LON/00AG/LSC/2006/0382

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985 SECTION 27 & 20C

Applicant: Ms Debora Vecchio

Respondent: London Borough of Camden

Re: 23 Lydford House, Royal College Street London NW1 0SA

Application received: 31 October 2006

Hearing date: 26 January 2007

Appearances: Ms D Vecchio (Applicant)

Mr D Oulyemi (Respondent)
Ms E Howells

Members of the Leasehold Valuation Tribunal:

Mrs T I Rabin JP
Mr M Mathews FRICS
Ms S Justice

23 LYDFORD HOUSE ROYAL COLLEGE STREET LONDON NW1 0SA

FACTS

1. The Tribunal was dealing with an application by the Tenant, Ms Debora Vecchio ("the Applicant"), for a determination whether the service charges levied by the Respondent landlord, London Borough of Camden, in respect of some of the major works undertaken at Lydford House Royal College Street London NW1 0SA ("the Building") and the College Estate ("the Estate") chargeable during the service charge year 2006 were payable. The application has been made under Section 27A (1) Landlord and Tenant Act 1985 as amended ("the Act"). The Applicant is the long leaseholder for Flat 23 Lydford House aforesaid ("the Flat"). A copy of the lease of the Flat 23 Lydford House aforesaid ("the Lease") has been produced to the Tribunal.

HEARING

2. The hearing took place on 26th January 2007 at 10 Alfred Place London WC1E 7LR. Ms Vecchio was present and gave evidence and the Respondent was represented by Ms Howells of Camden Home Ownership Services. The issue before the Tribunal was whether the service charges levied in service charge year 2006 in respect of some of the items in the major works schedule undertaken at the Building and the Estate were chargeable and whether the method of apportionment of the service charges between the various properties was correct. In view of the fact that the Applicant was not complaining about the standard of the work, only its chargeability, the Tribunal considered that an inspection of the Building would not assist and was not necessary.

THE LAW

3. The Tribunal's jurisdiction is set out in Section 27A (1) of the Act as follows:-

> (1) Where an amount is alleged to be payable by way of service charge an application can be made to a Leasehold Valuation Tribunal for a determination whether or not any amount is payable and, if so, 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 payment has been made

EVIDENCE

4. The Respondent served a notice of intention on the Applicant on 24th August 2004 setting out the work that was proposed to be undertaken on the Building and the Estate. The notice of intention pointed out that, where a tenant had purchased their flat under the Right to Buy Scheme within the preceding five years, their

contribution would be capped in accordance with the notification of expenditure to be undertaken within five years appended to the their leases. The notice of intention also explained the method of calculating the contributions to be made by the individual leaseholders which was based upon the rateable value of the individual units as a proportion of the total rateable value of all the units in building in which their flat was located or the rateable value of all the units in the Estate, depending on whether the works were defined as Block Th Works or Estate Works under the terms of the Lease. .

5. The Applicant's statement of case said that she was unwilling to pay for certain items within the major works. These were:

    (a) Replacement doors in the units
    (b) Installation of extractor fans
    (c) Bin stores and shed works

    She maintained that none of these items were included in the statement of anticipated works under the procedure pursuant to Section 125 of the Housing Act 1985. She also complained that she had not seen the notice of intention as she was living away from the Flat and was not made aware of the works to be undertaken. In addition she was querying the costs demanded by the Respondent in connection with proceedings in the County Court for an injunction amounting to £991. She did not consider that she was liable for these costs which were due to the Respondent's unreasonable behaviour in applying for a court order '***when access for the installation of the windows was an invasion of her privacy and a violation of her human rights.***'

6. The Applicant maintained that she had asked for different windows to be installed in the Flat and that her request had been ignored. No new windows had been installed in the Flat and she did consider that she should be asked to pay. She stated that the sheds for which she was being charged were not available for her use and were let by the Respondent for a profit and the costs of rebuilding should not be charged to her. She maintained that there had been no works undertaken to the bins which are no longer available to the tenants as they have been padlocked. She did not make it clear where she deposited her rubbish but said that the only work undertaken was to the sheds themselves and no new bins had been provided and no bin store had been constructed.

7. The Applicant made a number of other complaints, both in her statement of case and in her evidence. She stated that she had no liability to contribute towards the cost of the garage or the playground. In her statement of claim she referred to "unspecified items" for which she was not prepared to pay but nothing specific was mentioned at the hearing, other than a general complaint about the level of the cost for redecoration.

8. Ms Howells stated that the notice of intention indicated that the cost to the Applicant would be £13,407.67, although the notice made it clear that the contribution by the Applicant would be capped. The Respondent had not been provided with an alternative address by the Applicant and the notice was served at the Flat which was good service. The front doors to the individual flats were not

charged to the long leaseholders as the leases do not allow for this and there was no charge to the Applicant. . The original specification of work included extractor fans which were not in fact installed and the cost of these was deducted from the estimate. The only doors for which a charge is included in the service charge are composite doors and windows to the flats, such as French doors, where the windows and door form a single glazed unit.

