



**Residential
Property**
TRIBUNAL SERVICE

Leasehold Valuation Tribunal

LON/00AL/LSC/2007/0319

London Rent Assessment Panel

Landlord and Tenant Act 1985 sections 27A and 20C

Address: 49 Coltman House, Welland Street, London SE10 9DP

Applicants: Mr Russell Keefe and Ms Rebekah Wilkinson

Represented by: Ms R Wilkinson

Respondent: The Mayor and Burgesses of the London Borough of Greenwich

Represented by: Ms A Bester, legal officer, and Mr H Sandhu, principal charges officer

Tribunal members: Mr T J Powell LLB
Mr F Coffey FRICS
Mrs J Clark JP

Application: 13th August 2007

Oral pre-trial review: 24th September 2007

Hearing: 15th November 2007

Consideration of further documents 18th December 2007

Decision: 4th January 2008

Decisions of the Tribunal

- (1) The Tribunal determines that the cleaning charges should be reduced by 20%, so that of the £810.19 disputed by the Applicants, only £648.15 is reasonable and payable by them;
- (2) the Tribunal determines not to disturb the charges made for servicing the door entry system;
- (3) the Tribunal determines that the £122.60 repair charge for the replacement of the defective aluminium doors is not payable by the Applicants;
- (4) the Tribunal determines that the charges for lift maintenance are fair and reasonable and therefore payable in full by the Applicants;
- (5) the Tribunal determines not to disturb the costs charged in relation to the replacement of the water tanks;
- (6) the Tribunal determines that the management fee should be reduced by 10% for each of the service charge years, so that of the £580.51 disputed by the Applicants, only £522.46 is reasonable and payable them;
- (7) the Tribunal orders that the Respondent shall refund the Applicants' fees in the sum of £250 within 28 days of the date of this Decision.

Application

1. This was an application challenging the payability and reasonableness of service charges for the years 2003 - 2007. One of the Applicants, Ms Wilkinson, attended the hearing to present the case. The Respondent Council was represented by Ms Bester, legal officer, and Mr Sandhu, principal charges officer.

The property

2. Coltman House is a five storey brick-built block of flats located on the bank of the River Thames in Greenwich. The shared balconies on each floor are served by two communal stairways and two communal lifts. At ground floor level there are low shrubs and occasional small trees surrounding shared car parking spaces. The subject flat, 49 Coltman House, is situated on the third floor in the corner of the building. The bundle contained colour photographs of the block taken by both parties at different times. The Tribunal did not consider that an inspection of the property was necessary to determine the issues raised by the Applicants, and neither party requested an inspection.

The lease

3. The original tenant, Mr Russell Keefe, had exercised his right to buy in 1998, when a lease dated 29 June 1998 for 125 years was granted to him from that date by the Respondent. On 24 April 2002 Mr Keefe assigned the lease to himself and his partner, Ms Wilkinson, who appeared at the hearing on behalf of them both.
4. 'Services' to be provided by the Respondent and 'Service Charges' are defined in Clause 1 of the lease. Clause 6 contains a covenant by the lessees to pay a sum in advance on the 1st April in every financial year on account of the service charge. The Fourth Schedule of the lease provides further details of what the service charge is to cover and how adjustments are to be made at the year end.
5. The Fifth Schedule provides further details of the services to the flat and to the building or estate, which includes the provision of lifts, the lighting, cleaning, maintenance and repair of all common parts of the building and the estate, the entry-phone and other controlled entry system.
6. The Lessor's covenants are contained in Clause 7 of the lease. These include keeping in repair the structure and exterior of the flat and building, keeping in good repair and condition the common parts and by Clause 7(4) "to ensure so far as practicable that the Services are maintained at a reasonable level and keep in repair all machinery installations and apparatus connected with the provision of the Services provided always and it is hereby expressly agreed and declared: (i) that the Lessor shall not be liable to the Lessee for any interruption in any of the Services caused by necessary repairs or maintenance of any such machinery installations or apparatus or the destruction thereof or damage thereto by fire water act of God or by mechanical or other defect or breakdown ... or by any other circumstances beyond the Lessor's control."

The Law

7. Service charges and relevant costs are defined in Section 18 of the Landlord and Tenant Act 1985 (as amended). The amount of service charges which can be claimed against Leaseholders is limited by a test of reasonableness which is set out in Section 19 of the Act. Under Section 27A an application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable, including an advance service charge.
8. Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 allows a Tribunal to order a party to reimburse the whole or part of any fees paid by another party.
9. Section 20C of the Landlord and Tenant Act 1985 Act provides that a Tribunal may make an order preventing the Lessor recovering its costs of proceedings through the service charge, if the Tribunal considers it to be just and equitable.

