RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

Case number : CAM/42UD/LIS/2006/0010

County Court Claim number : 6IP01409

Property	:	**18 Canterbury Close, Stoke Park, Ipswich, Suffolk IP2 9YJ**
Application	:	For determination of liability to pay service charges for the years 2003–2006 [LTA 1985, s.27A]
Applicant	:	Sheila Perkins, 18 Canterbury Close, Stoke Park, Ipswich
Respondent	:	Orbit Housing Association, of 14 St Matthews Road, Norwich, Norfolk NR1 1SP
represented by	:	Alan Newman (Area Manager, Norwich) Shelley Power (Stowmarket office)

DECISION ON QUESTIONS TRANSFERRED TO THE TRIBUNAL UNDER CPR 56 PD para 15.1 FOR DETERMINATION

Handed down 5th December 2006

Hearing date	:	Thursday 30th November 2006 at Belstead Brook Hotel, Ipswich
Tribunal	:	G K Sinclair, E A Pennington FRICS, P A Tunley

Introduction and decision

1. On 28th March 2006 the Applicant, an assured tenant of the Respondent registered social landlord, issued a claim in the Ipswich County Court seeking the recovery of £851.25 which she claimed to have paid for service charges which had not been provided in the period from 2003 to date. The dispute concerned the landlord's failure, due to repeated or long-term illness, to provide the services of a resident caretaker, viz cutting the grass on the estate, removal of rubbish, maintenance of car parking and other communal areas, and reporting to the landlord's area office of the need for any more major repairs.

2. The landlord filed a Defence dated 27th April 2006 denying that it had failed to provide a reasonable level of services and, by implication, that the alleged sum was due. On 27th

July 2006 District Judge Bazley-White ordered that "the question of the reasonableness of the service charges in the context of the actual services performed be transferred to the Leasehold Valuation Tribunal." Upon receipt of the court file directions were made by me for the hearing of the application on 31st August 2006.

3. Despite limited compliance with the directions given the tribunal determines, after its consideration of the oral and documentary evidence, that in the service charge years ending 31st March 2004, 2005 and 2006 the caretaking services suffered considerably due to the persistent illness of the resident caretaker, Mr Garrod, but this was not properly addressed by the landlord until after many complaints were received from residents and a meeting held on site at the Applicant's home in September 2004, after which the Respondent's regular maintenance contractor was instructed on an *ad hoc* basis to carry out work on this scheme. The state of affairs shown in the Applicant's photographs improved, but at some additional cost to residents. Since March this year a residents' survey has revealed that they would prefer to have the caretaking service contracted out, at a net annual saving of about £10,000. This has been acted upon by Orbit and the existing caretaker declared redundant. RG Maintenance Services Ltd formally took over in October 2006, since when there has apparently been considerable activity.

4. Upon the basis of the evidence heard and received, including Orbit's own admission that the majority of complaints were that the standard was not as good as in the past – and that this was accepted, the tribunal regards the service provided as being sub-standard and that the cost was inflated in the second half of the period in question by adding the contractor's costs to the service charge account as well as the costs of employing the resident (but largely non-productive) caretaker. Doing the best it can on the available evidence, the tribunal reduces the elements of each year's service charge referable to the disputed work by 50%. The net result appears in the Schedule annexed to this decision.

The tenancy agreement

5. The Applicant's tenancy agreement is dated 16th August 1996, granting her an assured tenancy of a one-bedroom ground floor flat at the above address commencing on 19th August. By clause 3 the landlord housing association contracts to :

> ...provide the following services for which the tenant shall pay a service charge. Resident caretaker, communal cleaning/gardening.

6. Clause 4 confirms that this service charge is variable in accordance with the Landlord and Tenant Acts 1985 and 1987, that it will normally be reviewed annually, and the new charge payable from 1st April in each year. Clause 5 entitles the tenant to demand a written summary of the service charge account and to inspect receipts, etc.

Applicable law

7. The tribunal's powers to determine whether an amount by way of service charges is payable and, if so, by whom, to whom, how much, when and the manner of payment are set out in section 27A of the Landlord and Tenant Act 1985.[1] Provided that application is made to the tribunal after 30th September 2003 these powers apply irrespective of

[1] As introduced by the Commonhold and Leasehold Reform Act 2002, section 155(1)

whether the costs were incurred before the coming into force of this new section.[2] Please note sub-sections (5) & (6), which provide that a tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment, and that an agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement)[3] is void in so far as it purports to provide for a determination in a particular manner or on particular evidence of any question which may be the subject of an application to the Tribunal under section 27A.

