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LON/00AD/LIS/2005/0119

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT
ACT 1985.
(AS AMENDED)**

Applicant: Sanctuary Housing Association

Respondent: Ms Gonca Kemal

Re: 19 Upper Abbey Road, Belvedere, Kent DA17 5AE

Inspection date: 15 March 2006

Hearing date: 15 and 16 March 2006

Appearances: Mr A Beasley – Leasehold Officer, Sanctuary Housing
Mr L Howard – Senior Maintenance Officer,
Sanctuary Housing

For the Applicant

Ms G Kemal – Respondent in person
Mr O Kemal – Respondents Father

For the Respondents

Members of the Residential Property Tribunal Service:

Mr S E Carrott LLB
Mr P S Roberts DipArch RIBA
Mrs L Walter MA (Hons)

DECISION

- (a) The reasonable sum payable by the Respondent in respect of the charges for gardening for the year ending 2002 is £56.79.
- (b) The reasonable sum payable in respect of communal cleaning is £81.85. This is in respect of the year ending 2004, the charges for the year ending 2002 and 2003 being disallowed.
- (c) The charges for day to day repairs for the years ending 2002, 2004, 2005 and the estimate for 2006 are reasonable and payable. For the year ending 2003 the reasonable sum payable by the Respondent is £80.81.
- (d) The reasonable sum payable by the Respondent in respect of management charges is £75 per annum for the years ending 2002, 2003 and 2004. For the years ending 2005 and 2006 (estimate) the reasonable sum payable by the Respondent is £174.62 and £179.86 respectively.
- (e) The reasonable sum payable by the Respondent in respect of the sinking fund contribution is £350 per annum from the year ending 2004.
- (f) The Applicant shall not add the costs of this application to the service charge account and the Respondent shall not be liable to reimburse the Applicant for the fees payable in respect of this application and hearing.

1. Background

This is an application under section 27A of the Landlord and Tenant Act 1985 for the determination of the reasonableness and liability to pay service charges. The Applicant landlord is Sanctuary Housing Association, the landlord of the subject property 19 Upper Abbey Road, Belvedere, Kent. The Respondent tenant is Ms Gonca Kemal.

- 2. The hearing of the application took place on 15 March 2006. The Applicant was represented by its Leasehold Officer, Mr Andrew Beasley. The Respondent appeared in person and received assistance from her father Mr D. Kamal.

3. Issues

The disputed items of service charge were as follows –

- (1) grounds maintenance for the year ending 2002;
- (2) communal cleaning;
- (3) management charges; and
- (4) contributions to the sinking fund.

4. Inspection

The Tribunal inspected the subject property and grounds on 15 March 2006 before the hearing. The subject property is a flat located in a small modern development of fifteen units situated on a corner plot. The development contains secure parking and part open parking. There were some paved areas and some grass banks. The overall impression gained by the Tribunal was that the grounds and gardens were low maintenance with only a few shrubs in evidence. The Tribunal also noted that there was blistering paintwork to some windows and evidence of residual rot was apparent.

5. Gardening

The only year in issue before the Tribunal was the year ending 2002. The Appellant's contribution for the year ending 2003 of £159 was waived. The contribution for the year ending 2004 was not charged and the costs and estimate for the years ending 2005 and 2006 respectively were not challenged.

6. Ms Kemal told the Tribunal that during 2002 the gardens and grounds were not being maintained properly. She said that there was no single point of contact with the Applicant and that the Applicant had a large turnover of staff. There was no one responding to correspondence. She said that there was no one turning up to do the grounds maintenance or gardens and that the communal bins were falling apart. She referred the Tribunal to her letter dated 9 June 2003 in which she

stated that it was the second time that she was writing to the Applicant concerning the maintenance of the flats. In that letter she pointed out that the gardens, bins and car park area were in an appalling state and that she and the neighbours had been doing the best that they could to attempt to maintain the gardens so that they could open their windows and not trip over the weeds and overgrown plants. She produced photographs taken in April 2004 which showed the state of the communal grounds and the bins.

