

LON/00BG/LSC/2006/0012

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
FOR THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
ON APPLICATION UNDER SECTION 27A OF THE LANDLORD
AND TENANT ACT 1985, AS AMENDED**

Applicants: Mr Philip Hemmise
Mrs Tina Hemmise

Respondent: London Borough of Tower Hamlets

Property: 181 Campbell Road
London
E3 4DP

Hearing dates: 30 & 31 May 2006

Appearances: Mr Philip Hemmise
For the Applicant

Mr Darryn Harris
Mr Roger Brayshaw, FCA
For the Respondent

Members of the Residential Property Tribunal Service:

Miss L M Tagliavini BA(Hons) DipLaw LLM
Mr C White FRICS
Mr T W Sennett MA FCIEH

1. This is an application made pursuant to section 27A Landlord and Tenant Act 1985 by Mr and Mrs Hemmise who are the long leaseholders of Flat 181 pursuant to a lease dated 28/2/00, and are seeking a determination of the reasonableness of service charges relating to the service charge years 2000/01; 2001/02; 2002/03; and 2004/05. The subject premises comprise premises on the first floor of a purpose built block of flats on an estate of similarly built blocks of which the London Borough of Tower Hamlets (LBTH) are the freeholders.

2. The Applicants specifically sought the Tribunal's determination on the following issues in respect of each of the specified years:
 - (i) Maintenance of block and estate.
 - (ii) Gardening (horticultural services).
 - (iii) Cleaning of the block and common parts.
 - (iv) Administration and Management charges.

3. The Tribunal inspected the subject premises on the morning of 30/5/06 and were accompanied by Mr Hemmise and Mr Harris, legal officer from LBTH. At the outset, Mr Hemmise accepted that the current condition of the building and block and the larger estate area, had for the last 18 months been reasonable. The Tribunal found the block to be a 1980's block of three to four storeys, without a lift linked to similar blocks and constructed of a concrete frame with brick facade with a tiled roof and communal

gardens as well as private areas and car parking provision available at either end. The Tribunal inspected the common parts of the subject block and found it to be basic with concrete stairs and landing covered with vinyl tiles several of which were cracked, broken and missing. Louvre windows on the common landing were dirty, missing or cracked. Some litter was noted but overall the common parts of the block were in a fair decorative and a reasonably clean condition. Externally, the Tribunal noted that many of the gutters were blocked with growth and the gardens poorly weeded in many parts.

The Applicant's Case

4. At the hearing, the Applicant was represented by Mr R. Halward and Mr V. Griffiths of B.P.P. law and the Respondent represented by Mr B Harris and Mr R. Brayshaw, consultant accountant. In evidence Mr Hemmise stated that he had not seen any cleaning carried out from 2000 to about early 2005. A video was shown by Mr Hemmise which showed the condition of the premises in July and August 2002, January 2003 and March 2003 as well as some undated footage. The video showed cobwebs collecting in the corners of the common parts of the block, graffiti on the walls and dirt accumulated on the ledges and around light fittings. Floors were dirty and stained with missing tiles noticeable on the stairways. We saw weeds growing in the paved area and overflowing bin storage located outside the block in the communal areas.

5. Mr Hemmise told the Tribunal that he had not seen any maintenance work carried out to the block and was not aware of any work carried out on the estate for the service charge years in question. Mr Hemmise told the Tribunal that the bin storage had on many occasions overflowed onto the paved area outside, when the rubbish had not been collected in a timely fashion. Mr Hemmise accepted that some gardening had been carried out but this usually only took place after he had made several complaints to the Respondent who then sent a person to cut the grass.

6. Mr Hemmise told the Tribunal that since 2000, he had complained regularly about the lack of cleaning, maintenance and gardening services. Mr. Hemmise stated that he generally found that he had to wait a considerable time before receiving a response. As an example of this Mr Hemmise showed the Tribunal a number of letters indicating a significant time lag between the query and any response from the Respondent.

The Respondent's Case

7. Mr Harris told the Tribunal that it was accepted by the Respondent that the level of cleaning services provided previously had been sub-standard and a 30% rebate had been offered to the Applicant as a reduction of the overall service charges in respect of the estate and the block cleaning. Mr Harris told the Tribunal that cleaning was carried out by in-house employees who were assigned units of minutes in which to carry out the individual cleaning tasks. Sweeping was supposed to be carried out daily and washing down of floors once a week. Glass was cleaned once a year and

light fittings twice annually. Offensive graffiti was supposed to be removed within 24 hours and other graffiti within seven days. However, Mr Harris was unable to produce to the Tribunal a copy of any cleaning rota or other document setting out what the frequency and extent of the cleaners' duties were. Instead he relied on three Estate Service Monitoring Sheets which he said were now produced on a regular basis although these covered March 2002, October 2003 and January 2004. None of these documents had been prepared by hand and were unsigned but were a computerised record of what was said had been found at the time of those specific dates.

8. Gardening was contracted out but again Mr Harris was unable to produce a contract setting out the nature and extent of the services that were to be provided under this contract. It was said that grass cutting took place 2 or 3 times a year as well as some weeding.
9. Block and estate maintenance was carried out by the Respondent's in-house technical services team and included litter picking and picking up of leaves, cleaning of graffiti in estate areas and communal pathways. The estate cleaning was carried out by the same employees as those doing the block cleaning.
10. Mr Brayshaw stated that he believed that the housing administration management charges represented good value and were subsidised by the council. Mr Brayshaw gave the figures for the relevant years ranging from

128.50 (pounds sterling) to 164.44 (pounds sterling) for 2000/05 per unit. This included the local management and central costs which were said to include insurance costs, administration of service charges, major repairs, sending out estimates and producing annual accounts

11. After the close of the oral hearing both parties submitted, at the invitation of the Tribunal, further documents seeking to clarify certain issues which had arisen as to the extent of the "Estate" and instructions for tendering of the horticulture works and estates service monitoring sheets together with Land Registry documents in respect of the subject premises and surrounding area. Mr. Hemmisse commented in writing that despite the few improvements made he continued to be dissatisfied with the level of service provided.

