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Ref: LON/00BG/LSC/2006/0376

LEASEHOLD VALUATION TRIBUNAL
LONDON RENT ASSESSMENT PANEL

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

Property: 12 Nova Court West, Yabsley Street, London E14 9SA

Applicant: Mrs C Hall

Respondent: Swan Housing Association

Application Date: 18th October 2006

Hearing Date: 25th January 2007

Representatives: Ms M Bond, Ms S Teng and Mr N Casey (all law students,
representing the Applicant)
Mr R Pearce in person (Associate Housing Consultant
commissioned by the Respondent)

In Attendance: Mrs C Hall (the Applicant)
Mr A Hall
Mr S McKenna (Housing Manager for Respondent)
Ms S King (Ownership & Income Manager for Respondent)
Mr J Dyer (Estate Services Manager for Respondent)
Ms S Argent (Service Charge Officer for Respondent)
Mr D Skipper (of Hallmark Property Management)

Members of Tribunal

Mr P Korn (chairman)
Mr P Tobin
Mrs A Moss

INTRODUCTION

1. This is an application under Section 27A of the Landlord and Tenant Act 1985 (as amended) (the "1985 Act") for a determination of liability to pay service

charges. The Applicant disputes various items in respect of the service charge years 2004/2005, 2005/2006 and 2006/2007, as referred to in more detail below.

2. A Pre-Trial Review took place on 9th November 2006 and the Tribunal stated at that Review that this case may be suitable for mediation. Mediation subsequently took place but was inconclusive.

BACKGROUND

3. The Property is a two bedroom flat within a block consisting of 28 affordable properties built as part of a mixed development that includes some privately owned properties. Hallmark Property Services are the managing agents for the whole development. The Applicant has an Assured Tenancy with variable service charges and the Tenancy Agreement is dated 31st January 2005. Although the Applicant is Mrs Hall alone, the Tenancy Agreement is in the joint names of Mr and Mrs Hall.
4. The Applicant has been raising various issues with the Respondent in connection with the service charge since early 2005 and there has been a significant amount of correspondence and other communication, culminating in the attempt at mediation referred to above and the hearing before this Tribunal.

THE SPECIFIC ISSUES RAISED ON BEHALF OF THE APPLICANT

5. The specific items in dispute are set out according to service charge year in the Application Form. At the hearing, with the Tribunal's permission, the Applicant's representatives presented their evidence by dealing with each category of disputed service charge separately, regardless of the year in which the expenditure was incurred.
6. Dealing first with **cleaning**, Ms Bond for the Applicant referred the Tribunal to an email dated 31st August 2006 from Mr McKenna (of the Respondent) to Mr T Whelan of Hallmark (the managing agents) complaining about his repeated failure to provide information in response to service charge enquiries. Ms Bond also referred to notes taken by the Applicant on the state of various communal areas on an inspection on 12th June 2006, for example describing the communal doors, the internal doors and the lino as "filthy".
7. Ms Bond also referred to an email from Mr McKenna dated 11th October 2006, which stated that the Respondent itself was not happy with the standard of cleaning. Reference was also made to an email from Mr Dyer dated 13th October 2006 addressed to Mr Skipper of Hallmark describing the standard of finishing in the blocks as "not acceptable", referring to the need for Hallmark staff to be trained correctly in how to clean correctly and referring to the

methods “undertaken” [by Hallmark] as “clearly breaking” health and safety requirements.

8. Ms Bond also referred to a note dated 31st August 2006 and signed by a Hallmark concierge. It was a note of an inspection conducted in the company of the Applicant and referred to poor cleaning/maintenance of doors, floors, skirting boards, walls and windows. The Tribunal was also referred to various letters of complaint written by the Applicant.
9. In relation to the **lift**, the notes of the inspection referred to in paragraph 6 above also stated that the lift had lost its voice and number display. The note signed by the concierge referred to in paragraph 8 above also stated that the lifts were “constantly breaking down”. The Tribunal was again referred to letters of complaint sent by the Applicant, which included a complaint that the telephone inside the lift did not work properly.
10. **Fuel** charges were listed in the Application Form as being a matter of dispute but after some discussion the Applicant decided no longer to pursue the issue of fuel charges in respect of any financial year.
11. In relation to **lighting**, a point was made about the lights above the main front door not working but this was not pursued. Similarly, a point was made on behalf of the Applicant about Hallmark’s “Concierge Job Description” in relation to lighting but it conceded that this job description related to another property and again the point was not pursued.
12. In relation to the 2004/2005 Service Charge Accounts, Ms Teng for the Applicant queried the position in relation to **building insurance** and **grounds maintenance**. These amounts had been paid by the Applicant yet a letter dated 6th December 2006 from Mr McKenna to the Applicant stated in relation to both these items that residents of Nova Court had never been charged for these items. That same letter also contained confusing information concerning tenants’ obligations to pay towards **water rates**.
13. Ms Teng raised other points on the Accounts. The 2004/2005 contained a charge for “**Door entry systems/CCTV**” even though the Applicant did not benefit from CCTV. The 2005/2006 Accounts contained a new charge for “**Caretaker/Cleaner**” which had not adequately been explained despite requests for clarification by the Applicant. Also, the entries for **audit fees, legal fees** and **sundries/miscellaneous** for 2005/2006 and 2006/2007 were disputed.
14. Mr Casey for the Applicant summed up the Applicant’s position by stating that the Applicant had received very tardy responses from the Respondent over an extended period over what she felt to be valid service charge queries. Information, when it had been forthcoming, had been inadequate or confusing.