Background to the application

10. The Applicants' original application provided year by year commentary and figures in relation to the disputed service charges for the years ending 31 March 2003 to the estimated charge for the year to 31 March 2007. At the oral pre-trial review on 27 September 2007 the Tribunal identified from the application the issues to be determined.
11. At the beginning of the hearing on 15 November 2007 Ms Wilkinson agreed that those were the issues to be decided, but also sought to add a complaint about the standard of re-wiring works to the common parts, which formed part of major works some time ago and which had not yet been completed. Although this matter had been raised by the Applicants in correspondence with the council, there were no documents in the trial bundle relating to the re-wiring issue. In particular, there was no evidence of the contract or any invoice raised in respect of the re-wiring works.
12. Ms Bester, on behalf of the Respondent, complained that the council had not done any work to deal with the re-wiring issue, because at the pre-trial review it had only been asked to clarify the evidence relating to security gates and communal water tanks.
13. In the absence of any relevant documentation and given the fact that it had not been raised as an issue at the pre-trial review, the Tribunal felt unable to add the issue of re-wiring to the list of matters to be considered at the hearing. The Tribunal did however proceed to take evidence on each of the other areas of dispute and has made the following determinations.

Evidence and findings

Cleaning and maintenance

14. For the years 2003 - 2007 the Applicants' case is that cleaning and maintenance had not been carried out to a reasonable standard. The Applicants were disputing the following amounts for the five years from 2002/2003: £45.99, £59.24, £202.80, £232.79 and £269.37, making a total for the five year period in dispute of £810.19.
15. Ms Wilkinson complained that the balcony walkways were hardly ever checked or cleaned; the council was very slow at removing refuse and dog faeces, even when reported by tenants, so that sometimes Ms Wilkinson had had to remove refuse and dog faeces herself; the lifts were cleaned every day, but with dirty water; and cigarette butts were swept into corners of the shrubbery beds. Ms Wilkinson was able to demonstrate the existence of many of these problems with colour photographs taken in April 2006 and, by comparing them with further colour photographs that she had taken on 19 September 2007, she was able to demonstrate that (despite her complaints in the meantime) many of the same issues remained a problem on the estate. Two of the photographs related to

the vandalised roof of a bin store, which had not been repaired in the 17 months between the photographs and was still in disrepair at the date of the hearing.

16. Ms Wilkinson said that the Applicants were very happy to pay for cleaning and maintenance - if they received the service. However, she complained that the level of care and attention was so poor that the estate, which had received millions of pounds of regeneration money in 2000-2001, was starting to look shabbier and shabbier. She expressed frustration at her inability to force the council to maintain the estate properly and said that the Applicants had felt compelled to take action by bringing the case to the Tribunal, because of this.
17. Mr Sandhu gave evidence on behalf of the Respondent and relied upon the witness statement of Tanya Haines, the Greenwich area manager for the environment service department, 'Cleansweep'. That witness statement set out the caretaking duties carried out at Coltman House, which included checking the stairs and lobbies every day, sweeping the stairs once a week, clearing the balconies when needed and deep cleaning once a year. There are three caretakers covering the whole of the Meridian Estate in which Coltman House is situated. They work 36 hours per week, which equates roughly to about four hours per week per block. Ms Haines expressed the belief that the block is well-maintained.
18. Mr Sandhu elaborated on the work carried out by the caretakers. He said that the block and the estate were checked daily and the work required depended on what the caretakers found: if there was anything to pick up, they would do so. He also said that Leaseholders can contact the estate office or the home ownership department if they had particular issues that needed addressing.
19. While Mr Sandhu expressed the view that this was a quite nice estate in a reasonable condition, he did accept that the Applicants' photographs of cigarette butts and the vandalised bin store were unimpressive. When asked if the level of cleaning was sufficient for the estate and for the block, he said that the cleaning might not be sufficient, but that was reflected in the low charges to Leaseholders. In the year ending 31 March 2003 the charge to the Applicants for caretaking to the block had only been £44.64 per annum, which equated to less than £1 per week: so, in his view, the actual charge was reasonable based on the level of service that had been provided.

