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Residential Property
TRIBUNAL SERVICE

Leasehold Valuation Tribunal **LON/00AY/LSC/2007/0145**

London Rent Assessment Panel

Landlord and Tenant Act 1985 sections 27A and 20C

Address:	1 & 2 Keystone Court, 3, 7 & 8 Percheron Court and 1 & 5 Stillion Court, 50, 51 & 52 Combermere Road, London SW9
Applicants:	Ms Samantha Marlowe & Mr Oliver Jones Mr Neil Brownlow & Mr Stephen Connolly Mr Fraser Serle Mr Doug Foot Mr John Stuttle & Ms Deborah Farley Ms Joanne Woolferden
Represented by:	In person
Respondent:	Metropolitan Housing Trust (previously Metropolitan Home Ownership)
Represented by:	Mr Stuart Armstrong (Counsel) Ms C Kantow (Solicitor) HPLP Solicitors Ms Saroj Baines (Housing Manager) Mr Clive Morrison (Service Charge Manager)
Tribunal members:	Mr T J Powell LLB Mr C White FRICS Mr David Wilson
Application:	17 April 2007
Oral pre-trial review:	21 May 2007
Hearing:	10 September 2007
Decision:	21 September 2007

Decisions of the Tribunal

(1) Of the items remaining in dispute, the Tribunal determines that the following sums are reasonable and payable by the Applicants:

(a) the 2005-6 gardening charge of £2,234 should be reduced by 25% to £1,675.50;

(b) the 2006-7 gardening charge of £396.54 plus VAT should be reduced to £15.25 plus VAT; and

(c) the 2006-7 charge for external cleaning of £1,036.58 plus VAT should be reduced by 25% to £777.44 plus VAT.

(2) The Tribunal makes an order that the Respondent should refund the £350 Tribunal fees paid by the Applicants within 28 days and determines that none of the Respondent's costs of the Tribunal are to be passed to the leaseholders through the service charge.

Application

1. This is an application seeking a determination of the reasonableness, payability and the amount payable in respect of the following service charge heads for the service charge year 2002/2003 and for all subsequent service charge years:

(a) Water and sewerage charges;

(b) Charges relating to the repair and maintenance of the roofs (and whether covered by guarantee)

(c) Electricity costs (including call-out costs for replacement of light bulbs, etc);

(d) Cleaning costs and general maintenance;

(e) Gardening costs.

2. In addition, the Applicant raised an issue as to whether the Respondent is entitled to charge in respect of costs incurred more than 18 months prior to the date of the demand.

Attendance

3. Four of the Applicant leaseholders attended in person (Mr Jones, Mr Stuttle, Mr Serle and Ms Woolferden) and the case was presented on their behalf by Mr Jones and Mr Stuttle. The Respondent was represented by Mr Stuart Armstrong of Counsel, instructed by HPLP Solicitors. The Housing Manager, Ms Baines, and the Service Charge Manager, Mr Morrison attended in order to give evidence.

Property

4. Keystone, Stillion and Percheron Courts are three linked blocks of flats managed by the Respondent ("Metropolitan"), built by Bellway Homes in 2001 and occupied for the first time in the second half of 2001. Bellway Homes also built the adjacent development at the same time, which is privately owned and managed by Andertons.

5. The Applicants are part of a shared ownership scheme whereby they each own a percentage of their flat for which they pay a mortgage. In addition, the Applicants pay Metropolitan for service charges, plus rent on the percentage of the flat that Metropolitan owns. The flats have different values and different floor spaces. There is marked, off-street-parking, on the estate and a communal garden. Neither party requested an inspection and the Tribunal did not consider that one was necessary.

The lease

6. The Tribunal was provided with seven copy leases which were in identical or near-identical terms. The starting dates of the tenancies varied between November 2001 and July 2002. Each was a 99-year shared ownership lease commencing on their respective dates, varying in respect of the initial percentage of ownership held by the leaseholder and with differing liabilities to pay specified proportions of the service charge provision.

7. The leaseholders covenant by clause 3(2)(a) to pay all outgoings in respect of the premises and by clause 3(2)(b) to pay the service charge in accordance with clause 7.

