

4874



Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00BE/LSC/2009/0771

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 27A LANDLORD AND TENANT ACT
1985**

Premises:

24 Bradley House, Raymouth Street, London SE16 2DL

Applicant:

London Borough of Southwark

Represented by:

Mr Strauss (Litigation Officer)

Witnesses for the Applicant:

Mr Ian Gentry (CCTV Manager)

Mr D. Coombes (Accountant)

Respondent:

Ms. A Oduneye

Date of directions:

27th November 2009

Date of Hearing:

4th February 2010

Tribunal:

Mrs N. Dhanani LLB(Hons)

Mr J. Power MSc, FRICS, FCI Arb

Mr E Goss

1. Background

- A. The application was transferred to the tribunal by an order dated 5th November 2009 made by District Judge Zimmels sitting at Lambeth County Court. (Claim Number: 9LB52035).
- B. The Applicant pursuant to section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) seeks a determination of the reasonableness and liability to pay the service charges for the following years:
- (i) 2007/8
 - (ii) 2008/9
 - (iii) first half of 2009/10
- C. The Property that is the subject of this application is a two bedroom flat on the fifth floor of a purpose built block of flats comprising seventy seven flats located within the Abbeyfield Estate.
- D. The Respondent is the Lessee of a lease dated 5th April 2004 (“the Lease”) made between the Applicant (1) and Oluwatoyin Ajoke Oduneye (2) of a flat known as 24 Bradley House, London SE16 (the property”). The property was demised for a term of 125 years from 5th April 2004 at a ground rent of £10.00 per annum.

2. Directions

- A. On the 27th November 2009 appropriate directions were issued and the case listed for an inspection and hearing on the 4th February 2010. Directions have been followed in the main by the Applicant but the Respondent has failed to follow the directions in the main.

- B. The Applicant prepared bundles and a hearing was held on the 4th February 2010.

3. Application for postponement

- A. On the 29th January the Respondent emailed the Tribunal and sought a postponement on the grounds that she was unwell and in pain having had surgery. The applicant objected stating that the issues are very limited and pointing out that the Respondent had taken no part in the preparatory stages and has not produced a statement in response.
- B. In view of the late application and the non compliance with the directions the Tribunal refused the application for a postponement.

4. Inspection

- A. The Tribunal inspected the property on the morning of 4th February 2010. Mr Strauss was in attendance. Bradley House is a purpose built block of flats erected in the 1950s and forms part of a large estate. The building is of seven storeys accessed by two lifts and three staircases and leading in part to open deck walkways. Floors are of concrete and the block is flat roofed. In more recent times Pvc replacement windows have been fitted together with new rain water goods.
- B. To the front and rear of the block there are areas of open space and landscaping. The Tribunal noted that superficially the block was in fair condition other than for a severe water leak affecting one staircase at ground floor level.
- C. CCTV in a limited format is in operation but restricted to simply serving the main entrance doorways and lift vestibles.

- D. The Tribunal proceeded to Maydew House on the Abbeyfield Estate and were met by Mr Ian Gentry the Applicant's CCTV Manager and Mr Paul Keeley the Applicant's CCTV Technical Supervisor. The Tribunal inspected the CCTV monitoring station and met one of the members of the Concierge staff employed by the Applicant.
- E. There was a problem with the link cables from the CCTV cameras in Bradley House to the monitoring station and so the Tribunal was unable to view the CCTV from Bradley House although the tribunal was able to view the live monitoring of the CCTV from some of the other blocks within the Abbeyfield Estate.
- F. The Tribunal inspected the CCTV cameras in the entrance to the lifts and one of the stairwells at Bradley House, the cameras were encased in metal and seemed on a visual inspection to be reasonably tamper proof.

5. Hearing

A. Attendance

The Applicant was represented at the hearing by Mr Strauss and Mr Gentry and Mr Coombes appeared as witnesses on behalf of the Applicant. The respondent was not present and was not represented.

B. The Applicant's case

- (i) The Tribunal heard from Mr Strauss who reiterated and amplified the Applicant's case.
- (ii) The Applicant relies on:
 - (a) it's County Court Particulars of Claim and it's Statement of Case,

