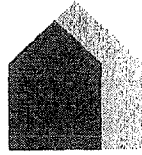


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Residential
Property
TRIBUNAL SERVICE

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

**LANDLORD AND TENANT ACT 1985, AS AMENDED
SECTIONS 27A AND 20C**

Ref: LON/00AU/LSC/2009/0086

Property: 6 Blackstock House
Blackstock Road
London
N5 1ET

Applicant: Mrs K McKeown

Respondent: London Borough of Islington

Appearances: Mrs K McKeown
Mr R McKeown
For the Applicant

Mrs R Murray - Solicitor
Mr R Edwards - Estate Manager
Ms S Hodgson FCA - Accountant
Upper Street Accounts Limited
Mrs Z Selassie - Service Charge
Calculation Officer
For the Respondent

Date of Hearing: 9 March 2010

Members of the Tribunal: Mrs J S L Goulden JP
Mr B Collins BSc FRICS
Mrs L Walter MA

REFERENCE: LON/00AU/LSC/2009/0086

**PROPERTY: FLAT 6, BLACKSTOCK HOUSE, BLACKSTOP ROAD,
LONDON N5 1ET**

Background

1. The Tribunal was dealing with the following applications dated 21 January 2009 (and received by the Tribunal on 17 February 2009):-
 - (a) an application under S.27A of the Landlord and Tenant Act 1985, as amended ("the Act") 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
 - (b) an application for limitation of landlord's costs of proceedings before the Tribunal under S.20C of the Act.
2. The service charge year runs from 1 January to 31 December in each year. The service charge years in dispute are for the years 2002/2003, to 2007/2008 inclusive.
3. The Applicant tenant is Mrs K McKeown and the Respondent landlord is the London Borough of Islington.
4. The Applicant holds Flat 6 (a first floor flat) under a lease dated 17 April 2000 and made between the Respondent (1) and the Applicant (2). The lease, a copy of which was provided to the Tribunal, was for a term of

125 years from 25 March 1983 at the rent and subject to the terms and conditions therein contained. It is understood that all leases are essentially in the same form.

5. Flat 6, Blackstock House, Blackstock Road, London N5 1ET ("the Property") was described in the application as a two bedroom flat in a 1960's block of 15 flats. In view of the issues raised, it was not considered that an inspection would be of assistance to the Tribunal and would be a disproportionate burden on the public purse.

Hearing on 9 March 2010

6. At the hearing on 9 March 2010, the Applicant, Mrs K McKeown, appeared in person and was represented by her son, Mr R McKeown. The landlord, London Borough of Islington, was represented by Mrs R Murray, Solicitor. Evidence for the Respondent was provided by Mr R Edwards, Estate Manager, Ms S Hodgson FCA, Upper Street Accounts Limited and Mrs Z Selassie, Service Charge Calculation Officer.
7. Although the Tribunal offered the parties an adjournment at the commencement of the hearing in order that they could discuss and, if possible, narrow the issues, neither side thought that this would be of assistance. An adjournment was accepted during the hearing but this proved unsuccessful.
8. With regard to the S.20C application (limitation of landlord's costs of proceedings before the Tribunal) Mrs Murray confirmed that the lease did not permit such costs to be placed on the service charge account. Accordingly no determination is required of the Tribunal.
9. The issue which remains outstanding, and which requires the determination of the Tribunal was in respect of the management fees only.

10. As a general point, the burden is on the Applicant to prove her case with such relevant evidence as is sufficient to persuade the Tribunal of the merits of her arguments. The Tribunal is not permitted to take into account the personal circumstances of the parties.
11. It should also be pointed out that the absence of invoices in themselves is no bar to the Tribunal finding that costs had been reasonably incurred by the landlord.
12. The contract between the parties is the lease between them and both sides are bound by the contractual terms contained therein.
13. The salient points of the evidence and the Tribunal's determination is set out below but the Tribunal considers that it might be helpful to the parties to indicate the basis on which its considerations are made.
14. The Tribunal has to decide not whether the cost of any particular service charge item is necessarily the cheapest available or the most reasonable, but whether the charge that was made was "**reasonably incurred**" by the landlord i.e. was the action taken in incurring the costs and also the amount of those costs both reasonable.
15. The difference in the words "reasonable" and "reasonably incurred" was set out in the Lands Tribunal case of **Forcelux Ltd -v- Sweetman and Parker (8 May 2001)** in which it was stated, inter alia,

"...there are, in my judgment, two distinctly separate matters I have to consider. Firstly the evidence, and from that whether the landlord's actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Secondly, whether the amount charged was reasonable in the light of that evidence. This second point is particularly important as, if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took

justified the expense, without properly testing the market. It has to be a question of degree....”

16. There were two management fees placed on the service charge account, one being the management fee imposed by Homes for Islington (“HFI”) and the other (which also included a maintenance charge) imposed by Blackstock Management Organisation (“BMO”). Both were borough wide charges. The Applicant accepted that her lease provided for both charges.
17. The HFI was described as an Arms Length Management Organisation (“ALMO”) and was in effect the managing agent of the landlord. The management fee for the HFI was to cover the cost of the matters set out in paragraph 21 below.
18. The BMO dealt with cleaning, caretaking and upkeep of the estate including common parts of the block, carrying out communal repairs and grounds maintenance, further details of which are set out in paragraph 21 below. There were three full time members of staff, being the estates manager and two caretakers/cleaners.
19. The Applicant complained of lack of transparency and the level of fees which Mr McKeown described as “astronomical”. He maintained that the services had been duplicated as between the HFI and BMO.
20. In the Applicant’s Statement of Case she said, inter alia,

“As far as I can tell Islington have delegated responsibility for some services to BMO, which is controlled by the tenants on the Estate and not by the leaseholders. The extent of the services provided by BMO has never been clear to me.... In general it seems that all BMO does is provide cleaning and ground maintenance although it is again not clear exactly what this covers.

