

11563



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case Reference** : **LON/00AL/LSC/2015/0463**

**Property** : **70 Rudd Street Close, Woolwich,  
London SE18 6RP**

**Applicant** : **Diane O'Dwyer**

**Representative** : **In person**

**Respondent** : **Royal Borough of Greenwich**

**Representative** : **Royal Borough of Greenwich,  
Home Ownership Service**

**Type of Application** : **For the determination of the  
reasonableness of and the liability  
to pay a service charge**

**Tribunal Member** : **Judge N Hawkes**

**Venue of paper  
determination** : **10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **11<sup>th</sup> March 2016**

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**DECISION**

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### **Decisions of the Tribunal**

- (1) The Tribunal determines that, of the sum of £376.90 claimed by the Respondent, the sum of £263.83 is payable by the Applicant in respect of the cleaning charges which form the subject matter of this application.
- (2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.
- (3) The Tribunal determines that the Respondent shall pay the Applicant £90 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant.

### **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant for cleaning in the service charge year 2013.
2. The relevant legal provisions are set out in the Appendix to this decision.

### **The background**

3. The property which is the subject of this application is a one bedroom flat in a purpose-built local authority block. The Applicant states that she bought the flat in 2007 as a rental investment.
4. Photographs were provided in the hearing bundles. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute (which relate to 2013).
5. The Applicant holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

### **The issues**

6. There is no dispute concerning the payability of the service charges under the lease. This dispute relates to whether or not the cleaning service provided by the respondent in 2013 was of a reasonable standard.

7. The issues raised are as follows:
- (i) The reasonableness of the cleaning charges in the year 2012/2013 (the Respondent initially charged £232.58 but has reduced this sum by £16.24, as a result of an adjustment made to the Block Caretaking schedule, and now claims the balance of £216.34);
  - (ii) The reasonableness of the cleaning charges in the year 2013/2014 (in respect of which the Respondent claims the sum of £160.56);
  - (iii) Whether an order under section 20C of the Landlord and Tenant 1985 should be made;
  - (iv) Whether an order for the reimbursement of Tribunal fees should be made.
8. Having considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

### **The Cleaning Charges**

9. The Tribunal determines that of the total sum of £376.90 claimed by the Respondent, the sum of £263.83 is payable by the Applicant in respect of the cleaning charges which form the subject matter of this application.

### **Reasons for the Tribunal's decision**

10. In her statement of case, the Applicant states that the Respondent blames anti-social behaviour for the condition of the block in which the property is situated. The Applicant initially agrees that this is a contributory factor but states that this is not the sole cause of the problems. She says that the block is not cleaned to a standard which she would expect to pay for and that dirt and dog urine in the lift is a "daily occurrence". She states that dog urine has been left in the lift for "days on end".
11. The Applicant describes what is shown in the photographs which she provides. She states that her tenant has complained to her about dirt in the block and that her tenant has been forced to use the stairs as a result of urine being left in the lifts.
12. The Applicant makes some comments regarding major works and service charges which do not form part of this application. She reiterates that anti-social behaviour in the block is a problem, referring

to drug dealing, break-ins and problem tenants. She then states that this is unfortunately nothing to do with the poor quarterly services given to leaseholders and that the Council should take action against bad tenants. She indicates that, at the material time, she saw mice and cockroaches and even needles from heroin use in the block.

13. The Respondent's statement of case provides:

*"The Respondent acknowledges that some standards fall below expectation, but this is due to the volume of responsive work (above the usual caretaking schedule) required by Caretakers as a result of the local anti-social behaviour issues. The Respondent also notes that the internal communal areas of the block would benefit from a 'deep clean' which the day to day routine would have little impact on improving."*

14. By a letter dated 10<sup>th</sup> October 2013, the Respondent states that the Applicant has paid an average of £4.47 per week for caretaking over a six year period and that the cleaning was of an acceptable standard. The Respondent states that "Cleansweep carried out a site visit and confirmed the block to be clean." The Respondent reiterates that the cleaning and caretaking was of an acceptable standard by letter dated 18<sup>th</sup> November 2013.

15. However, by an email dated 28<sup>th</sup> October 2013 to the Applicant, Carey Gay, an Environment Manager employed by the Respondent, states:

*"Thank you for meeting with me last Friday to discuss the cleaning of Ruddstreet Close. Having inspected the block, I believe that cleaning is being carried out, however there are areas that fall well below the expected standard of cleanliness and attention to detail is being missing. I agree that the state of the skirting, the build-up of dirt in the corners, cobwebs in the lobby, spit and spillage on the wall and the remnants of bubble gum on the floors needs to be addressed. With this in mind, I will arrange for the Caretaking supervisor to organise a thorough deep clean. Although I accept that there are cleaning issues that need to be addressed, maintaining the communal areas to a high standard is affected by the high levels of anti-social behaviour in the block and this ultimately has a negative effect on the fabric of the building. On our inspection we came across dumped rubbish around the bins, graffiti in the stairwell and urine on the stairs (this doesn't justify the state of the floor corners and skirting, but does highlight the difficulty that the caretaker has in maintaining the block). I think it's also fair to say that the communal décor and flooring are showing signs of wear, which again impacts on the overall presentation of the block..."*

## Appendix of relevant legislation

### Landlord and Tenant Act 1985 (as amended)

#### Section 18

- (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

- (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 provisions 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.

#### Section 27A

- (1) An application may be made to the appropriate Tribunal for a determination whether a service charge is 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 at or by 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 the appropriate 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 made any payment.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property Tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property Tribunal, to that Tribunal;
  - (b) in the case of proceedings before a residential property Tribunal, to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property Tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the Tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral Tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.