

LON/00AH/LSC/2006/0226
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON AN APPLICATION UNDER SECTION 27A & 20C OF
THE LANDLORD AND TENANT ACT 1985, AS AMENDED.

Address 49F Grange Park, Ealing, London W5 3PR

Applicant: Mr Mohamed Abdelhalim

Respondent Mr Christo Evangelinos

Determination on Paper 28 November 2006

Tribunal Miss J Dowell Chairman
Mr J R Humphrys FRICS

IN THE LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF :

**49F GRANGE PARK,
EALING, LONDON W5 3PR**

B E T W E E N :

MR MOHAMED ABDELHALIM

Applicant

- and -

MR CHRISTO EVANGELINOS

Respondent

THE APPLICATION

1. This is an application dated 29th June 2006 received by the Tribunal on 3rd July 2006. The issues in dispute are the Applicant's liability to pay and the reasonableness of service charges for the year ended 31st December 2005.

SUMMARY OF STATUTORY PROVISIONS

2. The Landlord and Tenant Act 1985 as amended is herein after referred to as "the Act". All references are to the Act.

Section 18 – Meaning of "service charge" and "relevant costs"

- (1) "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.
- (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 – Limitation of service charges: reasonableness

- (1) 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.
- (2) 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.

Section 27A – Liability to pay service charges: jurisdiction

- (1) An application may be made to a Leasehold Valuation Tribunal for a determination on 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) Sub section (1) applies whether or not any payment has been made.
- (3) An application may also be made to a Leasehold Valuation Tribunal for a determination of whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –
 - (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under sub section (1) may be made in respect of a matter which
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

PRE TRIAL REVIEW

3. A pre trial review was held on 26th July 2006. The individual service charge items in dispute and were identified those for the year ended 31st December 2005. The service charge costs being challenged by the Applicant are:

(a)	Insurance management/admin fee	-	£ 6.57
(b)	Emergency communal hall flooding call	-	£13.50
(c)	Internal communal cleaning	-	£43.75
(d)	External grounds maintenance	-	£10.50
(e)	Removal of communal grounds rubbish	-	£ 2.00
(f)	Miscellaneous/bulbs	-	£ 0.74
(g)	General management/admin charge	-	£45.00

THE DETERMINATION

4. The Tribunal determined this application without an oral hearing pursuant to regulation 13 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003. The Tribunal considered written representations from both parties.

THE LEASE

5. The lease in respect of 49F Grange Park, London W5 is dated 16th August 2002 and made between Christo Evangelinos (1) and Athanasios Dedes (2) for a term of 99 years from 27th May 1994.
6. The relevant provisions of the lease in respect of service charges are as follows:
- (a) The service charge year runs from 1st January to 31st December (clause 4(2)(a)).
 - (b) The lessee is required to contribute annually or quarterly 5% of the costs expenses maintenance cleaning outgoings and matters mentioned in the Fourth Schedule which shall be ascertained as follows:

“The Lessor or his managing agent shall as soon after the last day of December in every year or quarterly in the last day of every three-month period as may be practicable to them issue certificate as to the amount payable by the Tenant and such certificate shall except as regards a manifest errors contained therein be conclusive and binding on the Tenant who shall thereupon pay the amount so certified promptly to the Lessor.” (Clause 4(2)(a)).

- (c) Clause 4(i) provides that the tenant shall have the right to inspect the relevant receipts or payments constituting the expenditure incurred by the lessor under the lease.
- (d) The lessor’s obligations in respect of maintenance and repair are set out in clause 5(3).

- (e) The Applicant's share of total service charges for the building is 5% (clause 1).

INSURANCE, MANAGEMENT/ADMINISTRATION FEES (£6.57) AND GENERAL MANAGEMENT/ADMINISTRATION CHARGE (£45)

7. Mr Abdelhalim's complaint about these charges was that no receipts had been made available to him and that the standard of management was very poor. Mr Evangelinos in his letter of 9th September 2006 to the Tribunal explained that the lease provided for a management fee which was charged at £45 per annum per flat plus the managing of the insuring of it as part of the management provision which was charged at 10% of the total insurance premium i.e. £6.57.

Decision

8. We accept that the lease does allow for the cost of managing the building (Fourth Schedule, paragraph 3) however we are not satisfied that any costs have been incurred by the landlord who is a resident landlord who has not employed managing agents and appears to have charged a management fee of £45 to each flat for management and 10% of the cost of the insurance policy.
9. Further the lease provides that the tenant has the right to inspect the relevant receipts of all payments constituting expenditure. (Clause 4(i) of the lease).
10. We are not satisfied that the landlord has incurred management costs and in any event has not provided receipts. We therefore determine that Mr Abdelhalim is not liable to pay the items (a) and (g) above for management costs.

EMERGENCY - COMMUNAL HALL FLOODING (£13.50)

11. Mr Abdelhalim's case is that there was no flooding to communal areas and that he is not liable for this charge. Mr Abdelhalim also complained that he was not consulted about these works but Mr Evangelinos said it was an emergency. Mr Evangelinos said in his letter of 9th September 2006 that this was an emergency call for a flooding in the communal hall at a cost of £270 and he produced an invoice to support this.

