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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/00AK/LSC/2011/0733

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

Applicants:	Salmons Brook (Edmonton) No.2 Residents Company Ltd
Respondent:	Ms E Joseph
Property:	49 Grilse Close, Edmonton, London, N9 0UU
Date of Hearing	9 February 2012

Appearances
Applicant
Mr A Jenner — Hillcrest Estate Management Ltd, Managing Agents

Respondent
Ms Joseph — Leaseholder

Leasehold Valuation Tribunal
Mr I Mohabir LLB (Hons)
M S Coughlin MCIEH
Mr A Ring

for statutory interest was made on the service charge arrears sought against the Respondent. The administration charge was challenged by the Respondent and the Tribunal's determination in relation to this matter is made under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (as amended).

8. The heads of expenditure challenged by the Respondent were cleaning, management fees, maintenance of the entry phone system and general repairs. Each is considered in turn below.

The Law

9. The substantive law in relation to the determination regarding the service charges can be set out as follows:

Section 27A of the Act provides, *inter alia*, that:

> *"(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."*

Subsection (3) of this section contains the same provisions as subsection (1) in relation to any future liability to pay service charges. Where the reasonableness of service charge costs falls to be considered, the statutory test is set out in section 19 of the Act.

Hearing and Decision

10. The hearing in this matter took place on 9 February 2012. The Applicant were represented by Mr Jenner of Hillcrest Estate Management Ltd, the managing agents. The Respondent appeared in person.

Cleaning

11. The estimated expenditure for cleaning was placed at £3,000. The Respondent complained that the standard of the cleaning was poor. The stairs were not

cleaned and the skirting boards were dirty. She said that the cleaner attended once a week for no more than 1 hour to mop the 3 floors in her block.

12. Mr Jenner conceded that the standard of the cleaning had been poor. As a consequence, a new cleaner would be appointed from February 2012. He said that the Respondent's block comprised of 30 flats with 4 staircases. Although there was no cleaning contract (just a written instruction) the cleaning duties included the removal of dirt, cobwebs, cleaning the floors, handrails and bannisters and the changing of light bulbs when necessary. One hour was allowed to clean each staircase per week.

13. In the light of the concession made by Mr Jenner that the standard of cleaning had been poor thereby necessitating the replacement of the cleaner, the Tribunal was bound to find that part of the estimated cleaning costs had not been reasonable. Mr Jenner was not prepared to say what amount the Applicant was prepared to concede as being reasonable. In the absence of any evidence, the Tribunal, using its own expert knowledge and experience, determined that an estimated figure of £2,000 was reasonable.

Management Fees

14. The estimated management fees were £4,723.11, including VAT. Mr Jenner said that his firm charged a fee of £150 plus VAT per unit. The Property Manager is a Mr John Russell (based at their Ingatestone office) who should inspect the property on an ad hoc basis. The Applicant also relied on the Directors, gardeners and cleaners to report any problems to his firm.

15. The Respondent complained about three management failures on the part of the Applicant. Firstly, she said that the communal front door to her block had not been secured since March 2011. This had resulted in young people entering the building and smoking drugs on the stairs. She asserted that the front door still had not been repaired at the time of the hearing. The Respondent argued that the Applicant had been on notice about this problem as long ago as 23 May 2011, when she initially complained about this matter.

She followed up this complaint with a further e-mail dated 24 August 2011. Both of these e-mails were before the Tribunal in evidence.

16. Mr Jenner conceded that no repairs had been carried out to the front door since February 2011. He further conceded that no checks had been made about the condition of the front door by his firm. He accepted that the front door was in disrepair.

17. Secondly, the Respondent complained that the Applicant, through its managing agents, had failed to remove graffiti in the building and relied on the photographic evidence she adduced. Again, Mr Jenner conceded that graffiti had not been removed.

18. Thirdly, the Respondent repeated and relied on the (conceded) failure by the Applicant to monitor the standard of cleaning. Once again, this point was conceded by Mr Jenner.

19. Each of the management failures complained of by the Respondent were conceded by Mr Jenner. It follows, therefore, that the Tribunal found that the estimated expenditure for management fees had not been reasonable. It was clear to the Tribunal that the substantive complaints made by the Respondent had been long standing and serious. As long ago as 23 May 2011, the Applicant's managing agent had notice of these matters and, as acknowledged by Mr Jenner, failed to remedy them. In the Tribunal's judgement, there generally appeared to be little or no effective management of the property on a day-to-day basis. Accordingly to reflect this, the Tribunal allowed the sum of £100 plus VAT per unit as being reasonable for the estimated management fees.