9. The new windows had not been installed in the Flat since she had refused access and it had been necessary to seek access through a court order to enable the windows to be installed as part of the major works contract. Even with the court order in place, the Applicant had not granted access to the Respondent on the grounds that it was difficult for her to take time off work to grant access. The windows have been included in the service charge, subject to capping in accordance with Section 125 of the Housing Act 1985. These windows are currently in storage and ready to be installed to replace the existing windows. The Applicant is in the process of selling the Flat, although there have been some abortive sales, and the parties have agreed that the windows will be installed once the Flat is sold and the new owners have taken possession. The cost of the windows is £3334.67 and this is the figure that will be charged, provided that they are installed before the capping period expires on 31st March 2007. If they are not installed by that date, there will have to be a new contract for the windows with an uncapped charge. The Respondent has informed the Applicant's solicitors and the previous proposed purchasers that the windows will be installed as soon as the ownership is transferred. Since the Applicant has been issued with an ASBO as a result of an assault on an employee of the Respondent, the Respondent considered that health and safety considerations prohibit the installation of the windows whilst the Applicant is responsible for granting access.

10. The figure of £991 to which the Applicant is objecting was not a service charge item but was an order of the County Court for the Applicant to pay the costs of the injunction and, as such, does not fall within the Tribunal's jurisdiction. Ms Howells explained that the bin store and the storage sheds serving the Estate were contained in one structure. The Respondent had received complaints about drug addicts sleeping in the open bin store and throwing their needles away and decided that the bins had to be placed in a closed and locked unit where each of the occupants of the Estate were given a key for access. Ms Howells agreed that the storage sheds were not used by the Applicant but that bin store, part of the same building, had in fact been built adjoining the shed and the cost of that was within the obligations referred to in the Lease. The cost of the sheds and the bin store had been separated and there was no charge to the Applicant for the cost of rebuilding the sheds. This was apparent from the table on page 15 of the Bundle which showed that the total cost of altering the sheds was £58,937.50 of which the sum of £26,592.60, attributable to the sheds was marked "not rechargeable".

11. Ms Howells referred the Tribunal to the Respondent's statement of case on page 3 where the costs of the items recharged to the Applicant were set out. The first calculation shows the items for which charges were to be made to the Applicant the 1985 Act together with the amount charged for inflation calculated in accordance with the Housing (Right to Buy) (Service Charges) Order 1986. The second calculation showed the figures as revised by the removal of the charge for

the extractor fans, the removal of the charge for M and E (Mechanical and Electrical), estate regeneration and lighting upgrade which were not to be charged to the long leaseholders. The estimated figure has accordingly been reduced from £10,416.89 to £8,342.24.

THE TRIBUNAL'S DECISION

12. The Tribunal considered the evidence from both parties. Dealing first with the objection to paying for the doors, the cost of the front doors to the flats have not been passed on to the long leaseholders, only the cost of composite door and window units, two of which were located within the Flat. The Applicant is only being asked to pay a capped amount, increased in line with inflation, and the charge included in the cost of the windows is reasonable.

13. The Applicant objected to the cost of the windows. The cost was capped five years ago and the adjusted capped amount of £3,334.67 is reasonable. The Applicant has an obligation to pay for the windows under the provisions of Clause 4.2.1 of the Lease. Her objection included a complaint that the windows had not been installed and that the Respondent had not provided the windows that she requested. The fact that the windows have not been replaced is entirely due to the actions of the Applicant and the choice of windows is a matter for the Respondent and the Applicant had failed to make any representations when invited to do so after receiving the notice of intention. Access was refused by the Applicant on the grounds of ***'inconvenience and infringement of the Applicant's human rights'*** but the Respondent was replacing a number of windows in other flats and the failure of the Applicant to grant access necessitated an application to the County Court for an order requiring access on 48 hours notice. Despite that fact that proper notice was given, the Applicant still refused access and the windows have been placed in storage by the Respondent.

14. The Respondent, very reasonably, is prepared to honour the price of the windows, provided that they are installed prior to the expiry of the five year capping period on 31st March 2007. In view of the fact that the Applicant's conviction for assault, it is not possible to install the windows during the Applicant's ownership and she is clearly unhappy about granting access. However, assurances have been given to the Applicant's legal representative and prospective purchaser that the windows will be fitted as soon as ownership has changed. The Respondent can do no more and the Tribunal confirms that the sum of £3,334.67 is reasonable and payable, but subject to the caveat that the figure will be subject to revision if a new contract for the installation of windows is necessitated if the sale of the Flat is not completed by 31st March 2007. Although the Applicant complained at the hearing that the Respondent was sabotaging her attempts to sell the Flat by failing to provide information, this is not accepted by the Tribunal.