7. Mr Beasley on behalf of the Applicant explained that prior to March 2002 the Applicant had engaged the services of a contractor to tend to the grounds on a monthly basis. Although there were some difficulties he did not accept that there should be reduction in the charges for the year ending 2002. He accepted that the charges for the year ending 2003, where the Applicant's contribution was £159, should be waived and that there was no charge for the year ending 2004.

8. **Communal Cleaning**

This item related to the cleaning of the internal common parts as well as the grounds and the removal of bulk rubbish. The total charge for this for the year ending 2002 was £1233.74 with the Respondent's contribution being £82.24. In respect of the year ending 2003 the total charge was £470 with the Respondent's contribution being £31.33. For the year ending 2004 the total charge for this item was £1227.88 of which the Respondent's contribution was £81.85.

9. The Respondent told the Tribunal that she had never seen a cleaner on site and that there was no evidence that the communal cleaning took place. She said she wondered whether or not the cleaners had keys to access the internal areas.
10. Mr Howard MCIOB a chartered building surveyor and the Applicant's maintenance manager gave evidence on this issue. He told the Tribunal that the cleaning took place once a week and that the contract

was performed by Pat Madden (Cleaning Services) and the various invoices were referred to in the trial bundle. He further informed the Tribunal that the internal cleaning ceased in June 2004. It was accepted that a meeting took place on 22 June 2004 at which the residents complained about the standard of the communal cleaning.

11. Day to Day Repairs

This item related to minor repairs carried out to the building. For the year ending 2002 the total charge was £487.04 of which the Respondents contribution was £32.46. For the year ending 2003, the total charge was £1379.78 of which the Applicant's contribution was £91.98. In respect of the year ending 2004 the total charge was £283.18 of which the Applicant's contribution was £18.87. In respect of the year ending 2005 the total charge for this item was £364.32 of which the Applicant's contribution was £24.28. The estimate for the year ending 2006 was £529.42 of which £35.29 represented the Applicant's contribution.

12. The Respondent's father Mr Kemal made representations under this head. He said that all of the charges in respect of minor repairs were unreasonable and queried in particular one invoice relating to the installation of lighting and a time clock as being excessive.

13. Mr Howard told the Respondent that when day to day repairs were carried out the Applicant would always send out customer satisfaction slips. In relation to the invoice challenged by Mr Kemal he stated that that time was in respect of the installation of additional lights and a time clock.

14. Management

The total charges for management for the year ending 2002 were £2413.88 with the Applicant's contribution being £160.92. In respect of the year ending 2003, the total charges were £2474.23 with the Applicant's contribution being £164.94. For the year ending 2004 the

total charge was £2548.46 with the Applicant's contribution being £169.89. In respect of the year ending 2005 the total charge was £2619.34 with the Appellant's share being £174.62.

15. The Respondent's main complaint under this head was that there was no point of contact with the Applicant. No one person would take responsibility for anything. Added to this was the fact that the Applicant had a high turnover of staff and that therefore problems were never dealt with. In 2002/2003 she did not have any letters responded to. Ms Kemal further stated that it was difficult to suggest an appropriate reduction because the management duties were not broken down or otherwise specified.

16. After explaining the total charges under this head, Mr Beasley pointed out to the Tribunal that one of the problems was that the Respondent did not have a specific team to deal with leasehold properties until 2004 but that since that date the Applicant had a specific leasehold team which dealt with all of the Applicant's leasehold properties. He described the block as being a low maintenance block. There were two maintenance officers employed by the Applicant although he had not carried out any cost exercise in relation to the number of officer hours spent on the block. There was no information as to the cost of management as their fee was set by the finance department having regard to the guidelines set by the Housing Corporation. He was nevertheless willing to give some reduction for those years in which there was not a leasehold team in existence.

17. **Sinking Fund**

Ms Kemal told the Tribunal that she considered that the amount which she paid towards the sinking fund was excessive. She complained about the previous works which were carried out in 2004 and in particular the condition of the window frames which had been repaired.

