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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

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

LANDLORD AND TENANT ACT 1985 SECTION 27A and
Section 20C

LON/00BE/LSC/2010/0595

Premises: 81 Latimer, Beaconsfield Road, London SE17 2EW

Applicant: London Borough of Southwark

Respondent: Ms O Ajose-Adeogun

**Date of
Hearing: 15 November 2010**

**Tribunal: Ms M Daley LLB (hons)
Mr M Taylor FRICS MAPM
Mrs J Clark CQSW JP**

Attendance for the Applicant:

Mr Orlando Strauss-Litigation

Mr Dudhia- Finance

Mr Gordon Hynes- Heating Inspector

Attendance for the Respondent:

The Respondent appeared in person

Date of Decision: 15 November 2010

Background

(a) The case involves a county court claim for arrears of service charges in the sum of £1035.94 for the period 2008/09, which was transferred from the Lambeth County Court by order of the court made on 2 June 2010, to enable a determination to be made on the reasonableness and payability of the service charges pursuant to the provisions of section 27 A of the Landlord and Tenant Act 1985.

The Law

Section 27A(1) 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 18(1) of the Landlord and Tenant Act 1985 (“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 19(1) 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.

The Factual Background

(a) The property, which is the subject of this application is a five bed roomed three-storey maisonette situated on the Aylesbury Estate.

(a) The Respondent is the leaseholder of the premises.

(b) The Applicant, the London borough of Southwark is the freehold owner of the premises.

The Hearing

1. At the hearing the chair Ms Daley, stated that she wished to deal with a matter of perceived conflict before the hearing began. She informed the parties that she had worked for the Respondents as a lawyer, until September 2004. She had not undertaken any legal work for the Applicant since September 2004. She had also not undertaken any work on behalf of the Respondents Leasehold Management and she knew none of the employees, who dealt with this matter. Both parties were asked whether they consented to her dealing with this matter, both the Applicant and the Respondent indicated that they had no objections.

2. At the hearing, the Applicant's representative Mr Strauss informed the Tribunal that the major grounds for the dispute was as a result of the heating element of the charges, the Tribunal were referred to the actual charges (page 150) of the bundle. The total service charges were £2584.52, which included the following:-

- Building Insurance £320.42
- Heating - £1628.22
- Lighting and Electricity £53.16
- Estate ground maintenance £30.91
- Care and Upkeep £262.05
- Responsive(minor) Repairs £289.76

3. The Tribunal asked for further information of how the heating charges were made up, Mr Strauss informed the Tribunal that the Respondent's property is connected to the Aylesbury Boiler House which provides a district heating system for all of the properties on the Aylesbury Estate. Mr Strauss was unable to confirm the exact number of properties on the estate, which he believed to be

over 1000. The Aylesbury was built over 40 years ago, and over time because of a number of factors the heating system had become less effective and more expensive to maintain and to run.

4. The Applicant apportioned its charges by having a standard charge for each property regardless of the size, of 4 units, additional units were then allocated to the property based on the number of bedrooms, so for example in the Respondent's case, as she had a five bed roomed property, this meant that there were 9 units attached to her property. The Respondent's block had 204 units. This meant that her service charges were allocated as 9/204. This was described as a "Bed-Weighting" system. This was an accepted method of apportionment, which the Applicant stated had been agreed with the Leaseholder Council (a leaseholders' representative body)
5. The Tribunal were informed that there was a slightly different system applied for allocating heating cost. For example within the Aylesbury there were different gradings of heating. Some heating provided a full service akin to central heating whilst with other properties were heated to a lower standard, akin to background heating. This was the case for the Respondent, the weighting attributed to her heating was 2.5 her share of the heating was $9 \times 2.5 = 22/37746$.
6. The Tribunal asked questions about her obligations to pay for the heating and hot water under the lease. This was set out in The Lease, which provided a definition of services at page 2 of the lease, which included the central heating and hot water and 6(i) and clause (6(1) and 7 of the Third Schedule of the Lease that imparted an obligation on the lessee to contribute to the cost of the service.
7. The Tribunal briefly heard from Mr Dudhia who explained that the charges included the cost of heating and hot water, the maintenance of the boiler and the boiler room equipment and in addition the non boiler room charges associated with the provision of heating such as local repairs to the heating equipment to Latimer house and to each of the properties in Latimer house. These charges were shared in accordance with the weighting formula applied in such a way that the council also contributed for the tenanted flats. Mr Dudhia stated that the

charges for 2008/09 had been higher than for previous years because of repairs however the estimate for 2009/10 and 2010/11 was in the region of £1200 for this property.