Decision of the Tribunal

20. The Tribunal accepted the Applicants' evidence that the level of cleaning of the block and the estate was of a poor standard. The Tribunal also accepted that the service provided by the cleaning contract was poorer than expected, especially in relation to the removal of dog faeces when reported. The Respondent had presented very little evidence to counteract the allegations raised by the Applicants, which in turn led to an inability to deal with those allegations at the hearing.
21. The Tribunal considered that many of the complaints raised by the Applicants went to the issue of management. It accepted that the overall charges were low

and that to an extent the Leaseholders were receiving the service that they were paying for. However, in recognition of the poor standard of cleaning the Tribunal determines that the cleaning charges should be reduced by 20%. The effect of this decision is that the Applicants are to pay the amounts they have disputed under this head, less 20% of the sums disputed.

Door entry system

22. The Applicants case was that the door entry system was not performing to a reasonable standard for the years 2003 and 2004. Ms Wilkinson gave evidence that the doors were quite new and did not work very well. The Council had admitted the problem and the doors have been replaced. She disputed the cost of servicing the door entry system; £5.57 for 2002/3 and £7.00 for the following year. She complained that at times the door entry system did not lock the doors properly and at other times it was difficult to get in because the fobs were not working properly.
23. The Respondent accepted that the door was replaced, but said that the entry system itself was in proper working order and the buttons were not replaced at the same time as the door.
24. Overall the Tribunal determined not to disturb the charges made for servicing the door entry system.

Replacement of aluminium doors (aka gates)

25. The photographs showed that at each end of the Coltman House there was a heavy duty security door, which at times was described as a "gate" in the papers. The blue security door in the photographs was made of steel and was a replacement for the original aluminium door/gate, which had been defective. Ms Bester for the Respondent accepted that it was unreasonable to charge the Applicants for installation of the original aluminium doors and for the two repairs that were carried out to them. She said that the Respondent would have given the Applicants a refund, but when it looked at the account, the council discovered that the Applicants had never paid for them in the first place. This was because in the Section 125 right to buy notice served in 1998, the council had given the first Applicant, Mr Keefe, no notice that such a charge was likely to be incurred during the first five years of his ownership.
26. Ms Bester went on to say that the Applicants **were** charged for the two new steel doors as a "repair" item for the year to 31 March 2005. The Applicants' contribution to the replacement of the unsuitable aluminium doors was £61.30 per door, i.e. £122.60 for both doors (which latter figure was part of the £147.43 charged to the Applicants for block repairs for the year ending 31 March 2005).
27. Ms Bester said that the Applicants were liable to pay for the cost of the replacement of the two doors, because the charge was made more than five years after the grant of the lease. They would have to pay for the steel doors as

a "repair" item, even though they did not have to pay for the initial aluminium doors, which had been found to be unsuitable.

28. Ms Wilkinson challenged this, complaining that if the aluminium doors had worked from the start there would have been no need to replace them with steel ones and raise a charge to the Applicants outside of the five year period of the Section 125 right to buy notice.

The Tribunal's Decision

29. The Tribunal considered that it was grossly unfair that the Respondent should seek to charge the Applicants for the cost of installing replacement steel doors, when the original aluminium doors, for which the Applicants did not have to pay, were defective. The Tribunal determines that the £122.60 repair charge for the replacement of the defective aluminium doors is not payable by the Applicants.

Lift Maintenance

30. The Applicants' case was that the lifts were not performing to a reasonable standard for the years 2003 - 2007. The amounts in dispute for those five years were: £28.17, £37.82, £53.59, £50.36 and £80.70, making a total amount in dispute of £250.64.
31. Ms Wilkinson complained about repeated unreliability of the lifts, which were out of service once a week or once a fortnight, and often at weekends too. The complaints related to two new lifts installed in 2001 and, as far as she knew, the problems did not have to do with vandalism. Although Ms Wilkinson found it difficult to say accurately, when pressed by the Tribunal she estimated that the lifts might have been out of action on average one day in ten, i.e. for 10% of the time. However, she had not kept a record or diary and she was not able or willing to specify what she considered would be a reasonable charge for the lift maintenance, in the light of her experience. Ms Wilkinson's case was that she was being asked to pay an amount that does not reflect the service that she received, although she did say that things had improved in the current year.
32. The Respondent relied upon the printed lift servicing costs within the trial bundle. Those costs related mostly to the regular monthly servicing of the lifts. There had apparently been eight breakdowns in the year ending 31 March 2004; five breakdowns for the year ending 31 March 2005 and seven breakdowns in the following year. The Respondent complained that the Applicants' case was vague. Ms Bester said that she had sent repair details to the council's lift inspector and his emailed reply was that the level of breakdowns was "well below the average of 10 breakdowns per lift per year."

