contribution to the cost of the replacement wall would be limited to £250 under the provisions of Section 20 (5) and the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations"), rather than the contribution of £391 demanded by the Respondent. The Applicant still considered that the cost was too high, despite the amount required from her being limited to £250. The Notice of Intended Works dated 5th March 2004 (page 136 of the Bundle) refers to the works as demolishing damaged and dangerous front perimeter wall and rebuild a similar wall in a similar style. Two estimates were sought and BMS gave the lower quote of £5,780 plus VAT which, together with the management fee of 15%, resulted in the figure of £391 as the Applicant's share. The Applicant complained about the length of time that

the rebuilding of the wall had taken and also pointed out that a coping stone from one of the pillars had come loose and that there was a gap between some of the coping stones on the top of the wall and also to the rear of the wall.

13. The Tribunal then heard from Mr Anderson who said that the Building was within a conservation area and if that any rebuilding of the damaged wall had to be carried out, a similar wall should be erected. He obtained two quotes and referred to a control book in the Bundle at pages 128-129 of the Bundle which was the control book showing when a quote was requested and from whom and who had approved the commissioning of the contractor he confirmed that the cheapest quote had been accepted in accordance with the Respondent's guidelines. The selected contractor was asked to remove that part of the wall and the retaining wall which was damaged and replace with a similar wall. The contractor removed part of the retaining wall in error and this had to be rebuilt. He agreed that the coping stone on the end pier should be repaired and that this would be done as soon as possible. He also accepted that there was a gap between the main wall and the retaining wall but attributed this to subsidence since the wall was constructed. He also accepted that there was a gap between some of the coping stones on the top of the wall. He stated that he inspected the Building once a month but had not noticed the loose coping stone.

14. The Tribunal inspected the wall and found that it was in reasonable condition but that one of the coping stones was loose. There was a concrete retaining wall at the rear and there was a gap between the wall and the retaining wall at the left hand corner which the Tribunal accepted could be as a result of some movement since the wall was built. Generally the wall and the retaining wall were in reasonable condition. The Applicant had not provided any comparable quotes for the Tribunal to consider nor had she provided any evidence that the wall was not sound. The cost attributable to the repair of the wall after the amount was capped was £4250 and the Tribunal consider that the cost was reasonable and that the wall was properly repaired in accordance with the terms of the quote. No allowance is made beyond the figure of £250, being the maximum that can be demanded from a tenant if the correct consultation process had not been observed in accordance with the Act and the Regulations,

DECISION


15. The Tribunal finds that the amount demanded by the Respondent from the Applicant as her contribution towards the cost of cleaning the common parts for the service charge years in question was not reasonable given the standard of service provided and that the figure for the year ending 31st March 2004 should be £104.54 and the figure for the year ending 31st March 2005 should be £196.58. These sums are properly payable and payable forthwith.

16. The Tribunal finds that the revised figure of £250 demanded as a contribution from the Applicant for the repair of the front wall is reasonable and properly payable and payable forthwith

Section 20C of the Act

17. The Applicant made an application for an order under Section 20C of the Act to the effect that the costs of these proceedings are not proper costs to be included in the service charges. The Respondent stated to the Tribunal that it does not include costs in relation to proceedings in the Tribunal within the service charges and in the circumstances it is not necessary to make such an order.

CHAIRMAN



DATED: 14th February 2006.