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Property
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LEASEHOLD VALUATION TRIBUNAL

LANDLORD & TENANT ACT 1985 SECTION 27A AND 20C

REF: LON/00AY/LSC/2010/0258

Property:	50, DOLLAND HOUSE, NEWBURN STREET, LONDON SE11 5LS
Appellant	London Borough of Lambeth
Respondent	Mrs Mojisola Omoyele
Appearances	Ms Nicola Muir (of counsel) Mr Michael Edmunds (Head of Home Ownership) Miss Feonia Wildman (Service Charge CoOrdinator) Miss Manisha Williams (Service Charge CoOrdinator) For the Appellant The Respondent in person
Date of County Court Transfer Order:	7th April 2010
Pre-Trial Review and Directions:	18th May 2010
Date of Hearing:	2nd August 2010
Date of Decision:	16th August 2010
Members of Tribunal	Mr S Shaw LLB (Hons) MCIArb Mr. C. Gowman MCIEH MCMI Mr O. Miller BSc

DECISION

Introduction

1. This matter involves a case which has been transferred to the Tribunal by order of the Lambeth County Court dated 7 April 2010. In that case the London Borough of Lambeth ("the Applicant") claimed alleged arrears of service charge against Mrs Mojisola Omoyele ("the Respondent") in respect of the property at 50, Dolland House, Newburn Street, London SE11 5LS ("the property"). The Applicant is the freeholder of the property which is a flat in a building containing 60 flats and this building is one of the 28 blocks on the council estate known as Vauxhall Gardens Estate. The Respondent is the long leasehold owner of the flat.

2. The County Court claim was for the sum of £1,888.68 relating to alleged service charge arrears for the service charge year 2007/8 and 2008/9. When the matter came before the Tribunal, Ms Muir, on behalf of the Applicant, informed the Tribunal that the figure claimed in the County Court proceedings was partially based upon estimated figures and that the actual figures were now available. The sum claimed for determination by the Tribunal was £1,018.83 in relation to 2007/8 and £922.89 in respect of 2008/9. This computed to somewhat more than had been claimed in the County Court proceedings. After discussion with the parties, and with their consent, it was concluded that it would be artificial to deal with the estimated figures when the actual figures were now available, and that in the interests of finality, it would be sensible to resolve this matter using the up to date figures.

3. There is an issue in this case which, although not characterised as a preliminary issue either in the directions or before the Tribunal, it is nonetheless sensible for the Tribunal to deal with first, before getting into the detail of the case. In the County Court Defence (page 3) the Respondent contended that the Applicant had failed to perform its statutory duty to give her proper notice of her rights when making a demand for payment, and that accordingly by virtue of Section 152 and Section 153 of the Commonhold and Leasehold Reform Act 2002, no charges were recoverable. She expanded upon this at the pre-trial review and it is recorded that she indicated that she had not been provided with accounts, no demands had been served, and she had no notice of the claim until she received the proceedings in the post. This contention was repeated before the Tribunal on several occasions. The Applicant sought to rely upon a letter dated 26 January 2009 which appears in the bundle at page 36, under cover of which it was contended, details of the sums claimed and notice of statutory rights had been supplied to the Respondent. The full enclosures with this letter are not in the bundle and a further copy of the letter, together with all these enclosures was produced at the hearing for the benefit of the Tribunal and the Respondent.

4. The Respondent once again insisted that she had not received this document, and had never been given a proper explanation of how the service charges against her were being calculated and substantiated. If the Respondent is correct that as at the date of the County Court proceedings she had not received a demand for payment complying with the statutory requirements brought in by the Commonhold and Leasehold Reform Act 2002 Sections 152 and 153 and

incorporated into the Landlord & Tenant Act 1985, the Respondent would be entitled to withhold payment of the charge in accordance with the provisions of Section 21A of the 1985 Act.

5. It seems therefore sensible to the Tribunal that this issue be determined by the Tribunal straightaway, although for the reasons indicated below, the Tribunal will make findings as to the reasonableness of the charges levied in any event.

6. On the evidence before the Tribunal, the Tribunal was satisfied that the letter dated 26 January 2009 and its enclosures was not in fact received by the Respondent. The reasons for coming to this conclusion are:

   (i) The Tribunal accepted the oral evidence of the Respondent and found her a credible and honest witness. She made reasonable concessions and did not overstate her case in relation to some of the disputed items of service charge, and her evidence generally had the ring of truth to the Tribunal. There was no-one available to give direct evidence from the Applicant as to how these notices were served, and there was significant doubt about the addressing of the notices in a manner to be referred to below.

