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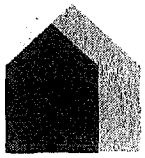

Residential
Property
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL
LANDLORD AND TENANT ACT 1985 SECTIONS 27A AND 20C

Case Refs: LON/00AP/LSC/2009/0674
LON/00AP/LSC/2010/0064

Property:	Flat A 419 Archway Road London N6 4AT
Applicant:	Maureen Ennison
Respondent:	Archway Freehold Company Limited
Appearances:	The Applicant in person Mr Andrew Whelan Ms K Bowes-Renna Mr Roger McElroy (Canonbury Management) For the Respondent
Date of Direction:	18 December 2009
Date of Hearing:	22 & 23 February 2010
Date of Decision:	16th March 2010
Members of Tribunal:	Mr S Shaw LLB (Hons) MCIArb Mr F Coffey FRICS Mr L Packer

DECISION

INTRODUCTION

1. This case involves two applications, both concerning Flat A, 419 Archway Road, London N6 4AT ("the Property"). The first application in time is made by Ms Maureen Ennison ("the Applicant") and is dated 15th October 2009. The Applicant is formerly the freehold owner and manager of 419 Archway Road which is a large terraced property divided into five flats identified as Flats A, B, C, D and E. The Applicant is the leasehold owner of Flat A, which is one of the two flats on the ground floor. Her application as referred to, is for a Determination of the liability to pay, and reasonableness of, certain service charges for the service charge year 2009/2010.

2. By virtue of Directions given by the Tribunal on 18 December 2009, a further application has been made by Archway Freehold Company Limited ("the Respondent"). Following representations made before the Tribunal on the occasion of the Pre-Trial Review, it appeared that there were further disputes arising out of the service charge years 2008/2009 and 2010/2011. As a result of these residual issues relating to these other service charge years, the Respondent was directed to issue an application to the Tribunal for a Determination of the outstanding issues in relation to the service charge years 2008/2009 and 2010/2011. That application was issued on 5 January 2010.

THE HEARING

3. During the morning of 22 February 2010, the Members of the Tribunal inspected the exterior of the property generally insofar as this was relevant to the case, together with the interior of Flat E. The Tribunal members were directed on site to the factual matters in respect of which it was considered an inspection would be helpful. Insofar as matters arise out of the inspection, they will be referred to in the context of the issues to be determined as identified below.

4. After the inspection, the Members returned to the Tribunal offices, and a hearing of the outstanding issues took place during the rest of that day and on 23 February, the following day. The Applicant represented herself. The Respondent appeared through its directors Mr Andrew Whelan and Ms Bowes-Renna. Mr Whelan is the leasehold owner of Flat C which is on the first floor of 419 Archway Road. Ms Bowes-Renna is the leasehold owner (together with her husband) of Flat E on the second floor, and which occupies the whole of that floor. Flat B and Flat D are owned by other individuals who did not attend before the Tribunal.

5. After discussion with the parties, it was determined that there were five main areas of contention between the parties spanning the service charge years 2008/2009, 2009/2010 and 2010/2011. It was convenient to deal with these matters in chronological order. It is proposed therefore to identify these five main areas of dispute, to summarise the parties' respective positions in respect thereof, and to give the Tribunal's Determination in relation to each such issue.

THE FINAL SERVICE CHARGES DUE FOR THE SERVICE CHARGE YEAR 2008/2009

6. In a Decision dated 28 December 2008 appearing at pages AB 417 – 425 in the first of the several bundles put before the Tribunal in relation to this case, the Tribunal made Determinations of the sums which should be payable by the Applicant to the Respondent by way of interim payments for the 2008/2009 service charge year. This Determination was made at a time before the end of year accounts were available and, of necessity, on an interim basis. Those accounts have now been finalised and appear at page 1012 in the second of the bundles put before the Tribunal. The Respondent's application in this regard therefore was for a Determination as to the balance alleged due from the Applicant in respect of this service charge year, now that the accounts have been produced.

