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Ref: LON/00BA/LSC/2006/0180

LEASEHOLD VALUATION TRIBUNAL
LONDON RENT ASSESSMENT PANEL

THE TRIBUNAL'S DECISION

OF ISSUES UNDER SECTIONS 27A & 20C OF LANDLORD AND
TENANT ACT 1985 (as amended)

PREMISES: 98 FOUNTAIN HOUSE, SADLER CLOSE,
MITCHAM, SURREY CR4 3EH

Applicant: Miss Marion Rose Hyde

Respondent: The Mayor and Burgesses of the London
Borough of Merton [Lessor/Freeholder]

Representatives Mrs Lesley Smith, Mr Ken Almeida, Miss
Ashmead and Mrs Sharon Phillips in the
employ of the Respondent

Hearing: 27 July 2006

Tribunal: Mrs Sonya O'Sullivan Solicitor
Mr D Huckle FRICS
Mrs C K Grover BA JP

Background

1. The Application to the Tribunal under s.27A of the Landlord and Tenant Act 1985 (as amended) (the "Act"), dated 12 May 2006, sought a determination of the reasonableness and/or liability to pay service charges for the service charge year 1 April 2006 to 31 March 2007. The sole issue in dispute was a management charge which had risen from £62.00 for the year ending 31 March 2006 to £182.70 for the year ending 31 March 2007.
2. The Application additionally sought a limitation of the landlord's costs in the proceedings under Section 20C of the Act.
3. The Applicant is the lessee of the subject property by virtue of a lease dated 27 October 1997 and made between The Mayor and Burgesses of the London Borough of Merton (1) and the Applicant (2) (the "Lease").
4. Directions were issued by the Tribunal on 23 May 2006 and the timetable for these directions was varied by order of the Tribunal dated 8 June 2006. Bundles were lodged by both parties in advance of the hearing.

Hearing

5. The hearing in this matter took place on 27 July 2006. The Tribunal did not inspect the subject property. The Applicant, Miss Marion Hyde, appeared in person. Mrs Lesley Smith, Mr Ken Almeida, Miss Ashmead and Mrs Sharon Phillips appeared on behalf of the Respondent.
6. Immediately before and during the course of the hearing the Respondent produced late evidence which was admitted after the Applicant was granted a short adjournment to read through the further documentation produced and had confirmed that she was happy to proceed. The Tribunal was highly critical of the Respondent's failure to lodge this further evidence in advance of the hearing and its failure to address the issues raised by the Applicant in her letter of 21 June 2006 despite having met with her since receipt of that letter. Such late production of evidence is unhelpful, particularly where, as in this case, the Applicant is appearing in person. No reason was given for the late production of this evidence.
7. The directions had provided for the Respondent to set out its case and for the Applicant to lodge a reply and, accordingly, the Tribunal first heard evidence from the Respondent. Mrs Smith, Assistant Head of Housing Services at the Respondent, presented the case on behalf of the Respondent. She also produced a witness statement dated 19 July 2006. Witness statements on behalf of the Respondent had also been produced by Ken

Almeida, Housing Accountant/Deputy of Community and Housing Finance Team, dated 19 July 2006 and Sharon Phillips, a Leasehold Manager in the Community and Housing Department, dated 14 June 2006.

8. The first question which was considered by the Tribunal was whether the Applicant had any liability to pay a management fee in respect of the services provided by the Respondent. Mrs Smith referred the Tribunal to the provisions of the Lease upon which they relied to make a management charge to the Applicant in respect of the services provided, namely clauses 5 (c) and (v) and 5 (d) (i) (ii) & (iii).

9. The Tribunal then went on to consider the second question, namely whether the management charge was reasonable.

10. Mrs Smith explained the background to the increase in the management charge. Prior to the review the tenants were charged a flat management charge (which was formerly known as an administration charge) of £62.00 per annum. She explained that as a result of changes in the housing subsidy system the Respondent recognised that it was not recovering an accurate amount for its management costs. It had consequently reviewed its invoicing and billing system and the recharging and management of those services. The Respondent assessed the services it was providing to its leaseholders and freeholders and decided to introduce a banding system to differentiate between those leaseholders and freeholders who were receiving different levels of services. This decision was ratified by the Respondent's Cabinet. A document summarising the different bandings and the amounts payable was included at page 21 of the Respondent's bundle. As the Applicant was a leaseholder who received all the estate services provided by the Respondent she came within Band 1 and was charged £182.70 in respect of the management charge for the year ending 31 March 2007. The Applicant accepted the bandings system as being fair in principle and did not dispute that as a leaseholder receiving the full benefit of services provided by the Respondent she should come within Band 1. The Applicant was however unhappy with the level of those charges.

11. Evidence was also given by Mrs Smith that a decision had been made by the Respondent not to recoup any past losses in respect of its failure to collect the costs incurred in previous years. Mrs Smith also gave evidence that if the management charge were to be reduced this would greatly affect the quality of the services the Respondent was able to offer to its tenants.