The Applicant had tried to take her complaints to the next level up by using the Applicant's complaints procedure but had not got anywhere. In particular, the matter had not been referred to the Chief Executive of Swan Housing. Mr Casey also referred to Mr McKenna's statement in a letter dated 6th December 2006 that it was "not possible to provide a detailed breakdown" of the audit fees, legal; fees and sundries for 2005/2006 and suggested that this failure was a breach of the Respondent's statutory duty to provide information.

RESPONSE ON BEHALF OF THE RESPONDENT

15. Mr Pearce (for the Respondent) called Mr Dyer as a witness. Mr Dyer said that in his view that whilst there were aspects of Hallmark's performance as managing agents that he was concerned about, the Respondent could not have provided cleaning services to a higher standard than Hallmark for the amount that Hallmark was charging.
16. Mr Dyer was invited by Mr Pearce to deal with certain specific points made on behalf of the Applicant. In relation to Mr McKenna's email complaint to Hallmark referred to in paragraph 6 above, Mr Dyer said that this complaint was not about quality of service but about lack of response to requests for information. In relation to cleaning of windows, whilst Mr Dyer conceded that the windows could perhaps have been cleaned more frequently it was nevertheless the case that the tenants were only charged for cleaning that did actually take place and the Respondent had not to Mr Dyer's knowledge received any complaints about cleaning from any other tenants.
17. In relation to the lift, the Respondent accepted that the lift did not have a voice or number display. There was an inherent defect and the Respondent was in the process of investigating its own remedies in relation to the defect. Nevertheless, in the Respondent's view tenants were only charged the actual cost of lift maintenance.
18. In relation to the charges for building insurance and grounds maintenance in the 2004/2005 Accounts, the Respondent conceded that these should not have been charged and agreed that the Applicant was entitled to a refund in relation to these items.
19. In relation to the item in the 2005/2006 Accounts for "Caretaker/Cleaner", the Respondent conceded that a caretaker was not provided but stated that this figure was in fact just for the cleaner. Similarly with "Door entry systems/CCTV" it was agreed that the Applicant's block did not benefit from CCTV and this item in fact just related to door entry systems. The Respondent found it easier to set out its service charge accounts in this manner but Mr Dyer conceded that it had added to the Applicant's confusion.

20. On the subject of the complaints procedure, Mr Pearce conceded that the complaint had not been escalated in a formal way but noted that there had been a lot of correspondence and therefore the Respondent had been dealing with the complaint, albeit not as quickly as the Applicant would have liked. Mr Pearce's view was that whilst the Respondent had not dealt with the complaint in a first class manner it had done so generally in an adequate manner. He conceded that the standard of services had also not been first class.

21. Mr Pearce also made the point that the Respondent was not a private commercial landlord seeking to maximise its profit but a housing association. He also suggested that much of the difficulty has arisen out of the Applicant's confusion with the terminology. The point was also made that, apart from a complaint in relation to a disabled lift, the Respondent was not aware of any other tenants having complained about the services.

FURTHER POINT ON BEHALF OF APPLICANT

22. In relation to the lack of complaints by other tenants, Ms Bond said that other tenants had not attended the hearing because they could not afford to take the day off work, but she was unable to bring any evidence to demonstrate that other tenants had complained.

TENANCY AGREEMENT

23. The parties were invited by the Tribunal to address the Tribunal on the wording of the Tenancy Agreement. The parties did not take up the invitation, save for a brief disagreement as to whether there was an obligation on the landlord to provide particular services listed in clause 1(3). The Tenancy Agreement will be referred to in more detail later.

