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Residential  
Property  
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**DECISION BY THE LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985, as amended, Section 27A

**Ref :LON/00BE/LSC/2007/0329**

**Property: 119 Draper House, 20 Elephant and Castle, London  
SE1 6SY**

**Hearing date: 22 October 2007**

**Applicant: Mr D Holden**

**Represented by: Letter**

**Respondent: The London Borough of Southwark**

**Represented by: Mrs E Sorbjan, Mr D Coombs, Mrs L Huggins**

**Members of the Tribunal:**

**Mr C Leonard (Chairman)**

**Mr F Coffey FRICS**

## INTRODUCTION

1. The Applicant is the leaseholder of 119 Draper House, 20 Elephant and Castle, London SE1 6SY ("the property"). According to the Respondent the Applicant is one of 24 long leaseholders among 141 tenants in the Building.
2. The Applicant complains of the cost of a concierge service, comprising a combined CCTV and concierge service to the Building. The concierge service is provided in two shifts between 6 am and midnight every day. The concierges are non-resident and undertake some caretaking duties; the service charge is based on their estimate of the proportion of time they spend on concierge duties only.
3. The charges to the Applicant for this service in the service charge years 1 April 2004 - 31 March 2008 are as follows;

| Year              | Amount  |
|-------------------|---------|
| 2004-5            | £542.72 |
| 2005-6            | £364.32 |
| 2006-7            | £244.78 |
| 2007-8 (estimate) | £385.09 |

4. It has not been suggested that the concierge service is unnecessary. The evidence of the Respondent is that it is required to protect the Building from unwarranted intrusion, with consequential risk to the security of the residents and damage to the building. The Applicant queries his obligation to pay for the service at all, given the terms of his lease, and also complains that he pays too much for it compared to the majority of tenants in the block, who pay rent weekly.

## THE LEASE

5. The Applicant's lease is dated 9 August 2004 and runs for a term of 125 years from that date. The Third Schedule to the lease deals with annual service charges, which are payable in quarterly instalments. The service charge must be a fair proportion of the costs and expenses set out at paragraph 7 of the Third Schedule.

6. Paragraph 7 reads as follows:-

"The said costs and expenses are all costs and expenses of or incidental to

(1) The carrying out of all works required by sub-clause (2) - (4) inclusive of clause 4 of this lease

(2) Providing the services hereinbefore defined...

(6) The maintenance and management of the building and the estate (but not the maintenance of any other building comprised in the estate)

(7) The employment of any managing agents appointed by the council in respect of the building or the estate or any part thereof **PROVIDED** that if no managing agents are so employed then the council may add the sum of 10% to any of the above items for administration..."

7. Clause 4, sub-clauses (2) - (4) of the lease describe the Respondent's general repair, maintenance and decoration obligations. "The services", as defined, include caretaking and the provision of an entry-phone system.

8. The first question to consider is whether concierge and CCTV charges are recoverable under the service charge provisions of the lease. The Tribunal determines that they are, for the following reasons.

9. The Respondent relies upon paragraph 7(6) of the lease to justify the charge for such services. Paragraph 7(6) could perhaps be more specific, but it is not unclear. It is evidently not intended to cover general management costs, because they are provided for in paragraph 7(7), nor the Respondent's repair and decoration obligations, because they are provided for in clause 4.
10. If paragraph 7 (6) is not to be redundant, it follows that in referring to "all costs and expenses of or incidental to... the maintenance and management of the building and the estate" it is intended to refer in broad terms to all aspects of the day-to-day business of maintenance and management. In doing so it is quite widely worded enough to encompass necessary security and concierge services, which do qualify as "costs of" maintenance and management and even if they did not, would qualify as costs "incidental to" maintenance and management.
11. In reaching this conclusion the Tribunal has considered the factual background against which the lease was signed. According to both parties' evidence, the concierge service pre-dates the lease. When the lease was executed, both parties were aware that the building had the benefit of a concierge service and were in a position to know that the cost of that service would be included in the general provisions of paragraph 7(6) of the Third Schedule.
12. Paragraph 6(2) of the Third Schedule provides that the Respondent may adopt any reasonable method of ascertaining a fair proportion of the costs and expenses to be paid by the Applicant.
13. The Respondent's system of allocating service charges is to allocate a number of "units" to a given property, assuming four basic rooms and adding the actual number of bedrooms. The service charge is then allocated in the proportion that the property's units bear to the total number of units in the relevant block (or, where appropriate, the estate).
14. This is a reasonable method of apportionment. It might be said to be most appropriate to services from which larger properties obviously gain more benefit

(such as heating) but the Tribunal accepts the Respondent's submission to the effect that it would be impracticable to manage the apportionment of routine service charges so as to make such a distinction. The system would become over-complicated and less transparent as a result.

15. The Applicant complains that as a long leaseholder he pays more for the service than weekly tenants who obtain the same benefit from it.

16. The figures before the Tribunal do not support that assertion. The Applicant has produced a neighbour's rent card for the year 2006-2007 which indicates that a tenant's weekly rent includes £6.95 for concierge services. This amounts to £361.40 per year. For the same period the Applicant paid £244.78.

17. The figures for the charge have fluctuated. The Respondent advises that this is a result of changes in the number of occupied "units", changes in the method of allocating charges and variations in cost, for example arising from the need to utilise temporary staff. Whilst costs should be minimised, none of the above figures are outside an acceptable range for the service.

18. The Tribunal's conclusion is that the service charges to which the Applicant has objected are not unreasonable and should be paid. The Respondent states that the Applicant is in arrears of service charge in the sum of £2,299.90 and in the absence of evidence to the contrary the Tribunal determines that that sum is now payable by the Applicant to the Respondent. The Tribunal notes however that the Respondent has no present intention of taking enforcement proceedings or serving a section 146 Notice, and intends to come to a sensible repayment arrangement with the Applicant.

19. No application has been made under section 20C of the 1985 Act.

Dated 12 November 2007

  
Colum Leonard

Chairman