   (ii) The proper postal address of the Respondent and the property is 50, Dolland House, Newburn Street, SE11 5LS. The letter of the 26 January 2009 is not so addressed. It is addressed to *"Mrs M Omoyele or Current Homeowner, 50 Dolland House, Vauxhall Gardens Estate, SE11 5LR"*. The postal code is therefore inaccurate and the name of the street has not been supplied. The Respondent told the Tribunal, and the Tribunal accepts, that this is not the first time that this has happened, and that when

post is mis-addressed in this way, it is delivered by the postman to an address in Dolland Street and not Newburn Street.

(iii) This confusion in the address can be found elsewhere in the Applicant's correspondence. A good example is in the letter at page 49 in the bundle dated 21 December 2009, which describes the property address as having the postal code of SE11 5LR (incorrectly) albeit that the address at the top of the letter contains the correct postal code of SE11 5LS.

7. On the balance of the evidence before the Tribunal, and for the reasons indicated, the Tribunal was not satisfied that the demand or demands had been lawfully served upon the Respondent in accordance with the statutory provisions, and that she remains entitled to withhold payment unless and until this defect is cured, insofar as it is capable of being cured – as to which no doubt the Applicant will take its own advice.

8. For these reasons, the Tribunal's primary finding is that on the evidence before it and for the reasons indicated, no sum is at this stage payable by the Respondent to the Applicant.

9. In case this matter should go further, either by way of attempt to cure the procedural defect or otherwise, the Tribunal will nonetheless make findings as to the reasonableness of these service charges in any event, on the basis of the actual material before it. It is proposed to deal with the two service charge years together on an item by item basis, since the self-same heads of service charge were challenged in relation to each year.

Cleaning

10. The lease in this case provides for payment in respect of certain block service charges and in addition service charges relating to the Estate of which the property is part. For the year 2007/8 block cleaning charges of £163.02 are claimed and further £69.86 in respect of the Estate. For the year 2008/9, the figures for block and estate are £189.92 and £108.77 respectively. Mr Edmonds of the Applicant's Home Ownership Department told the Tribunal that there was a daily cleaning rota and that the block received 2 hours cleaning a day which would be supervised by a lady called Samelia Croughwell, who was the supervisor of the block. There was however no evidence from this lady, either in the form of a written statement or oral evidence, and no-one was available to give direct evidence in relation to the actual cleaning. The Respondent, for her part, said that there was no daily cleaning rota kept at the property, as suggested by the Applicant. She accepted that some cleaning was done, but certainly not 2 hours per day, and she thought that the cleaners attended perhaps three times a week for approximately one hour. Generally she said the standard of cleaning was not high and the cost was excessive.

11. It is interesting that in the document headed "Your Service Charges Explained" which is said to have come under cover of the letter earlier referred to, dated 26 January 2009, it is stated that *"As a rule the cleaning of individual blocks are [sic] carried out twice a week with the Estate area cleaned daily. The frequency varies dependant on the size of the block or Estate. If you would like details of the cleaning schedule for your block/Estate please call us".*

12. Of course this is a general guideline only, but it is significant that the claim for the Estate cleaning has risen in one year from £69.86 to £108.77, a very substantial percentage rise for which the Applicant could give no explanation other than to guess that *"There may have been more graffiti."*

13. Doing the best it can on the evidence before it, the Tribunal concludes that it would be reasonable to allow cleaning charges broadly in line with the information supplied in the Applicant's own document referred to and which amount to 40% of the time claimed for (but disputed) by the Applicant. This would reduce the block figures to £65.20 and £75.97 for the two successive service charge years and the Estate figures to £69.86 and £76.85 for the Estate charge. These are the sums determined as reasonable by the Tribunal.

Electricity

14. The Respondent had challenged these figures on the basis that the appropriate invoices had never been supplied. At the hearing, and very late in the day, these invoices were supplied and with one exception, the Tribunal was satisfied on the evidence that the claims made were reasonable and supported. Accordingly for the year 2007/8 the block charge of £81.16 and the Estate charge of £1.48 is determined as reasonable. For the year 2008/09, the block charge as claimed of £75.27 is allowed. For complicated reasons, not altogether understood, the Applicant, through Ms Williams, explained that the Estate charge for that year had been calculated in a different way, resulting in a figure of £32.29. Obviously, an uplift of this kind from £1.48 the preceding year required some

explanation, which she could not really provide. Accordingly the Applicant, reasonably, indicted that it would cap this charge at £1.50 and this is the sum determined as reasonable by the Tribunal.

Window Cleaning

15. A sum had been claimed for this cleaning but the Applicant accepted that it was not appropriate for this property and that the charges, both for the years before the Tribunal and for earlier years would be deducted and the Respondent's service charge account adjusted accordingly. Mr Edmond undertook to ensure that this happened and accordingly the Tribunal makes no further finding under this head.

