RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

IN THE MATTER OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED) S27A & S20C

IN THE MATTER OF : FLATS 3,13 & 18 ATHLONE CLOSE LONDON E5 8HD

CASE NUMBER LON/00AM/LSC/2007/0342

Parties	Mr D Buzugbe Miss Louise Dwyer Mr Robert Shaw	Applicants
	The Mayor and Burgesses of The London Borough of Hackney	Respondents

Appearances:

For the Applicant	Mr Buzugbe; Ms Dwyer and Mr Shaw
For the Respondent	Ms A Johnson (Manager at Leasehold Services) Mr H S Virdee and Mr N Shah
Date of Application	5 September 2007
Date of Hearing	13 December 2007
Tribunal	Mr A A Dutton Chair Mr F L Coffey FRICS Mrs S Justice
Date of Decision	8 January 2008

REASONS/DECISION

A. BACKGROUND:

1. This matter came before us on 13 December 2007 following the lodgement of an application in September 2007 by the Applicants for a determination, pursuant to s27A of the Landlord and Tenant Act 1985, ("the Act") of the reasonableness or liability to pay service charges demanded by the local authority.

2. A pre-trial review was held on 26 September 2007 and the issues to be determined were as follows:
   a. liability under the lease to pay for the costs referable to the communal heating/hot water system (such as fuel and maintenance costs) which the Applicants maintain is on for 365 days in each year.
   b. the reasonableness of service charges referable to the communal heating/hot water system (such as fuel and maintenance costs) for the years 2005/6 2006/7)actual charges) and 2007/8 (estimated charges) which the Applicants maintain are too high and not fair and reasonable in any event, regardless of any obligation to pay in the lease.
   c. the reasonableness of service charges referable to the block cleaning given their complaints by the level of charges and the standard of cleaning.

3. To support the Applicants claim a Statement of Claim was lodged running to some 11 pages. Annexed to that was an index with a number of documents running to a further 162 pages.

4. The Respondents filed a reply of similar length and there was a final response to the Respondents reply which was undated. In addition as a result of an apparent disagreement between the Applicants further documents were produced by Mr Buzugbe and Miss Dwyer in a supplementary statement received at the Panel offices on the 10 December.

5. These documents have been noted by us in reaching our decision.

6. In addition to the above documentation we had submissions made to us by the parties. At the commencement of the hearing Mr Shaw made an application to summarily strike out the Respondents reply on the assertion that it contained an unlawful and false statement and that there had been a failure to follow the complaints procedure and an unreasonable manipulation of the Freedom of Information Act. He asserted that nothing could be taken

at face value and if we were not prepared to agree to strike out the Respondents response that he would seek an adjournment. He indicated that the reason for an application of an adjournment would be to seek evidence going back over a considerable period of time, indeed in some instances as much as ten years. In response Miss Johnson indicated that the complaints procedures had been dealt with and referred us to a letter of 9 May 2007. Mr Buzugbe, on behalf of himself and Miss Dwyer, half-heartedly supported Mr Shaw's position but did not wish for the matter to be adjourned.

7. We concluded that as the parties were present and that the issues were as set out in the Directions Order which we have referred to above. The need for us to consider the various technical points that Mr Shaw sought to make both in his original statement and response to the document which he refers to as the Respondents Defence, would not assist us in reaching a decision on the matters before us. In those circumstances we declined to strike out the Council's response and also declined to adjourn the matter.

B. EVIDENCE

8. Miss Johnson, on behalf of the local authority, confirmed that the boiler in question was functioning 24 hours per day, 365 days per year. Apparently Hackney Homes had taken over the running of the block approximately two years ago and Miss Johnson confirmed that she understood there were quarterly service visits and annual services undertaken. There appeared to be some inaccuracies in the gas costs which were included within the papers for which Miss Johnson had no ready explanation. She was however able to confirm that from 2005/6 costs had been accurately identified although there was a period in time when only four of the five meters in the block were being read. This resulted, it would appear, in an unusually large demand for gas in the year 2006. She told us that the local authority were looking into the possibility of installing some form of control system so the heating was not on permanently.

