

5495

**RESIDENTIAL PROPERTY TRIBUNAL**

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL**

**CASE NUMBER LON/00AG/LSC/2009/0222**

**IN THE MATTER OF 22 KENBROOK HOUSE, LEIGHTON ROAD, LONDON NW5 2QN**

**IN THE MATTER OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED) SECTION 27A**

**Parties:**

**Applicant : Miss Rahma Ally**

**Respondent : London Borough of Camden  
(Home Ownerships Service)**

**Date of Application : 17 April 2009**

**Date of Mediation Agreement: 06 July 2009**

**Hearing Date : 28 October 2010**

**Tribunal Members : Mr A A Dutton (Chair)  
Mr M A Mathews FRICS  
Mrs L West JP MBA**

**Date of Decision : 18 November 2010**

## DECISION

The Application dated 17 April 2009 is dismissed for the reasons set out below. The Tribunal however has confirmed that the heating costs for the year 2010 estimated at £1,195.03 appear to be on the high side compared to previous years. They are not however the subject of these proceedings. There is no order for costs sought by the Respondent.

## REASONS

### A. BACKGROUND

1. This application was made by Miss Rahma Ally the leasehold owner of 22 Kenbrook House, Leighton Road, Kentish Town on the 17 April 2009. The Application refers to concerns that she has over a number of years relating essentially to the installation of a new central heating system to her flat as part of the communal central heating and hot water supply which serves the whole block. She was also concerned as to the annual running costs of the system.
2. On the 20 May 2009 at a Directions hearing, which Miss Ally attended together with a representative from the Respondents, it is recorded that Miss Ally did not wish to challenge the service charge for the various years in question but was concerned only with the major works carried out in 2005 and the subsequent charges made in respect of heating and hot water. She did not wish to challenge the consultation process. The Directions provided for mediation to take place which did occur on 6 July 2009 but did not result in a settlement. Certain Directions were then given.
3. A further Directions appointment was convened for 11 May 2010 when it was agreed that *"the Application should now proceed to a hearing and that the dispute related to the standard of works carried out to the heating and hot water system and to the costs of the provision of heating and hot water from 2005 to 2010 inclusive"*.
4. The matter came before the Tribunal for determination on 28 October 2010. Prior to the hearing we had been supplied with a bundle of documents numbering some 289 pages and subsequently a second bundle which contained the Applicant's Statement of Case, Summary and Tender specification, final accounts and other documents relating to the Contract itself.
5. It is perhaps appropriate at this stage to record the background to this dispute. It appears that in August 2004 a feasibility study was carried out in relation to the heating services at Kenbrook House. The Summary of the Report indicates that the mechanical and electrical services were generally in workable order. Apparently one boiler had been replaced in 1993. However there were concerns arising from a residents' questionnaire as to the lack of control and the ability to isolate individual heating systems, that the hot water provision was inconsistent and the cold water services occasionally ran warm. Three options were put forward with the third option being the complete replacement of communal heating system, boiler plant and pipe work, hot water cylinders and installation of individual controls. The feasibility study went on to recommend this as being the best option as it should provide good reliable services with a typical life span of some thirty years with reduced year-on-year maintenance costs. A budget figure of £900,000 was indicated. The matter proceeded from there and the requirements of s20 of the Landlord and Tenant Act 1985 were complied with and a Contract entered into with Powerminster Gleeson Services Limited. The final costs amounted to some £969,977.47 and the liability attributable to Miss Ally was £13,635.52.
6. In the first bundle we received there was a report from Mary Neale in June 2009, the Applicant's Statement of Case also in June 2009 with a number of exhibits, a report from

Nifes Consulting Group made in October 2009 and other documentation which we shall refer to as necessary. In addition we had an Applicant's Statement of Case which was dated 25 October 2010 which contained the conclusion "for the reasons set out above it is submitted that the Respondent has not provided an adequate radiator and hot water system and therefore the Tribunal should determine a reduced level of service charge to reflect the difficulties experienced by the Applicant".

