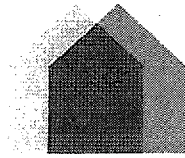


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Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

LON/00BB/LSC/2006/0188

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

Applicant: Mr Steven James Alderton

Respondent: London Borough of Newham

Property: 23 Chargeable Lane, Plaistow, London E13 8DL

Date of Application: 23rd May 2006

Date of Hearing: 31st July 2006

Venue: 10 Alfred Place, London WC1E 7LR

Appearances for Applicant: Mr Steven Alderton, In Person

Appearances for Respondent: Mr Mike Burrage, Service Charge Manager

Also in Attendance: None

Members of the Tribunal: Mr John Hewitt Chairman
Mr Michael Mathews FRICS
Mr Colum Leonard

Date of Decision: 6th August 2006

Decision

1. The decision of the Tribunal is that the sum of £968.76 claimed by the Respondent as being a service charge payable in respect of major works connected with the installation of an entry phone system is not payable by the lessee of the Property.
2. The findings of the Tribunal and the reasons for its decision are set out below.

Background

3. The Property concerned with this application is a maisonette on ground and first floors in a block numbered 22-32 Chargeable Lane. The Property is accessed directly at street level via porch which leads to the street door and which also houses a small external storeroom. Other lower maisonettes are similarly accessed via porches directly off the street. The maisonettes on the second and third floors are accessed via a common staircase leading to a landing, along which the street doors are set.
4. The Applicant is one of two joint lessees of the property by virtue of a lease dated 27 April 1992 granted by the Respondent as landlord to the Applicant and Minnie James Alderton as lessee, for a term of 125 years from the date of the lease at a ground rent of £10 pa and on other terms and conditions as therein set out.
5. So far as material to this application the lease provides:
A definition of 'the Estate' as being the block containing maisonettes numbered 22-32 Chargeable Lane and certain amenity land situated around the block.
A definition of the landlord as 'the Corporation'
A covenant on the part of the lessee to pay by way of;
'additional rent a proportionate part of the expenses and outgoings incurred by the Corporation in the repair maintenance renewal improvement and insurance of the Estate and the provision of services therein and other heads of expenditure as the same are set out in the Third Schedule hereto such

further and additional rent (hereinafter called 'the service charge')'. (Clause 5(2))

A covenant on the part of the Corporation:

'...to maintain repair redecorate renew amend improve clean ... (a) the structure of the Estate and every part thereof ...' (Clause 7(1) and (a))

The Third Schedule sets out the costs expenses outgoings and matters in respect of which the lessee is to contribute, and includes;

'...the expense of maintaining repairing redecorating renewing amending improving cleaning ...the Estate and all parts thereof and all appurtenances apparatus and other things belonging thereto ...' (Paragraph 1)

6. In or about 2005 the Respondent installed on the Estate an entry phone system at the main entrance to the stairway leading to the maisonettes on the second and third floors of the Estate so that visitors to those maisonettes cannot access them unless the occupier activates the system and permits access. The proportionate part of the cost attributed to the lessee of the Property and claimed by the Respondent is £968.76.
7. The questions for the Tribunal to determine are:
 - 7.1 Whether the installation of the entry phone system constitutes an 'improvement' within the meaning of the lease.
 - 7.2 Whether it was reasonable to incur the cost of installation of the entry phone system, and if so whether the cost incurred was reasonable in amount.
8. The hearing took place on Monday 31st July 2006. The Applicant represented himself. Mr Mike Burrage, Service Charge Manager represented the Respondent. Both Mr Alderton and Mr Burrage gave evidence to us and made submissions to us.

The Law

9. A lease must be construed in the same way as any other commercial contract. The modern approach to construction was clarified by Lord Bingham in *BCCI (SA) v. Ali* [2002] 1 AC 251; [2001] 2 WLR 735 when he said;

'In construing this provision, as any other contractual provision, the object of the court is to give effect to what the contracting parties intended. To ascertain the intention of the parties the court reads the terms of the contract as a whole, giving the words used their natural and ordinary meaning in the context of the agreement, the parties' relationship and all relevant facts surrounding the transaction so far as known to the parties. To ascertain the parties' intentions the court does not of course inquire into the parties' subjective states of mind but makes an objective judgment based on the materials already identified. The general principles summarised by Lord Hoffman in Investors Compensation Scheme Ltd v. West Bromwich Building Society [1998] 1 WLR 896, 912-913 apply in a case such as this.'

10. The Tribunal also bears in mind that a tenant's liability for service charges should be clearly and unambiguously set out in the lease. This is clear from *Sella House v Mears* [1989] 1 EGLR 65 and the judgment of Taylor LJ at 68E.