9. Mr Shah, a mechanical engineer with the local authority, confirmed that he had inspected the system in October 2007 and thought that the boilers in the Applicants block had been replaced about ten year ago. He told us there were two boilers in the block and that each flat had its own hot water cylinder and cold water tank. Some properties appeared to have thermostatic valves on the radiators and there was apparently a temperature regulator valve fitted to the hot water tank. Other than this there appeared to be little control over the supply of heating or hot water to the flats. He was however of the view that the system was relatively efficient. He did however concede that it was not usual practice to run a

boiler system 24 hours per day, 365 days per year. Some mention had been made by Ms Dwyer of a sprinkler system but it appeared from discussions with Mr Shah that this was not the case and that any water ingress there may have been was possibly as a result of the overflow from the feed and expansion tank. Mr Shah confirmed that there was an annual service and quarterly visits. Apparently the servicing was carried out "in-house" but had been tendered with outside contractors although the in-house team had won. No tender documents were included within the papers.

10. He was of the view that there were three options to deal with the system. One was to install thermostatic valves to the radiators; another was to install controls to the system so that you could separate hot water and central heating; and the third was to have a programmer within each property. He confirmed that the cost of the fuel and maintenance was averaged between the 26 tenants in the block of which four were leaseholders, the remainder being apparently local authority tenants. It was also confirmed on behalf of the local authority that they would have no objections to lessees having individual central heating systems if they wished and indeed that had been mooted in correspondence.

11. Mr Virdee, who was Mr Shah's Section Manager, confirmed the maintenance visits but also that no real thought had been given to the nature of the system until this application had been brought by the Applicants. He suggested that it would be possible to install heat meters which would then reflect the individual cost to the flats or alternatively upgrade the boilers, install thermostatic valves or replace with electric heating. However no decision had been taken. He did however agree that the system was unacceptable and he believed that individual central heating systems would be the best way forward.

12. On the question of cleaning it was accepted on behalf of the Council that there had been some challenges within the blocks. There had apparently been problems with graffiti and unwanted visitors. We were told there is a daily cleaning and also a responsive attendance if required. For the year 2007/8, the local authority indicated a willingness to reduce the estimated costs by 60%. There was some discussion about the non-functioning door-entry system which although it had been recently replaced, had, for some reason not been activated.

13. Following the evidence from the local authority Mr Shaw confirmed that he had nothing much to add to what had been said in his Statement of Case. Insofar as the changes in the local authority, namely the involvement of Hackney Homes, he pointed out that the same people appeared to be employed by Hackney Homes as were employed by the

Council and that in practice therefore there had been no real change. He had no reason to suppose that the discrepancies in the accounting system would be put right and that relying on the documentation provided, in this case by the Council, there was an indication that for a flat the appropriate cost for heating should be in the region of £227 per annum. This was based on an extract from an energy saving trust document entitled "Energy Efficiency Best Practice in Housing-Domestic Heating by Gas: Boiler Systems".

14. Insofar as the cleaning was concerned he did not think that the figures put forward by the Council were reliable and that a reasonable charge for the cleaning in line with that which he thought for the heating aspects, was 20% of the actual costs and that this should be fixed for a period of ten years.

15. He also made claims for reimbursement of fees and costs under the Commonhold and Leasehold Reform Act. In addition also he sought a claim of interest at 8% on any sum that the local authority was ordered to repay.

16. Insofar as a claim under s20C of the Act was concerned the Council confirmed they would be making no request for costs in respect of these proceedings and we will deal with that in the Decision element of this document.

17. Mr Buzugbe referred to the Supplementary Statement he had produced and the Statements lodged on behalf of the Applicants with regard to the consumption of gas and cleaning. With regard to cleaning he disputed the attendance of the cleaners and said that rubbish was still constantly on site. He also asserted that he had made a number of attempts to contact the Council with regard to problems in respect of graffiti but without success.

18. Miss Dwyer also relied on the Supplementary Statement and asked us to consider the documentation included which showed the full expenditure in relation to a typical household which indicated that the present level of costs was high. In her view the system was outdated and inefficient and that matters had only been progressed since complaints had been made. As to maintenance she referred to the occasions when there had been flooding which suggested that the maintenance was not carried out satisfactorily.

19. Finally on behalf of the Council Miss Johnson confirmed that they would be taking steps to remedy the defects with the system and were in the process of identifying issues. She pointed out that fuel charges related to the actual consumption and there was no mark-up

and that the system had been designed for elderly people and although it may be old it did not mean that it was inefficient. She rejected any application by Mr Shaw for fees to be paid.