8. The landlord covenants by clause 5(4) to maintain, repair and decorate and renew the roof (etc) and the common parts. By clause 5(5) the landlord covenants to keep the common parts adequately cleaned and lighted, including the windows.

9. Clause 7 contains the detailed service charge provisions, including an accounting year ending on 30 September each year. The leaseholders are to pay the service charge during the term by equal monthly payments in advance. There is provision for adjustments to be made in respect of any deficit or surplus at the end of each service charge year.

The law

10. Service charges and relevant costs are defined in Section 18 of the Landlord and Tenant Act 1985 (as amended). The amount of service charges which can be claimed against leaseholders is limited by a test of reasonableness which is set out in Section 19 of the Act. Under Section 27A an application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable, including an advance service charge.

11. Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 allows a Tribunal to order a party to reimburse the whole or part of any fees paid by another party.

12. Section 20C of the Landlord and Tenant Act 1985 Act provides that a Tribunal can make an order preventing the Lessor recovering its costs of proceedings through the service charge, if the Tribunal considers it to be just and equitable.

Background to the Application

13. The leaseholders began to occupy their respective flats from the end of 2001 onwards. From a very early stage Percheron Court suffered from a leaking roof, for which the original construction by Bellway Homes was blamed. Problems had also been caused by the builders having put the wrong doors and numbers on all of the properties in Percheron Court, and with continuous problems with the intercom and electronic locking of the door. There had also been persistent problems with the lighting in the communal areas, resulting in numerous expensive visits by contractors to the property since March 2002. The leaseholders also complained about poor or non-existent maintenance of the communal areas and garden, despite being required to pay the cost of contractors through the service charge, and about the need to re-mark the car park, since the original markings were not correct and did not match car park numbers in residents' own copies of the leases.

14. There have been a number of meetings between leaseholders and the Respondent to try and resolve any of these issues, but matters came to a head with a sharp increase in the service charge during 2005, as a result of the Respondent asking leaseholders to pay a back charge in one year of £10,000 for water costs, and an additional £2,500 for the current year's water charges. The inability to resolve all of these issues lead to the current application. The issues were identified at the oral pre-trial review. By the time the hearing took place, the Respondent had made a number of concessions in relation to the service charges, and further negotiation between the parties had reached agreement on some of the remaining items, but not all of them.

Evidence and the Tribunal's findings

Charges relating to roof inspections and repairs

15. The Respondent conceded that the £3,431.50 charged to the leaseholders since 2003 was not payable by them and was no longer in dispute.

Other charges related to defects with the building

16. The Respondent also conceded that the £465.49 charged to the leaseholders in relation to other defects with the building would be removed and would no longer form part of the service charge, so that this matter was no longer in issue.

Charges relating to water costs

17. On 1 March 2005, Metropolitan notified the leaseholders that a provision for domestic water charge of £12,500 had been included in their service charge estimate. It had been thought that all of the water supplied to the three blocks had come from the neighbouring private development managed by Andertons, and the charge to leaseholders was in respect of a percentage of the Thames Water bill which Andertons had received. In its written response to the application, Metropolitan revealed that one of its departments had been aware that there were 15 water meters for the 15 flats at Combermere Road, but that this information had not been communicated to leaseholders, or to the Respondent's sales or service charge teams. In its written response, Metropolitan proposed crediting each leaseholder's account with the amounts charged pertaining to water from 1 April 2005 to 30 September 2007, and the earlier charges were to be apportioned between each flat in accordance with water meter readings that it had taken.

18. However, at the hearing, Mr Armstrong for Metropolitan sought to clarify the situation with regard to the water supply at the Combermere Road properties. He said that contrary to the previous belief that the water was supplied via the neighbouring private development, managed by Andertons, Metropolitan now believed that none of those charges paid by the neighbouring property are related to the Combermere Road properties. It now appeared that Thames Water had just never billed the leaseholders or Metropolitan for the water supplied directly to the Combermere Road properties. As a result, Metropolitan now withdrew all of the water charges which had been notified to leaseholders through the service charge, and confirmed that any sums paid by leaseholders would be refunded by 10 October 2007.