**B. INSPECTION:**

7. We inspected the subject premises before the hearing on 28 October in the company of representatives of the Local Authority and Miss Ally. The block is three-sided with an open common area. It is over 4/5 floors with a mansard level with flats being accessed by way of an open walk-way on the inner walls of the block. There is also a lift and stairs serving the upper floors. The communal parts are spartan but appear to be in reasonable order. Miss Ally's property is over two floors with kitchen and large living room apparently used as a bedroom on the first floor of the property and above further bedrooms, bathroom and separate w.c. with wash-hand basin. It was immediately apparent on entering the property that the ambient temperature was high and indeed uncomfortably so. Miss Ally told us that she had turned the central heating up for our visit. We noted the various radiators in the rooms, the hot water tank in the airing cupboard with the cold feed to it and tested the hot and cold water in the bathroom, separate toilet with wash-hand basin and the kitchen. We also tested the shower. All appeared to be working satisfactorily. We also listened to the shower pump.

**C. HEARING:**

8. At the hearing the Local Authority were represented by Mr Karl Schooling who was accompanied by Mrs Neale, the Project Officer for major works with Mr Chris Palmer from Nifes Consulting Group who had not only provided the feasibility study but had also managed the works. Miss Ally was accompanied by Doctor Newton for support rather than involvement.

9. Miss Ally told us that her issues were as follows:

- Water pressure;
- Control of the central heating system;
- Noise in the pipe work;
- The temperature of the flat;
- The fact that she had one radiator less than neighbours;
- The noisy shower pump;

There was no particular challenge made to the annual costs as she had no evidence to do so although she did ask that the Tribunal reviewed the costs that were levied by the Local Authority.

10. On behalf of the Council Mr Schooling asked that Mr Palmer give evidence. No Witness Statement had been filed by him and initially we were reluctant to let him give evidence to the Tribunal in those circumstances. Miss Ally however indicated that she would like to hear what he had to say. We therefore agreed that he could give evidence to the Tribunal.

11. Mr Palmer told us that he was a Design Engineer and now the Regional Director of Nifes. He has some 33 years experience in the design world in respect of central heating and other matters. He was the area manager at the time of the Contract. A Report had been prepared following the mediation the author shown as Fresh Kuwali although it appeared that a Mr Chadwick may have been the person involved. This is the report referred to at paragraph 6 above and Mr Palmer told us that he had been fully involved in the preparation. The report was some 17 pages long with appendices and essentially concluded that the system was providing "adequate" hot water and heating to the flat. At the summary 1.2 it sets out the position.

12. On questioning from the Tribunal he confirmed that no consideration had been given to the installation of individual central heating systems. When asked why he explained that the Local Authority had bought into the bulk gas system arrangements and that this served some 235 boiler houses in the Borough. The volume of gas that was used by these communal systems meant that they could achieve an attractive gas price. He thought that a domestic system on an individual basis might work out cheaper to install but in the long run would cost more than the new system that had been installed by the Local Authority in this case. He told us that Camden looked to supply what was known as Whole Life Systems. In his view the life of the boilers would be somewhere between 25-30 years which would be double that which you might expect from an individual boiler serving individual properties. He also confirmed that by having a communal system the annual running costs were less in that, for example, an annual gas safety check would not be required and the gas that could be supplied was in his view possibly two-thirds or three-quarters cheaper than would be available to an individual. In his view therefore he was in no doubt that the installation of a communal system was beneficial over a period of time. Miss Ally interjected indicating that she thought the old system was perfectly adequate and had made enquiries as to the possibility of installing a combination boiler details of which appeared within the papers before us.
13. Mr Palmer then went on to deal with some of the issues relating to the present system. He told us there should be no problems with the water system. It ran from a mains cold water supply which served the drinking water and also served a system of communal coldwater tanks in the roof space which subsequently served the bathrooms and toilets in the flats as well as a cold water storage tank for individual flats which was contained in the airing cupboard. He confirmed that the scope of the Contract was to replace the hot water tanks within the properties which included an electric immersion heater for the purposes of topping up the water temperature if so required. The cold water storage tank had been replaced in the airing cupboard and the coldwater feed volume increased from 22mm to 28mm from the tank in the airing cupboard to the hot water tank. This should therefore enhance the water pressure. He told us that the hot and cold water systems in the flats were not changed but that the radiator pipe work throughout had been replaced with new radiators installed and new thermostatic valves. The pipe work to the boiler house to the flat itself was external but was insulated and the control system for the boilers had been renewed and a domestic programming system with timing facilities installed in each flat which gave the individual flat owner control over hot water and heating. He confirmed that the system would provide 24 hour, 365 days per year cover for hot water and heating which would be at the control of the residents. There was also a cylinder thermostat to the hot water tank which could be amended as the Lessee required. The hot water to the radiators came directly from the boiler and had a flow temperature of 82 degrees centigrade and would lose about 1 or 2 degrees in travelling from the boiler to the flat. Full calculations had been taken at the time the survey was done and he was satisfied that the correct calculations had been undertaken to ascertain the appropriate heat loss. He also confirmed that the tanks in the airing cupboard had been put back in exactly the same position as those that had been replaced. On the question of noise he thought this might arise from the rising main coming through the kitchen as there had been no work to that. Occasionally also there may be a rushing noise at the time of peak demand. He told us that certain steps were taken to reduce noise from the flow of water between 11:00 pm and 6:00 am and that there were systems in place to bypass excessive noise in each flat.
14. Miss Ally however maintained that she did suffer from excessive noise both from the system and from the pump for the power shower. It was pointed out to her that the control system she had in the hall would override the individual radiator thermostats. Apparently this timer installation had not been viewed or amended by Miss Ally since the system was installed. Miss Ally had also raised concerns that neighbours appeared to have extra