8. The Respondent informed the Tribunal that she had been a tenant of the premises since 1993, and had purchased the property in 2005. She had been aware of issues with the heating and hot water whilst she was a tenant, and these issues centred around having problems with the heating such as leaking to the radiators and radiators which failed to work. These problems had been reported although they had not been effectively remedied. In 2006 (The tenant was not sure of the exact date, the heating in the ground floor living room had failed, and also the ground floor bedroom.

9. The Respondent stated that she had reported this and sometime in 2007, the Council's contractor T Brown had visited and informed her that all of the radiators needed replacing. Nothing further had been done until September 2010 when one of the ground floor radiators had been removed and not replaced. Ms Ajose-Adeogun also informed the Tribunal that there had been issues with a leak from the property above, (which was the subject of a counter-claim in the county court). Ms Ajose-Adeogun stated that as a result of the problems with the flat and the heating, she had decided that she would not pay the service charges, as it was not fair that she had to contribute to the heating, when she was not getting a service and had to supplement the system by paying for additional heating.

10. Mr Strauss in reply stated that the Respondent had not fully complied with her obligation to provide access. Ms Ajose-Adeogun denied this and stated that she worked full-time, but was fully contactable by mobile to provide access on appointment.

11. Mr Strauss called Mr Hynes a heating inspector, who stated that he had inspected the Respondent's property on 6 October 2010, he had found the property to be warm, the only issue with the heating was that one of the valves to the radiator was turned off, and there were problems with leaking to the cold water tank. Ms Ajose-Adeogun stated that she was aware that the valve was turned off as she had done this herself as the radiator was near the kitchen and it had been too warm. She asked Mr Hynes to confirm that there was a missing radiator, which had previously been removed. He agreed that this was the case, and stated that the Applicant needed to do Asbestos checks prior to replacing the radiator. Mr Strauss did not accept that the heating bills provided by the Respondent were particularly high. He cited that the heating was background heating and this was the basis of the charge.
12. In summary Mr Strauss informed the Tribunal that the Respondent was fully aware of the fact that the property was connected to the district heating before purchasing the property. He considered that the charges were reasonable in all of the circumstances, and asked that the Tribunal make an order to that effect. Mr Strauss stated that although the Applicant would not make a charge to the Respondent's service charge account for the cost of appearing at the Tribunal, he requested that the Tribunal make an order for the payment of the hearing fees.
13. Ms Ajose- Adeogun resisted this application and stated that the charges had increased considerable and referred the Tribunal to her electricity bill, it was noted that the bill also included cooking and lighting and the other domestic supply at the premises, and the estimate was approximately £1300 for the year. In her view, the Applicant should not have brought this case.

The Decision of the Tribunal

14. The Tribunal having listened to the evidence from both parties and having considered the documentary evidence and the submissions. make the following findings-:

15. The Tribunal noted that although there were other charges that made up the service charge bill these were not objected to by the Respondent and that the main item of dispute was the cost of the heating and hot water. The Tribunal find that although there are issues with the effectiveness of the heating the apportionment of the cost is reasonable and as such if the heating had worked effectively that the total sum was reasonable and payable, (albeit that it was an expensive system to run and maintain). The Tribunal note that given the cost of the heating, there was not an altogether unreasonable expectation on the part of the Respondent, that there should be no need for additional heating, this was not possible, given the age and effectiveness of the district heating system and given that the Respondent had lived in the property prior to purchasing the property, this was not altogether surprising.
16. The Tribunal note that there was another issue concerning the degree to which the supplied heating system worked. The Tribunal noted that it was agreed that a radiator had been disconnected and removed, and that although the Tribunal did not have information on the number of times the heating had been reported as faulty at the Respondent's premises, there were a number of repairs at Latimer house to individual radiators which supported the Respondent's assertions. We accepted that in the service charge year 2009/10 two radiators failed to work or worked only intermittently, given this we find that the unit charge ought to be adjusted to reflect this, The Tribunal have adjusted this to 7 units/22. The appropriate charge should be reduced by £230 to reflect this. We find that in respect of the service charge year 2009/10 that the sum of £805.94 is reasonable and payable.

The Tribunal having considered the Application for reimbursement of fees under *Regulation 9 of The Leasehold Valuation Tribunal (Procedure) (England) Regulation 2003*. Determine that as the Applicant had substantially succeeded in its application that the Respondent ought to reimburse a proportion of the fees, and determine that the sum to be reimbursed should not exceed £50.00.

Signed *M. Deby*

Dated 15-11-2010