The Tribunal's Decision

Block Cleaning

12. The Tribunal notes that the Applicants are liable only to pay service charges in respect of the Building (173-193 Campbell Road) and Common Parts as defined in the lease. The Tribunal finds that some cleaning was carried out in the relevant years, otherwise the Building in which the Applicant's flat is situated would be in a far worse a condition than that shown on the video or as seen on inspection. In addition it was accepted by the Respondent that the level of cleaning was not as good as it should have been for that period. The Tribunal is of the opinion that a deduction of 50% for the cleaning charges to the relevant Building and Common

Parts for all the service charge years in dispute (2000-2005 inc.) is appropriate to reflect the poor standard of cleaning provided.

Estate Cleaning

13. It is noted that in the terms of the Applicant's lease that there is no reference to "Estate" only to the "Demised Premises" and "Building" the latter comprising 173-193 Campbell Road. The Fifth Schedule of the lease provides an explanation of The Service Charge which concerns only the expenditure in relation to the Building (and the Common Parts) and the Demised Premises. It does not refer to any wider area such as the "Estate" as claimed by the Respondent, as clause 5(5) of the lease also only expressly refers only to the Building, the Demised Premises and the Common Parts. Consequently, the Tribunal are of the opinion that it cannot be right that the Applicants are liable to a contribution towards the upkeep of the Estate as sought by the Respondent and those sums so specifically claimed are disallowed in their entirety.

14. Notwithstanding, the Tribunal in any event accepts the evidence of Mr Hemmise that during the relevant service charge years this aspect of cleaning/caretaking of the Estate was not carried out to a reasonable standard. The Respondent was unable at the hearing to provide any evidence to contradict these claims or show that work sheets or monitoring sheets were in fact kept to establish that a regular cleaning service of the Estate was in fact provided. The Tribunal were not persuaded by the further evidence provided that the services set out as being undertaken were in fact carried out either at all or to a reasonable standard.

Consequently, in keeping with the finding above the Tribunal determines that a deduction of 50% for these (Estate) costs would be appropriate had they been recoverable over the relevant service charge years.

Horticultural Maintenance

15. For 2000/01 no charge was made for this service. The Tribunal finds that the charge if made is excessive for the low level and restricted extent of the work provided in this respect. Based on the Respondent's evidence the Tribunal finds this charge to be excessive even though when divided between the individual units, it amounts to a relatively small charge. Consequently, the Tribunal finds that 50% of the costs charged are reasonable in so far as they relate only to the Building and Common Parts.

Block Maintenance

16. The Tribunal accepts the Respondent's evidence of the costs charged in the relevant service charge years. Although, it was said by Mr. Hemmise that no block maintenance had been carried out, the Tribunal does not accept Mr. Hemmise's evidence on this point. The Tribunal prefers the Respondent's evidence and its own findings from the inspection that maintenance works have over the years been carried out although there is need of attention to the cleaning of the guttering to the rear elevation. Subject to the costs of these works being properly attributed to the Building and Common Parts as defined in the lease, the Tribunal finds that the costs incurred are reasonable in their entirety.

Estate Maintenance

17. The same argument in respect of the definition of "Estate" is also applicable here i.e. these costs are not recoverable under the terms of the lease. Further, the Tribunal notes that the Respondent has sought to make estate maintenance charges in respect of even numbered flats that are not, according to the boundary map produced by the Respondent, units that fall within the Respondent's definition of the Estate in any event. Were these costs recoverable, the Tribunal finds that the modest charges incurred would be reasonable, as there was no evidence produced by the Applicants to contradict this view.

The Housing Management Charge/Administration Charge

18. The Respondent indicated to the Tribunal that these charges largely relate to and are incurred by the same heads as already discussed above. However, the Tribunal strongly suspects that the lessees have in the past been charged for items that should properly be re-charged to the individual tenant. While the costs charged would ordinarily be reasonable for this type of block in this location, the Tribunal finds that these charges are unreasonable in view of the poor standard and level of services provided over the subject years and makes a 50% deduction in respect of them where they relate to the Demised Premises/Building and Common Parts. Again where these management and administration charges are referable to Estate costs they are disallowed in their entirety.

19. In conclusion the Tribunal finds that the service charges for the service charges years 2000 to 2005 (inclusive) should be recalculated in accordance with the express terms of the lease and exclude charges relating to the "Estate". The remaining charges should be attributable only to the Demised Premises/Building/Common Parts as defined in the Applicant's lease. After re-calculation, those charges remaining relating to the Demised Premises/Building and Common Parts, should where indicated in the decision above, be reduced by 50% to reflect the poor services provided by the Respondent for the service charge years under consideration i.e. 2000-2005 (inclusive) i.e. cleaning costs, gardening costs and housing management and administration charges. The maintenance charge for the Building and Common Parts being allowed in full.

20. The Respondent indicated that the costs of this application would not in any event be added to the service charge account. Therefore the Tribunal does not need to make a decision on any application made pursuant to section 20C Landlord and Tenant Act 1985.

Chairman: LM Tagliavini

Dated: 5th August 2006.