The approach to construction of a service charge provision in a residential lease was again reviewed by the Court of Appeal in *Gilje v Charlesgrove Securities Limited* [2001] EWCA 1777, where ambiguous provisions were looked at in respect of a notional rent on the caretaker's accommodation. Laws LJ said:

'On ordinary principles there must be clear terms in the contractual provisions said to entitle him to do so. The lease, moreover, was drafted or proffered by the landlord. It falls to be construed contra proferentem.'

In the same case Mummery LJ said

'First, I note what is stated in paragraph 55 on page 71 of the 5th Edn of the Encyclopedia of Forms and Precedents Vol 23 on Landlord and Tenant in the section relating to the drafting of provisions in leases for services charges. It is stated as follows:

'The draftsman should bear in mind that the courts tend to construe the service charge provision restrictively and are unlikely to allow recovery for items which are not clearly included'

He went on to say

'The proposition is obvious. .. indeed the proposition reflects a particular application of the general principle of construction in the contra proferentem rule.'

11. Service charges in residential leases are subject to statutory control as follows;

Landlord and Tenant Act 1985

Section 18: Meaning of 'service charge' and 'relevant costs'

'(1) In the following provisions of this Act 'service charge' means an amount payable by a tenant of a dwelling as part of or in addition to the rent:-

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose:-

(a) 'costs' includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.'

Section 19: Limitation of service charges: reasonableness

'(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period:-

- (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;*

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

A party to a lease is entitled to apply to a leasehold valuation tribunal for a determination as to whether a sum is payable by way of a service charge, and if so, how much is payable.

Section 27A: Liability to pay service charges: jurisdiction

'(1) Where an amount is alleged to be payable by way of service charge, an application may be made to a leasehold valuation tribunal for a determination whether or not any amount is so payable and, if it is, as to:-

- (a) the person by whom it is payable,*
- (b) the person to whom it is payable,*
- (c) the amount which is payable,*
- (d) the date on which it is payable, and*
- (e) the manner in which it is payable.*

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to:-

- (a) the person by whom it would be payable,*

- (b) *the person to whom it would be payable,*
- (c) *the amount which would be payable,*
- (d) *the date at or by which it would be payable, and*
- (e) *the manner in which it would be payable.*
- (4) *No application under subsection (1) or (3) may be made in respect of a matter which:-*
 - (a) *has been agreed or admitted by the tenant,*
 - (b) *has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*
 - (c) *has been the subject of determination by a court, or*
 - (d) *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*
- (5) *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having paid the whole or any part of an amount alleged to be payable by way of service charge.*
- (6) ...
- (7) ...

The Case for the Respondent

12. Mr Burrage gave evidence and told us that he was responsible for the management of the service charge accounts but that he did not have any direct responsibility for or knowledge of the reasons behind the decision to install the entry phone system. He said that broadly the Respondent had taken a generic decision to install entry phone systems to across much of its residential portfolio. He referred to the s20 consultation letter dated 20th December 2002 which referred to a major works programme: 'Installation of a Door Entry System' and the tenders submitted ranged from £304,344 to £484,940. Subsequently the proportion of the cost incurred attributed to the Estate, 22-32 Chargeable Lane, was approximately £12,000, but Mr Burrage did know how that proportion had been ascertained. Of that sum the proportion attributable to the Property was £968.76 and Mr Burrage said that this was based on rateable values of the properties comprising the Estate. From the scale of the main contract Mr Burrage inferred that a large number of entry phone systems were installed across the Respondent's residential estate.

13. Mr Burrage said that he was unfamiliar with the Estate because he is office based and rarely visits the properties. He was not able to explain to us the layout of the Estate and the detail of the new door entry system. Mr Burrage did not dispute the explanation given to us by Mr Alderton. Mr Burrage was unable to tell us what security problem, if any, existed at the subject Estate which informed the decision to install the door entry system. He was equally unable to tell us if the installation of the door entry system had brought about any improvement in security.

14. Mr Burrage was unaware of any previous door entry system on the Estate and he accepted Mr Alderton's evidence that there was not any such system at all. Mr Burrage thus accepted that the cost incurred was not a repair or a renewal of an existing but defective system and submitted that it was an improvement. He submitted that the Respondent was entitled to recover a contribution to the cost from the Applicant because the lease obliges the lessee to contribute to the costs incurred by the Respondent in '*...improving...the Estate and all parts thereof and all appurtenances apparatus and other things belonging thereto...*'

Unfortunately Mr Burrage was not able to assist us with specific reasons explaining the decision to install the system on the Estate. Mr Burrage said he did not know whether the tenants of the maisonettes comprising the Estate had requested the system to be installed or what their views about it were.

15. Mr Burrage submitted that generally tenants want improved security for their homes and that it was reasonable for the Respondent to carry out improvements and to incur the cost of the works. Mr Burrage further submitted that the Respondent went to competitive tender to get the best price for the works, that the cost was reasonably incurred, was reasonable in amount and thus is payable by the lessee.

