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REF: LON/00AY/LSC/2006/0347

THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON
RENT ASSESSMENT PANEL

THE LANDLORD AND TENANT ACT 1985 (as amended) SECTION
27A

PREMISES: 59 BECKETT HOUSE, GRANTHAM ROAD,
LONDON, SW9 9DN

APPLICANT: Mr MARIO RISTOVSKI

REPOONDENTS: HYDE SOUTHBANK HOMES

APPEARANCES:

Mr M RISTOVSKI

The Applicant, attended the
hearing

Miss S MAUGER, of Counsel, instructed by Messrs.
Trowers & Hamlins, Solicitors

For the Respondents

Members of the Leasehold Valuation Tribunal

Miss A Seifert FCI Arb

Mr F Coffey FRICS

Mr D Wills ACIB

Date of decision: 9th March 2007

REF: LON/00AY/LSC/2006/0347

THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL

RE: 59 Beckett House, Grantham Road, London SW9 9DN

The Tribunal's decision

1. By a lease dated 26th October 1992 ("the lease"), made between the Mayor and Burgesses of the London Borough of Lambeth ("the Council"), as landlord, and Paul Stephen Long and Paul Joseph Kit as lessees, 59 Beckett House, Grantham Road, London SW9 9DN ("the flat"), was leased to the lessees for the term of 125 years from 24th March 1986. The ground rent of £10 was payable annually on the 29th September. By clause 2 of the lease the lessees covenanted to pay by way of further and additional rent, a rateable and proportionate part of the reasonable expenses and outgoings incurred by the Council in the repair and maintenance, renewal and insurance of 1 to 80 Beckett House ("Beckett House"), and the provision of services therein, and the other expenditure as set out in the fourth schedule to the lease, subject to the provisions in the Fifth Schedule to the lease, which contained the charging mechanism. The lessees' interest under the lease became vested in Mr Mario Ristovski in April 2004. The Council's interest is vested in Hyde Southbank Homes, the Respondents.
2. The Fourth Schedule to the lease sets out the landlord's expenses and outgoings and other heads of expenditure in respect of which the lessees were to pay a proportionate part by way of service charge. In respect of the Beckett House the charges payable were, under paragraph 8: "The reasonable costs incurred by the Council (now the Respondents) in the management of the Building including all fees and costs incurred in respect of the annual certificate of account and of accounts kept and audits made for the purpose thereof, such management costs being not less than 10% of the total service charge."
3. Hyde Southbank Homes owns and manages approximately 2,400 homes in the central Stockwell area in the London Borough of Lambeth. Hyde Southbank Homes was formed in 1999. It is a member of the Hyde Group, one of the largest housing association groups. Beckett House has approximately 80 residents, of which 17 are long leaseholders.
4. In Claim No. 6CL03715, in the Central London County Court, Mr Ristovski claimed the sum of £1841.00 from Hyde Southbank Homes, in respect of

service charges paid. A Defence was filed. By an Order made by District Judge Silverman dated 14th September 2006, the matter was transferred to the Leasehold Valuation Tribunal.

5. Under section 18 of the Landlord and Tenant Act 1985 (as amended) ("the Act):

"(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."

Under section 19 of the Act:

(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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable is 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 adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Under section 27A of the Act:

(1) An application may be made to a leasehold valuation 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 the payment has been made.”

Under subsection (3) similar applications can be made in respect of prospective service charge costs to be incurred.

6. The service charge years in issue were the years ending 31st March 2005, 31st March 2006, and the estimated charge for the service charge year ending 31st March 2007. The service charge items in issue were the concierge services, cleaning charges and management charges.
7. A hearing was held on 24th January 2007. Mr Ristovski attended the hearing and gave oral evidence. The Respondents were represented by Ms S Mauger of Counsel, instructed by Messrs. Trowers & Hamlins. Mr Paul Singleton, who was employed by the Respondents as Head of Operations (London and Kent) provided a witness statement dated 22nd January 2007, and gave additional oral evidence. Ms J Mellard, Housing Service Manager of the Respondents, also attended the hearing.
8. Concierge Service
- 8.1 Mr Ristovski's complaint related to the service charges alleged payable since he moved into the flat on 1st April 2004, until the concierge service was outsourced on about 3rd July 2006. Mr Ristovski submitted the concierge service provided was not of a reasonable standard, and that the costs of this service were not reasonably incurred. Mr Ristovski had no complaints about the concierge service provided after the above date.

