

LON/00AY/LSC/2005/0289

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR
THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE,
ON APPLICATIONS UNDER SECTION 27A OF THE
LANDLORD AND TENANT ACT 1987, AS AMENDED**

APPLICANTS: Mrs Maria Felicia Andrew-Moore.

REPRESENTED BY: Waran & Co Solicitors

RESPONDENTS: Ms Jane E Cardwell

REPRESENTED BY: Carpenter & Co Solicitors

ADDRESS: 46 Grafton Square, London SW4 0DB

APPLICATION DATE: 14 October 2006

HEARING DATE: 26 & 27 January 2006

APPEARANCE: Mr L Wise (Counsel)
Mr S Andrew (Solicitor)
Mr S Moore

For the Applicants.

Mr A Walden (Counsel)
Mr P Ferrell (Legal Representative)
Ms J Carwell

For the Respondent

TRIBUNAL MEMBERS: Mrs F Burton LLB LLM MA
Mr J Jerero FRICS
Dr A Fox MCI Arb

46 GRAFTON SQUARE, LONDON SW4 0DB

BACKGROUND

1. This matter was transferred to the Leasehold Valuation Tribunal from the Wandsworth County Court by order dated 20 September 2005 of District Judge Habershon for determination of the payability of arrears of service charges amounting to £1,000 pursuant to s 27a of the Landlord and Tenant Act 1985

2. In view of the County Court referral, no formal Directions were issued save that on 16 November 2005 the Clerk notified the parties that the case had been set down for hearing on 26 January 2006 at 10.00 a m., that the Applicant was expected to prepare a bundle of documents to be used at the hearing, and that the bundle should contain all the documents to be relied on by either party and which were relevant to the issues in dispute; it was further directed that the bundle should as far as possible be agreed, indexed, have numbered pages and be in chronological order; and that one copy of should be sent to the Respondent and 4 copies to the Tribunal by 16 January 2006

3. The property is a converted period house containing 3 flats occupied in Flat 1 respectively by the Applicant and her husband, who managed the block on her behalf, the Respondent in Flat 3 and another Lessee in Flat 2. At the hearing on 26 January 2006, both parties were represented by solicitors and counsel.

THE CASE FOR THE APPLICANT

4. In opening the case, Mr Wise, counsel for the Applicant, referred the Tribunal to the relevant pages of the bundles which indicated that the disputed items were (i) electricity for the common parts (the staircase lighting), (ii) cleaning and (iii) management fees. Building insurance was not in dispute. Mr Wise drew the Tribunal's attention to Schedule 4 of the Lease which together with Clause 3(2) imposed the obligation on the Lessee to pay the service charges that were the subject of the dispute, and also to the colour photographs in the bundle which, he submitted, showed the quality of the building, which was kept in good condition, as was

appropriate for the smart flats it contained. He said that Mr Moore, who was responsible for the management of the building, was a conscientious retired man of a military background who, although aged 78 enjoyed the work.

5. Mr Wise then called Mr Moore who had made a lengthy written statement on which he elaborated in answer to questions from Mr Wise and the Tribunal. Asked if he had ever thought of engaging professional managers for the building, Mr Moore said that he had made such enquiries, but as there were only 2 other flats besides his own and his wife's, no one had been interested. He had, for example, been to Hamptons, but they had quoted £5,000 p a. In answer to questions from the Tribunal, he said that he had not tried any other firms, such as Andrews & Robertson whom he had heard managed his type of building, but they had disappeared from the high street, and he had been put off by Hampton's reaction to his approach to them. He said that the Respondent was the Lessee of the top flat, which she had bought in 1995, but that she had been away for several years during the intervening period during which she had sublet the flat. Her tenants had not been well behaved during her absence, slamming doors and making nasty remarks to him when he objected. They had mostly stayed for a short period, 6 months or so, although some had stayed for 2 years. He agreed that there was no prohibition on sub letting but the incidents had not been the only problems which had arisen with the Respondent's flat. There had also been trouble caused by a flood during the previous year. He considered that the £2,100 p.a. that he charged for management of the building was entirely reasonable.

6. With regard to cleaning, Mr Moore said that he cleaned the front door brass several times a week because people left marks on it. The going rate locally for cleaning was £7.50 per hour but cleaners did not want to clean as and when necessary as he did, but preferred to come about 3 times a week. He knew what the local rates were from pamphlets that came through the front door, although he had not sought any specific quotations, as he thought £7.50 per hour was reasonable and he could do the cleaning at that rate when it was necessary. In fact, he said, he had reduced the cleaning charge well below the total of the hours which he had spent, as the actual hours at the quoted rate had totalled £1,852 but he had charged only £200 not £617.50 per flat. He had provided a breakdown of the cleaning charges.