16. In response to an enquiry from Mr Alderton, Mr Burrage explained that a lessee of an adjacent maisonette, No. 26 was not billed for a contribution to the major works because her lease was in an old form and did not impose an

obligation to contribute to improvements. This was in contrast, he said, to the Applicant's lease which did impose an obligation to contribute to the cost of improvements.

17. In consideration of an application under s20C of the Act, Mr Burrage assured the Tribunal that the Respondent did not intend to pass any costs it may have incurred in respect of these proceedings through the service charge account. It was thus unnecessary for a formal s20C application to be made and determined.

The Case for the Applicant

18. Mr Alderton said that he had lived at the Property since 1972 when he moved in with his mother and late father. Mr Alderton explained the layout of the Estate. He told us of the stairway leading to the upper maisonettes. He said that access to the stairway at street level was via two points. The entry phone system comprised the installation of two doorways with telephone connections to phones in each of the upper maisonettes. The system thus controls access to the stairway and to the upper maisonettes. Mr Alderton's home, like the other lower maisonettes, is accessed via a porch and front door directly off the street and is outside of the scope of the new entry door system.
19. Mr Alderton said that he was unaware of any particular historic security issue concerning the upper maisonettes at the Estate or of any call by the tenants of them for improved security. He said that the installation of the system had compromised the security of the lower maisonettes because prospective burglars are now more likely to target the lower maisonettes as the upper maisonettes are more difficult to access. He is thus more vulnerable. Mr Alderton submitted that if the Respondent had wished to improve security on the Estate and surrounding area generally a more comprehensive scheme embracing all properties should have been considered and implemented.
20. Mr Alderton was generally critical of the level of repair and maintenance of the Estate by the Respondent compared to other estates for which it is responsible.

21. Mr Alderton submitted that the entry phone system was not an improvement and that the cost of it was not reasonably incurred.

Findings and Reasons

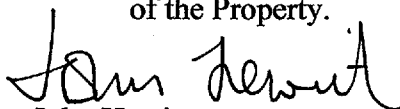
22. The Tribunal find that both Mr Burrage and Mr Alderton to be honest and reliable witnesses doing their best to assist the Tribunal and that they gave their evidence to us without bias or exaggeration.

23. Mr Burrage accepted that for the contribution to the cost of the new door entry system to be payable by the lessee it has to be an 'improvement' within the meaning of the lease. The lease does not provide a definition of an 'improvement' and there is no statutory definition which is relevant. The Tribunal thus is required to construe the expression in the context of the lease. The Tribunal notes that the lease granted a term of 125 years. It is inevitable that over such a long period there will be technical and other progress in and changes to lifestyles and good estate management practices. There is thus a need for flexibility to enable the landlord to adapt the management of the Estate as may be required and to install new or additional plant, equipment or installations as may be reasonable to maintain or improve the efficient use and enjoyment of the Estate by the persons who live there.

The Tribunal finds that in principle and in the context of the subject lease and Estate the installation of a door entry system or other security system is capable of constituting an 'improvement' provided that there is a sound and reasonable case for the need for it and provided the system installed is designed to reasonably meet the identified need.

The Tribunal also find that an improvement need not necessarily benefit all tenants but at the very least it ought to benefit a number of them. It is possible that an improvement that benefits some disbenefit others. If so, in considering whether a landlord was acting reasonably in effecting an improvement, the Tribunal would expect to see, at the very least, a reasoned and balanced case discussing the pros and cons of the scheme and its likely impact on residents, and clarity about the overall benefits to be achieved.

23. We find, and it was not disputed, that the cost of the installation of the door entry system is a service charge within the meaning of s18 of the Act. It follows that s19 applies and the amount payable is limited to the extent to which the service charge is reasonably incurred, and if so, is reasonable in amount.
24. The Tribunal has to consider whether it was reasonable for the Respondent to incur the cost of the door entry system. On the very limited evidence presented to us by the Respondent during the hearing we cannot with confidence find that it was. No evidence was produced to us to explain the reasoning for the installation of the system on the Estate, the need for it and the problem it was intended to overcome. No evidence was produced as to the likely effect of the system on the lower maisonettes and the overall balance between what might be conflicting interests of the upper and lower maisonettes.
25. The Tribunal preferred the evidence and submissions of Mr Alderton because he was persuasive and he had some direct knowledge of the Estate and the issues concerning it. We find that there was no significant security problem affecting the upper maisonettes that would justify the installation of the door entry system, to the detriment of the lower maisonettes.
26. In the light of the evidence of Mr Alderton which we accept and in the absence of cogent evidence from the Respondent supporting the case for the need for the door entry system we cannot find that it was reasonable for the Respondent to have incurred the cost of the entry phone system as an improvement.
27. Accordingly we find that that the claim for the sum of £968.76 by way of a contribution to the cost of the entry phone system is not payable by the lessee of the Property.


John Hewitt

Chairman

6th August 2006