INSPECTION

24. The Tribunal inspected the block of which the Property forms part after the hearing. There was a suggestion on behalf of the Applicant that certain items had been fixed recently and that therefore the Tribunal would not see the full picture (although this point was not really pursued at the inspection). On the inspection, the Tribunal noted the problems with the lift as described on behalf of the Applicant and the Applicant also pointed out to the Tribunal the standard of cleaning in the block, particularly of the floor and windows.

THE LAW

25. Section 19(1) of the 1985 Act provides:

“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 shall be limited accordingly.”

26. “Relevant costs” are defined in Section 18(2) of the 1985 Act as “the costs or estimated costs incurred or to be incurred by or on behalf of the landlord...in connection with the matters for which the service charge is payable”.
“Service charge” is defined in Section 18(1) of the 1985 Act as “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 cost of management, and (b) the whole or part of which varies or may vary according to the relevant costs”.
27. Section 27A of the 1985 Act gives a leasehold valuation tribunal jurisdiction to determine (on an application made to it) “whether a service charge is payable and, if it is, as to...the amount which is payable...”.

APPLICATION OF LAW TO FACTS

28. Neither party made substantive submissions on the terms of the Tenancy Agreement, but it is appropriate nevertheless for the Tribunal to consider whether the cost of the relevant service charge items is recoverable as a matter of construction of the wording of the Tenancy Agreement itself.
29. The service charge provisions in the Tenancy Agreement are unfortunately poorly drafted. Clause 1(3) states that:-
“The [landlord] shall provide such services in connection with the premises as may be required. These may include some or any of the following items (together with other such services as may be required)
(a) window cleaning (b) cleaning of communal areas (c) grass/cutting/landscaping (d) security (e) supply of water/electricity (f) fire equipment maintenance (g) lift maintenance (h) communal television maintenance
communal cleaning, lighting maintenance PROVIDED ALWAYS the [landlord] may cease to provide any such services if in its reasonable opinion it is no longer practicable to provide such or it may provide additional services if the [landlord] considers it desirable to do so.”
30. Clause 1(1) states (amongst other things) that the landlord “has allocated £14.63 as the cost of provision of the Services set out in 1(3)” but then Clause 1(5) adds that the landlord “may charge for the services on the basis either of

reasonable costs incurred during the previous accounting period (with provision for any expected increase or decrease in costs for the current or next account period) or of estimates for the current or next accounting period. The difference between any estimate and the actual cost may be carried forward.” Clause 1(6) provides that the charge for the services “may include a reasonable contribution to a sinking fund” and Clause 1(7) provides that “the cost of the services shall be apportioned equally between all the properties benefiting from the service concerned”.

31. Whilst in the view of the Tribunal it would be in both parties’ interests for the provisions relating to the provision and the cost of the services to be clearer and tighter, the Tribunal considers that these provisions are sufficiently wide to entitle the landlord to charge for all the heads of expenditure which are the subject of this application.
32. The next point to consider is whether each disputed head of expenditure falls within Section 18 of the 1985 Act, such that they fall to be limited under Section 19 of the 1985 Act if not reasonably incurred and/or if incurred in respect of services or works which are not of a reasonable standard. The Tribunal considers that although Clause 1(1) of the Tenancy Agreement would appear to indicate that the service charge is fixed, the other provisions of the Tenancy Agreement and the practical application of those provisions leads the Tribunal to conclude that the service charge is in fact variable and that the disputed items fall within Section 18.
33. The Tribunal also considers that none of the exceptions set out in Section 27A of the 1985 Act apply and that it therefore has jurisdiction to make a determination in respect of the disputed items.
34. In relation to the **cleaning**, the Tribunal’s inspection of the Property confirmed that the Property was not in pristine condition and that there was, for example, a difference in quality of cleaning between the area of floor personally cleaned by the Applicant and the adjacent area. Indeed, this point was not disputed by the Respondent. However, the Tribunal did not find the level of cleaning to be so poor that the cleaning which had taken place should not be paid for. In addition, the Applicant had brought no evidence of other tenants having complained about the state of cleanliness and no compelling evidence as to why no other tenants had provided written submissions in support of her case (if, as was intimated, other tenants were indeed supportive).
35. The main problem in respect of the cleaning appears to have been that cleaning was not carried out as frequently as the Applicant would have liked. However, it would seem that the lack of frequency in turn led to the cost being proportionately less. The Applicant submitted no real evidence to indicate that the amount paid was itself unreasonable. It is conceivable that the

Applicant might have grounds for arguing that the Respondent was periodically in breach of its responsibility to provide a cleaning service under the Tenancy Agreement but this is not the application before the Tribunal.