7. With regard to the electricity, Mr Moore said that there was a separate meter for the staircase lighting, and there was a power socket for cleaning which was run off the meter as well as the lighting. Only he used the socket which was necessary for cleaning the common parts. Electricity for the common parts was on a commercial rate, at 12p per unit, which had gone up last year, and there were three lights. He said the lights were not, as was claimed, on 24 hours a day, as they were controlled by a time clock and came on a quarter of an hour before dusk (or during the day if, for example, there was a thunderstorm and the sky became dark). He altered the time switch himself every 5 or 6 days so that the lights came on at dusk as that time changed. He said there could not be a push button time switch which operated automatically as it would go out before the top floor was reached and this would be dangerous. He insisted that there could not be a movement sensor as this would be too expensive to instal. He confirmed that the meter had been checked by the electricity board and was working accurately. However, he said he could not use energy saving bulbs because they were incompatible with the timeswitch, although it appeared that he had since had the time switch was disconnected.

8. Questioned by the Tribunal and cross examined by Mr Walden, counsel for the Respondent, Mr Moore said that he did not know of any other managing agent who might be charging £2100 p.a. for a building of only 3 flats, and admitted that he had sought no comparables, but had rather thought himself underpaid at the previous rate of £500 charged up to 2003. Asked about requests from the Respondent and from Ms Lucy Pearson, the Lessee of Flat 2, for a push button time switch for the lights, Mr Moore said that this was true but insisted that no one other than the Respondent had complained about the electricity charges. Asked what he spent on his own electricity, Mr Moore said he had no idea as his electricity was operated under the key system. He said that the Lessees' separate meters were either side of the landlord's (i.e. that for the common parts' account) by the front door and that nothing but power for the staircase lighting and the common parts' cleaning was supplied by the landlord's meter.

9. Asked whether he had an accountant, Mr Moore replied that he did not. When it was pointed out that the service charge account on pages 67-68 of the bundle was

arithmetically incorrect by £480 (proportionately a large amount) Mr Moore was surprised. Asked why he had sent a letter on page 70 of the bundle refusing detail of the service charge account, Mr Moore was unable to provide an explanation. Asked where the amount of £350 charged to each service charge account for a reserve fund for 2001-2002 (and again in 2002-2003) had gone, and whether there was a separate interest bearing bank account for this fund, Mr Moore confirmed that there was no such account, and said that he did not know the destination of the money as all cheques went to his wife who was the freeholder. He thought cheques went into her personal account, but would "have to ask the wife". He said he had stopped charging for the reserve fund in 2004. Asked whether the management fee had gone to supervising building works when these had been necessary he said that it had, but insisted that when these had been completed there was no reason for the fee to go down again as he thought £700 per flat was "reasonable".

9. Asked by Mr Walden whether he had obtained any quotations other than from the roofer he had previously used when roof repairs had been necessary, Mr Moore said he thought that they had done a good job three years earlier and saw no need for comparative quotations. Asked how he knew that no one else could do the work more cheaply, Mr Moore merely repeated his previous answer. Asked by Mr Walden why he sorted the post daily (as set out in his statement, although this was not in his list of the manager's duties) Mr Moore said that this was a "cordial gesture". Asked about the breakdown of cleaning, he said that this had been done at his solicitors' request. He had not done one previously, but thought that what he did was reasonable and did not think that the Lessees needed to have such a breakdown to see whether they were being overcharged. He insisted that cleaning the front door brass 3 times a week was necessary if it were to "look nice" because of "the weather", and for the same reason he cleaned the windows and regularly every two weeks and washed the net curtains in the common parts by hand. He said that net curtains were necessary as the building was "not a council block" and so was the security he provided as otherwise all sorts of "spurious people" came to the door. For this reason he kept the side light on outside the building all night. Asked if he and his wife paid the same into the service charge account as the Lessees, or whether they simply plucked a figure out of the air, Mr Moore replied that they managed the block economically and that "Mark" (the Lessee of Flat 2 in succession to Ms Pearson) did

not complain. Asked whether his wife (the Applicant) passed on the management fees to him, Mr Moore said that she gave him "some of it".

10. Asked by the Tribunal whether he had heard of the RICS Residential Management Code, which set out the duties of a manager, including on such issues as separate accounts for Lessees' money, Mr Moore said he had not. He was surprised to hear that his style of management was not in accordance with the RICS Code. In re-examination by Mr Wise, Mr Moore was unable to say when he had had the lighting time switch checked for accuracy but reiterated that he had since had it disconnected owing to the Lessees' objection to the lights coming on automatically at dusk.