Mr Ristovski said that it had become clear to him, about a month after he moved into the flat, that a concierge service between the hours of 7 a.m. to midnight, was not being provided. There was a board situated by the lift, on which it was stated that the concierge service was available during these times, 7 days per week. At the same time he received information from the Resident's Association, of which he is not a member, that talks were taking place with the Respondents, in respect of the concierge service. He waited for the result. However, later, he contacted the Respondents, and went through the complaints procedure.

Mr Ristovski contended that the landlords had failed to provide consistent security for Beckett House. Beckett House did not have concierge cover for days or weeks at a time. The Respondents had paid concierge staff who had not worked. The service was at best sporadic. The Respondents had acknowledged that they had no facility to check whether staff had

come in for work in the evenings or weekends. Mr Ristovski was able to monitor the service provided, as he worked 3 days each week at his flat. Notes had been left by the concierge that the reason he was not at his desk was because he was checking the building. However the same note that was there in the morning, was still there that evening. Sometimes, when the concierge's chair was empty, Mr Ristovski waited 20 minutes for him to return, but he did not do so. Sometimes the concierge would come to work between 8 and 9.30, and then leave.

Mr Ristovski referred to the Respondents' Defence in the County Court, in which it was stated that; "Over the past year, the number of our staff has reduced. We have not recruited additional staff as we are outsourcing the contract. We have maintained a service, but have been careful not to allow costs to escalate dramatically." Mr Ristovski submitted that this showed that the Respondents had, in effect, taken a decision to wind down the concierge service when they were still charging lessees for it.

Mr Ristovski produced letters from residents of Beckett House, addressed to 'To whom it may concern', relating to poor services, and also produced a list of signatures he had collected from other residents. He stated that the letters were written in about April 2006.

- 8.2 It was stated in the Respondents' Reply that the concierge service had previously been provided by the Council by staff employed by them. When properties were transferred to the Respondents, the employees were the subject of TUPE, and became the direct employees of the Respondents. The concierge service was based on the 3 blocks which formed part of an estate, Beckett, Arden and Pinter. It was stated in the Reply that the services included the following:
- Responding to emergencies, including visits to residents' properties
 - Reporting on damage to communal areas and repairing where possible
 - Making sure that work completed in communal areas is carried out to the expected standards
 - Replacing light bulbs and covers to lights in communal areas
 - Ensuring the communal/public areas is safe and secure.

It was also stated that each of the blocks had an entry phone system and the concierge seeks to ensure that only authorised visitors entered the block.

The published hours of the concierge service were 7 a.m. to 12 midnight, 7 days a week. It was accepted by the Respondents that for the years 2005 and 2006, some of the shifts were not manned. In his witness statement dated 22nd January 2007, Mr Singleton stated that in 2004/2005, and 2005/2006, approximately 20% of the shifts were not

staffed. However, he said that this was on an organised basis with published shift patterns and information provided to the residents. However, the service charge account was only charged for those shifts that were manned and where employees had been paid.

The actual concierge charge for the service charge year 2004/2005 for Beckett House, in the revised final accounts was £65,396.20, with the long leaseholder's proportion (apportioned by rateable value) being £834.08 each. The Respondents produced a statement for that year together with details of the concierge charge detailing the employees who worked and the amounts paid.

The actual concierge charge for Beckett House in the service charge year 2005/2006 for leaseholders in the revised final account for 2005/2006 was £13,641.36 equating to £802.43 per leaseholder. The Respondents produced a statement showing the shifts worked and the employees paid.

The estimated service charge for the service charge year 2006/2007 was £77,000 equating to a charge of £982 to each leaseholder.

Mr Paul Singleton, Head of Operations for the Respondents, described his duties as including: managing teams of staff to provide income collection and arrears management, estate services, tenancy services, customer services and residential involvement. He said that the concierge provided caretaking services and also security.

