

IN THE LEASEHOLD VALUATION TRIBUNAL

LON/00AG/LSL/2004/0002

PROPERTY: 10 SOMERS CLOSE, LONDON, NW1 1RT

BETWEEN:

MARTIN FENECH

Applicant

-and-

LONDON BOROUGH OF CAMDEN

Respondent

THE TRIBUNAL'S DECISION

BACKGROUND

1. Unless stated otherwise the references herein are to the trial bundle ("the bundle") in this matter and the pages within the bundle.
2. This is an application made by the Applicant under s.27A of the Landlord and Tenant Act 1985 ("the Act") (as amended) for a determination of his liability to the Respondent to pay both actual and estimated service charges for the years ended 31 March 2001, 31 March 2003 and 31 March 2004.
3. The Applicant occupies the subject property by virtue of a lease ("the lease") dated 27 August 2001 commencing on that date for a term of 125 years at an

annual ground rent of £10 per annum. The Respondent is the Applicant's landlord under the lease. In the bundle (pp 14-54) is an incomplete copy of the Applicant's lease. The Applicant's liability to pay service charges arises under clause 3.2.1 of the lease (p 28). In that clause service charges are described as the 'Service Cost'. In the Definitions section of the lease the Service Cost is defined as "the amount payable by the Tenant being the Specified Proportion of the Service Charge" (p 26). The expenditure comprising the service charge are also set out in the Definitions section of the lease to include the matters set out in the Fifth Schedule (pp 25-26). The Fifth Schedule sets out in more detail the Items of Expenditure in respect of which the Respondent may recover from the Applicant by way of service charges (pp 51-55). The Fourth Schedule and specifically clause 4.1 therein sets out the basis on which liability for the service charges is apportioned (pp 48-51).

4. The service charges being challenged by the Applicant, and therefore the issued to be decided by the Tribunal are set out in his letter of 1 February 2004 (p 9). These can be set out as follows:

Service Charge Account for Year Ended 31 March 2002 (p 171)

Caretaking Services - £164.63

The challenge is on the basis that the cost is not justified and he offers the sum of £100 as a reasonable amount.

Service Charge Estimates for the Years Ended 31 March 2003 & 2004 (pp 166 & 163)

Heating and Hot Water - £477.79 & £482.07

The Applicant simply offers the sum of £200 in respect of both years as being fairer and more affordable.

Caretaking Services - £342.03 & £336.49

This item is challenged on the same basis as set out above and the Applicant offers £100 again in respect of both years as being reasonable.

Block Repairs and Maintenance - £90 for both years

The entire amount is challenged on the basis that no repairs or maintenance were carried out by the Respondent.

Administration Costs - £99.39 & £101.40

The Applicant simply offers the sum of £40 in respect of both years as being reasonable.

INSPECTION

5. The Tribunal inspected the subject property on 2 June 2004. The subject property was found to be situated in a well maintained modern gated development of low rise flats and houses with integral garages constructed in about the 1980s. There was a brick paved roadway and a courtyard with trees and shrubs. There was also a central courtyard with a grassed garden area. The entrance to the block containing Flat 10 was accessed by a door entry

system. The internal common parts were painted and some damaged plaster was noted adjoining the front entrance door. The flooring was covered with vinyl tiles as was the staircase. Lighting was by low energy fittings controlled by time switches.

DECISION

6. The hearing in this matter took place on 2 June 2004. The Applicant appeared in person. Also present was Mr Lynch, another tenant in the same block of flats, but he played no part in these proceedings. The Respondent was represented by Ms R de Villiers of Home Ownership Services and Mr J Hinks, both of whom are employees of the Respondent.

7. Set out below is the Tribunal's determination of the issues identified in paragraph 4 above. In determining those issues and therefore this application, the Tribunal had regard to the provisions of section 19(1)(a) and (b) of the Act, namely that the disputed service charge costs were reasonably incurred and that the services or works provided were of a reasonable standard.

CARETAKING SERVICES

8. The Applicant's argument in relation to the service charges for this item for all three service charge years was the same. He stated that the caretaker only swept the courtyard very occasionally and only mopped the staircase when asked to do so. When cross-examined by Mr. Hinks, the Applicant conceded that he was not aware of the exact duties performed by the caretaker.