19. Mr Stuttle for the leaseholders complained that Metropolitan had been incompetent in this matter. Leaseholders had been complaining about the water costs for the past two years, and had been told as early as 2005 that there were no water meters on the estate. This concession had only come at the Tribunal hearing itself. Leaseholders will now be faced with very high bills because of Metropolitan's negligent failure to manage the estate properly. He urged the Tribunal to give some recognition to this state of affairs.

20. The Tribunal considered that this was not a service charge issue and it went beyond its jurisdiction. If leaseholders are faced with large bills in respect of water charges, they may have other avenues of redress. Mr Armstrong for Metropolitan accepted the Tribunal's view that the state of affairs did not reflect well on the management of the estate.

Charges relating to the lighting of common parts

21. In their application form the leaseholders were claiming that some £3,284.55 relating to charges for the lighting of the common parts should be deducted from the service charge. In its response, Metropolitan conceded that £712.05 should be deducted. The Tribunal went through the Applicants' schedule at the hearing, and the parties indicated which of the items had been agreed, and which were still in dispute. Of those items between 15 March 2002 and July

2003, the Applicants agreed to pay all of the costs except for three duplicated items which had been asterixed, which Metropolitan then conceded.

22. With regard to the items dated August 2003 to June 2006, after hearing evidence from a number of leaseholders about problems with the lighting, these were all conceded by the Respondent, save for the item dated June 2005, the cost of which the parties agreed to pay half each.

23. All together, the parties agreed before the Tribunal, that the charge for lighting should be reduced from a total of £3,284.55 over the period March 2002 to June 2006, to the lower figure of £877.41.

Charges relating to maintenance of communal areas and gardening

24. The leaseholders challenged the grounds' maintenance charge of £2,234 for the year ending 30 September 2006. They also challenged the current year's service charge to 30 September 2007, on the grounds that (until Friday, 7 September 2007) there had been no gardening provided whatsoever during the service charge year.

Period: October 2005 to September 2006

25. Mr Serle gave evidence that he had had two barbeques in May 2005, but had not been able to have barbeques since then because of the overgrown condition of the garden. He drew an unfavourable comparison to the garden of the private development next door, which he said was in a very good condition. Ms Woolferden complained that she was unable to have a barbeque in August 2006, because the grass was too long and the garden was full of nettles and thistles. She and the other leaseholders pointed to photographs in the trial bundle taken on 5 June 2007 as being indicative of the state of the garden in the earlier period. Ms Woolferden said that the state of the shrubs and bushes indicated that they had not been cut for several years and that their size showed 2 to 3 years' growth. The Applicants asked the Tribunal to reduce the service charge by 50%.

26. For Metropolitan, Mr Armstrong emphasised that the charge was not just for gardening, but was also for sweeping and cleaning the other external areas including the car park and refuse bin. Clive Morrison, the service charge manager for Metropolitan, gave evidence relying on the inspection reports in the trial bundle, which showed that inspections had been entered on the system on 17 May 2005, 11 July 2006, 19 July 2006, 3 August 2006 and 25 September 2006, all of which showed that the condition of the grounds and refuse area was either 'good' or 'satisfactory'. Mr Morrison was unable to confirm that inspection had definitely taken place between May 2005 and July 2006, but he felt that in all likelihood, inspections had taken place; they just had not been entered on the computer system. A number of inspections had been conducted by Ricky Miller, an assistant within the service charge team, who sometimes did visits instead of the housing officer. In Mr Morrison's view, Ricky Miller was very attentive, and he would have pointed out anything amiss. He did confirm that the contractor TCM was changed after 30 September 2006, which the leaseholders had claimed was due to TCM's incompetence.

27. The Tribunal considered that the evidence of poor gardening was good: there was anecdotal evidence of long grass, thistles and the inability to have barbeques. In addition, there was an apparent lack of visits by Metropolitan before July 2006. The Tribunal considered the supervision of the gardening contract was not comprehensive and that gardening was wanting in some respects. Accordingly, the Tribunal determined that the charge of £2,234 should be reduced by 25%, and that the resulting charge of £1,675.50 was reasonable and payable for this service.