8. The overall amount payable as a service charge continues to be governed by section 19, which limits relevant costs :
   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.

Inspection and evidence

9. The tribunal inspected the Respondent's particular housing scheme at Canterbury Close at 10:00am on 30th November 2006 in the presence of Alan Newman and Shelley Power, both officers employed locally by Orbit. The Applicant did not attend the inspection. At the time the weather was dry, sunny, and warmer than usual for the season. It was evident that the grass had recently been cut. The estate looked clean, swept, and very presentable. Around the car parking areas some lighter coloured wooden fence panels were evident where, in the Applicant's photographs, damaged or missing panels had been apparent. The fenced clothes drying areas were also clean and in good order. None of the weeds, long grasses or rubbish visible in the Applicant's photographs remained. The only item perhaps requiring some attention was a patch of spilt white paint in the car parking area closest to the main road (Stoke Park Drive).

10. The hearing commenced at 11:15. In essence, Ms Perkins' case was that the amount claimed is a combination of figures for the caretaker element since 2004. She should not be obliged to pay any of this. She paid for a resident caretaker who was supposed to take care of the communal areas around the estate. Up until May this year he had not done anything because he was supposedly off sick, but even when he was supposed to be working nothing was done about the estate. This year Orbit terminated his services. Now a contractor has been engaged, but up until this week nothing was done except for an occasional visit to cut the grass. Suddenly, all the edges have been cut, paths cleared, shrubs cut down, the grass cut – and it looks wonderful. As for *ad hoc* work carried out while the caretaker was off sick she asserted, on the basis of reports received from other tenants, that contractors were not there when they said they were, and little was ever done.

11. In response, Mr Newman challenged the amount being claimed. There was nothing to demonstrate how that was made up. He stated that he had calculated from what Ms Perkins has been paying and her total service charge amounted to £882.42, based on the

2 See the Commonhold and Leasehold Reform Act 2002 (Commencement No 2 and Savings) (England) Order 2003 [SI 2003/1986], Article 2(c) and Schedule 2, para 6

3 Eg. provisions in a lease stating that the landlord's accountant's certificate shall be conclusive, or that any dispute shall be referred to arbitration

monthly amounts from January 2003 to the end of March 2006. As this included items other than the caretaker the claim for £851.25 must therefore be incorrect. Initially he denied her claim, saying that the work had been done, but later admitted that there were complaints from all the people listed on Ms Perkins' claim, and that he did have a brief meeting at her address in September 2004. Orbit was by then aware of the caretaker Mr Garrod's problems. A meeting had been requested. The majority of complaints were that the standard was not as good as it had been in the past, and which residents expected. This concerned the general upkeep of the estate. Orbit accepted that and he explained to them what it was going to do about it.

12. In his witness statement Mr Newman did accept that there had been problems with the caretaker due to long-term sickness. He was aware from housing officers' inspections. Orbit did employ outside contractors, although because Orbit would only get a sick note for a couple of weeks it was often difficult to decide when to get in contractors. Those additional costs have not been passed on, he said. There were annual deficits on the service charge account for this scheme, but this had been borne by Orbit. Asked about the amounts for extra gardening recorded in the accounts, he said that these would have been for extra help where the caretaker could not cope. It was reasonable to include these.

13. Challenging Ms Perkins' assertion that contractors were not there when they said they were he provided a letter from RG Maintenance Services Ltd with dates that the work was done, what was done, and by how many and which operatives. He said that his contractor is reliable and does all of Orbit's work in this region. He would not claim for work he has not done : it is simply not in his interests to do that. Mr Newman also produced a site specification sheet that the contractor has been working to.

14. Mr Newman was asked by the tribunal how the supervision of the caretaker was carried out and recorded? He stated that a housing officer would visit monthly and there is a process to be gone through. A housing officer would have been on site and observed its condition. We were, he said, aware that things were not as they should be, but a balance had to be struck as to when a contractor should be brought in to deal with the estate.