9. The Respondent called Mr. Hayes to give evidence in rebuttal. He is the Caretaking Supervisor at the Respondent's Camden District Housing Office. He confirmed in all respects the witness statement of Mr P. Datta (pp 58-160) who is the Respondent's Patch Manager with overall responsibility for the management of the caretaking for the subject property. Mr. Datta's witness statement sets out the duties performed by the caretaker (p 58) both on a daily and weekly basis. Mr. Hayes confirmed that daily checks and monthly inspections of the block of flats were made. This was evidenced by the Estate Service Monitoring Sheets annexed to the witness statement of Mr. Datta. He maintained this position in cross-examination. He stated that the caretaker was also responsible for reporting any disrepair noted by him but was not responsible for cleaning any graffiti.
10. In re-examination, Mr. Hayes confirmed that the caretaker in question only had responsibility for Flats 8-15 in the block and spent three and a half hours each week in performing his duties, which included the cleaning of the two staircases in the block.
11. Witness evidence was also given by Mr. Cole, who is the Home Ownership Accountant employed by the Respondent in its Home Ownership Services Department. He gave evidence as to how the cost for the provision of caretaking services for the service charge years in dispute was arrived at.
12. In relation to the service charge year ended March 2002, he stated that the figure of £164.63 was the actual amount and no adjustment was necessary.

However, in relation to the subsequent two years, he stated that the amounts were only provisional figures and there was a possibility that the final figures would be less than the provisional ones in the service charge estimates for both years. Apparently, the reason for the delay in the preparation of the final service charge accounts for the years ended March 2003 and March 2004 was as a result of the difficulty in the collection of the relevant data within the Respondent's organisation. Mr. Cole explained that the service charge estimate for the provision of caretaking services for the year ended March 2003 was calculated in the following way. It was based on the data available for the year ended March 2002 when it was calculated that the total number of productive hours worked by the caretaker was 2.36 hours per week. On a 42 week annual basis this amounted to 99.2 hours (pp 225 & 229). The hourly rate for the provision of this service was calculated at £21.87. When grossed up annually this produced a figure of £2170.40 for the block to which the sum of £45 for window cleaning charges was added. The total annual costs for the provision of caretaking services to the block of flats for the year ended March 2002 was £2215.40. When this figure was apportioned equally as between the eight flats in the block it produced a figure of £276.19 per flat (p 224). The Applicant's liability for that year had been reduced to £164.63 as he had only been the lessee of the flat for 217 days in that year. The estimated figures for the service charge years ended March 2003 and March 2004 were based on the same annual cost calculation but it had been increased by 12.19% and 21.85% respectively. The window cleaning cost was increased by 4% for each year. This produced estimated figures of £342.04 and £336.49 respectively.

13. As the Applicant's challenge in respect of the service charges for the provision of caretaking services for each of the three service charge years was the same they can be dealt with together by the Tribunal. It is the Applicant's bare assertion, in his view, that the caretaking services provided were not of a reasonable standard. He did not challenge that they were reasonably incurred. The Applicant adduced no evidence to support this argument. The Tribunal heard evidence from Mr. Hayes as to the actual duties performed by the caretaker and the frequency with which they were carried out. This was evidenced by the Estate Service Monitoring Sheets annexed to the witness statement of Mr. Datta. Mr. Cole's evidence demonstrated how the service charge costs for the year ended March 2002 was arrived at and, based on the same assumptions, how the estimated service charge figures for the years ended March 2003 and March 2004 were calculated.
14. The Tribunal is prepared to accept the evidence of Mr. Hayes as to the duties performed by the caretaker were of a reasonable standard. On inspection, the Tribunal found the internal staircase and grounds to be reasonably clean. The Tribunal also finds that having regard to the duties carried, the costs for the provision of this caretaking services are also reasonable. The Applicant adduced no evidence to the contrary. The Applicant's mere assertion otherwise is insufficient for the Tribunal to make a finding in his favour. Accordingly, for the service charge years ended March 2002, March 2003 and March 2004 the amounts of £164.63, £342.03 and £336.49 respectively for the provision of caretaking services are allowed in full.