18. Mr Howard for the Applicant gave evidence as to the history of the previous works including consultation and the fact that further extensive works were due to be carried out in 2009.
19. Mr Beasley referred to the witness statement of Mr Aaron Cadger, the maintenance officer to the effect that the next cyclical redecoration was due in 2009 and that the cost of the works would be around £40,000 including VAT. He stated that the Applicant thus needed to collect some £8000 annually to cover those works in addition to routine repairs and maintenance.

20. **REASONS**

(a) **Gardening**

The only year in dispute was the year ending 2002. The charge for the year ending 2003 had been waived and there had been no charge for the year ending 2004. There was no challenge in respect of the years ending 2005 and 2006. The Tribunal accepted the evidence of Ms Kemal corroborated as it was by the photographs which were taken in June 2003. Although the Applicant had performed part of the service, it was clear that there was considerable neglect of the garden. The Tribunal accordingly determined that 50% of the amount for the year ending 2002 was payable by the Respondent, namely £56.79. This was a reasonable sum in the circumstances.

(b) **Communal Cleaning**

The Tribunal determined that save for the year ending 2004 all of the charges for communal cleaning would be disallowed. The Tribunal considered the Respondent to be a witness of truth and accepted her assertion that she had never seen a cleaner and neither had she seen evidence of cleaning. Despite the fact that the Applicant had invoices, there were no reports by officers to say that the communal cleaning had been undertaken. Indeed the notes of the meeting on 22 June 2004 stated clearly that the

communal cleaning had not been done. The year ending 2004 would be allowed because it was not disputed that in respect of the two invoices for £587.50 and £640.38 that work had been carried out and related to garden rubbish removal. Accordingly the Respondent's contribution under this head would be £81.85. This was a reasonable sum in the circumstances.

(c) **Day to Day Repairs**

Despite the representations made by Mr Kemal on behalf of the Respondent, the Tribunal found that there was no serious challenge under this head. The Tribunal determined that the charges under this head were both reasonable and payable save for the year ending 2003. The total charge for this year was £1379.78. However the sum of £167.50 would be disallowed because that invoice related to the Marriot Hotel in Bexley and not to minor day to day repairs. According for the year ending 2003 the total charge would be £1212.28 and the Respondent's contribution would be £80.81.

(d) **Management**

Although the Tribunal accepted the evidence of the Applicant that the charge for management had been set in accordance with Housing Corporation Guidelines, it was clear that for a number of years the Applicant did not have a proper leasehold team which could respond to the concerns of the tenants and that during this period the building was actually deteriorating. For the years ending 2002, 2003 and 2004, the management of the building was poor. The Applicant did not respond properly to tenant's complaints and the failure to do so, although organisational meant that there should accordingly be some reduction in the figure charged to the lessees. The Tribunal accordingly determined that for the three years in question a reasonable charge would be £75 per annum, per lessee. With regard to the year ending 2005 and the estimate for 2006, the

Tribunal considered that the sums requested (£174.62 and £179.86) were both reasonable and payable. An effective leasehold team was now in place and the Respondent appeared to be responding effectively to the concerns of the lessees.

(e) **Sinking Fund**

Although the lease specified that fluctuations in the service charge should be avoided, the manner in which the monies had been charged to the sinking fund leaves much to be desired. This was a modern development built around 1990 and what the Applicant in effect tried to do was to collect all monies for all cyclical works from the beginning. This was simply wrong. Moreover the cost of the works to be carried out in 2009 were unsupported by proper schedules or estimates. The sum of £40,000 was simply excessive. A reasonable pre-estimate for the purposes of the sinking fund would be £20,000 plus fees at 10% plus VAT, thus £25,850. This sum could be achieved over a five year period at the rate of £344 say £350 per lessee over a period of 5 years. Thus a reasonable sum would be £350 per lessee payable from the year ending 2004.

(f) **Section 20C Landlord and Tenant Act 1985 and Reimbursement of Fees**

It was clear that the Respondent had succeeded overall in this application. In those circumstances it would be wrong for the Applicant to recover the costs of this application through the service charge and for the same reasons it would be wrong to order the Respondent to reimburse the Applicant with the application and hearing fee.

Chairman

SECAMOTT

Date

18/5/06