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Residential
Property
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

Landlord and Tenant Act 1985 – Section 27A

LON/00AJ/LSC/2010/0346

Property : **206 Rectory Park Avenue, Northolt UB5 6SJ**

Applicant : **Ms Christine Akele**

Represented by : **Ms Akele In Person**

Respondent : **London Borough of Ealing**

Represented by : **Ms Cheryl Drakes Solicitor – Ealing Homes
Limited, Legal Department
Ms Sandra Lucas Service Charge Manager -
Ealing Homes Limited**

Date of Application: **17 May 2010**

Date of Hearing : **13 October 2010**

Date of Decision : **19 November 2010**

Tribunal : **Mr John Hewitt Chairman
Mr Andrew Lewicki BSc (Hons) MRICS
MBEng
Mr David Wills ACIB**

Decision

1. The decision of the Tribunal is that:
 - 1.1 The service charges payable by the Applicant for the years 2007/8, 2008/9 and 2009/10 are as certified by the Respondent which, for ease of reference, are set out in Appendix 1 to this Decision;
 - 1.2 The estimate of service charges payable for the year 2010/11 as set out in Appendix 1 is a reasonable estimate; and
 - 1.3 By consent an order shall be made (and is hereby made) pursuant to s20C of the Act that no costs incurred by the Respondent in connection with these proceedings before this Tribunal shall be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant;

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the hearing file provided to us for use at the hearing.

The Lease and the Property

2. The relevant lease [1] is dated 22 January 1990 and was granted by London Borough of Ealing (the Council) to Hardas Vejanand Sava and Rukmini Hardas Vejanand Sava under the Right to Buy Scheme. The term granted was 130 years from 1 January 1981 at a ground rent of £10 per year and on other terms set out in the lease.
3. The demised premises (the Property) comprise a maisonette on the second and third floor of a block of some 24 dwellings, being Block 5, 166-212 Rectory Park Road. The Block is situated on an estate. The estate is rather run down and has a drab appearance. Evidently the

Council has plans to demolish the estate and to rebuild. We were told that a planning application for a major scheme is about to be lodged.

4. By clause 7 of the lease the tenant covenanted to pay a service charge. The service charge year is 1 April to 31 March. It was not in dispute that the proportion of costs payable by Ms Akele is 4.16667%.
5. By clause 4 and the Eighth Schedule the landlord covenanted to keep the Reserved Property in repair and to insure the development and to provide other services.
6. The lease terms were not in dispute.

Inspection

7. On the morning of 13 October 2010 the Tribunal had the opportunity to inspect the Block and the estate in the company of representatives of the Council. Ms Akele had been notified of the proposed inspection but she was unable to attend, evidently due to work commitments.
8. During the course of our visit we were able to observe the grass in front of Block 5 being cut and the common parts open walkways, stairways and bin store being cleaned.

The hearing

9. Ms Akele attended the hearing and represented herself. The Council was represented by Ms Drakes and Ms Lucas.
10. The application had put in issue the reasonableness of the service charges for the years 2007/8, 2008/9, 2009/10 and the estimate for 2010/11. A summary of these service charges is set out on Appendix 1 to this Decision.

11. The gist of Ms Akele's case [gh] was that other than grass cutting and insurance no other services were provided and that the sums claimed were unreasonable and inhuman.
12. Ms Sandra Lucas gave evidence. Her witness statement is at [uu] and Ms Lucas told us that it was true. Ms Lucas told us that she has some 25 years experience in housing management, 19 of them in Ealing.
13. Ms Lucas took us carefully through the service charge accounts and the detailed supporting papers [53-214]. Mrs Lucas explained that 'Estate Services' comprise caretaking, block refuse removal and litter picking. Ms Lucas told us that other services provided included communal window cleaning, grass cutting, lighting, repairs and maintenance, removal of abandoned vehicles, graffiti removal and pest control.
14. Ms Lucas was cross-examined by Ms Akele on repairs and maintenance and Ms Lucas went through the records and for each year in issue and explained how the sums claimed had been arrived at. Ms Lucas explained that repairs are dealt with if reported and also that the caretaker will put in a report if he sees that something needs to be put right. In addition management carry out estate inspections about twice per year on average and ward councillors and officers also walk round the estate from time to time.
15. Ms Lucas also gave an account of the various mailings and Leaseholders Group meetings and forums that take place at which leaseholders and residents can raise issues of concern.
16. Ms Lucas told us that the blocks in Rectory Park are due to be demolished. Plans will be finalised in November 2010 and a planning application will be submitted. The present plan was for works to commence in the summer of 2012 and continue over a 3 year period.

17. Ms Lucas told us that historically the Council had charged a flat annual management fee, usually £30 + a variable management fee which had been set some years back at 26% of expenditure. All management functions are carried out in-house. The management cost covers staffing, ASB on estates, rent of offices, residents involvement, IT and other costs of running the service. Ms Lucas said that the 26% variable management fee income was insufficient to cover the costs of the service and it operates at a loss. The amount of the rate is under review.

18. One of Ms Akele's specific complaints related to the costs of major works carried out and associated scaffolding which was left in place for some while. Ms Lucas took us through the details which are summarised in paragraph 17d of her witness statement. Ms Lucas confirmed that refunds or rebates were given to lessees. Ms Akele's cash account is at [219-220] and we note that on 19 October 2009 the account was credited with £320.94 which relates directly to the scaffolding issue. Ms Lucas also explained that on reflection some pest control, abandoned vehicle s removal and graffiti removal costs had been incorrectly charged to the block charges in the years 2006/7, 2007/8 and 2008/9 and that credits to reverse the expenditure have been entered on the cash account. On Appendix 1 the expenditure has been highlighted with a red asterisk. Ms Lucas took us through the details and Ms Akele said that she was satisfied.