- (b) the witness statement of Gulam Dudhia who is employed in the Applicant's Home Ownership Unit as an Accountant.
 - (c) the witness statement of Mr Ian Gentry who is employed as CCTV Manager for the Applicant's housing stock, including the system that serves Bradley House.
- (ii) The Tribunal heard from Mr Strauss the Applicant's Representative who drew to the Tribunal's attention to the relevant provisions in the Lease. He explained that the Respondent has under the provisions of clause 2(3)(a) covenanted to pay the Service charge contributions as set out in the Third Schedule to the Lease. Paragraph 6 and 7(6) of the Third Schedule provides that the Service Charge payable by the Respondent shall be a fair proportion of costs and expenses of or incidental to the maintenance and management of the building and the estate. He contends that the CCTV system is embedded in the structure of the building and so it forms part of "the building" as defined under the Lease. He further contends that the Lease defines the building as including "...other property appertaining exclusively thereto..." and the CCTV system falls within this part of the definition of the building, and as such the Respondent is liable for the costs and expenses incurred in connection with the CCTV.
- (iii) The Applicant uses a bed weighting method for apportioning the major works charges whereby each flat is assigned a weighting of 4 units with an additional unit for each bedroom. Since the Applicant's flat has 2 bedrooms it has a bed weighting of 6 units. There are a total of 440 units within the block and so the Applicant's contribution towards the service charge is 6/440 of the cost.
- (iv) Mr Strauss responded to the Respondents allegations that the CCTV is not functional by stating that it is an internal system that cannot capture events outside the building. The 2008 gun related incident took place near the building and not in the

building and so it was not captured by the CCTV. He stated that the bin stores are also external and there is no CCTV monitoring of this area.

- (v) Mr Strauss explained that the CCTV system is a monitoring system for monitoring the entrances and lift hallways whereby the concierge can alert the Police if necessary in order to protect the residents. The CCTV is a deterrent against any antisocial behaviour such as gangs of youths gathering or drug addicts gaining access and intimidating residents. Although he accepted that the system does not record the CCTV footage but is more of a visual aid for the concierge and so it does have its limitations. He stated that he had spoken with the area housing office who had confirmed the CCTV system was working when the Respondent claims it was not working.
- (vi) Mr Gentry confirmed his witness statement and gave evidence. He stated that he believed that the CCTV was installed about 10 to 15 years ago in Bradley House. The CCTV is monitored live from 6am to Midnight seven days a week. He stated that there are five CCTV cameras in Bradley House each monitoring the entrances and lift hallways. He explained that the concierge team sends a weekly report on the CCTV system by email to him and they if they become aware of a problem with the system the concierge team notifies him and he calls the engineers to attend to the system.
- (vii) Mr Gentry explained that although there has been an intermittent fault with the Bradley House CCTV system since Sunday 31st January the system finally broke down today and he was made aware of the malfunction. He stated he has reported the fault to the engineers who will attend tomorrow. He claimed that apart from the current fault he is unaware of any repairs for the CCTV system at Bradley House being reported over the last few months but could not comment on the time prior to that.

- (viii) Mr Coombes confirmed that Mr Dudhia could not attend at the hearing but that he is employed by the Applicant in a similar role to Mr Dudhia. He explained that as the concierge staff are located in Maydew House with the monitoring station an extra weighting has been applied to the service charge element for Maydew House only. This was identified on page 56 of the bundle that itemised the cost per block of the concierge service and the actual apportionment to Bradley House and to number 24 Bradley House in particular. The amount included in the service charge for the CCTV relates purely to the salary costs of the concierge. A discount of 20% is apportioned to those costs because the concierge staff spend approximately 20% of their time away from the monitors dealing with other matters and walking around the estate. The 20% is not charged to any leaseholders service charge account. The 20% cost is borne by the council's general housing fund. The repairs to the CCTV system are included in the unitemised repairs spending head.
- (ix) Mr Strauss provided the following explanation for the items specified on the service charge accounts:
- (a) Insurance premium - is a borough wide insurance policy and costs are apportioned based on the bed weighting element for individual flats. The Insurance The Applicant decided to use a borough wide policy that is arranged with Zurich to provide better value to its residents.
 - (b) Care and Upkeep - relates to the daily cleaning of the building and the estate. The area office and the concierge staff monitors the cleaning staff
 - (c) Door Entry Phone - cost relates to the cost of repairs and maintenance to the door entry system
 - (d) Garden Maintenance – this relates to the cleaning of the grassed areas and drains
 - (e) Lifts – there are two lifts in Bradley House and this item relates to repairs and maintenance of these lifts

- (f) Unitemised Repairs – this relates to minor responsive repairs to the building such as attending to broken windows, doors etc and encompass the costs of maintenance to the CCTV system and the cost of repairs to parts of the estate such as the estate roads etc.
- (g) Estate Lighting Electricity – this is the metered cost for the building and the estate and also includes the cost of repairs.

C. The Respondents case

- i. Since the Respondent has not submitted a Statement in response as required by the directions and failed to appear at the hearing the Tribunal referred to the Respondents defence filed in respect of the County Court claim and the Respondents email of the 29th January 2010.
- ii. The Respondent disputes the Service Charges stating that she has only been provided with an estimated bill and does not know the exact amount owing.
- iii. She claims she pays for the CCTV every year but the system in her building is not working. She states her dispute relates to the CCTV attached to Bradley House and not the whole system. She claims the camera attached to her building at the back by the bin room is rusted. She refers to an incident in 2008 involving a gun shot and a car being broken into which was parked in front of the rusty camera but the camera failed to capture the incident.