7. The exact figure representing this balance was unfortunately not entirely clear. The Application itself seeks the sum of £1,489 (see page AB 326). In the Respondent's Statement of Case a sum totalling £2,310.40 is claimed (alleged to be the service charge arrears of £1,426.96 plus the Applicant's 18% share of £4,908 being the deficit for the year (in the sum of £883.44) producing a total of £2,310.40. The Respondent appeared unable to explain these figures by reference to the service charge accounts appearing at AB – 1014, and at the hearing told the Tribunal that what they were seeking was the Applicant's 18% share of the total expenditure in the sum of £14,475 less the sum of £645 which he had paid, producing a balance of £1,961.50.

8. This was an unsatisfactory state of affairs. The Tribunal proceeded at the hearing on the basis that the true sum sought was indeed £1,961.50 as appears to be the position on the accounts – but the Tribunal relies on the Respondent to ensure that this does not involve an over-recovery against the Applicant. The matter proceeded on the basis that the Applicant would identify in the list of expenditure, particular headings of expenditure which she challenged, in order to discover whether these were challenges the Tribunal considered to be justified on the evidence, and by reference to the Act.

9. The first heading of expenditure challenged by the Applicant was that relating to management fees. In the accounts, this is shown as expenditure of £1,510 for the year. However, there were other items of expenditure also set out in the accounts for that year which involved, substantially, alleged expenditure in respect of management. The first of those two other items is under the heading "Legal Services" and involves a sum of £2,919. When asked to explain this expenditure it transpired that although headed "Legal Services," the expenditure actually related to time spent on dealing with matters relating to the various applications to this Tribunal made by the Applicant by Canonbury Management Company. Canonbury Management is either a firm or a company of which Mr Roger McElroy is director. Mr McElroy appeared at the hearing before the Tribunal. Canonbury Management has been appointed by the Respondent to deal with the day-to-day management issues relating to the property and the other flats at Archway Road.

10. The second item of the two other items of expenditure in the accounts relevant in this regard is under the heading "Renovations" and shows expenditure of £2,581. It transpired that these were charges incurred by Canonbury Management in dealing with all the Section 20 consultation issues arising out of some major works at the property, to which reference will be made below, in a subsequent service charge year.

11. It is convenient for the Tribunal to take these three headings together because they are all in fact management related issues, and account for a substantial amount of the expenditure during this service charge year.

12. So far as the first item of expenditure is concerned, that is to say £1,510 for management fees, the Applicant contended that this was excessive and that the Tribunal should re-affirm the assessment made on an interim basis by the Tribunal in its decision of 28 December 2008. That Determination was to the effect that there were some valid (albeit unidentified) criticisms in relation to the sum claimed, and the interim contribution was to be calculated on the basis of annual management fees of £1,000. (The Tribunal would stress that the earlier finding was in respect of an estimate only, pending conclusion of final accounts). The Applicant contended that in fact Canonbury Management responded poorly to requests for assistance, that in effect it was an office based in the City with no real local knowledge or contacts, and the telephone number supplied rarely produced an answer. She said that the building generally was filthy, and there was little by way of inspection by the managing agents.

13. Mr McElroy on the other hand told the Tribunal that the fees of his company were competitive by comparison with local firms. He told the Tribunal that £1,000 per annum amounted to about £180 plus VAT in respect of each of the units at 419 Archway Road and he did not think that it would be possible to find local agents who would do the job for this price. He said that generally small properties of this kind were uneconomic from a management point of view. He moreover told the Tribunal that his company had a staff of about twenty, eight or nine of whom were based at the offices in Guildhall Yard in the City, and that

all his staff were provided with a database of contractors to deal with maintenance issues. Also Mr Whelan and Ms Bowes-Renna told the Tribunal that they had never had any trouble with management. It was right to say that they did not reside in the premises, but they had tenants who were in occupation and they had not received any complaint from them. Mr Whelan told the Tribunal of a particular occasion when there was some leakage of some water from the flat above, and the matter was dealt with very promptly and efficiently by Canonbury Management.

14. This issue was not easy for the Tribunal to resolve because of course the inspection took place recently, and beyond the service charge year in question. The Applicant told the Tribunal that the property was looking better than usual for the purposes of the Tribunal's visit, and had been recently cleaned, which was not typical for the service charge year in issue. However, on the basis of the evidence before the Tribunal, the Tribunal agreed that it would be difficult to find local agents to do the job for significantly less than that charged by Canonbury Management and there was no real evidence of bad management apparent to the Tribunal on its inspection. This charge therefore is not adjusted.