11. The Applicant had also submitted a significant written claim for costs in relation to the proceedings in the County Court and at the Tribunal.

THE CASE FOR THE RESPONDENT

12. The Respondent gave her evidence in the form of her witness statement in the Wandsworth County Court, which had previously been seen by Mr Moore and required no elaboration. In summary the Respondent complained of no proper accounting in respect of the service charges. For some years she had paid without seeing vouchers "to keep the peace" but as the amounts had increased she had considered the service charges needed to be supported by proper accounts. She had experienced problems with the freeholder and Mr Moore during the time she had lived in Egypt and had sub-let her flat, always to one or two professional girls. Mr Moore had taken over the management from a firm called Hoopers in 1996, following which no proper accounts had been available. She had left her flat in the charge of her parents and her mother had had to write to her solicitors (then Sears Tooth) about the faulty intercom system, the need for a new front door, leaks in the roof, lack of carpeting and so forth, and had questioned the amounts for cleaning, lighting and an excessive management charge. She had subsequently requested a breakdown in conjunction with the then Lessee of Flat 2, together with an update on the outstanding issues including by then decoration and the timer switch. She had had little success with such requests, while the Applicant had still continued to

pursue the Lessees for increasing service charges. In 1999 arithmetical errors had been raised by herself and Lucy Pearson of Flat 2, and in 2004 there had been a false accusation made against her by the Applicant's solicitors that the previous managing agents had terminated their engagement due to her refusal to pay their fee, which was untrue. She had also suffered from repeated harassment of her tenants who had been wrongly (and impolitely) asked to account for their movements and those of their visitors, disturbing their peaceful enjoyment of her flat. The Applicant had also claimed to have a right to have a key and access to the Respondent's flat at any time, which was also wrong. As a result of all these problems the Respondent and Ms Pearson had discussed with their solicitors seeking the appointment of alternative managing agents.

CLOSING SUBMISSIONS

13. On behalf of the Respondent, Mr Walden said that claim for costs made by the Applicant's solicitors was a worthless document since it far exceeded what must actually have been charged. With regard to the Applicant's case for the cleaning charges levied by the Applicant, he accepted that Mr Moore was house proud and wanted to keep the building clean, but he queried whether it imposed a fair burden on the Lessees, as the time spent appeared to be disproportionate to the needs of the building. With regard to the lights in the common parts, Mr Walden said the question was whether any cost cutting had been considered at all in response to the requests of the leaseholders. Mr Moore's view that it would be too expensive to put in a push button automatic light switching system was ill founded since part of the system was already there and the conversion should at least have been costed out. The present system of spending £150 per year on 6 light bulbs was disproportionate when other methods were available of lighting the stairs cost effectively. The management fees were hugely disproportionate, unjustified and unnecessary. At the least a drop after the roofing works were complete would have been appropriate, but there had also been significant errors in accounting. Mr Walden submitted that any management charges should only reflect the requirements of carrying out the freeholder's covenants under the lease.

13. For the Applicant, Mr Wise submitted that Mr Moore had merely chosen a

system for the common parts' electricity which was not approved of by one tenant and that there were different ways of arranging for common parts lighting. He said that Mr Moore should not be penalised for his choice. With regard to the cleaning, he said that this was done with pride and the charges had been discounted in any case for a modest list of tasks. With regard to the management charges, the building needed management and although Mr Moore's accounting might be poor, "the money was all there". The only real question was whether the charges were excessive for the work done.

DECISION

14. Having carefully considered all the evidence, the Tribunal is of the view that there is little to challenge in relation to the electricity and the cleaning. Mr Moore's accounting was clearly poor, but he had reduced the cleaning charge and the electricity, although poorly organised, had actually incurred the charges billed by the utility company. However, the management is clearly thoroughly unsatisfactory. The amount charged is far in excess of the going rate for the subject property and it is within the Tribunal's knowledge that local firms do exist in South London who would have managed the building much more cost effectively and more cheaply at a market rate. Mr Moore has, for example, been clearly in breach of ss 21 and 22 of the Landlord and Tenant Act 1985 without reasonable excuse. The Tribunal is of the view that an appropriate management charge for the extent and quality of the management actually effected would be a maximum of £200 per annum per flat.

15 The Tribunal therefore determines that the service charges for the relevant years for electricity and cleaning are reasonable and duly payable, but that the management charges are not and should be limited to a maximum of £200 per annum per flat. With regard to costs, the Tribunal notes that the District Judge has reserved costs to the final hearing in the county court, and therefore makes no order in respect of the costs of the hearing before the Leasehold Valuation Tribunal.

Chairman.....

A. R. Smith

Date.....

13.3.06