19. Ms Lucas took us through the budget for 2010/11 and explained that it was based on a Council model which took into account the actual expenditure incurred over the preceding four years. It was a purely arithmetical exercise and no value adjustments were made to reflect actual future intentions. Ms Lucas explained that given the intended demolition of the Block the plan was to keep repairs and maintenance to the absolute minimum and to carry out responsive works only when they were required for health and safety reasons.

20. Ms Akele gave evidence. Ms Akele told us that she has lived on the estate since 2007. Ms Akele complained of a dripping water leak which caused a build up of damp and algae over a three year period. Ms Akele submitted that the caretaker should have noticed and reported this leak and that the Council should have attended to it. Similarly with a puddle of rainwater on the open walkway and an overhead gutter blocked with grass. Ms Akele said that she had not reported these or any other issues because she is too busy and the call centre is unhelpful and keeps her waiting. Also she submitted that it is not her job to do so; that it what the caretaker and other staff are there for. She said that if you are paying someone to do this she assumed they would send someone out to deal with issues.
21. Ms Akele was also critical of the quality of window cleaning on the stairways and the sweeping of the walkways. She said that she and her neighbours often swept the veranda's themselves.
22. Ms Akele said that the painting and cleaning in general was also poor as was the general state of the building.
23. Ms Akele accepted that estate and communal lighting was provided.
24. Ms Akele was critical of the evidence of Ms Lucas about community involvement and the opportunities for leaseholders and residents to raise issues. In cross-examination Ms Akele accepted that she received letters from the Council of which [111] and [114b] were samples. She said that she did not have time to look at the small print on the back. She suggested that details of proposed meetings should be clearly stated on the face of the communications.
25. Ms Akele said that she had paid too much by way of service charges and that she should be given a rebate. Ms Akele was unwilling to say

how much should be repaid to her and said that she was content to leave it to the Tribunal to decide.

Discussion and findings

26. The Tribunal gave careful consideration to the conflicting evidence given to it. We accept the evidence of Ms Lucas and we are satisfied that the Council has provided a range of services in accordance with its obligations under the lease. We are satisfied that broadly the costs claimed are within the range of what is to be considered as reasonable for the subject Block and the estate. We therefore find that no adjustment or rebate is required. The Council is not perfect and we accept that on occasions its service slips a little. We accept that occasionally cleaning or window cleaning might be missed out or not quite as thorough as Ms Akele might wish. In our experience it is generally helpful if lessees make prompt and contemporaneous complaint to the Council when matters slip or defects are noted so that appropriate and effective action can be taken by the Council. We find that it is unrealistic for lessees to expect a high (and expensive) level of supervision such that they need not make complaints if and when justified.
27. We noted the management costs at 26% + a fixed fee of £30 usually (and £50 on one occasion) and we consider that these are at the higher end of the bracket of what is to be regarded as reasonable but just about within the bracket so that we do not consider any adjustment or rebate to be appropriate. We urge the Council to reconsider its policy on management charges and to consider whether it would be appropriate and helpful to lessees to adopt a unit fee basis so that the Council and lessees would know in advance of each year what the management fee was to be. If the Council were to retain a percentage basis it should consider a reasonable figure somewhat below 26% and be ready and able to justify it.

28. In these circumstances we did not consider it just or appropriate to make any adjustment to the service charges claimed by the Council or to require the Council to pay a rebate to Ms Akele.

The section 20C Application – limitation of landlord’s costs of the proceedings

29. An application was made under s20C of the Act with regard to the landlord’s costs incurred or to be incurred in connection with these proceedings and an order was sought that those costs ought not to be regarded as relevant costs in determining the amount of any service charge payable by Ms Akele.
30. The application was not opposed and Ms Drakes said that the Council did not propose to pass through the service charge any costs which the Council may have incurred in connection with the proceedings. Accordingly and for the avoidance of doubt and with the consent of both parties we have made an order pursuant to s20C of the Act.

Reimbursement of Fees

31. Ms Akele did not wish to make an application that the Tribunal require the Council to reimburse the fees paid by her to the Tribunal in connection with these proceedings.

The Law

32. The law we have taken into account in arriving at our decision is set out in the Schedule to this Decision.

The Schedule

The Relevant Law

Landlord and Tenant Act 1985

Section 18(1) of the Act provides that, for the purposes of relevant parts of the Act ‘service charges’ means 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 costs of management, and
- (b) the whole or part of which varies or may vary according to the relevant costs.

Section 19(1) of the Act provides that 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 are of a reasonable standard;

and the amount payable shall be limited accordingly.

Section 19(2) of the Act provides that where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction of subsequent charges or otherwise.

Section 20C(1) of the Act provides that a tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a leasehold valuation tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

Section 20C(3) of the Act provides that the tribunal may make such order on the application as it considers just and equitable in the circumstances.

Section 27A of the Act provides that an application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, 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.

Section 27A(3) of the Act provides that an application may be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance, or management of any specified description, a service charge would be payable for the costs and, if it would, as to

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable.
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9(1) provides that subject to paragraph (2) a Tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or any part of any fees paid by him in respect of the proceedings.

Regulation 9(2) provides that a Tribunal shall not require a party to make such reimbursement if, at the time when the Tribunal is considering whether or not to do so, it is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Regulation 8(1) makes reference to a number of benefits/allowances including, but not limited to, income support, housing benefit, jobseekers allowance, tax credits, state pension credits and disability related allowances.



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John Hewitt

Chairman

19 November 2010