Discussion and findings

15. The tribunal had before it what were described as the audited accounts, not for this whole scheme but only for the assured tenants. Seemingly the Respondent prepared one set of accounts for those freeholders and long leaseholders who had exercised their right to buy, a separate set for the assured tenants, and perhaps yet another for those with registered fair rents. This seemed to the tribunal to be an unnecessary complication. From a list setting out the current tenure of all eighty housing units on the scheme the tribunal could see that 39 – but this varies – are assured tenants. Their sets of accounts for each accounting year ending 31st March 2004, 2005 and 2006 therefore reflected just under half of the total expenditure. Mr Perkins' share was one thirty-ninth of that shown.

16. The tribunal was satisfied on the evidence that :
    a. During this whole period the resident caretaker was off sick most of the time
    b. The amount of work he was able to do on the estate was next to nothing

c. This became apparent, or should have become apparent to the Respondent through its regular inspections by the relevant housing officer
d. Complaints were received about the deteriorating state of the communal facilities
e. Despite this, it was not until after a meeting was held at the request of concerned residents in September 2004 that contractors were brought in on an *ad hoc* basis to do that which should have been performed by the caretaker
f. The cost of this work was added to the service charge account, although it should have been done by the caretaker
g. Where this additional cost took the service charge account over budget and into deficit the loss was accepted by the Respondent and not passed on to residents in the next service charge year
h. Improvements only began to occur during the second half of the year ending 31st March 2005, and even then the work was not undertaken on a regular basis because the Respondent was unsure whether the resident caretaker would be fit for work or not and therefore delayed in calling in its regional contractor
i. The major improvement in maintenance of the estate has taken place since the caretaker was made redundant and this contract outsourced in October 2006, after the period in question had ended.

17. Doing the best it can, and recognising that the level of service in the earlier part of the period was probably worse than the latter, the tribunal applied a broad brush approach and makes a deduction over the whole period of one half of those four elements in the service charge accounts which are attributable to the caretaking service in dispute, viz
    a. Scheme staff costs
    b. Cleaning & refuse removal [a significant part]
    c. Gardening
    d. Rental & service of equipment [the tractor lawnmower, strimmers, etc provided].

18. The tribunal recognises that the Respondent housing association was placed in a difficult position due to the long-term illness of its employee. Without wishing to encourage any precipitate action or heartlessness amongst employers the tribunal nevertheless regrets that this prolonged breakdown in service was allowed to continue for too long, with a sticking plaster approach being adopted only after about eighteen months had passed and a regular (and much cheaper) system of work only in mid-2006. The tribunal notes that when asking residents to vote on a proposal to contract out the caretaking services the Respondent revealed that the annual cost was expected to reduce from £27,000 to around £17,000. Earlier action could have saved the residents a significant amount.

19. The sum claimed by the Applicant in her original County Court claim is too high. The tribunal accepts that this is probably akin to her whole service charge for the three years accepted as being in dispute. Nevertheless, the caretaking element is roughly 75% of each year's charge. The amount which the tribunal determines is recoverable is as set out in the Schedule.

Dated 5th December 2006

Graham Sinclair – Chairman
for the Leasehold Valuation Tribunal

SCHEDULE

Item (from assured tenants' account)	Claimed	Allowed	Deduction
year ending 31st March 2004			
Scheme Staff Costs	£7,031.72	£3,515.86	
Cleaning & Refuse Removal	£496.58	£248.29	
Gardening	£1,349.95	£674.98	
Rental & Service of Equipment	£29.00	£14.50	**£4,453.63**
year ending 31st March 2005			
Scheme Staff Costs	£7,412.12	£3,706.06	
Cleaning & Refuse Removal	£232.89	£116.45	
Gardening	£1,271.23	£635.62	
Rental & Service of Equipment	£128.90	£64.45	**£4,522.57**
year ending 31st March 2006			
Scheme Staff Costs	£7,276.98	£3,638.49	
Cleaning & Refuse Removal	£915.66	£457.83	
Gardening	£1,622.21	£811.11	
Rental & Service of Equipment	£47.55	£23.78	**£4,931.20**

The tribunal has not seen the actual service charge demands served upon the Applicant and does not know precisely, for each year in question, the number of assured tenants by which the above figures should be divided.

It trusts that the Respondent will be able to make the necessary adjustments to the amounts already paid by the Applicant. If the recalculated amounts are not accepted then the parties may restore this application and, upon being provided with the relevant financial information, the tribunal will determine the precise amounts recoverable for each year in question.