THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL
CASE REFERENCE: LON/LLAC/2006/O298

In the matter of	:	The Landlord and Tenant Act 1985 Section 27A	
Premises:	:	105 Glebelands Close London N12 OAE	
Parties	:	Mr Abdul Jolil	Applicant
		Peverel OM Limited	Respondent

Appearances : Applicant in person

-and-

Mr R Sandler
(Solicitor in the employ of Peverel OM Limited)
Miss S Martin Estate Manager

For the Respondent

Application dated: 17 July 2006

Hearing date	:	22 November 2006	
Tribunal	:	Mr A A Dutton	Chairman
		Mr P S Roberts	DIP Arch RIBA
		Mrs R Turner	JP BA

Decision Date : 12th December 2006

REASONS

A. BACKGROUND:

1. This application was made by Mr Abdul Jolil the Leaseholder of 105 Glebelands Close Finchley London N12 OAE ("the property") for determination under s27A of the Landlord and Tenant Act 1985 ("the Act").

2. Mr Jolil's application sought a determination for the years ending May 2005 and 2006 together also with a future year ending May 2007. His complaints for all three years were similar. There were specific items that he wished to challenge and they are as follows:

   (a) For the year 2004/2005;

   - Maintenance of landscaped areas, lift maintenance, building and terrorism insurance premium, management fee, domestic cold water costs. As a comment to these items he raised nine points which are fully set out on his application and do not need to be recited in detail in these reasons.

   (b) For the year 2005/2006 he raised specific matters in relation to the following:

   - Pest control, window cleaning, building/terrorism insurance, management fee, internal communal area decoration, reserve fund costs, gym maintenance. Again he raised issues which were fully set out.

   (c) For the year 2006/2007 he queried the estimated service charges and the lack of information given to him by Peverel OM.

3. We have been provided with a statement dated 13 October 2006 to which Mr Jolil had appended some 23 items as exhibits. Miss Martin, on behalf of the Respondents, had produced a statement with a number of exhibits attached as well as two files containing the invoices for the years ending May 2005 & May 2006. We were also provided with the certified accounts for those two years, the 2006 accounts being produced at the hearing.

B. EVIDENCE:

4. We will briefly record the evidence given by the parties but as much of it was in document form we hope they will forgive us if we do not go through each item on a detailed basis.

5. Mr Jolil started his submission to us by complaining about the state of the gym equipment, lack of instructions for use and the lack of repair amongst other matters. He also commented upon a leak he had recently had at his property from an upper flat. His initial main complaint was the lack of contact he had with Peverel OM and their unwillingness to

either meet with him on a face to face basis or to engage in telephone conversations to try and resolve the issues raised by him. He had attached to his submission at item 22, a number of leaseholder satisfaction and comments surveys which had been completed by other leaseholders in the block. There were apparently 47 flats in Mr Jolil's block of which the 16 had responded. None had sought to join in the proceedings. He then went on to complain about the window cleaning of the common parts, the lack of proper cleaning to carpets, and the frequency at which the windows and common parts were cleaned although accepting that he was not at the premises during the day.

6. Another complaint he made was the inconsistency between the estimated service charges and the actual service charges which he said had caused him difficulty in budgeting for future costs. He raised also the costs in respect of the water provision to the estate which was by a common metered supply which was then apportioned between the flats on the terms of the lease. It appeared that his annual costs were in the region of £140.00 which he accepted was reasonable although there was some suggestion that the latest water bill was substantially higher than the previous one but was under review by the Managing Agents.

7. He raised concerns as to the lease agreement that had been entered into in 2004 for the gym equipment which was exhibited to Miss Martin's Statement and to which we will refer later in these Reasons. He also queried the costs of lift maintenance which included insurance and felt it unreasonable that he should contribute as he lived on the ground floor and therefore did not need to use the lift. He thought the insurance premiums were too high, although he had no evidence that could be utilised to challenge the figures. He also felt the electricity charges, certainly for the years 2005 and 2006 appeared to be inconsistent. There were also concerns expressed about the costs of fire equipment and the Management fee. Generally he did not feel he was getting the service that he was paying for and he was concerned that he had been given misleading information which had induced him to purchase the lease only to find out that the service charge figures were considerably higher than that he had allowed for.

