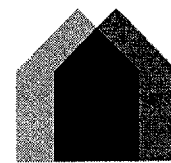


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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL



**Residential
Property**
TRIBUNAL SERVICE

S.27A & S.20C Landlord & Tenant Act 1985 (as amended)

DECISION & ORDER

Case Number: LON/00AG/LIS/2006/0079

Property: 18,22,35 Beaumont Walk
London
NW3 4SW

Applicants: Ms W Meakin, Mr N Goldsmith,
Ms J Gray and Mr L Warden

Respondent: The London Borough of Camden

Applications: 3 Applications dated 25 May 2006

Directions: 28 June 2006

Hearing: 2 October 2006

Decision: 11 December 2006

Appearances: For the Applicants:
Ms Meakin and Mr Goldsmith in person
No attendance for Ms Gray and Mr Warden

For the Respondent:
Ms E Howells, Project Control Officer
Mr T Stow, Technical Adviser
Mr Fatogbe, Patch Manager

Tribunal Members: Ms J A Talbot MA
Lady Davies FRICS
Mr R Eschle

Summary of Decision

Service charges for electricity costs were settled between the parties. Charges for hot water were reduced by 10%. Charges for caretaking were payable in full.

LON/00AG/LIS/2006/0079

18,22,35 Beaumont Walk, London NW3 4SW

Application

1. There were 3 Applications, all dated 25 May 2006, made by Ms Meakin, Mr Goldsmith, Ms Gray and Mr Warden, the respective tenants of 18, 22 and 35 Beaumont Walk, London NW3 4SW, under Section 27A of the Landlord and Tenant Act 1985, in respect of service charges for the years 2002 to 2006.

Background

2. A Pre-Trial Review was held on 28 June 2006. Directions were issued on the same date in which the issues to be determined were identified as: the quality and cost of hot water and central heating; the cost of electricity; and lack of care and maintenance.
3. The Applicants were required to produce Statements and documents in support of their case. Ms Meakin and Mr Goldsmith complied but Ms Gray and Mr Warden (of flat 35) did not. For the Respondent, a Statement was produced from Harry Yates, mechanical and electrical services manager, together with documents in support.
4. Ms Meakin and Mr Goldsmith complied with the Directions but nothing further was heard from Ms Gray and Mr Warden of no.35. As they had not withdrawn their application, and the evidence was relevant to all 3 properties, the Tribunal decided to make determinations on all the Applications.

Jurisdiction

5. The Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money payable by a tenant to a landlord for the costs of services, repairs, some improvements, maintenance or insurance or the landlord's costs of management, under the terms of the lease (S.18 LTA 1985). The Tribunal can decide by whom, to whom, how much and when service charge is payable. A service charge is only payable insofar as it is reasonably incurred, or the works to which it related are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges.

Lease

6. The Tribunal had a copy of the leases of 22 and 35. The lease for 18 is dated 13 July 1987 and the lease for 22 is dated 20 December 1993, both for a term of 125 years. The latter is in a more modern form, but the relevant provisions essentially have the same content.
7. The provisions relating to the calculation and payment of the service charge are to be found at Clause 2(2) and the Third Schedule of 18's lease and Clause 3 and the Fourth Schedule of 22's lease. The tenants are to pay by way of service charge an annual amount calculated by reference to rateable value. All the

Applicants paid the same proportion, namely 20% of charges attributable to their block.

8. Insofar as is relevant to the Applications, the landlord is obliged to maintain and repair the structure and exterior of the buildings, the common parts, boundary walls, fences and gardens, and in particular, "the boilers and heating and hot water apparatus (if any) in the building save and except such items (if any) as may be now or hereinafter installed in the flat serving exclusively the flat and not comprising part of a general heating system serving the entire building".

Inspection

9. The Tribunal members inspected the properties after the hearing. Beaumont Walk comprised a small purpose-built residential development constructed in the 1970's, located on Adelaide Road in the London Borough of Camden. The development consisted of a mix of flats and town houses in eight similar three-storey blocks, of brick construction part tile-hung with synthetic slates, set in landscaped gardens of lawn with shrub borders. There was a small amount of litter in one area only but this was not widespread, and the grounds and parking spaces appeared generally tidy and well maintained.
10. A row of mature trees along the Adelaide road boundary, obviously planted before the construction of the development, were now enclosed in some of the units' own small gardens including the garden of 18. Because of the size of the trees the fencing around the trunks had become broken. A repair had been effected in one area but some broken areas remained.
11. There were 45 units of accommodation overall. Typically the blocks contained 2 town houses at each end with flats in the middle. In one block was a common room area occupied by the caretaker who was present at the time of the inspection. The Tribunal inspected 18 and 35 internally. 18 was a top floor flat in one of the central blocks nearest the road. The tenant had improved the access steps and landing area. 35 was a town house on the end of one block over the central boiler house. Both units were in good condition internally. The common parts, being of ageing concrete, appeared somewhat dingy but were clean and in reasonable condition.
12. The Tribunal had access to the central boiler house, loft areas above the blocks containing 18, 35 and one other. The boiler house contained a large boiler and heating pumps which appeared on external viewing to be clean and in good condition. In the lofts, the Tribunal members saw hot water cylinders one for each unit, with all pipework connected and all warm to the touch. Some cylinders, however, were unlagged, including that serving 35 (which was numbered). It was not certain which cylinder served 18 as in this loft the cylinders were not numbered.

