

LON/00BB/LSC/2006/0282

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS
UNDER SECTIONS 27A OF THE LANDLORD & TENANT ACT 1985
(AS AMENDED)**

Applicant: Mr. Brian Bruce

Respondents: Look Ahead Housing & Care Limited

Re: 2 Chauntler Close, Custom House, London E16 3BZ

Hearing dates: 25th September 2006

Appearances: For the Applicant: Mr. B Bruce
Mr. K Nicoll

For the Respondent: Ms S Barnes – Housing Liaison
Manager

Members of the Residential Property Tribunal Service:

Miss L M Tagliavini BA (Hons) DipLaw LLM

Mr. D Levene OBE MRICS

Mrs. R Turner JP BA

2. CHAUNTLER CLOSE, CUSTOM HOUSE, LONDON E16 3BZ

1. This is application by the lessee of 2 Chauntler Close, Custom House, London E16 3BZ ("the premises") pursuant to section 27A of the Landlord and Tenant Act 1985 (the "Act") seeking a determination as to the reasonableness of service charges claimed by the landlord, Look Ahead Housing and Care Limited, from October 2004 to date.
2. Mr. Bruce has been the assured tenant of the subject premises since 18th October 2004. It is a term of the lease that Mr. Bruce will pay a weekly rent inclusive of a service charge and the Association will provide the services particularised in the agreement which may be subject to increase, addition, removal, reduction or variation after consultation with the tenants affected; see *clause 1(3)(i)&(ii)*. Additionally, it is a term of the tenancy that the Association may increase or decrease the rent by written notice to the tenants.
3. In the tenancy agreement between the parties it was specified that the items included under the service charge were:

Fire Alarms and Equipment

Electrical and PAT Testing

Gardening

Water Audit

Window Cleaning
Cleaning, Communal
Electricity, Communal

4. In a letter dated 25th June 2006 to the Association Mr. Bruce set out his objections to the payment of the service charges. He stated that the services were either not provided at all, or were provided to a very poor standard and at an unreasonable cost. At the hearing of this application Mr. Bruce told the Tribunal that he had received no notice of any variation to the list of services provided but was now being asked to pay in addition to the above service charges listed, for:

Door Entry
SU Furnishing
Pest Control
Refuse Collection
Communal TV Aerial
15% Admin Charge

5. It was conceded by Ms Barnes on behalf of the Association, that the SU Furnishing charge should be waived in respect of Mr. Bruce. Ms. Barnes was however, unable to produce any document showing that the service charges had been varied in the manner prescribed under the terms of the lease, although such a letter was referred to in the limited documentation before the Tribunal.
6. Before reaching its decision, the Tribunal took the opportunity to inspect the building and common parts in which the subject premises are situated and found a modern low level block of purpose built flats set around communal gardens. The


common areas appeared to the Tribunal, to be in fair order with obvious signs of maintenance to the garden areas and cleaning to the common parts, although not to a particularly high standard. It was noted by the Tribunal that some parts of the guttering required attention in places, and communal lights were left on despite the broad daylight.

Decision

7. The Tribunal has, as a preliminary issue to decide whether it has jurisdiction pursuant to the provisions of the Act to determine the reasonableness of these services charges. It is said on behalf of the Association that there is no jurisdiction because in this case the service charge is fixed and not variable (as required under section 18 of The Act. It is said that the service charge forms part of the rent and will only vary when the rent is varied. Mr. Bruce asserted without more, that the Tribunal did have jurisdiction to determine his application.
8. The Tribunal decides that on the facts of this case, and having regard to the terms of the lease there is no jurisdiction to determine this application. The Tribunal finds that the service charges are not variable service charges within the meaning section 18 of the Act as there is no mechanism provided for in the lease that allows a variation in the service charges independently of the rent.
9. However, the Tribunal notes that several of the sums of service charge claimed in June 2006 are not those expressly included in the lease dated October 2004.

Further, in the absence of any evidence showing a variation to those service charges, the Tribunal is of the opinion that those service charges not so expressly included in the lease are not properly recoverable. Similarly, had the Tribunal been able to determine the reasonableness of the service charges, its view would be that only a sum in the region of 50% would be properly recoverable in order to reflect the poor level of service provided by the Association and the unreasonableness of the costs charged.

10. Therefore, the Tribunal determines that as there is no jurisdiction to hear this application it must be dismissed.

Chairman: 

Dated: 5/12/06