The Tribunal's Decision

33. The Tribunal accepted that the lifts were in constant use, that they would be subject to occasional breakdown and they would have to be repaired from time to time. The Applicants had not provided any diary or record of breakdowns

and had therefore not made out their case that the level of breakdowns was higher than might be expected. It follows that the Tribunal determines that the charges for lift maintenance are fair and reasonable and therefore payable in full by the Applicants.

Communal Water Tanks

34. The Applicants challenged their £240.08 share of the cost of "servicing" four water tanks serving the building in the year ending 31 March 2006. They complained that this seemed to be very expensive and Ms Wilkinson asked how much the work had actually cost the council.
35. In the Respondent's Further Reply to Statement of Case dated 5 October 2007 (at pages 136 - 139 of the bundle), the Respondent pointed to its duty to maintain the communal water tanks, stating that it had a qualifying long-term agreement in place to carry out maintenance and repair to those tanks. The Respondent submitted that the amount charged to the Applicants was reasonable and fair, as the Applicants had only been charged for such repairs and maintenance in the 2006 service charge year and not in any other financial period since 2002/2003 to date.
36. Mr Sandhu gave evidence in support of the Respondent's position, stating that the water tanks generally had a lifetime of 25 years and the tanks serving this block were very much older. There was an ongoing programme looking at the water tanks in the Borough and the net cost to the council of replacing (not repairing) them had been £15,366.60, a figure which was broken down into the various tasks and prime cost sums for materials in a schedule on page 44 of the trial bundle. However, the Respondent was unable to provide either an invoice for that work or any specification for the works carried out.
37. Having heard Mr Sandhu's evidence Ms Wilkinson said that she had only just realised that the charge raised under the heading "Block Repairs" was in fact for replacing the water tanks, so she had had no opportunity to obtain alternative quotations for this work. She complained that the Respondent had not made this clear before the hearing either in correspondence or in its Further Reply to Statement of Case.
38. The Tribunal felt unable to make any decision in relation to this item without first seeing the contract for the works, the schedule of rates, details of how the contract for the replacement of the water tanks was carried out, the final account for the replacement of the tanks and details of any instructions, valuations and payments relating to it. The Tribunal therefore gave the Respondent 14 days to provide such documentation to the Tribunal and to the Applicants, and a further 14 days for the Applicants to respond. The Tribunal indicated that it would make its decision on this issue at a later stage on the basis of the papers and any representations received.

The Papers Received

39. The Respondent filed and served a lever arch file containing: a statement from Glynis Fields, the senior mechanical engineer within the Respondent's neighbourhood services department; the form of tender, contractual conditions and schedule of rates relating to a contract for the annual inspection, cleaning and replacement of storage tanks and associated plumbing and watermain repairs 2000; a copy of the minutes of a council committee dated February 2001 reviewing the tenders and accepting the lowest in cost; the term partnering agreement for the annual inspection, etc of water storage tanks dated December 2005 (i.e. the contract replacing the 2000 contract); the tender acceptance report dated 6 October 2006; and the original invoice from Hertel UK Ltd dated the 3rd January 2006 in respect of the works for carrying out tank replacement works at Coltman House.
40. The Tribunal also received an e-mail from Ms Wilkinson on 18 December 2007 which stated that she had received the Respondent's bundle somewhat late in the day, that she had found the document "very opaque" and that she was unsure as to whether the amount charged for the replacement of the four water tanks in Coltman House was a reasonable percentage of the total tender cost quoted. She said that she was prepared to let the Tribunal come to a decision on this aspect of the application, based on the further evidence that the council had provided, but taking into account her comments.

The Tribunal's Decision

41. The evidence in the bundle is that the Respondent went to tender for a contract for the annual inspection, cleaning and replacement of storage tanks and associated plumbing and water main repairs in 2000. Four tenders were received for that work:

Hertel UK Ltd	£158,864.80
SCD	£233,393.00
Greenwich Public Services	£321,140.00
Foreshaw Building Services Ltd	£464,912.00

42. It will be seen that Hertel UK Ltd, a company on the Respondent's 'Approved List', was substantially cheaper than any other tenderer.
43. At the hearing Mr Sandhu's evidence was that the work had been carried out in 2005/6 under this contract. As part of that contract Hertel UK Ltd carried out the tank replacement works at Coltman House at a cost of £15,366.60 (exclusive of VAT), as appears in the invoice dated 3 January 2006. On the evidence before it, the Tribunal determined that this cost was reasonable for the work carried out.