Ms Mauger said the Respondents accepted that there were problems with the concierge service. Spot checks had been carried out in office hours in weekdays, and not after 5 p.m. The spot checks resulted in disciplinary action against one person. Mr Singleton said that 2 to 3 members of staff received warnings because there was evidence that they had left early. There was an active Residents' Association which was in contact with Mr Singleton. He had received e-mails and telephone calls about the concierge service at the end of 2004 and through 2005, but was unable to provide details of complaints received. He accepted that there had been substantial overtime payments, at time and a half. The overtime would have been certified by the Estate Services Manager, Mr Michael Cooper, and signed off by Mr Singleton. No one checked whether the staff had attended to do the overtime, as it was assumed that they would have fulfilled their duties. The concierge services were to provide a front of house service, assist residents, and carry out inspections the block on each shift. Mr Singleton said that he had every confidence in the ability and reliability of the Estate Services Manager. He described the concierge service as a service under strain.

Visitors' Books for Beckett House were produced, but the information contained was of not particular assistance in determining whether the concierges had attended throughout the times for which they had been paid.

9. Cleaning Charges

In respect of the cleaning service, Mr Ristovski said that the cleaning service was sporadic and that the building was left in a dirty condition. He also said that the lifts were in a disgusting state. Mr Ristovski was unable to produce any letter at the hearing in which he specifically complained to the management about the standard of cleaning service.

Ms Mauger submitted that there was no specific complaint about the standard of the cleaning service in Mr Ristovski's Statement of Case. Mr Singleton did not have details of the cleaning service available at the hearing. The cleaning specification had been made available to the Residents' Association. It had been understood that was not Mr Ristovski's case that the works under the cleaning contract were not carried out, but merely that the estimate for the service charge year 2004/2005 was incorrect. The management had been extremely pleased with the standard of cleaning service provided.

10. Management fees

10.1 Mr Ristovski contended that the Respondents had not managed the concierge service at Beckett House properly. He submitted that the 15% management fee was unreasonable.

Mr Ristovski was concerned that his complaints had not been dealt with adequately. In a letter he had received following a complaint panel hearing on 13th April 2006, Sue Norman, a Board Member stated, "The Panel did not uphold your complaint about the concierge service because a service review, working with residents, is about to result in significant improvements." However, Mr Ristovski's complaint related the service provided up until the changes were made.

Mr Ristovski also submitted that the Respondents had underestimated the cost of cleaning for 2004/2005. The Respondents had admitted in correspondence that they had budgeted for the cost of only one month's worth of cleaning for the entire year. Mr Ristovski stated that this had resulted in additional charges, the charge to him being £231. He complained that the residents were not consulted in accordance with the Respondent's leaflet in which it stated that they must consult the residents when spending takes place over £100. The Respondents had subsequently reduced the charge by 50%. He submitted that it was

unreasonable for a 15% management fee to be payable when basic errors were made that had a substantial impact on the lessees.

Mr Ristovski, in his Statement of case, also alleged that there was a lack of transparency in respect of the service charge budgets. He stated that he had repeatedly asked to see accounts relating to Beckett House. He was shown the accounts for the district of Stockwell, which were not itemised for Beckett House, and therefore had been unable to obtain an accurate and meaningful picture of expenditure relating to that property. He questioned whether it was justified for the Respondents to charge a 15% management charge in those circumstances.

At the hearing Mr Ristovski said that his main complaint in respect of the Management Charges related to the concierge service.

10.2 In the Reply, the services provided by the Respondents as part of their management duties was said to include:

- Keeping financial records.
- Monitoring the various contracts in respect of cleaning, gardening, CCTV, maintenance and repairs and lift maintenance.
- Providing all necessary information for the purposes of producing the accounts.
- Responding to queries from residents, including providing evening meetings with tenants.

In the Respondent's Reply it was stated that when the Respondents prepared the estimated budget for 2004/2005, they inadvertently, only included the monthly cost of the cleaning contract which was approximately £2,000. The Respondents should have included the annual estimated cost for the cleaning contract. The actual cost for 2004/2005 was £18,111.94, with leaseholders having a liability to pay £231.00. Extra works were not undertaken and therefore no consultation was needed. It had been explained to Mr Ristovski that an error had occurred in relation to the estimated budget for the year. In the event the Respondents' Board agreed to refund 50% of the costs charged to leaseholders and a refund of £115.50 was made for that service charge year.

In the Respondents' letter to Mr Ristovski dated 20th April 2006, it was stated that:

"The significant error on the estimate for the year (04/05) was the cleaning charges which were set at a monthly level. In December 2005, the HSH Board considered this and agreed a 50% refund of cleaning costs for leaseholders in light of this error, which resulted in a £115.50 refund to you.