Decision

12. We have seen the invoice from Calthorp Response Maintenance dated 20th April 2005 for a total of £270.01 which describes the works as "Attendance for emergency call regarding communal ground floor level." We are satisfied that the Applicant is liable to pay a service charge in respect of these works. The lessor is responsible for these works under clause 5(3) of the lease and the lessee is liable to pay his share of the costs under paragraph 1 of the Fourth Schedule of the lease. We are satisfied that these costs were reasonably incurred.
13. There is no requirement for the landlord to consult before carrying out emergency works where the costs result in the relevant costs to any tenant being less than £250 (Service Charges (Consultation Requirements) (England) Regulations 2003).

INTERNAL COMMUNAL CLEANING (£43.75) AND EXTERNAL GROUNDS MAINTENANCE (£10.50)

14. Mr Abdelhalim's complaint when he made his application was that he had not seen receipts for this work. He also stated that he hardly saw any cleaning and if he saw it once every month or two it was always just for half-an-hour hoovering "for which the freeholder is charging an arm and a leg". Mr Evangelinos explained that he had written to Mr Abdelhalim's solicitor and sent a copy of a receipt from Cleaning and Maintenance Services dated 8th January 2006. He explained that the regular cleaning of the internal communal areas and the seasonal external grounds and path cleaning and maintenance were arranged by him. He stated that the internal communal area of 49 Grange Park was of a high standard, floors and staircases laid with very expensive carpets and hardwood flooring. The walls were decorated in an expensive manner and that to maintain this to an appropriate standard he had agreed with the leaseholders to employ a reliable and trustworthy person. He explained that this person came in almost every day. In his opinion after making initial enquiries a few years ago, the costs would have been tripled to the current costs if he had employed a caretaker/cleaner/management company. He said the external communal paths/gardens were also of a high standard and cleanliness and by attending to their regular and general upkeep and a thorough clean three or four times a year it was possible to keep them to a very high standard.

Decision

15. These are charges for which the lessee is liable to pay under paragraphs 1 and 2 of the Fourth Schedule of the lease. The Tribunal did not inspect the exterior and/or communal interior of this property but we accept that no other lessee had complained about either the standard of the work or the cost. Having considered the invoice dated 8th January 2006 from Cleaning and Maintenance Services and from our own knowledge and experience of the cost of cleaning and external maintenance, the total sum of £1,085 has been reasonably incurred and the total sum of £54.25 is payable by Mr Abdelhalim.

REMOVAL OF COMMUNAL GROUND RUBBISH (£2) AND MISCELLANEOUS/BULBS (£0.74)

16. The Applicant's complaint was that he had no rubbish bin and that the light bulbs were not working. The Applicant also complained that there were no receipts for these sums. Mr Evangelinos stated that the common parts were maintained and light bulbs replaced during the year and that rubbish had been disposed of from the communal parts.

Decision

17. Unfortunately, as the landlord had not been able to give any receipts to support these expenses which had been requested by the Applicant we have no alternative but to find that the Applicant is not liable for these payments as the landlord has not complied with the requirements of clause 4(i) of the lease.

APPLICATION UNDER SECTION 20C OF THE ACT

18. In his application form Mr Abdelhalim had indicated his intention to apply to the Tribunal for an order preventing the landlord from recovering any costs incurred in connection with the proceedings before the Leasehold Valuation Tribunal as part of the service charge. The landlord made no submissions to us in this respect and on the basis of the letter sent by the landlord in person to the Tribunal it did not appear that the landlord had incurred any costs which he would be able to add to the service charge. In addition we were concerned that the landlord had not produced a certified summary of relevant costs for the accounting period in question. If there are more than four relevant dwellings in order for a summary to be valid a qualified accountant must certify that the summary is a fair summary. The Applicant has been partially successful in his application to the Tribunal and in the circumstances we determine that the landlord may not recover any costs incurred in connection with these proceedings as part of the service charge.

.....
Jane Dowell
Chairman

Dated this | | day of December 2006

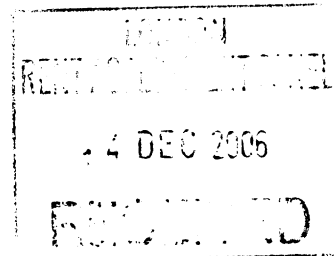
**16 Whaddon House
William Mews
London SW1X 9HG**

**Tel: 020 7235 9215
Fax: 020 7235 2429
Mobile: 07850 001039**

Ms C Stone
Clerk to the Leasehold Valuation Tribunal
10 Alfred Place
London
WC1E 7LR

11th December 2006

Ref: LON/00ADC/2006/0226



Dear Caroline

Re: 49F Grange Park, London W5 3PR

I enclose:

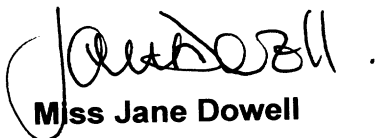
1. The Tribunal's decision dated 11th December 2006 in the above case.

Could you please ensure that you add a front sheet to this decision before it is sent to the parties.

Please do not hesitate to contact me if I can be of any further assistance in this matter.

Kind regards.

Yours sincerely,


Miss Jane Dowell

Enc.