44. As to whether it was reasonably incurred, the Tribunal considered that the Respondent's arguments were more compelling than the Applicants', namely that the water tanks were more than 25 years old, made of galvanised steel and close to the end of their useful life.
45. The Tribunal therefore determines not to disturb the costs charged in relation to the replacement of the water tanks.

Blocked Drains

46. The Applicants complained about a £5.96 charge for unblocking drains during the year to 31 March 2006 and maintained that a cheaper solution to the unblocking of drains should be found, such as repair. After discussion with the Tribunal, which indicated its view that the annual cost of unblocking drains seemed very low and very much lower than the cost of repairing the drains would be, Ms Wilkinson withdrew the challenge to the £5.96 charge.

Management Charge

47. The Applicants' case was that the cost of management charge at 20% of the service charges was too high, for each of the years 2003 - 2007.
48. Ms Wilkinson's main complaint was that the 20% management fee was moveable figure depending on the level of service charges and that it would be fairer if the charge was a fixed amount. The sums in dispute between 2003 and 2007 were: £81.26, £93.27, £125.00, £148.96 and £132.02, making a total for the five year period of £580.51. Although the Tribunal indicated that the overall amount of the management fee did not appear to be unreasonable in comparison with flat fee charges seen at other comparable properties, Ms Wilkinson was extremely reluctant to concede any part of the fee, because of the extremely poor communication she had received from the Respondent in the past and because, in her view, all she was getting for her money was service charge invoices, delays in providing services and her complaints being ignored.
49. Mr Sandhu on behalf of the Respondent relied on the provisions in the lease, which allowed the Respondent to charge a management fee. His evidence was that the actual cost of running the home ownership service was higher than the actual cost levied to Leaseholders. The 20% of service charges was merely a cap on those charges imposed by the Respondent itself, in order to be a good landlord. He said that the Respondent still provided a reasonable level of service.
50. When challenged by Ms Wilkinson to say what she was getting for her management charges, Ms Bester then referred to paragraph 15 of the witness statement of Matthew Saye, which set out in some detail the various services provided by the Home Ownership Service, including: statutory consultation, construction and calculation of service charges, invoicing, provisions of information to Leaseholders and dealing with Leaseholder's queries.

51. When pressed by the Tribunal to say how much the Applicants might be willing to pay by way of management fee for these services, Ms Wilkinson was unable to specify a figure, but simply reiterated her view that the level of service charges was too high if all she was getting was service charge invoices, delayed services and being ignored.

The Tribunal's Decision

52. The Tribunal accepts the Respondent's evidence that the 20% of service charges which the management fee represents a cap on the costs of the home ownership service, and not a method of calculating those costs. However, in the light of all of the evidence that the Tribunal had received in relation to the standard of services, the Tribunal determines that the management fee should be reduced by 10% for each of the service charge years, to reflect the lack of information provided to the Applicants, lack of communication, delays in providing services and in some instances the failure to carry out communal cleaning and repairs.

Refund of Fees and Section 20C Application

53. On behalf of the Respondent, Ms Bester indicated that the council would not recoup the costs of the Tribunal proceedings through the service charge. Ms Wilkinson therefore agreed that there was no need for the Tribunal to make an order under Section 20C and she withdrew that application.
54. With regard to fees, the Applicants had paid some £250. Ms Wilkinson applied for a refund of those fees, pointing to the large amount of correspondence that she had entered into to try and deal with her complaints and the lack of any real answers. She said that it had been the council itself that had sent her information about the Tribunal, in response to her questions. When the Applicants had threatened to bring the application, the Respondent had asked her to wait and it agreed to discuss her complaints with her, but nothing had happened apart from more delay. She felt that the Applicants had been forced to come to the Tribunal to have their complaints determined.
55. For the Respondent, Ms Bester said that it was reasonable to look at the Tribunal's final decision. She conceded that if the Applicants were successful on more than half of the issues then it would be reasonable to order the Respondent to refund the fees.

The Tribunal's Decision

56. The Tribunal considered that communication by the Respondent was wanting, especially in relation to the largest item where the replacement of the water tanks at Coltman House was wrongly described as a "repair" until part-way through the hearing itself, when it was revealed by Mr Sandhu that the work was a replacement. This failure of communication necessitated an adjournment of this aspect of the case.

57. The Tribunal accepted that making an application was very much a last resort for the Applicants and, in fact, they had been encouraged to do so by the Respondent. The Applicants had succeeded on sufficient of their complaints that the Tribunal orders that the Respondent shall refund the Applicants' fees in the sum of £250 within 28 days of the date of this Decision.

Chairman:



Timothy Powell

Date:

4th January 2008