The Board agreed that management fees for 2006/2007 would be fixed at 10% for one year only in recognition of the difficulties with the previous year's accounts".

Mr Singleton stated at the hearing that it should be remembered that as a gesture of good will in recognition of the errors on the service charge accounts relating to cleaning costs, it had been agreed to reduce the management fee for leaseholders from 15% to 10% for the service charge year 2006/2007.

For 2004/2005, the revised final account showed the actual charge of £185.50 to each leaseholder. For 2005/2006, the revised final accounts showed the leaseholders' actual charge at £4,891.88, which equated to £287.75 per leaseholder. The estimated charge at 10% for 2006/2007 was £175.61 for each leaseholder.

Ms Mauger told the Tribunal that the Respondents would not object to a reduction in the management fee to 10% for the service charge years 2004/2005 and 2005/ 2006. The Respondents had already stated in correspondence that the management fee for 2006/2006 would be reduced to 10% as a gesture of good will.

11. Ms Mauger said that the Respondent would not seek to recover the costs of and incidental to these proceedings as part of the service charge.
12. Mr Ristovski applied for re-imbusement of the hearing fee of £150. Ms Mauger said that the Respondents had no objection to the Tribunal making an order that the Respondent reimburse the hearing fee.
13. The Tribunal's decision
- 13.1 Concierge charges

The Tribunal finds on the evidence that the concierge service was not of a reasonable standard, and that the costs were not reasonably incurred. Although it was the Respondents' case that only the actual cost had been recharged to the leaseholders, the Tribunal were not satisfied that the schedule showing the persons and hours of employment necessarily accurately reflected the service actually provided. Although some monitoring took place, this was mainly only on weekdays and in office hours. Some telephone calls checking attendance may have taken place in the evenings, but there was no direct evidence from the Estates Manager in respect of this, and the evidence in respect of any action taken by the Respondents was quite vague. Against this there was the evidence of Mr Ristovski, who had worked at home for part of each week and observed for himself the poor attendance provided. In the circumstances

the Tribunal determines that the cost of the concierge service for 2004/2005, 2005/ 2006 and for the first 3 months (April, May, June) of the estimated charge for 2006/2007 be reduced by 30%. This results in the following charges to Mr Ristovski for the concierge service:

Year	Sum charged £	Reduced to £
2004/2005	834.08	583.85
2005/2006	802.43	561.70
2006/2007 (estimated)	245.50 (April/May/June)	171.85

Mr Ristovski is liable for the above amounts under the terms of the lease.

13.2 Cleaning charges

There was insufficient evidence to support Mr Ristovski's claim to a reduction in the cost of the cleaning service. The Tribunal finds that the charges for the cleaning service in 2004/2005 (taking into account the refund of £115.50), 2005/2006 and 2006/2007 were reasonable and reasonably incurred. Mr Ristovski is liable for such charges under the terms of the lease.

13.3 Management charges

The Tribunal finds on the evidence that the management charges were not reasonable and were not reasonably incurred. The Tribunal notes that the Respondents did not object to a reduction of the management charges by 10% in the service charge years 2004/2005 and 2005/2006. The charge for 2006/2007 was already limited to 105 as a concession by the Respondents.

Year	Sum Charged £	Reduced to £
2004/2005	185.50	127.88
2005/2006	287.75	167.77
2006/2007 (estimated)	175.61	No deduction as charged at 10%

Mr Ristovski is liable for the above charges under terms of the lease.

13.4 Re-imbusement of fees

Under the Leasehold Valuation Tribunal (Fees) (England) Regulations 2004, regulation 9, subject to exceptions which do not apply in this case, in any proceedings in respect of which a fee is payable under the Regulations, a Tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any

fees paid by him in respect of the proceedings. The Tribunal notes that the Respondents do not object to an order being made for re-imbusement of the hearing fee and considers it reasonable in all the circumstances to make such an order. Accordingly the Tribunal orders that the Respondents reimburse Mr Ristovski the hearing fee of £150.

CHAIRMAN: Miss A Seifert



DATE: 9th March 2007

Members of the Leasehold Valuation Tribunal

Miss A Seifert FCI Arb
Mr F Coffey FRICS
Mr D Will ACIB