

**LEASEHOLD VALUATION TRIBUNAL****LONDON RENT ASSESSMENT PANEL****DECISION ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD  
AND TENANT ACT 1985 (AS AMENDED)**

Property: 28 King Arthur Close, London SE15 2LP

Applicant: London Borough of Southwark

Respondent: Miss O Ogunleye

Application Date: Transferred from Lambeth County Court by Order dated 11<sup>th</sup>  
September 2007

Date of Oral Pre-  
Trial Review: 12<sup>th</sup> November 2007

Hearing Date: 4<sup>th</sup> February 2008

Appearances: Miss E Sorbjan (litigation officer for the Applicant)  
Mr G Dudhia (Home Ownership Unit accountant for the  
Applicant)  
Miss O Ogunleye (the Respondent, representing herself)

**Members of Tribunal**

Mr P Korn (chairman)  
Mr I Thompson  
Mr O Miller

**INTRODUCTION**

1. This is an application under Section 27A of the Landlord and Tenant Act 1985 (as amended) ("**the 1985 Act**") for a determination of liability to pay service charges.
2. The application arises out of a Claim for recovery of ground rent, service charge and interest dated 24<sup>th</sup> July 2007 (Claim Number 7LB03297) made by

the Applicant to Lambeth County Court. By an Order dated 11<sup>th</sup> September 2007, the case was transferred by Lambeth County Court to the Leasehold Valuation Tribunal, presumably (although not explicitly stated) to determine the reasonableness and/or payability of the service charge raised.

3. A Pre-Trial Review at the Leasehold Valuation Tribunal took place on 12<sup>th</sup> November 2007.

## **BACKGROUND**

4. The Property is a flat within a block on an estate, of which the Respondent is the leaseholder under a lease ("**the Lease**") dated 29<sup>th</sup> April 2002 and made between the Applicant (1) and the Respondent (2).
5. The amount being claimed by the Applicant as unpaid service charge / ground rent in its County Court claim is £2,664.63 (plus interest and costs). This breaks down to £689.51 for the service charge year 2005/2006, £1,325.35 for the service charge year 2006/2007 (based on an estimate) and £649.77 for the first half of the service charge year 2007/2008 (also based on an estimate). Whilst further sums may have fallen due since the date of the original claim, the issue for the Tribunal is confined to the payability of the amount of service charge actually claimed.

## **THE APPLICANT'S CASE**

6. The Applicant's case is set out in the bundle of documents provided by the Applicant to the Tribunal and to the Respondent. Miss Sorbjan pointed to the relevant clauses in the Lease entitling the Applicant to charge the Respondent a service charge for the relevant period in respect of the particular heads of expenditure charged.
7. Miss Sorbjan noted that the bundle of documents contained details of the amounts charged, together with supporting evidence (such as copy invoices and allocation summaries). As the Respondent had, as part of her defence, questioned the standard of cleaning within the block, Miss Sorbjan called as a witness Mr N Mellish – cleaning services manager for the Applicant – whose witness statement forms part of the bundle.
8. Mr Mellish was questioned about the evidence contained in his witness statement by the Tribunal and by the Respondent. Mr Mellish reiterated some of the points contained in his witness statement, which had led him to the conclusion that cleaning within the block has been carried out to a reasonable standard, although he was unable to give full details of the inspection regime and was only able to give a general overview.

9. The Tribunal pointed out that it was unclear from the information provided by the Applicant whether all of the non-boiler repairs carried out on the estate (part of the cost of which formed part of the Respondent's service charge) actually benefited the Respondent's block in a tangible way. The Applicant accepted that it was unclear and that it was possible that some minor items were cross-charged in a way that did not fully match the benefit to each block. Mr Dudhia for the Applicant said that this issue was already being looked into to try to eliminate these sorts of discrepancies and he confirmed that the Applicant would rectify the position in future service charge years.
10. On a separate point, Miss Sorbjan noted that, whilst the claim for outstanding service charge related to the period from the beginning of the service charge year 2005/2006 to halfway through the service charge year 2007/2008 ("**the Claim Period**"), the complaints contained in the Respondent's defence seemed to relate to a later period – from November 2007 onward – and that therefore these complaints did not appear to be relevant to the non-payment of service charge in respect of that earlier period.