Lift Services

16. Sums of £36.48 were claimed against the Respondent for both the service charge years. The Respondent was troubled that she never sees any planned maintenance (which is what this charge relates to) and that there are only attendances when the lifts have broken down. The Tribunal considered that she may not always be present when this maintenance occurs, nor be able to distinguish fully what is maintenance and what is repair. The sums claimed are reasonable as to quantum and are allowed.

Repairs and Maintenance

17. The sums claimed by the Applicant were reduced in respect of 2007/8 to £601.94 and £8.09. The block figure had been reduced to that figure because incorporated in the original sum of £617.73 were some items which were statute

barred because of the long delay by the Applicant in raising its demand on the 26 January 2009. That demand covered a period from 1 April 2007 to 31 March 2008 and thus in respect of the earlier charges it was made long after the sums were incurred and in breach of Section 20B of the Act. The Applicant did at the hearing produce a print-out containing details of the various job details which comprised this charge. The Respondent was not in a strong position to challenge these items on a specific basis and on the balance of the evidence, with one exception, these sums were allowed as reasonable. The one sum which the Applicant conceded should be deducted was a charge of £20.12 in relation to replacement fobs. These would have been paid for individually and therefore should come off this figure. The allowed sum is therefore £581.82 for block charges for that year and £8.09. For the following year, 2008/9, the figures of £144.18 and £0.60 are allowed as reasonable.

Estate Grounds Maintenance

18. The sum claimed for the two respective service charge years under this head was £30.37 and £31.58. The Respondent had no real evidence to challenge these charges, which seemed on their face to be reasonable to the Tribunal and which are allowed accordingly.

Insurance Premium

19. For both the service charge years a sum of £153.73 has been claimed. There was no evidence from the Respondent to challenge this sum which again, on its face, appears reasonable to the Tribunal and these sums are allowed.

Management Charge

20. For the year 2007/8 the sum of £172.70 is claimed, for the following year £131.75 is claimed. The Tribunal was informed that these charges are made up of a figure of not less 10% of the total service charge which is recoverable under the Fourth Schedule to the lease and not susceptible to adjustment by the Tribunal since it is not a variable service charge, but is fixed by the lease. However, in relation to each year, a sum of £68 has been added in order to cover central office costs and which is not part of the 10% provided for in the lease. The Tribunal is satisfied that that further £68 would be reasonable, had management of this property been carried out to a good standard. However, the Tribunal was not satisfied that there had been reasonable management for a number of reasons.

21. First, the statement supplied on the 26 January 2009 shows that there was a long delay between the sums incurred and the sums being billed; this was a demand served at the end of January 2009 in respect of a period from 1 April 2007 to 31 March 2008. The Respondent complained, and the Tribunal agrees, that this is unhelpful when it comes to budgeting. Moreover, the letter apologies for the delay which is said to be referable to the new computer system. This may well have been a problem encountered, but it seems to the Tribunal that this is Applicant's rather than the Respondent's problem. Secondly, bound up with this bill, is an inappropriate claim for sums incurred outside the 18 month period provided for in the Act. It leaves leaseholders to pick up this point and it seems to the Tribunal that it would have been preferable had these sums not been claimed at all. Thirdly, the Respondent informed the Tribunal, and the

Tribunal accepts, that there is a poor telephone response when she telephones in order to query matters or seek further information. Fourthly, sums had been inappropriately claimed for which ought not to have been recovered at all, for example the window cleaning charge. Finally, there is the overall point made by the Respondent and which the Tribunal accepts, that there has been poor communication in this case and that after a long delay, leaseholders are expected to pay significant sums which have not been budgeted for. The Tribunal considers that some, albeit modest, reduction of the £68.00 element should therefore follow and reduces this sum to £50 in each year, thereby reducing the sum claimed by £18 in each of the years in question.

Costs

22. The directions at paragraph 8 indicated that matters relating to costs in Section 20C of the Act would be addressed at the conclusion of the hearing. Mr Edmonds on behalf of the Applicant indicated that the Applicant had no intention of pursuing the Respondent for the costs incurred in these proceedings by way of further service charge, and accordingly and in any event the Tribunal directs that no such costs should be recovered, by virtue of Section 20C.

Conclusion

23. For the reasons indicated above, the Tribunal was not persuaded that an appropriate demand had been served upon the Respondent in this case, and found that she was entitled to withhold the service charges demanded. Accordingly, for the purposes of this application, no sums are payable for the service charge years 2007/8, 2008/9. For the sake of completion the Tribunal

has made findings as set out above on the facts before it as to the reasonableness of the individual charges claimed by the Applicant. A direction under Section 20C of the Act is given in favour of the Respondent.

Legal Chairman: **S Shaw**

Dated: **16th August 2010**