Period: October 2006 to September 2007

28. Ms Baines indicated that the current service charge year's ground maintenance charge should be broken down as to:

    (a) £396.54 plus VAT for gardening;

    (b) £1036.58 plus VAT for external cleaning of hard areas, and

    (c) £935.29 plus VAT for internal cleaning.

    She went on to say that the litter picking, removal of refuse and gardening should entail 52 visits in the year, whereas the sweeping of the communal hard areas and the maintenance of communal lighting entailed 26 visits in each year. Mr Stuttle, for the leaseholders, said that these visits had not been done. He was not challenging the internal cleaning, only the gardening and external cleaning.

2006-2007 charge for gardening

29. With regard to the current service charge year to 30 September 2007, Mr Armstrong of Metropolitan conceded that the only gardening which had taken place during the whole service charge year was on Friday 7 September 2007. The Tribunal was provided by the leaseholders with colour photographs showing the garden before and after this recent visit by contractors. The cutting of the grass and pruning of bushes appeared to be extremely severe. The Tribunal questioned whether the only reason that the contractors had attended was the imminent hearing on 10 September, and this was not challenged. However, the housing manager, Ms Baines, did suggest that one of the problems that the contractor had was obtaining a key to get access to the garden and she emphasised that their duties involved sweeping and external cleaning, which definitely had been done.

30. The Applicants gave mixed evidence, confirming on the one hand that the contractors had not been seen on site, cleaning and picking litter, but on the other hand, that refuse had been removed on occasions and that the refuse bin area had been swept.

31. A new contractor was in place from October 2006 and was contracted to visit every week. The undisputed evidence of the parties was that there was no gardening from 1 October 2006 until the drastic cutting of the grass and shrubs on Friday, 7 September 2006, leaving little greenery or foliage. It was clear from the photographs taken before this work that there was very tall grass,

thistles and overgrown bushes which meant that the garden could not be used by leaseholders. Even assuming that there may be one more visit by contractors in the current service charge year, this was a very poor service. The Tribunal determined that the reasonable fee for the gardening element, which was originally £396.54 plus VAT, should be reduced to £15.25 plus VAT.

2006-2007 charge for external cleaning of hard areas

32. As to the element of the charge which related to the sweeping and cleaning of the external communal hard area, the evidence of the leaseholders was that there were a few visits, but the leaseholders had not been on site each and every day to say how many visits there had been. The evidence was that there was some collection of refuse and some litter picking, though often of poor quality. The refuse area had been swept, though the corner of a very small area by Stallion Court had remained litter strewn for a considerable time. The photographs provided showed weeds in the drive and some litter. Ms Woolferden had given evidence that some grit had prevented her opening a door to remove a bicycle.

33. On behalf of Metropolitan Ms Baines had indicated that there was evidence of attendances by contractors at her office, but not before the Tribunal, because Metropolitan had not realised that the documents were necessary. She said that the contractors had billed on the basis of their attendance, but she had no information on what they had actually done.

34. The Tribunal considered that the element of the charge for external cleaning, some £1,036.58 plus VAT, was very high. On the balance of probabilities, the work had not been completed satisfactorily and in line with the contract. Doing the best that it can with limited availability of specific evidence, the Tribunal considered that the charge should be reduced by 25% to £777.44 plus VAT, and that this sum is reasonable and payable by the leaseholders.

Refund of fees and section 20C application

35. Mr Armstrong, for Metropolitan, conceded that the Respondent would refund the leaseholders the £350 they have paid by way of Tribunal fees. He also agreed to an order being made under Section 20C of the 1984 Act. Accordingly, the Tribunal makes an order that the Respondent should refund the £350 Tribunal fees paid by the Applicants within 28 days and determines that none of the Respondent's costs of the Tribunal are to be passed to the leaseholders through the service charge.

Chairman: T.Powell

Timothy Powell

Date: 21 September 2007