Hearing

13. The hearing took place in London on 2 October 2006. It was attended by Ms Meakin and Mr Goldsmith, the Applicant tenants, in person, and Ms Howells, Mr Stow and Mr Fatogbe on behalf of the Respondent landlord, Camden LBC.

Facts

14. On the basis of its inspection, the documents produced and submissions made by the parties at the hearing, the Tribunal found the following facts:

Electricity

15. At the hearing the parties helpfully indicated that they had reached agreement on this issue, which affected Mr Goldsmith. His electricity charges had risen sharply in the year ending 31 March 2006, with an even greater increase estimated for 2007, which he had paid in advance despite his concerns. He had received in correspondence no satisfactory explanation from the Council. Ms Howells conceded that there had been an error and that the correct actual expenditure had now been ascertained, with the result that there would be a credit back to Mr Goldsmith of £300.31, which he accepted.

Heating and Hot Water

16. Essentially the Applicants' case was that they did not receive an adequate supply of hot water. No representations were made about space heating. The Council was obliged to provide a constant supply of hot water, so they were not getting what they were paying for. Both Mr Goldsmith and Ms Meakin were sole occupants of their properties so their usage was less than a family unit, yet they had difficulty in filling a bath with hot water. The Tribunal had noted on inspection that the kitchen tap at 35 ran only warm after several minutes. Ms Meakin thought that some pipework had been diverted so that two units were being supplied via one set of pipes, but produced no evidence in support. This was inconsistent with the Tribunal's observations at the inspection when all pipework appeared to be undisturbed.
17. The supply problem had been ongoing for several years. Many reports had been made to the Council, in response to which the maintenance contractor Seaflame usually attended on site. Often the situation would improve for a few days but then the problem would recur. Sometimes there was no hot water at all, for about 14 days in any one year. The tenants did not always complain as they felt there was no point. There had been no call-outs since April 2006, and indeed no complaints, as the supply had improved since then, but it was still not reliable.
18. The Council's position was set out in a witness statement from Harry Yates, Mechanical and Electrical Services Manager, and confirmed by Mr Stow at the hearing. The central boiler system was properly maintained and all complaints attended to by Seaflame being called out. It was acknowledged that the heating and hot water system did not always run satisfactorily, but there had been no recent major breakdowns and it was not unreasonable for the Council to respond by attending call-outs and regularly maintaining the existing system on an economic basis without a large capital outlay.
19. The Beaumont Walk contract had to be seen in the wider context of a Value Management Review of heating contract charges across the borough. The contract had been placed with Seaflame in 2003 after an extensive tendering process. The placement of risk of failure rates and associated repair and replacement costs had been taken back by the Council, which increased the risk to the Council but reduced the contract sum. The contract was under continuing review, and there was a borough-wide planned preventative maintenance regime in place.

Fuel charges

20. Mr Goldsmith and Ms Meakin were not convinced that the Council had obtained the best rate for fuel charges. They had seen a large rise in the actual costs for the years ending 31 March 2005 and 31 March 2006 which had not been adequately explained and which they found unreasonable.
21. Ms Howell explained that the actual expenditure on fuel 2005 was unavoidable and reflected two main elements: a generic increase in fuel costs across the board, and a change in the Council's fuel contract. Both elements were described more fully in a report contained in the documents before the Tribunal. The Council tendered for fuel contracts throughout Europe every three years and placed the contract with the cheapest supplier. In 2005 a review by Haringey LBC of energy procurement by London boroughs ranked Camden's contracts as "best in class" in terms of price.
22. In terms of apportioning fuel costs across the development, this was done in relation to property sizes across what was known as the heating estate. The increase in fuel charges was attributable solely to the issues outlined above and not to any change in the method of apportionment.

Lack of care and maintenance

23. The Applicants' case, presented by Ms Meakin, was that the caretaking service, grounds maintenance and estate cleaning generally was patchy, and there was no clear understanding of the nature and extent of the caretaking duties. Some years previously there had been an individual caretaker, known to the residents, who was a visible presence around the estate. After he left, from 1998 to 2000 there was inadequate cover, with the problem becoming most acute in 2001. Between 2002 to 2005 the situation improved but there had still been a litter problem and poor cleaning of the common parts. She was also concerned about the failure to repair the fences damaged by the mature trees.
24. Mr Fatogbe, Council caretaker services manager for the patch including Beaumont Walk, referred to a document setting out the caretaker service objectives and core duties and showing what was expected on a weekly basis over 22 estates. It was a responsive in-house service, in that staff attended to deal with particular problems on the estates as and when required. The current caretaker covered 2 estates, Beaumont and Whitton, spending 20 hours per week at Whitton and 15 at Beaumont. The costs were based on hourly rates.
25. On quality control, a monitoring system was in place whereby a site supervisor visited estates daily with formal monthly inspections. Mr Fatogbe produced record sheets produced from 19/12/02 to 28/01/04 which showed that the overall standard at Beaumont had been assessed at levels ranging from 91.1% to 95.5%. The acceptable overall standard was 80%. In 2004 there were some records of litter on the ground and in 2003 some dust and cobwebs on lights and fittings. Throughout there were comments of marks on walls and stairs which might not be possible to remove. The monitoring sheets, in Mr Fatogbe's view, demonstrated a good quality of service overall.
26. Two forthcoming changes were to be implemented: first, a named individual, Paul, was to be responsible for managing Beaumont Walk, and secondly, in response to complaints that the caretaker was not regularly seen, a time