radiators. It appeared that discussions had taken place between the parties in respect of the housing of a radiator in the kitchen but that Miss Ally was unhappy with the proposed positioning of same and one was not installed. However Mr Palmer said that would be irrelevant as to the ambient temperature in the flat was calculated on the area basis and larger radiators had been installed in the lounge.

15. Discussion then followed in respect of the shower pump. It was suggested that the pipe work to the pump could be encased in armaflex insulation and indeed the Local Authority agreed that they would undertake this.
16. We then heard from Mr Palmer on the actual costings. The tender figure was £917,262 and this increased to £969,977. He told us this was caused by changes in condition but seemed largely as a result of a delay and an extension of time sought by the Contractor apparently because they had had difficulties in gaining access to various flats. This was not however consistent with the Certificates relating to the extension of time and it appears that much of the problems had been caused by the gas board being slow in enabling the commissioning of the new system.
17. Mr Schooling then confirmed with us that Miss Ally's proportion in respect of liabilities under the lease was 1.21% based upon the rateable value of her property as against a total rateable value for the block. He confirmed that the Contract Administrator's fee was 6.35% which he thought was perfectly reasonable and that the administration charge had been limited to 10% notwithstanding that the lease gave the possibility of a substantially greater charge being levied. He told us that Miss Ally owed the Local Authority £11,652.09.
18. Miss Ally indicated that she had no savings and had not put money aside.
19. In final questioning from the Tribunal the Council confirmed that they believed that the heating was in good order. An issue relating to the question of loft insulation had been dealt with and the loft insulation had been enhanced in 2007 and they believed therefore that the monies were properly due.
20. Miss Ally said she wanted an improvement to the system and in particular cessation of the noise. She would like a radiator in the kitchen and we were directed to the remedy section in her latest witness statement which set out the following:
  - If possible to have a small radiator by the kitchen door;
  - To replace a small radiator in the hall with a larger radiator;
  - To replace a small radiator in the bedroom with a larger one;
  - Reposition pipes and pumps in the airing cupboard in order to reduce the noise;
  - To enable her to control the heating system;
  - To reduce the noise coming from the larger exterior water pipe outside the building.

In the absence of any remedies as above she thought the service charges should be reduced.

21. The local authority confirmed that they would not be seeking to claim costs and that within 28 days they would assist with placing foam around the pipe work as referred to above; and would also arrange a visit to see if the controls in Miss Ally's flat needed to be adjusted.

#### **C. THE LAW:**

22. The law applicable to this case is to be found at s27A of the Landlord and Tenant Act 1985. This requires the tribunal to determine whether a service charge is payable and if it is, by whom, to whom, the amount, the date it is due and the manner of payment. We have borne

this section in mind, together with section 18 of the Act which defines the meaning of a service charge and the relevant costs.