12. Evidence was also given by Mr Almeida on behalf of the Respondent that the increases in management charge were being staggered and the amount actually being charged to the tenants was not equal to the actual costs incurred and that a shortfall in the region of £90,000 for the year ending 31 March 2007 existed. If the Respondent were to seek to recover the full costs incurred this would equate to an average extra cost of about £29.00 for each of their 3227 properties.

13. Mrs Smith also provided the Tribunal with information in relation to the management charges being made by other local authorities which is summarised below:

Local Authority	Annual Fee
London Borough of Croydon	£164 y/e 2006
Tower Hamlets	£155 y/e 2006
London Borough of Sutton	£186 y/e 2007
London Borough of Wandsworth	£161 y/e 2006
London Borough of Lambeth	£150 y/e 2006

Mrs Smith confirmed that although the Respondent had liaised with other local authorities in relation to their management charges no meaningful consultation had taken place. She was unable to provide the Tribunal with any information in relation to each local authority's portfolio of tenancies, the way in which their charges are calculated or the level of services provided in comparison to the Respondent. Likewise, although Mrs Smith confirmed that an independent consultant had been appointed by the Respondent to provide advice in relation to the introduction of the new management charge, no written documentation was provided to the Tribunal in this regard.

14. Mrs Smith also referred the Tribunal to the decision of the Leasehold Valuation Tribunal reference LON/OOBG/LSC/2005.0373 in which case the management charge had been reduced to reflect the poor services being provided by the local authority in question.

15. The Applicant's case was set out in her letter of 21 June 2006 at pages 1-3 of the Applicant's bundle. In this letter the Applicant raised her

queries in relation to the management charges set out on the document entitled "Service Charge Management Fee for L/holder's & F/Holder's" ("Service Charge Management Fee Spreadsheet") exhibited to the Witness Statement of Sharon Phillips dated 14 June 2006. Another copy of the same document, with the minor amendment that headings on page 1 of the document were included, was produced at the hearing. The Applicant's main case was that she queried whether there were any elements of double charging and whether the number of staff involved was accurate. In particular the Applicant raised a number of queries in her letter of 21 June 2006 on items contained within the Service Charge Management Fee Spreadsheet. In response to the Applicant's letter of 21 June 2006 the Respondent had produced a document entitled "Response to Marion Hyde's questions 21st June 2006". Again, the Tribunal was highly critical of the Respondent's failure to lodge this evidence in advance of the hearing or to even attempt to provide a verbal explanation to Miss Hyde. Had they done so it may even have obviated the need for a hearing. Set out below is a summary of the points raised by the Applicant in her letter of 21 June 2006 and the Respondent's response as given in oral evidence by Mrs Smith by reference to the Respondent's Response to the Applicant's letter:

- (a) The first point was simply a reference to the increase in the management charge to £182.70 which had been formerly charged at £62 and was known as an administration charge.
- (b) The Applicant pointed out a mathematical error under the heading "Directorate Costs/Chief Offs/Assist". Mrs Smith clarified that the correct figure for insertion should be 11/165 rather than 10/165 and that this error had no effect on the amount due. The Applicant accepted this explanation.
- (c) The Applicant queried the allocation of 30% of the Assistant Head of Housing Services time which she thought was excessive. In response Mrs Smith, as Assistant Head of Housing Services, explained how she had reached this figure by carrying out a review of how she spent her time. The Applicant also questioned whether there was an element of double charging for the items claimed in respect of Assistant Head of Repairs Mgt and Major Works. Mrs Smith gave evidence that these were different teams dealing with different aspects and that no duplication occurred.

- (d) The Applicant queried the 6.7% levied for Support/Overhead costs for service. Mrs Smith clarified that this was calculated by reference to the number of leaseholders and the fact that not all service charge payers receive all applicable services. The Applicant accepted this explanation.
- (e) The Applicant questioned how the 10% charged in respect of the Repairs Helpline was calculated. Mrs Smith gave evidence on how the figure was reached by looking at the number of beneficiaries of that service and allocating an appropriate percentage to the various groups who benefit.
- (f) This was a reference to leasehold management charges and was agreed by the Applicant in advance of the hearing.
- (g) In relation to the heading "Cust Services/Resources" the Applicant again questioned whether there was an element of double charging and asked whether the manager cost referred in fact to the cost of the Assistant Head of Housing already charged under another head. Mrs Smith gave evidence that the charge was not levied twice but that rather these were for two separate individuals. The Applicant also questioned the allocation of costs in relation to the Senior Staff and team. Mrs Smith gave evidence as to how this figure was calculated by estimating how much of their time was spent on work relevant to the Applicant's banding. This was carried out by resource planning with the relevant members of staff.
- (h) The Applicant expressed concern that the cost of one member out of four of the Community Development team (now known as the Consultation Team) was allocated to the leaseholders. Mrs Smith gave evidence that this was estimated but that the Respondent had under rather than overestimated to ensure that it was a fair allocation.
- (i) The Applicant questioned the charging of Communal and Major Repairs and whether there was any double charging. Mrs Smith gave evidence that these were two different teams, one which dealt with ongoing repairs and the other with long term contracts and that these costs were accurate. The Applicant accepted this explanation.
- (j) The Applicant raised a query in relation to whether the costs of the Repairs and Voids Manager were not already covered by the service charge. Mrs Smith gave evidence that this cost related to the cost of the staff which would not be included in the service charge. In response to the question as to whether this could be covered by