recording initiative would be introduced so that time spent on site was directly measurable.

Decision

Electricity

27. The Tribunal noted the agreement between the parties which was sensible and satisfactory. It was perhaps unfortunate that it had taken such a long time for the Council to address the tenants' concerns and make the necessary adjustments.

Heating and Hot Water, Fuel Charges

28. It was understandable that the Applicants had become frustrated over the years by the inadequate supply of hot water and heating, and the Council's failure to respond adequately to their concerns. The Tribunal noted the temperature of the water in the kitchen of 35. It appeared that sometimes the situation was better than at other times, and had improved since April 2006 as there had been no complaints or call outs since then. It also appeared that the supply of space heating had not been adversely affected.
29. It is likely, in the Tribunal's view, that the absence of lagging to many of the hot water cylinders was contributing to the hot water problem. It would be straightforward, and indeed prudent, for the Respondent to ensure that all the cylinders were lagged with a suitable standard insulating material. This comment is intended to assist as the Tribunal has no power to compel the Council to take this step.
30. In general, the Tribunal accepted that the Council had acted reasonably in maintaining the central boiler system under the contract, and that Seaflame responded adequately to any reports. The system was working albeit not always to a satisfactory standard. It did not appear from the evidence that a complete replacement of the system was currently contemplated, or indeed necessary, but of course any such capital project would be at considerable expense to the tenants.
31. On fuel charges the Tribunal accepted the Council's evidence that there had been a general rise in price and had acted reasonably in tendering throughout Europe and placing the contract with the cheapest supplier.
32. However, in recognition of the fact that the overall service to which the service charge relates has been substandard from time to time over several years, the Tribunal decided to reduce the charges payable by the Applicants by 10%. This was intended to reflect the inadequate supply of hot water only as the space heating was satisfactory.

Care and maintenance

33. The Tribunal took the view that the cost for caretaking was reasonable for the services provided and that overall the services were of a reasonable standard, based on the evidence given and on its own inspection. The menu of core duties was also reasonable and comprehensive. The forthcoming changes were sensible and responsive to tenants' concerns.

34. The Tribunal gave weight to the fact that at the inspection the members saw a well maintained site with a minimal amount of litter and the caretaker was present on site. The common parts were generally clean, albeit somewhat unattractive in that the stairways were designed in bare concrete which was not unusual for a development of this type and age. Any historical problems over litter and cleaning had been attended to. The Tribunal further noted that the caretaking costs had not risen significantly over the period in question.
35. For these reasons the Tribunal did not make any reduction to the service charges for caretaking services.
36. The issue of lack of repair to the boundary fence was one of disrepair rather than caretaking and was not before the Tribunal. However, the matter was noted by the Council's representatives at the inspection and it is to be hoped that the matter will be attended to.
37. In general it appeared to the Tribunal that many of the Applicants' concerns and questions could have been dealt with more speedily and efficiently by the Council, and this would have avoided the obvious frustration built up over several years of what was perceived by the Applicants as inaction. Again it is to be hoped that in future the Council would respond more fully to substantive issues raised by tenants at Beaumont Walk.

Summary and Order

38. The Tribunal determines that the following sums are payable by the Applicants to the Respondent for heating and hot water, being the sums charged less 10% in accordance with paragraph 28 above:

Hot Water charges	No. 18	No. 22	No.35
Y/e 31 Mar 2003	£ 837.29	£ 558.19	£ 651.22
Y/e 31 Mar 2004	£1,004.81	£ 696.87	£ 781.53
Y/e 31 Mar 2005	£ 695.06	£ 463.36	£ 540.95
Y/e 31 Mar 2006	£1,503.13	£1,002.08	£1,169.12

39. Caretaking charges are payable by the Applicants in full as already demanded by the Respondent for the years in question.
40. No other service charges are in dispute, the question of electricity charges having been settled between the parties as recorded above.

Section 20C

41. The Applicants applied for an order under Section 20C of the 1985 Act that any costs incurred by the Respondent in connection with these proceedings should not be regarded as relevant costs to be included in any future service charges payable by them. At the hearing Ms Howells confirmed that the Council did not intend to charge any costs to the service charges. Accordingly it was not necessary for the Tribunal to make any order under Section 20C.

Dated 11 December 2006

Ms J A Talbot MA
Chairman