6. The Lease

- A. The Lease defines:

- (i) “the building” as “*..the building known as 1 to 77 Bradley House including any grounds outbuildings gardens yards or other property appertaining exclusively thereto*”,
- (ii) “the estate” as “*..the estate known as The Abbeyfield Estate including all roads paths gardens and other property forming part thereof*”
- (iii) “the flat” as “*...Number 24 on the fifth floor of the building and including the ceilings and floors of the flat the internal plaster and faces of the exterior walls of the flat and the internal walls of the flat ...but excluding all external windows and doors and window and door frames the exterior walls roof foundations and other main structural parts of the building*”

B. By virtue of Clause 2(3) of the Lease the Applicant covenants to pay the service charge as set out in the Third Schedule to the Lease.

C. Paragraph 2(1) of the Third Schedule of the Lease requires that before the start of each year the Applicant make a reasonable estimate and to notify the Respondent of the estimated service charge payable by the respondent that year. The Respondent is required by paragraph 2(2) of the Third Schedule to make four equal payments in advance on account pursuant to an estimate provided by the Applicant. The four payments are to be made on 1st April, 1st July, 1st October and 1st January.

D. Paragraph 6(1) of the third Schedule requires that the service charge payable by the Respondent shall be a fair proportion of the costs and expenses set out in paragraph 7 of the Third Schedule incurred in the year.

E. Paragraph 7 sets out the costs and expenses that may be included in service charge payable by the Respondent. These include (amongst other items) the following:

- (i) The costs and expenses incurred by the Applicant in providing amongst other items the following:

- i. keeping in repair the structure and exterior of the flat and of the building (including the drains gutters and external pipes) and to make good any defect affecting the structure,
- ii. keeping in repair the common parts of the building and any other property over which the Applicant has any rights under the First schedule such as the estate roads, gardens the pipes sewers drains etc
- iii. painting all outside and internal common parts of the building
- iv. the provision of a lift, entry phone, caretaking, lighting and cleaning of common areas, the maintenance of estate roads and paths, estate lighting, maintenance of gardens or landscaped areas and any un- itemised repairs
- v. the maintenance and management of the building and the estate
- vi. the employment of any managing agents in respect of the building or estate and if no managing agents are employed the Applicant may add 10% to any of the above items for administration

F. The Applicant under clause 4 of the Lease covenants inter-alia to keep in repair the structure and exterior of the flat and of the building and to make good any defect affecting the structure. In addition the Applicant covenants to keep in repair the common parts of the building and the estate.

7. The law

Section 27A of the Act provides:

“(1)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.

(2) Subsection (1) applies whether or not any payment has been made."

Section 18(1) of the Act provides that, for the purposes of the relevant parts of the Act, "service charge" 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 18 further provides:

"(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose—

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period."

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 or works 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 or subsequent charges or otherwise ”.

8. Decision

- i. Having considered carefully the evidence and submissions made to us we are of no doubt that the costs submitted by the Applicant in the service charge accounts 2007/08,2008/09 and the estimated service charge account for 2009/10 are fair and reasonable. Having undertaken an inspection of the building we are satisfied that the services provided are of a reasonable standard. Although the CCTV for Bradley House was not working during our inspection we accept that this was unusual occurrence. We find that the cost of providing a monitored CCTV system to be reasonable bearing in mind that the system provides 16 hours of live monitoring per day throughout the year. We accept the evidence submitted on behalf of the Applicant.
- ii. We find the Respondent liable to pay to the Applicant the following amounts in respect of the service charge less any interim payments already paid by the Applicant to the Respondent:
 - (a) for the service charge year 2007/08 £1229.69,
 - (b) for the service charge year 2008/09 £1315.01, and
 - (c) for the service charge year 2009/10 £ 1267.98 in respect of the estimated service charge.
- iii. The payment is due in accordance with the Lease in advance by four equal payments made on the 1st of April, 1st of July, 1st of October and 1st of January.

9. Section 20(c) and the reimbursement of fees

- i. Mr Strauss confirmed that the Applicant has a policy not to include the costs incurred in connection with such proceedings in the service charge and gave the Tribunal an undertaking to that effect.
- ii. The Applicant submitted an application in respect of reimbursement of fees and contends the reimbursement of fees should follow the event, and contends that the Respondent's general non compliance with the Tribunal's directions should be taken into account.
- iii. The Tribunal has a discretion as to the incidence of these fees. The Applicant has had success in relation to the application. In our judgment bearing in mind the Respondent's non compliance with the Tribunal's directions the fairest course is that there be an order in favour of the Applicant as to the reimbursement of the LVT application and hearing fees by the Respondent in the sum of £175.

Chairman Mrs N Dhanani

Date 22nd February 2010