**D. FINDINGS:**

23. Our inspection indicated that the central heating system was working perfectly adequately. Admittedly it was not a cold day and for reasons that were not wholly clear Miss Ally had turned the heating up. We found the temperature within the flat uncomfortable. The testing of the hot and cold water supply to the various sinks showed that it was functioning perfectly adequately. The shower worked adequately and the noise from the shower pump was no more than one would expect in normal circumstances. Certain complaints as to the condition of the flat for example mildew do not seem to be as a result of anything that was done by the Local Authority in changing the system. The complaint was that the system was not working properly and was noisy. At the time of our inspection we could find no evidence of either matter being substantiated.
24. We found the evidence of Mr Palmer both extremely helpful and given in an honest and straight forward way. Although we deprecate the Local Authority's failure to provide a witness statement we do not believe that Miss Ally was prejudiced by his involvement and we were certainly assisted. Further the report of Nifes instigated after the mediation appointment was of assistance, although we do bear in mind that it is a report prepared by a company closely involved with the Council and could not therefore be said to be independent.
25. We find therefore that on the information available to us, on the evidence we took at the hearing and on our inspection, that the central heating system and the hot water appears to be working perfectly satisfactorily. The new hot water tank has an immersion heater installed which will enable Miss Ally to control, to a certain extent, the temperature of the hot water and certainly to increase it if she thought it was necessary. It seems to us however that if the circulating water leaves the system at 82c and only loses a degree or so, then that would not be necessary. Furthermore she has within her flat a control system which enables her to time when the central heating works as well as the temperature thermostats to the radiators. We are concerned that the truth of this matter may be that Miss Ally does not properly understand the system and has not co-ordinated the thermostat settings with the timing settings which she has. We hope that a visit by the Local Authority or one of its Contractors to assist in the setting of the control in the flat will alleviate this problem. There appeared to be no evidence or explanation as to the noise that Miss Ally says she is aware of and it may be that the concerns she has had over the years have perhaps exacerbated the true position.
26. In any event as we have indicated above, and on the basis of the evidence given to us by Mr Palmer, we cannot conclude that the costs associated with the installation of this system are anything other than reasonable. The Council has followed the s20 Tender process and there is no challenge to that. Whilst it may be possible that Miss Ally could have installed an individual system for less, although the figures she was quoted seem to us to be too low when one considers the fact that she has had new radiators and new pipe work, we find that the annual costs of running that system would be substantially more than the communal system which has the benefit of a much reduced gas price.
27. This leads us on to the annual running costs. Those were dealt with in the first bundle where heating charges for the years 2006/7 and 2007/8 were broken down. The cost to Miss Ally therefore included not only the supply of gas itself but repairs, maintenance, insurance, electricity, remote monitoring costs and gas repair contracts. As a matter of fact, we were informed that the costs to Miss Ally for the period 2006/7 were £692.48; for the following year reduced to £53.95 because of some disruption during works; for the year 2008/9 £750.89; and an estimated sum for 2009/10 of £1,195.03. Without any evidence from Miss Ally as to the costs that she thought she might have paid, either under the

previous system or in respect of any replacement system she might have installed, it was very difficult to argue that these were not appropriate. The property itself is fairly large and we did not think that the costs for, certainly the years 2006/7 – 2008/9 in respect of the supply of hot water and heating, was unreasonable. We do have our concerns as to the estimated cost for 2009/10 which we hope will in fact come in at a lower figure than is suggested. It may however be that there was a new tender for bulk gas supply in that period which may have had an impact on the overall costs.

28. To summarise therefore we find that we must reject Miss Ally's application. There is no evidence before us to show that the central heating system is not working satisfactorily or that the costs associated with the installation and annual running of same are unreasonable. We therefore order that Miss Ally should pay to the Local Authority the sum of £11,652.09 within the next 28 days or such other period as may be agreed between the parties. We are disappointed to note that Miss Ally, clearly aware that some payment would be required in respect of these works, has made, she told us, no attempt to put money aside and she has no savings.
29. The Local Authority indicated that they would not be seeking to recover the costs in respect of this matter. We therefore record that within this Decision. No application was made by Miss Ally originally under s20C of the Act but in light of the Local Authority's assertion before us that costs would not be recovered we will leave the matter at that.
30. We hope the Local Authority will be able to assist Miss Ally to ensure that the internal controls systems are not conflicting with the supply of heat to her property and that the installation of the insulation to the pipe work will ameliorate any noise that she perceives may be coming from the shower pump.



.....  
Chairman

Dated 18th November 2010