15. However, the sum of £2,919 claimed under the heading of "Legal Services" and the further sum of £2,581 under the heading "Renovations" seemed to the Tribunal to be more problematic. The first head of claim (£2,919) for Legal Services was said on behalf of the Respondent to be recoverable under clause 2(19)(ii)(b) of the lease (page AB – 351) on the basis that it was a cost:

"...in connection with the appointment and payment of any managing or other agents..."

16. It has long been established that legal fees of this kind are not normally recoverable as a service charge in the absence of clear and unambiguous provision to this effect in the lease (see ***Sella House Ltd v Mears [1989] 1 EGLR 65*** and ***St Mary's Mansions Ltd v Limegate Investments Co Ltd [2003] 1 EGLR 41***). The words cited are not in the view of the Tribunal clear and unambiguous and a much more specific provision is required so far as the

Tribunal is concerned to recover legal fees of this kind. In any event, these were not in fact fees incurred by reference to lawyers but further work carried out by Canonbury Management in the context of preparing for, and dealing with, this application and other applications before the Tribunal. Although there may be other routes for seeking to recover this expenditure, it does not seem to the Tribunal that it is a recoverable expense as a service charge under the lease by way of legal costs claimed and in the circumstances this sum is disallowed.

17. The other heading of charge, which is really a management charge, is termed "Renovations" in the accounts. This is a sum of £2,581 and is said to have been the extra time expended by Canonbury Management in dealing with observations made by principally the Applicant in the context of the Section 20 consultation process. The Tribunal was taken to a timesheet explaining how the sum was calculated and showing an individual charge out rate for each letter of time spent. So far as the Tribunal is concerned, it is indeed the position that sometimes there is significant management time involved in dealing with a Section 20 procedure does not seem to the Tribunal to be appropriate to charge the tenant, in effect almost on an indemnity basis for compliance with what are the statutory obligations in any event. It is fair to say that there is a degree of work involved here outside the ordinary realm of management but it seems to the Tribunal that the sum claimed is high and in effect overly comprehensive. Doing the best it can and on a broad brush basis the Tribunal would allow no more than the sum of £1,500 under this head.

18. The two items referred to therefore should be reduced and the Applicant's charge re-calculated by reference to and as determined by the Tribunal.

UTILITIES

19. A sum of £227 is claimed under this head in the accounts. The Applicant told the Tribunal that she had in fact paid the sum of £155.27 to avoid the utilities being cut off at one stage and she produced the receipt in this regard. It appeared accepted on behalf of the Respondent that if this was so (and the Tribunal finds on the evidence that it was indeed so) she should be given credit

for this payment, less her 18% appropriate contribution towards it. In the circumstances therefore the Tribunal concurs with the Applicant and a further credit in the sum of £127.32 (being 82% of the £155.27 should be allowed to her against the service charge for this year).

CLEANING

20. A sum of £952 has been charged in the service charge account for this year for cleaning. The Respondent told the Tribunal that there was an hiatus of about 3 months when there was no cleaning at the property for this service charge year because there was a lack of funds on account. This sum therefore accounts for 9 months cleaning and, on the Respondent's evidence, there was one visit every fortnight up to 30 minutes on each occasion. As understood by the Tribunal therefore there would have been about 20 visits during this service charge year and a charge of £952 would amount to close to £50 a visit (each visit being 30 minutes). This seems high to the Tribunal, and given that each visit was about 30 minutes, a charge of £25 on each occasion would seem more in line as a reasonable service charge. On the basis of 20 or so visits for the balance of that year, this would produce an appropriate cleaning charge in the order of £500, which is the sum allowed by the Tribunal.

21. These are the sums challenged by the Applicant before the Tribunal and the Tribunal's findings are as set out above and the appropriate adjustments should be made to arrive at the correct service charge demand for this year.