8. The Respondents replied to Mr Jolil's comments as the evidence unfolded. We were told the insurance was dealt with through a broker who went to the market on an annual basis and that as far as they were concerned it was competitive and correct, although they conceded that in a previous year the estimated rebuilding cost allowance was inadequate. The apportionment of the water rates was as per the terms of the lease which in fact Mr Jolil denied ever signing or agreeing to notwithstanding that he had completed the

purchase of the property some time in May 2004. Miss Martin also explained some of the charges in relation to lift maintenance and the use of the gym and also the fire equipment. As far as pest control was concerned we were told the property was subject to some infestation from rodents as it was near to open land and this was not apparent until the estate had been set up and was running. We were told the Management fee was currently £168.20 plus VAT per unit per annum and that insofar as interest was concerned we were provided with a calculation to show how that had amassed and was, we were told, in accordance with the terms of the lease.

9. There were also some additional costs which the Respondents had added to Mr Jolil's service charge account which included the costs of a debt collection agency and two letters that had been written by Peverel OM at a charge of £54.05 each. In response to Mr Jolil's main concern, namely the lack of response and communication from Peverel, Miss Martin referred us to a number of letters she had written and confirmed that a meeting had in fact taken place in October 2005 when tenants were invited to attend but very few did. She felt she had dealt with Mr Jolil's concerns in writing and that it was a reasonable way of attempting to resolve the issues.

10. Mr Jolil summed up his case by seeking a 40% reduction in the cost of most items that he disputed as well as seeking reimbursement of the fees he had incurred for bringing the application and for the hearing and his own costs which he assessed at £25.00 per hour for some 40 hours in preparation of his case.

11. In response thereto Mr Sandler dealt specifically with the issues of the gym, lift, water rates and management and we heard all that was said in that regard. He also accepted that although Mr Jolil had not in his application made a request that the jurisdiction of s20C of the Act be invoked, he was prepared to assume that was intended by Mr Jolil and he therefore asked us to consider the recoverability of the cost of these proceedings as a service charge. This was based on a written submission made showing an hourly rate of £125.00 giving a total sum which he sought to claim on behalf of the Respondents of £1,997.50.

C. THE LAW:

12. In this matter we are required to apply the provisions of the Landlord and Tenant Act 1985 and in particular s27A and s20C. An issue also arose as to consultation requirements under the Service Charges (Consultation Requirements) (England) Regulations of 2003

which we will refer to in the Decision element. We bear in mind also the provisions of s18 & s19 of the Landlord and Tenant Act 1985.

D. DECISION:

13. It became apparent from the outset that the major cause of concern for Mr Jolil was the perceived lack of response that he had received from the Managing Agents and the information he had been given both at the time of his purchase as to anticipated service charges and subsequently. We cannot make any findings as to the estimated service charge figures given to Mr Jolil which induced him to enter into the contract to purchase the lease. Mr Jolil said in evidence that he had not signed the lease but we find that difficult to comprehend bearing in mind that registration of the purchase presumably has now gone through and that he told us he had exchanged contracts and subsequently completed some time in May 2004. It is a matter for him to take up with his solicitors as to the terms of the lease and the information given to him at the time of his purchase.

14. We can deal fairly briefly with the complaints made by Mr Jolil for the year 2006/2007 where in effect there was a concern as to the estimated service charges that were being claimed by the Respondent. It seems to us that as the parties now have a complete set of accounts, which is for the year ending May 2006, those figures should be used and an uplift of 5% across the board (except from Management charges, which we fix at £168.00 plus VAT for this year), should be applied for achieving the estimated service charge figures for the year ending May 2007. At the end of the day these figures will all come out in the wash because once the final account has been done, if Mr Jolil has overpaid then he will be entitled to either a reimbursement or a credit for the following year. It should be noted that in fact Mr Jolil has not paid for much of the outstanding service charge sums and there appears to be in excess of £4000.00 due and owing.

15. In the course of the hearing Mr Jolil did not really crystallise his arguments on any particular items. It was a general scatter-gun affect of complaints as to the overall management of the estate and a general complaint as to the level of service charges without any real specific issue being raised. He had also, it appears, misunderstood the accounts. For example he had not appreciated that the water rate demand represented and initial 8 month period. It is fair to say that some of the estimated costs appeared to be out of line with the actual costs, hence our findings in respect of the year 2006/2007. What Mr Jolil did not appear to appreciate was that he had final accounts for the years ending May 2005 and May 2006 and that these were the figures that he should have been working on, not the estimated costs. He had also been provided with the invoices to substantiate