#### **RESPONSE BY THE RESPONDENT**

11. The Respondent repeated her complaints – which were raised in her written defence – that there was debris outside her flat in October 2007 in connection with the clearing of Flat 29. She also mentioned concerns about lighting within the block in December 2007 and January 2008.
12. The Tribunal noted that none of the complaints referred to above related to the Claim Period, and the Respondent was asked whether she had any specific complaints about either non-provision (or poor quality provision) of services, non-recoverability of particular items (or types) of expenditure or unreasonable charges in relation to the Claim Period. The Respondent was unable to specify any particular concerns relating to that period and later confirmed that her complaints really related to the period from October (or possibly December) 2007 onwards.
13. The Respondent then said that she had been absent from the Property between 2003 and December 2006 and that she had leased the Property to a South London housing association which in turn had leased it to the London Borough of Southwark to rent out to individual people. The Respondent was unable to produce any documentary evidence to support this statement and had not previously raised this point in her defence. Miss Sorbjan and Mr Dudhia said that they did not know anything about it. It appeared that the Respondent was not suggesting that she had surrendered her Lease or assigned it, and as far as the Tribunal could ascertain the suggestion seemed to be that she had sublet the Property. The Respondent's point was that in respect of the period of subletting she did not think that she was liable to pay the service charge.

14. The Respondent also stated that she should not be responsible to pay for things from which she did not benefit, although she was unable to give any specific examples.
15. The Tribunal noted that the Respondent did not seem to have made any written complaints to the Applicant in relation to her concerns about services, and neither did she seem to have made any other form of contact (for example by telephone) to complain about these matters. The Respondent said that she did not have any information as to who to contact, although she confirmed that she had been a tenant (albeit not a formal long leaseholder) since 1992. It was also noted that the service charge invoices sent to the Respondent contained a telephone number for enquiries and that the letter dated 2<sup>nd</sup> April 2007 containing details of the estimated service charge for 2007/2008 provided telephone, email, fax and postal address details of who to contact for any queries regarding the service charge account.

#### **ADJOURNMENT**

16. At a certain point in the proceedings it appeared that it might be possible for the parties to reach some form of compromise, and therefore the Tribunal suggested an adjournment to enable the parties to discuss the matter. In the event, the parties were unable to reach agreement and the case continued.

#### **NO INSPECTION**

17. The members of the Tribunal did not inspect the Property. Neither party requested an inspection, and the Tribunal's view was that inspection was not necessary in order for it to make a determination in the circumstances of this particular case.

#### **THE LAW**

18. Section 19(1) of the 1985 Act provides:

“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 shall be limited accordingly.”

19. “Relevant costs” are defined in Section 18(2) of the 1985 Act as “the costs or estimated costs incurred or to be incurred by or on behalf of the landlord...in connection with the matters for which the service charge is payable”.

“Service charge” is defined in Section 18(1) of the 1985 Act as “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, improvements, or insurance or the landlord’s cost of management, and (b) the whole or part of which varies or may vary according to the relevant costs”.

20. Section 27A of the 1985 Act gives a leasehold valuation tribunal jurisdiction to determine (on an application made to it) “whether a service charge is payable and, if it is, as to...the amount which is payable...”.

#### **APPLICATION OF LAW TO FACTS**

21. The Applicant argued that the reasonable cost of the relevant service charge items was recoverable as a matter of construction of the wording of the Lease itself, and the Tribunal accepts that the provisions quoted by the Applicant are sufficiently wide to entitle the landlord to charge for the heads of expenditure which are the subject of this application.
22. Whilst the Respondent had raised concerns about the clearing of Flat 29, the lighting and a couple of other issues related to cleaning, these all related to the period from October 2007 and were therefore not relevant to the payability of the service charge in respect of the Claim Period. The Respondent had raised no specific or even general concerns about the level of service charge for the Claim Period, save for her point that she did not believe it to be payable for the period 2003 to December 2006 when she allegedly sublet the Property to the South London housing association.
23. No evidence was placed before the Tribunal to demonstrate that the Respondent did in fact sublet the Property (although it is possible that she did), and even if she had sublet the Property this would not have cancelled her liability to continue to pay the service charge to the Applicant as her landlord. In addition, if the Respondent believed that she was not liable during that period then this does not explain why she **did** in fact pay the service charge during the period 11<sup>th</sup> May 2005 to 9<sup>th</sup> March 2006.
24. Having looked at the various items of expenditure during the Claim Period the Tribunal is of the view that none of these items is manifestly unreasonable for a property of this nature, and therefore in the absence of any evidence from the Respondent to the contrary the Tribunal concludes that the service charges in respect of the Claim Period are payable in full.

#### **DETERMINATION**

25. The Tribunal determines that the outstanding service charges for the service charge years 2005/2006 (actual) and 2006/2007 (estimated) and for the first

half of the service charge year 2007/2008 (estimated) as specified in the County Court claim are **fully payable** by the Respondent. As the Tribunal does not technically have jurisdiction to determine payability of the £10 a year **ground rent**, this determination is limited to service charge. The amount payable by way of service charge is £2,664.63 less such part of the arrears as is actually attributable to ground rent.

26. Miss Sorbjan stated that the Applicant would not be seeking to recover the costs incurred by it in connection with the proceedings before this Tribunal, and therefore it is unnecessary for the Tribunal to determine whether an order should be made under Section 20C of the 1985 Act.

CHAIRMAN.....  
Mr P Korn

Date: 6<sup>th</sup> February 2008