15. The Respondent reviewed the location of the bin store following complaints about the misuse of the previous bin area by drug addicts. The bin store is now within a building housing the storage sheds. It is clear from page 15 of the Bundle that the sum of £26,592.60 of the total cost of £58.937.50 was not charged as part of figure from which the capped expenses applicable to the Flat amounting to £5007.58 for repairs and redecorations was derived. . This sum has not been

challenged by the Applicant, other than her refusal to accept responsibility for various items, even though a breakdown of the costs had been provided and is well within the capped figure of £7,207.38. Ms Howells pointed out that the costs have not been finalised and, since the costs are below the capped figure, there is a possibility that this will increase and the Tribunal's decision must be read with this in mind.

16. The Tribunal considered the other items which the Applicant wished the Tribunal to consider referred to in her statement of case and paragraph 7 of this decision. There was no charge to the Applicant for any garage, the extractor fans or the playground. These were not included in the service charge and consequently there is no cost to her. She complained in her statement of case of an excessive amount for redecoration but made no specific representations nor did she produce any evidence in support. These costs are included in the figure for repairs and redecorations which the Tribunal finds were reasonable. The Tribunal agrees with the Respondent that the costs relating to the court proceedings and ordered by the court are not service charge items and the Tribunal has no jurisdiction to make a determination.

17. The Tribunal noted that the Respondent charged 10% supervision fee for supervising the major works and an additional 10% for management.. Ms Howells stated that the management fee was largely charged to provide a service for the long leaseholders. This charge was considered to be excessive by the Tribunal, bearing in mind that the total charge would amount to 20% and reduced the management charge to 7.5%.

18. The Applicant complained that the notice of intention was not received by her as she was living with her mother at the time. She had tenants in the Flat and they did not pass on the correspondence to her. She had not formally informed the Respondent in writing that she was living elsewhere. The Tribunal is satisfied that the service of the notice at the Flat was good service and the Applicant was properly notified. The notice did invite observations (see page 10 of the Bundle) and the Applicant failed to make any observations by 24th September 2004 as invited. There was a full breakdown of the estimated costs (see page 11) and the Applicant was aware of them.

19. The Applicant has accused the Respondent of fraud and this is a matter on which the Tribunal must comment. The fraud allegation appears to be based on the alleged delivery of an invoice in excess of £13,000 when the actual costs would be less. It is clear from the papers that there was no invoice for £13,000, merely the estimate at page 11 of the Bundle and the accompanying letter made it quite clear that the capping provisions would apply to any long leaseholder who had purchased their flat within the period of five years preceding the work being undertaken. The Applicant also complained that she had lost prospective purchaser due to the Respondent's lack of co-operation with her legal advisers in failing to provide information about the service charges, something denied by Ms Howells who said the Respondent was happy to co-operate and that the sales had fallen through for other reasons. The allegations of fraud are completely without foundation. The Applicant has also made an allegation that the Respondent has made an application to the Tribunal for forfeiture of the Flat as part of a Mafia

plot. This allegation is not worthy of comment by the Tribunal as it is totally fanciful.

20. The Applicant complained about the manner in which the service charges were apportioned. The Lease, which is a contractual document, sets out clearly the basis of charge in Clauses 4.1 and 4.2 of the Fourth Schedule (page 67 of the Bundle). In summary, the expenses incurred by the Respondent relating to the Building are charged by dividing the expenses by the aggregate rateable values of all the flats in the Building and multiplying the resulting figure by the rateable value of the Flat. The Lease provides for the cost of the expenses relating to the Estate to be charged on a fair and reasonable basis and the notice of intention makes it clear that the costs will be charged on the basis of the proportion of rateable value of the Flat to the aggregate of the rateable values of all the flats in the Estate. This is considered by the Tribunal to be fair and reasonable and in accordance with the terms of the Lease.

CONCLUSION

21. The Tribunal found that the work to the Building and the Estate was properly undertake and of a reasonable standard. The Tribunal accepts that the final figures cannot yet be ascertained pending the preparation of the final account but the adjusted estimates as shown on page 3 of the Bundle are reasonable. The management charge is to be reduced to 7.5% and a statement adjusted accordingly should be submitted to the Applicant as soon as possible and is payable immediately after service on the Applicant at the Flat.

SECTION 20C OF THE ACT

22. An application was made by the Applicants for an order under Section 20C of the Act to the effect that the costs of these proceedings are not proper costs to be included in the service charges. The Respondent stated that they would not include the costs of these proceedings in the service charges. On the strength of that assurance, the Tribunal considers that it is not necessary to make such an order.

CHAIRMAN.....

Mrs T I Rabin JP

DATED: 14th February 2007