these items of expenditure and although there was some confusion, for example in the electricity invoices, no specific challenge was made that enabled us to reduce any of the items save for those matters which we shall refer to later in this Decision. For example it appeared clear that the water rates had been apportioned under the terms of the lease. We find that it was not within Mr Jolil's ability to distance himself from the lease and that he is therefore bound by the terms of same. This means for example the fact he does not use the lift does not stop him having to contribute towards the costs of maintaining it. Furthermore it did not seem to us that it was a service charge dispute that the gym equipment did not have any instructions. We were told by Miss Martin that the gym was not manned and that if it was, there would be a substantial additional charge to be made although it was something the Management Company would be prepared to consider. As to cleaning he was not regularly at the premises during the day and was not really therefore able to challenge whether the cleaners arrived or not. As to the building insurance, again we were satisfied that the Respondents utilised brokers to obtain insurance cover and Mr Jolil did not produce any evidence to challenge the level of premiums. Accordingly we find that the figures shown in the 2005 and 2006 accounts are reasonable and are payable.

16. Mr Jolil conceded that he was liable to make interest payments but there are one or two items of expenditure which had been added to Mr Jolil's account with which we are unhappy. For example, it seems to us that the terms of the lease, a copy of which we were provided with, did not enable the Respondent to recover the costs of the debt collection agency. In our finding that did not fall within the definition of legal or other costs set out in paragraph 15.3 of Part D to the Sixth Schedule. The costs of the letters written by Peverel demanding payment were too high. We accept that in principle these would fall within paragraphs 7.1 of Part D of the Sixth Schedule which enables a charge to be made for the running and management of the estate and the collection of rents and service charges. However, if the hourly rate for Mr Sandler was £125.00 the normal charging rate would be one-tenth and we would therefore allow £12.50 plus VAT each for the two letters demanding payment. Accordingly the account Mr Jolil has for service charges should be reduced by deleting the legal notice fees of £54.05 and substituting them with a figure of £14.69. Further the PDC fee of £146.88 is disallowed. The interest figures appear not to be challenged.

17 Accordingly we find the amounts claimed by the Respondents are due and owing and should be paid as soon as possible although Mr Jolil thought that his building society may have already settled the amounts outstanding. Mr Sandler indicated that was not the case.

18. The other issue we want to briefly deal with is the question of the service charge consultation requirements, as contained in the 2003 regulations which we referred to previously. Mr Jolil (in a somewhat roundabout way) indicated that in his view there should have been a consultation process in respect of the leasing agreement for the gym equipment which the Respondents entered into apparently in 2004. We have considered this but on the information we have, somewhat limited though it may be, we have concluded that this Agreement may fall within the exemptions contained in 3.(1) of the Statutory Instrument in that there were no tenants of the building or other premises to which the Agreement relates and the Agreement is for a term not exceeding five years. No evidence was adduced as to the occupancy and indeed Mr Jolil does not accept that he has entered into any lease. There is no doubt however that if the Agreement is reviewed at the expiration of the five-year period that the consultation process will have to be undertaken and indeed the Respondent accepted that was the case. In addition the monthly payment exclusive of VAT would not appear to fall foul of the £100.00 per flat per annum limit. With VAT added the amount by which the liability exceeds the £100 limit for the accounting period is only £2.47 per flat.

19. We turn then to the question of fees and costs. Mr Jolil has been largely unsuccessful in his application and therefore we think it is inappropriate that there should be a refund to him of the fees incurred for the application and hearing. In addition we are not minded to make an Order under the Commonhold and Leasehold Reform Act 2002, Schedule 12 paragraph 10 which gives us power in certain circumstances to order costs. We do not believe those circumstances have arisen in this case in respect of either side. The only issue therefore that needs to be addressed is the question of the recoverability of costs and the provisions of s20C of the Act. This enables us to make a finding that the costs of these proceedings are not recoverable as a service charge if we believe it just and equitable so to do. In this case we think it is not unreasonable for the Respondent to be able to recover these costs through the service charge regime. However we would limit those costs to 75% of the amount they seek to claim. We make no finding as to the quantum of the costs as that seems to us to be a matter that would need to be open for challenge as to reasonableness by those persons who are possibly going to face such a demand in the future. Whatever that sum may be however, it is only 75% that is recoverable through the service charge. The reason for reducing it from a full 100% is that we believe there have been inconsistencies between the amounts estimated as due and the actual costs, which is misleading. In addition also we cannot help but feel that it would have been potentially possible to have resolved some of these matters if the Respondents had either picked up

the telephone or had arranged a meeting with Mr Jolil before the advent of these proceedings. It might well have obviated the need for the extensive bundle of documentation that was produced. In those circumstances we limit the Respondents ability to recover accordingly.

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Chairman

Dated..... 12 December 2006