36. In relation to the **lift**, it does appear to be the case that the lift has been seriously defective for an unacceptable period of time. The service charge accounts for each of the three years in question show "lift servicing" as a significant item. It is not clear from correspondence whether there were significant problems during the service charge year 2004/2005 but it does seem that there were problems during 2005/2006 and that these problems are continuing during the current year 2006/2007. In the circumstances, the view of the Tribunal is that the servicing has not been of a reasonable standard and that a third of the amount charged for lift servicing should be deducted for the years 2005/2006 and 2006/2007.
37. As noted above, the Applicant is no longer disputing the **fuel or lighting** heads of expenditure in any of the service charge years.
38. As regards **building insurance** and **grounds maintenance**, the Respondent accepts that these amounts should not have been charged for the 2004/2005 service charge year and that therefore these sums should be refunded.
39. In relation to **water rates**, whilst it is noted that the Applicant was confused as to which water rates were being referred to, in the absence of any compelling evidence having been brought by the Applicant the Tribunal has no choice but to accept the Respondent's explanation for these charges. The same applies to the **door entry system/CCTV** and the **caretaker/cleaner**.
40. In relation to the **audit fees** and **legal fees**, again the Applicant has brought no compelling evidence as to why these should not be payable, and the Tribunal does not for example think that a contribution of 9 pence a week towards legal fees in 2005/2006 is necessarily unreasonable.
41. The Tribunal has more sympathy with the Applicant's position in relation to the figure for **miscellaneous** items for the year 2006/2007. A figure of £1.40 per week – up from zero for "miscellaneous" in 2004/2005 and 7 pence for "sundries" in 2005/2006 – is hard to justify, and the Respondent did not really bring any evidence on this point. A detailed breakdown of, and explanation for, this huge rise in miscellaneous expenditure should have been provided, and this is an area in respect of which the Tribunal agrees with the Applicant that there has been an unacceptable degree of confusion and a lack of communication and transparency. In the circumstances, the Tribunal is of the view that the figure of £1.40 per week should be reduced to 20 pence per week. If in due course when the actual cost of services for 2006/2007 is known and the Respondent is able to re-allocate the balance to specific heads of charge and provide sufficient accompanying evidence to the Applicant,

then the balance (if properly payable) can be re-charged to the Applicant at that point.

42. As a general point, the Tribunal takes the view that there have been a number of occasions on which the Respondent has failed to respond to complaints made by the Applicant within a reasonable amount of time and that when it has responded it has sometimes done so in an unhelpful and/or a confusing manner. At the same time, it is also appropriate to note that some of the Applicant's complaints appear to have overstated the seriousness of the relevant problem.

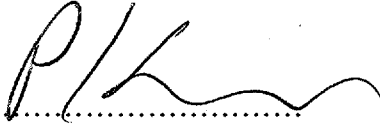
DETERMINATION

43. The Tribunal determines that the Applicant's contribution to lift servicing shall be reduced from 94 pence per week to 63 pence per week for the year 2005/2006 and from 91 pence per week to 61 pence per week for the year 2006/2007 (subject, in the case of the year 2006/2007, to the Respondent making a substantial effort to fix the lift and being later able to demonstrate that it is entitled to charge for that additional work as part of the **actual** service charge costs for the 2006/2007 year).
44. The Respondent shall refund to the Applicant forthwith the sum of £1.15 per week in respect of building insurance and 14 pence per week for grounds maintenance, in each case in respect of such part of the service charge year 2004/2005 for which the Applicant has actually been charged.
45. The Applicant's contribution to miscellaneous items for the year 2006/2007 shall be reduced from £1.40 per week to 20 pence per week (subject to the point made in paragraph 41 above).
46. The Tribunal determines, based on the evidence put before it, that the remainder of the disputed charges were reasonably incurred and are therefore properly payable by the Applicant.
47. Mr Pearce stated that the Respondent would not be seeking to recover the costs incurred by it in connection with the proceedings before this Tribunal, and therefore it is unnecessary for the Tribunal to determine whether an order should be made under Section 20C of the 1985 Act.
48. The Applicant applied under regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for reimbursement by the Respondent of the fee of £70 paid by the Applicant in connection with these proceedings. In the circumstances of this Tribunal having found in favour of the Applicant on a number of points and the Respondent's failure to provide prompt, clear and helpful responses to the Applicant's complaints and queries

on a number of occasions, the Tribunal orders the Respondent to reimburse to the Applicant her Application Fee of £70.

CHAIRMAN.....

Mr P Korn

A handwritten signature in black ink, appearing to be 'P/K' followed by a wavy line, written over a dotted line.

Date: 6th February 2007