C. THE LAW

20. The law applicable to this application is to be found at s27A of the Act. This requires us to determine the identity of the person liable to make payments and the sums, and to whom they should be paid, amongst other matters. It also deals not only with costs that have been incurred but with costs that are to be incurred. The issues in this matter having been set out at the start of the Reasons.

D. DECISION

21. It seems to us that the central heating system the Applicants have to contend with is inefficient and this is in itself unreasonable. Accordingly, some of the charges that flow from it are unreasonable. It does not seem to us that it is a compelling argument on the part of the Council that the system was designed for elderly members of the community. The Council clearly resolved to grant Right to Buy provisions and in so doing granted leases to people who were not elderly persons. There is no provision within the lease to limit ownership to an elderly person. The present system of constant heat and hot water is clearly in our finding unreasonable. It appears that no steps had been taken by the local authority to address this until this application was brought by the Applicants. It may well be that matters will now be reviewed and it might also be the case that subject to costs, each Lessee would be better installing their own system. Be that as it may, we have to deal with the arrangements presently before us.

22. On the question of fuel costs, we have been provided with copies of the invoices and we are aware of the tendering process undertaken by the local authority to acquire the gas. We can see nothing wrong with the tendering process that is undertaken and our experience in these matters leads us to believe that the actual cost of gas is competitive. In those circumstances therefore we find that the actual cost of fuel on a unit basis is fair and reasonable. We also accept the Council's explanation for the increase in the year 2006/7 caused by the "catching up" following the meter readings from the meter that had previously been omitted. However, it is the constant supply which is unreasonable and we find that some allowance should be made to the Applicants to reflect this. Accordingly we propose to make deductions of one-third of the cost of the fuel for the period 1st October-

3oth April and two-thirds of the cost of the fuel from 1st May- 30th September. The reason for this is that in evidence to us Miss Johnson indicated that ordinarily the central heating system in communal blocks is dealt with on the basis that heating is provided from the beginning of October through to the end of April. For the summer months we have no doubt that there would be occasions when central heating would be required but we are of the view that only one-third of the cost is appropriate for that period.

23. We have prepared a short schedule at the foot of this Decision showing our calculations as to the recoverable elements of the fuel costs.

24. Insofar as maintenance is concerned there was no real evidence produced to us that the costs were unreasonable. Clearly an annual service would be required and the quarterly visits, together with a 24 hour call out ability, did not seem to us to give rise to unreasonable charging rates. We were told that the costs had been tendered. There was no evidence of any unusual call out activity suggesting that the system was particularly faulty and in those circumstances we find that the maintenance charges made in respect of the central heating system for the years in dispute are reasonable.

25. Turning now to the question of cleaning. We have been provided with photographs and could see from those that at the time they were taken there had been problems. No evidence was produced to us as to any comparable rates that might be obtained for cleaning costs with an outside contractor. Clearly the block has had problems which have resulted in additional cleaning costs arising. We accept the local authority's agreement to reduce the costs for 2007/8 by 60% and make an Order accordingly in regard thereto. Insofar as the other cleaning costs are concerned, those stand. However we would expect that the security system will be activated as quickly as possible as that may, hopefully, reduce the problems from which the block has suffered.

26. Finally we deal with the question of fees. We are prepared in this instance to order that the fees paid to the Tribunal be refunded. Those are the application fee of £250 and the hearing fee of £150. The Council sought to make no claim and we make an Order under s20C that the costs of these proceedings are not to be recoverable as a service charge. As a quid-pro-quo it seems to us that it would be inappropriate for an Order to be made under Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002 for costs as claimed by Mr Shaw and we decline to do so.

27. Insofar as interest is concerned this was not pleaded by Mr Shaw and he produced no authority that it was recoverable. We decline therefore to make any Order insofar as interest is concerned.

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Chairman

Dated.....8th January.....2008

Schedule of heating costs for flats at Athlone Close
Figures taken from the Hackney Housing Service accounts for each flat

Year	Amount claimed £	Amount allowed £
2005/6	423.50	223.50
2006/7	922.84	487.03
2007/8 (Estimated)	691.16	364.80