Entryphone System

20. The budget estimate for maintaining the entryphone system and television aerials was £150. The Respondent asserted that her entryphone had not worked since May 2011. She referred the Tribunal to her e-mail of 24 August 2011 when she complained to the managing agent about this matter.

21. In reply, Mr Jenner said that the Respondent would not provide the contractor with a convenient date on which to carry out the repairs. He referred the Tribunal to an internal e-mail dated 27 October 2011 where it is recorded that the contractor, Mr Webb of R Webb Securities, had spoken directly to the Respondent to arrange an appointment and she had only offered a Sunday as being convenient. He did not work on a Sunday. Apparently, Mr Webb left matters on the basis that the Respondent should contact him to arrange a convenient time and date to carry out the repairs. This conversation was denied by the Respondent. It was common ground that the repairs to the Respondent's entryphone system were never carried out.

22. The Tribunal made no finding as to the alleged conversation that took place between the Respondent and Mr Webb as it was not necessary to do so and nothing turned on this. The Tribunal found that the budget provision for the estimated expenditure of £150 to repair and maintain the entryphone system had been reasonably incurred and was reasonable in amount. It was common ground that the present system is approximately 25 years old and requires replacement. Until such time, it follows that there should be a budget provision to repair and maintain the system and that a sum of £150 was almost *de minimis*. Accordingly, it was allowed as claimed by the Applicant.

General Repairs

23. Of the budget estimate of £750, the only item of expenditure challenged by the Respondent was £61 paid to Elite Property Services to check a strip light, replace the bulb and starter outside 46 Grilse Close. Although this sum represented actual expenditure incurred in 2011 and was not strictly before the Tribunal in this matter, nevertheless, both parties were content for the Tribunal to make a determination on this issue.

24. The Respondent's bare submission was that the cost was excessive and, therefore, unreasonable.

25. Mr Jenner said that the light posed a health and safety issue and the repair had been carried out in response to the tenant's complaint. It could not wait for the cleaners to carry out this work.

26. The Tribunal accepted Mr Jenner's evidence and found that this expenditure had been reasonably incurred and was reasonable in amount. In the Tribunal's judgement, a call out charge for a contractor to attend to deal with the defective light would have been approximately £50 in any event. Accordingly, it was allowed without any deduction.

Schedule 11 – Administration Charges

27. The sum of £120 was claimed by the Applicant as an administration charge paid to the managing agent to pursue the Respondent for these service charges. In broad terms, the Respondent submitted that she should not have to pay this sum because of her long-standing complaints, which had not been resolved by the Applicant and formed the subject matter of these proceedings.

28. It is now accepted practice within the Tribunal that the test of reasonableness imposed by paragraph 2 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (as amended) is essentially the same test imposed by section 19 of the Act.

29. In the present matter, the Tribunal found that the administration charge of £120 claimed by the Applicant had not been reasonably incurred for the following reasons. It was clear to the Tribunal that the Applicant had made no real attempt to engage with the Respondent to resolve the complaints, about which, it was plainly on notice. The Applicant had simply issued proceedings against the Respondent. The issue of proceedings is a matter of last and not first resort. The Tribunal was satisfied that Respondent had acted reasonably by promptly conceding the sum of £504. As an act of good faith, the Respondent had sent a cheque for this amount to the applicant, who had returned it. Even at this stage, it appears that the Applicant had failed to take any steps to attempt to engage with the Respondent to resolve the remaining sum in issue. Moreover, on the substantive issues, the Respondent had

succeeded in whole or in part. For these reasons, the administration charge of £120 was disallowed.

Section 20C & Fees

30. When asked by the Tribunal, the Respondent declined to make any application under section 20C of the Act. In any event, it is open to her to subsequently make this application in relation to any of the costs that the Applicant may have incurred in these proceedings.

31. Mr Jenner told the Tribunal that total fees of £220 had been paid to have these proceedings issued and heard. He sought an order that the Respondent should reimburse the Applicant these fees. The Tribunal declined to make such an order for the same reasons set out in paragraph 29 above in relation to the administration charges. These fees have already been charged to the Respondent's account and should, therefore, be removed.

CHAIRMAN: Mr I Mohabir LLB (Hons)

DATE: 5th March 2012