buildings insurance Mrs Smith confirmed that as it related to staff costs it could not be recovered by insurance. The Applicant accepted this explanation.

- (k) The Applicant sought confirmation that any monies received by the Respondent in relation to services given to non service charge paying freeholders (eg by preparation of Deeds of Waiver) would continue to be offset against any management charge. Mrs Smith was happy to give this confirmation on behalf of the Respondent.
- (l) The Applicant questioned whether the reference by the Respondent to the management charges levied by other local authorities was relevant in that nothing was known about the services they provided, the number of staff employed or their property portfolios. Mrs Smith gave evidence that this was simply a benchmarking exercise and was not an attempt to justify the Respondent's charge.
- (m) This point referred to an alleged clerical error relating to the members of staff shown. Mrs Smith gave evidence to explain how the number of staff had been calculated and the explanation was accepted by the Applicant.

After hearing the Respondent's response to the points raised in her letter of 21 June 2006 the Applicant confirmed that she understood the explanations given in relation to her queries and now accepted many of the explanations. She did however still have concerns as to the reasonableness of the charges made in relation to points (c), (g) and (h) as set out above, namely the allocation of 30% of the Assistant Head of Housing Services's time, the allocation of management and Senior Staff time in relation to Customer Services/Resources and the allocation of one member of staff from the Community Development team. She did not however offer any evidence to the Tribunal as to what she thought a reasonable charge would be in relation to each of the disputed items or what staff resource would be required.

Decision

16. The Tribunal first considered whether the Applicant had any liability to pay a management charge in respect of the services provided by the

Respondent. After considering the terms of the Lease the Tribunal was satisfied that under the terms of the Lease the Respondent was obliged to provide various services to the Applicant and was entitled to charge a management charge for the provision of those services. Accordingly the Tribunal determined that the Applicant was liable to pay a management fee in respect of the services provided by the Respondent.

17. The Tribunal then went on to consider the second issue, that is whether the management charge of £182.70 for the year ending 31 March 2007 was reasonable.

18. In making its determination the Tribunal had regard to the points raised by the Applicant in her letter of 21 June 2006 and her evidence given at the hearing. The Tribunal also had regard to the evidence given on behalf of the Respondent in relation to the background to the introduction of the charge, the way in which the management charge was calculated, the services provided by the Respondent and its response to the Applicant's letter of 21 June 2006.

19. The Tribunal gave little weight to the evidence it had heard on behalf of the Respondent in relation to the management charges levied by other local authorities. As the Applicant quite rightly pointed out, the Tribunal had not been provided with any evidence on the way in which each local authority calculated its charge, the services provided or the number of properties to which the charge related and it could not therefore make any meaningful comparison between those charges and the management charge now levied by the Respondent.

20. The Tribunal did have some concerns about the costs shown for managers within the Service Charge Management Fee Spreadsheet. They understood however from Mrs Smith on behalf of the Respondent that an internal review is in progress in relation to this and the report will be available in Autumn 2006.

21. The Tribunal considered what, in the open market, would be an appropriate and reasonable charge for the provision of the management services by a professional managing agent. The Tribunal noted that the charging methodology recommended by the Royal Institution of Chartered Surveyors in their Service Residential Code was on a per unit basis.


22. Accordingly on the basis of their knowledge and experience and taking into account the scope of the services provided and the fact that the Applicant did not offer the Tribunal any evidence on this point, the Tribunal was satisfied that it was appropriate to accept the figures included in the

Service Charge Management Fee Spreadsheet as the starting point of their determination as to what was an appropriate and reasonable charge for the provision of those services.

23. The Tribunal went on to consider whether it had been provided with any evidence to suggest that the management charge should be reduced to take into account the scope and quality of the services provided by the Respondent. In this regard the Tribunal noted that the Applicant had made no complaint in any way about the quality of the services provided. Accordingly the Tribunal determined that the management fee charged of £182.70 for the year ending 31 March 2007 was reasonable. Indeed, if it were to be reduced, the quality of services provided might well suffer.

24. The Applicant had made an application under Section 20C of the Act to limit the landlord's costs in the proceedings. On behalf of the Respondent Mrs Smith confirmed that they would not be seeking to add their costs to the service charge and accordingly no question of an application under Section 20C arose.

CHAIRMAN



DATE

10 August

2006