For many years I did not appreciate that I was being charged for BMO. The annual service charge accounts simply list 2 management items: Management & Maintenance and Management (Co-Op properties). The sums charged under these heads got larger as the years went by. Although I queried these items in 2008 I was not given an explanation that I could understand.... It was only after the pre-trial review that I was given a full explanation for the BMO charges....

The BMO management charges, in relation to the cost of the services provided by BMO, are completely disproportionate. Islington are obliged, under the terms of my lease, to insure, maintain and repair Blackstock House and the Blackstock Estate. It was their decision to subcontract the provision of some services to BMO and it is unreasonable that I should have to pay the additional management charges resulting from that decision. If Islington had provided the cleaning services it is reasonable to assume that any increase in their management charge would have been offset by the saving in not having to supervise BMO.... the total management charges are excessive both in proportion to the cost of the services provided by both Islington and BMO and in absolute terms”.

21. The Respondent in its reply to the Applicant's Statement of Case set out its case as follows.

“Although the “Management and Maintenance” and “Management for Co-Op Properties” both charge for the management of Blackstock House, the individual managerial functions undertaken by HFI and the BMO are separate.

Management & Maintenance

The above service charge item relates to the costs incurred directly by the BMO in relation to the management of the services they provide. These costs include charges for the following:

- *Caretaking and cleaning of the building;*
- *Grounds maintenance for Blackstock Estate, including gardening, cutting lawns, blowing leaves, cleaning grounds and trimming hedges;*
- *Communal repairs and maintenance;*
- *Management, salaries, stationary and equipment costs; and*
- *Other heads of expenditure*

The building costs incurred by the BMO are apportioned equally amongst the 15 units in the building. The estate based charges are apportioned equally amongst the 187 units in Blackstock Estate.

Management for Co-Op Properties

The above service charge items relates to the costs incurred by HFI under the following three heads of charge:

- *Area Office;*
- *Home Ownership Services; and*
- *Central Support Services*

HFI is responsible for liaising with the BMO, producing service charge invoices, and managing certain repairs.

There is no duplication of work between the BMO and HFI, and therefore no duplication of management charges”.

The Tribunal's Determination

22. The Tribunal is critical of the manner in which the Respondent's case was presented which was confused and confusing.
23. The Respondent's statement in response to the Applicant's case was a mere four pages and the evidence from those appearing on behalf of the Respondent was contradictory and lacking in coherence. The Applicant's complaint as to lack of transparency is upheld.
24. In the Tribunal's Directions of 18 March 2009, the Procedural Chairman had directed that the Respondent was to provide to the Applicant by 8 April 2009, "*a breakdown of the costs involved in the management of the property, including those relating to the area offices from which management functions are undertaken. Ms Mathur on behalf of the Respondent informed the Tribunal that the Management and Maintenance heading on the expenditure account related also to services and agreed that she would split out from these amounts the actual level of services (amount and what covered) so that the actual management fee for the Teant Management Organisation could be shown*". These Directions did not seem to have been adhered to.
25. However, after much discussion between the parties and the Tribunal during the hearing, a breakdown was prepared by Ms Hodgson which set out the BMO and HFI charges to the block. Since the management charges had been entwined with other charges, the management charges themselves had not been immediately apparent, and the breakdown was a useful exercise.
26. It is understood that an audit for the landlord is carried out every year. The audit report on Blackstock TMO-Homes for Islington for the year 2006/2007 was included in the bundle (although this appears to be incomplete) and summarised the findings of the review of the BMO. The report was highly critical. The overall assessment stated "*control is*

generally weak leaving the system open to error or abuse". There were serious concerns regarding the quality of governance and "the use of, and the value for money obtained from public monies at the BMO, particularly with regard to payments made to board members during the present and previous financial year....the review of minutes revealed little evidence of financial review by the board and decision making was not clearly recorded".

27. The audit also criticised payments to board members and committee expenses, as does this Tribunal. From the evidence adduced to the Tribunal, there appear to be an unacceptable number of bonuses, vouchers or gratuities, the reasons for which were not satisfactorily explained. The allowances for baby sitting appear to be excessive.
28. From the explanations provided, the Tribunal has not been persuaded that there has not been some duplication of services across the various offices. There was a paucity of evidence to reinforce the Respondent's contention that all duties/functions were wholly separate.
29. The Tribunal was provided with global figures for some, but not all, of the service charge years in question and accordingly is only able to make a determination in respect of specific accounts demanded of the Applicant.
30. The Tribunal determines that the BMO charges for the service charge years in issue 2002/2003 to 2007/2008 inclusive as demanded of the Applicant (and as shown on the breakdown prepared at the hearing) are relevant and reasonably incurred and properly chargeable to the service charge account but, in respect of the HFI charges for the same period and using a broad brush approach, the Tribunal determines that only £75 per annum for each of the service charge years is relevant and reasonable incurred and properly chargeable to the service charge account and payable by the Applicant.

The Tribunal's determinations as to service charges are binding on the parties and may be enforced through the County Courts if service charges determined as payable remain unpaid.

CHAIRMAN:

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DATED:

23.. March 2010.....