INTERIM SERVICE CHARGE FOR 2009/2010

22. The interim service charge for 2009/2010 has been calculated by reference to estimated expenditure appearing at page 228 in the documents before the Tribunal. There were only two items challenged before the Tribunal by the Applicant in respect of this expenditure. The first was for building insurance in the sum of £1,105. The Applicant pointed out to the Tribunal that in fact the insurance for that year had been placed for £850 – a saving on that which had been budgeted for by the Respondent. The Respondent conceded that this was

indeed the cost of the insurance for that year but told the Tribunal, and the Tribunal accepts, that it had made a genuine estimate and the fact that it had managed to make a saving when the insurance was in fact obtained, does not render the estimate any less reasonable or valid. As indicated, the Tribunal concurs. These were estimated figures and the actual expenditure was not available to the Respondent at the time. The margin of difference in the scheme of things, bearing in mind the Applicant's 18% contribution, is not great, and no adjustment is made in this regard. The only other challenge made was in respect of the provision made for management fees in the sum of £1,500 per annum. As already indicated in relation to the earlier year, the Tribunal does not consider this unreasonable and no adjustment is made in relation to this figure. The sum therefore as claimed by the Respondent for this year on an interim basis is allowed. It should be stressed that the finalised accounts will have to be justified by the Respondent when the actual figures are known.

CONSULTATION COSTS

23. In August 2009, the Applicant was invoiced in the sum of £9,168.19 being her share of the cost of major works proposed at 419 Archway Road. The Applicant challenges this particular item of service charge on two bases. First she argues that the appropriate consultation procedure was not properly followed under Section 20 of the 1985 Act. Secondly, she argues that the sum of £9,168.19 is excessive for reasons to be referred to below.

24. So far as the first, procedure, point is concerned, the precise point of contention raised by the Applicant was not clear to the Tribunal. Compliance with the Section 20 consultation process is dealt with at paragraphs 29–31 of the Landlord's Statement of Case at pages AB – 858 / 859. In short, the initial Section 20 Notice was served to all leaseholders on 9 March 2009 coupled with a clarifying and amending further notice on 11 March 2009 - the relevant documents appearing at pages 252 – 265 in the bundle. The works were described in some detail in an extract from a report prepared by a surveyor instructed by Canonbury Management. The Applicant made detailed comments and observations on the Notice appearing in a letter dated 5 April 2009 at pages

266 – 270 in the bundle (the Applicant had the opportunity to suggest an alternative contractor, but did not do so in that letter). Those observations were in turn "*had regard to*", and commented upon in further documents appearing at pages 271 – 278 in the bundle. Unfortunately, this document seems to be undated but it is said to have been sent on 21 April 2009 and this fact and the fact of its receipt did not appear to be in contention.

25. Subsequently, on 21 April 2009 requests for tenders for the works were sent out to 3 companies and on 10 June 2009 a further Notice was sent giving details of the tender results upon which no further comments were received.

26. The Applicant's objection to the consultation procedure appeared to be based upon the contention that the works proposed did not properly come within the terms of the lease. This, it seemed to the Tribunal, was not so much a procedural objection, but a substantive objection to the reasonableness of the works. If she is right in this regard, she will have a strong defence to payment of her contribution when the sums are finalised. However, from a procedural point of view, it seemed to the Tribunal from the background set out above, that there had indeed been procedural compliance, and this point is determined in favour of the Respondent.

27. So far as the quantum of the sum claimed is concerned, the main objection appeared to be that certain parts of the work which were exclusive to particular flats (and in particular Flat E at the top) had been charged to the service account generally, whereas these specific costs should have been taken out and charged to individual flats concerned.

28. In response to this the Respondent took the Tribunal to a spreadsheet at page 309 in the bundle demonstrating that the total cost of the works was £70,244.64. The Applicant's contribution had been calculated by reference to £50,934 worth of work, this lower figure having been achieved after removing the total of £19,310.27 from the total costs, referable to exactly the kind of costs falling to individual flat owners, to which the Applicant had referred. Accordingly, it seemed to the Tribunal on the basis of the evidence before it that specific works

had indeed been deducted from the overall cost as appropriate, and before calculation of the Applicant's contribution.