HEATING AND HOT WATER

15. The Applicant's challenge in relation to this item is for the service charge years ended March 2003 and March 2004 only. He argued that historically the heating had always broken down and sometimes this occurred on weekends. He admitted that repairs were always effected. He also stated that the heating was only provided for six months of the year. He did not pay an additional amount for the provision of hot water. He submitted that there was no basis for the amounts the Respondent sought to recover for this item. However, he conceded that equally there was no basis for his proposed figure of £200 as being reasonable.
16. Evidence was heard from Mr. Cole in relation to this service charge item. He stated that the service charge estimates for these two years were provisional as the data was not available to provide final figures. The estimated figures were based on the actual costs incurred for the year ended March 2002. He went on to say that the heating costs was comprised of two elements. Firstly, the actual fuel costs. Secondly, the maintenance costs. The latter was effectively for the provision of a service contract to carry out repairs to the heating system in the event of a breakdown. He accepted that these costs would always be higher than the fuel costs as some of the charges arose out of contract. He also pointed out that the service charges for this item was apportioned as between nine flats because Flat 7 was included.
17. The Tribunal was taken to be apportionment of the two elements comprising this service charge item for the subject property (pp 174-176). The actual cost

breakdown for the year ended March 2002 (p 176) allocated a credit of £142.32 in respect of fuel charges. The overall heating maintenance costs for the Somers Town Estate for that year was £9,134.70. The block allocation of those costs was £2,108.01 (p 195) divided between the nine flats to provide a unit cost of £234.22.

18. Although no actual fuel cost figures were available for the service charge years ended March 2003 and March 2004, the Tribunal in principle finds that the Respondent's estimated figures for this element to be reasonable. In relation to the maintenance element, the only actual cost figure available is £234.22 for the year ended March 2002. This equates to a cost of £4.50 per week for the provision of this service. The Tribunal also finds this sum to be reasonable. The service charge estimates for the years ended March 2003 and March 2004 for the provision of heating and hot water is based on the figures available for the year ended March 2002 with an uplift to allow for increased annual costs. The original service charge estimate for the year ended March 2003 (p 166) provided a figure of £477.79 for this item. This was subsequently revised downwards by £150 to £327.79 (p 13) and the Tribunal allows this amount as being reasonable for that year. It follows that if the service charge estimate for the year ended March 2004 (p 163) was based on the previous year's service charge estimate with a provision for an annual increase, then the service charge estimate of £482.07 for this year must also be reduced by £150. Accordingly, the sum of £332.07 is allowed for this item in the service charge estimate for the year ended March 2004.

BLOCK MAINTENANCE AND REPAIRS

19. The Applicant argued that the service charge estimate of £90 the year ended March 2003 should be completely disallowed on the basis that no maintenance was carried out that year. However, he was prepared to agree the figure of £90 for this item in the service charge estimate for the year ended March 2004.
20. Mr. Cole, for the Respondent, again stated that the figure of £90 the year ended March 2003 was a provisional figure for the same reasons as stated above. The figure of £90 anticipated the costs of re-fixing and repairing a rainwater pipe and clearing a drain. There were also associated scaffolding and ladder costs. He submitted that in the circumstances £90 was not an unreasonable amount.
21. The Tribunal agrees with Mr. Cole's submission. The sum of £90 is not unreasonable having regard to the works carried out in this amount is allowed in full.

ADMINISTRATION COSTS

22. The Applicant's position was that he was not aware of how this service charge item in the service charge estimates for the years ended March 2003 and March 2004 arose or what it pertained to.
23. The Respondent argued that it relied on clause 13.1 in the lease and was entitled to recover these costs from the Applicant (p 54). It was submitted that

10% of the total service charge costs was not an unreasonable sum for this item.

24. The Tribunal agrees with the Respondent's submission that a 10% fee having regard to the management and administrative functions performed by the Respondent is entirely reasonable. Accordingly, the amounts allowed for the service charge years ended March 2003 and March 2004 are £84.59 and £86.40 respectively.

REIMBURSEMENT OF FEES

25. The Tribunal then considered whether it should require the Respondent to reimburse the Applicant with the whole or part of his fees in these proceedings in accordance with Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003. The Tribunal makes no such order in these proceedings as the Applicant has substantively lost on all of the issues that were the subject matter of these proceedings. In addition, the Tribunal was of the view that many of the issues that came before it were capable of resolution had the Applicant responded to the several letters written by the Respondent with proposals to resolve this matter. Regrettably, the Applicant chose not to avail himself of this course of action.

SECTION 20C APPLICATION

26. The Tribunal did not have to consider this application made by the Applicant. It was stated on behalf of the Respondent that no costs had been incurred in these proceedings, which could form the subject matter of such an application.

CHAIRMAN.....J. Kshah.....

DATE.....27/7/04.....