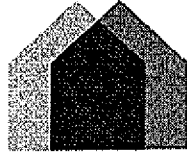


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Residential
Property
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE
DECISION IN THE LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985/1987 as amended
Section

Ref: LON/00BB/LIS/2006/0004

Property: 51 Cyprus Place, London, E6 5NP

Applicant: Paul Dive

Respondent: London Borough of Newham

Member of Tribunal: Peter Leighton LLB (Hons)
John Reed FRICS

Date of Decision: 30th March 2006

1. By an application dated 3 January 2006, the Applicant applied to the Leasehold Valuation Tribunal for a determination of liability to pay service charges in respect of his property at 51 Cyprus Place, E6 5NP of which the Respondent is the Freeholder.
2. An oral pre-trial review was held on 1 February 2006 (Chair: Mrs J Goulden) at which the Applicant appeared in person and the Respondent was represented by Mr M Burrage, the Service Charge Manager of the Respondents. Directions were given that the application should proceed by way of written representations and a timetable was set whereby each party could submit the details of the case and the application was listed for determination in the week commencing 27 March 2006.
3. The sole issue in the application relates to the level of management charges charged to the Respondent in the sum of £166.32 for the year April 2004 to 31 March 2005, and estimated management fees for the year April 2005 to 31 March 2006 in the sum of £161.91.

THE FACTS

4. The Applicant is the leasehold owner of the first floor flat in a block of eight which is owned by the London Borough of Newham. The lease was granted in 1989 for a term of 125 years.
5. By Clause 5(2) of the lease, it is provided that the lessee covenanted to:-

"Pay to the corporation without any deduction by way of further and additional rent a proportional part of the expenses and outgoings incurred by the corporation in the repair maintenance renewal improvement and insurance of the estate and the provision of services therein and the other heads of expenditure as the same are set out in the third schedule hereto such further and additional rent (hereinafter called "the service charge") which was subject to various provisions in the lease.

- (f) Defines the expenses and outgoings in the following way:-

"... shall be deemed to include not only those expenses outgoings and other expenditure hereinbefore described which have been actually dispersed incurred or made by the corporation during the year in question but also such reasonable part of all such expenses outgoings and other expenditure hereinbefore described whenever dispersed incurred or made from whether prior to commencement of the said term or otherwise including a sum or sum of money by way of reasonable provision for anticipated expenditure in respect thereof at the corporation may in their discretion allocate to the year in question as being fair and reasonable in the circumstances,"

6. The Third Schedule Paragraph 11 states that one of the heads of expenditure is "the cost incurred by the corporation in the management of the estate".
7. The service charge proportions are calculated in accordance with provisions of Clause 5(2)(e) as follows:-

"The annual amount of the service charge ... shall be calculated by dividing the aggregate of the said expenses and outgoings ... in the year to which the certificate relates by the rateable value (in force at the end of such year" of the estate and then multiplying the result of the amount by the rateable value (in force at the same date) of the devised premises. Provided that the corporation may calculate the amount of service charge payable in respect of the demised premises in such reasonable alternative manner as they shall select in the case of rateable values for the estate of the demised premises not being available".

THE ISSUE

8. The essence of the Applicant's complaint is set out in the application where he complains of a 400% increase in the management costs with no corresponding improvement in the level of service provided which he maintains is minimal. It appears that the management charge has increased from about £40 per annum to a figure now in excess of £160 per annum.
9. He goes on to state that he has been told that the increase is to finance a reorganisation of the service charge section and not to improve the service to leaseholders.
10. The Applicant originally pursued a complaint through the Council's complaints machinery but this was not upheld and he was advised that he was entitled to appeal the level of service charges to the Tribunal, even though he was directed to an address which was the last but four of the Tribunal.
11. In his statement of case the Applicant complains that the level of services provided at the premises is minimal.
12. The Respondent in reply in a letter dated 20 February 2006 sets out the various services which management performs for the benefit of leaseholders. These include:-
 - (a) local housing management on the estate;
 - (b) service charge invoice production;
 - (c) accounting for payments received;
 - (d) arrange buildings insurance and making necessary claims for the structure of the common parts;
 - (e) support you if you need to make a claim under the block policy;

- (f) undertake inspection visits;
 - (g) consult you and other leaseholders about management arrangements;
 - (h) provide newsletters and handbooks and respond to customers' queries;
 - (i) appoint necessary advisers and consultants;
 - (j) provide an out of hours emergency call centre;
 - (k) arrange for the appropriate contractors to be available for repairs and maintenance to the building and related administrative work.
13. The letter goes on to state that in the past those leaseholders with three services or less provided were charged a proportion of the cost of the services for the management fee, whereas the Respondent has now reverted to the terms of the lease and apportioned in accordance with the rateable value (presumably the rateable value as at 1990).
14. The Respondent further contends that the matters complained of concerning this addition of the estate are not charged by way of service charge to the Applicant but states that he may, if dissatisfied, raise the matter with the estate services manager.

THE TRIBUNAL'S CONCLUSION

15. The Tribunal has noted that the Respondent is not charged a figure for caretaking services and accordingly is unable to take into account the complaints under this heading, other than insofar as they relate to the level of the management fee.
16. It is clear that the management fee has been increased sharply both on the grounds that there has been a degree of reorganisation, and that the proportions of the service charge have now been altered so that the contribution is calculated in accordance with the terms of the lease based on the old rateable value.
17. Whilst the Tribunal has every sympathy with the Applicant's complaint as to the sharp rise in service charges, (and perhaps it would have been more sensible if the Respondents had phased the increases in over a longer period), the Tribunal is unable to find that the management charges have been incorrectly proportioned in accordance with the terms of the lease.
18. Further it would appear that if, as the Tribunal suspects, the management fee is inclusive of VAT, the net figure for management costs would be of the order of £140 per annum for providing services set out above.
19. Taking account of the general level of management costs, the Tribunal is unable to say a figure of £140 per annum or indeed £160 per annum is an excessive figure. The Tribunal has wide experience of the levels of

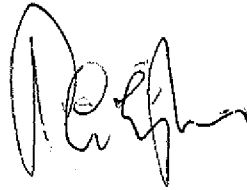
management fees charged for managing blocks of flats in the London area and is of the opinion that the amount charged is within the range of such fees.

20. The only qualification which the Tribunal would express, is that if VAT is not chargeable on the management fee and were to be added, the Tribunal would consider that the resultant figure would be higher than the average, and would not be justified for the services provided and should be limited to £161.19.

CONCLUSION

21. The Tribunal therefore determines that the management fee for the year 2004/5 in the sum of £166.32 is reasonable and payable and that the estimated management fee for the year 2005/6 in the sum of £161.19 is also reasonable and payable.

Chairman: Peter Leighton



Date: 29 March 2006

JG