29. Having said this, a service charge demand in the sum of £9,168.19 is on any basis an extremely high demand. The Respondent told the Tribunal that it was well aware of this and that it was perfectly willing to talk about a payment plan in relation to this sum, so as to spread the payment over a period of time. This had earlier been offered in a letter of 10 August 2009 appearing at page 220 in the bundle.

30. So far as the quantum of this demand therefore is concerned, again on the basis of the evidence before the Tribunal it does not seem to the Tribunal that in principle, having regard to the very extensive works required, it is an unreasonable sum; however, the Tribunal's finding in this regard is on an interim basis only. The sum will have to be justified by reference to the reasonableness of the overall costs, and all other matters generally appropriate under Section 27A of the Act, and it would of course be open to the Applicant to revert to the Tribunal to challenge the costs under a Section 27A application. It is earnestly to be hoped that this will not be necessary given the very extensive costs on all sides which have been incurred in dealing with the issues in relation to this property already. Further, it is to be hoped by the Tribunal that the Respondent will take on board the observations made in this context by the Tribunal, that this is a very high sum for the Applicant to meet, and that a payment plan should be devised in order to spread the load of the payment, notwithstanding the fact that it is no more than an interim assessment at this stage. For the avoidance of doubt therefore, no adjustment is made to the £9,168.19 claimed on an interim basis, but it is emphasised that this is no more than an interim assessment, and moreover the Respondent is urged to spread this load by means of a payment plan.

INTERIM SERVICE CHARGE FOR 2010/2011

31. The budget in this regard appears at page 1053 in the bundle. The only real item challenged by the Applicant was the management fee in the sum of £1,500 upon which the observations of the Tribunal are the same as referred to above in the context of the other years. The demand made in the sum of £1,181.93 seems reasonable to the Tribunal on the basis of the budget produced, and no adjustment to this sum is made.

SECTION 20C COSTS

32. The Applicant invited the Tribunal to make an Order under Section 20C of the Act disallowing the adding of any costs relating to these proceedings to the service charge account. The Respondent appeared to be under the impression that it was open to it to target the whole of the costs of these proceedings by way of service charge against this Applicant exclusively. So far as the Tribunal is concerned, under the machinery of the lease, if it were possible to add this cost to the service charge account, it would have to be payable in the appropriate contributions by all tenants and not simply the Applicant. However, for the reasons indicated above (paragraphs 15 and 16), the Tribunal is not satisfied that the Respondent has demonstrated that the cost of these proceedings are recoverable as a service charge item of expenditure under the terms of the lease in any event. For this reason, and regardless of the merits, the Tribunal does indeed make a Direction under Section 20C that no part of the cost of these proceedings is recoverable as a service charge item.

33. Even if the position had been otherwise and there had been sufficient provision in the lease for recovery of such costs as a service charge item, the Tribunal considers the sum claimed under this head to be excessive. The Tribunal was informed by the Respondent, that it would seek to recover a sum of £5,000 in this regard. Although the manner in which this was calculated was not particularised, it was said on behalf of the Respondent that there were over a thousand pages of documents which had been generated by the issues thrown up

by the Applicant and many hours of management time and other time had been spent preparing for this hearing and the earlier hearings dealing with other service charge years. The Tribunal has no doubt that time was indeed expended in preparing these documents, and for the various hearings and the time of the hearings themselves. Costs in this order are outside the usual modest range allowed for in this Tribunal, which is intended to be an alternative to Court Proceedings and to be more economic. This Tribunal is not a specialist Costs Tribunal, and doing the best it can on the basis of the assessment of the volume of work in this case, the Tribunal would have allowed costs limited to £2,000 to be added to the service charge expenditure, had it been satisfied that there was proper provision in this regard. However, as indicated above, the Tribunal was not so satisfied and accordingly no sum is allowed under this head. A Section 20C Direction is given to the effect that no part of the costs of these proceedings should be added to the service charge account expenditure.

34. No other applications in respect of costs or otherwise were made and no other Orders are made. The appropriate adjustments should be made to the service charge accounts foe each of the years in question, and the Applicant's contribution re-calculated accordingly.

Legal Chairman: S. Shaw

Dated: 16th March 2010