

REF LON/00BG/LSC/2007/0138

IN THE LEASEHOLD VALUATION TRIBUNAL

**IN THE-MATTER OF THE LANDLORD AND TENANT ACT 1985 SECTION
27A and SECTION 20C**

**AND IN THE MATTER OF 24 Landin House Thomas Road London E14
7AN**

Applicants

Ms Ginette Casey

Represented by

Ms Emily Firn of BPP

Respondent

**Poplar Housing and Regeneration
Community Association**

Represented by

Mr R Brayshaw FCA

The Tribunal

Mr P Leighton LLB (Hons)

Mrs J Davies FRICS

Mr D Wilson JP

Hearing Dates

6th August and 20th August 2007

Date of Decision

16th October 2007

Introduction

- 1 By an application dated 20th April 2007 the Applicant seeks a determination of her liability to pay service charges for the years 2004/5 and 2005/6 in respect of the premises at 24 Landin House Thomas Road London E14 7AN ("the Property") under Section 27A of the Landlord and Tenant Act 1985 and for an order restricting the Respondent's right to recover the costs of the proceedings under Section 20C of the Act.
- 2 Directions were given on 27th April 2007 (Mr Andrew) for the hearing of the application to be held at the headquarters of the Respondent owing to the Applicant's disability and her perceived inability to attend at Alfred Place. London WC1.
- 3 The matter came before the Tribunal on 6th August 2007 and the Tribunal attended the Respondent's offices at 167A East India Dock Road London E14 but the facilities available were extremely limited and by agreement the hearing was moved to Alfred Place, the Applicant confirming that she was capable of attending at that address having travelled there on a previous occasion.

Inspection

- 4 Notwithstanding that the directions made no provision for inspection of the premises the Tribunal decided in the light of the allegations raised by the Applicant that an inspection was necessary and carried out that inspection on the morning of 6th August 2007 prior to the commencement of the hearing which was rescheduled to commence at 1 30 p.m. at Alfred Place. The inspection took place in the presence of the parties and Mr Neal Gray the Estates Area co-ordinator was also present.
- 5 In the course of the inspection the Tribunal noted that the property was situated on the top floor of a four storey purpose built block of flats consisting of 25 flats in all. The flats in the block were segregated and were reached by several metal staircases and lockable gates. There was a lift at each end of the block. It was not possible therefore to walk from one end of the block to the other and it was not possible to go

- from one lift to the other without going outside the block and entering from a different entrance.
- 6 The block was part of the Burdett Estate which consisted of a number of tenanted and leasehold properties which were administered by the Respondent. In the Applicant's block there were 8 leasehold flats and 17 tenanted flats.
 - 7 The Tribunal was shown the area where rats had escaped near the forecourt of the premises. The Tribunal also inspected the play park provisions in the estate. They were within a few hundred yards of the Applicant's dwelling but central on the estate and convenient for the use of children, with swings and slides and other playground apparatus. Although it was school holiday time when the tribunal attended there were in fact no children playing in the play parks.
 - 8 The Tribunal inspected the grounds and found that they were generally well maintained. There were employees working on the site and in the grounds on the morning of the inspection. As the Tribunal had only decided to inspect about half an hour before the inspection actually took place the Tribunal did not consider that the employees had been brought in specifically for that purpose but that it was in fact part of a routine maintenance arrangement on the estate.
 - 9 The Tribunal inspected the Applicant's staircase and forecourt but did not enter her flat. There was a panel missing on the side of one of the staircases. The Tribunal also noted that the window at the top of the staircase was cracked and was held in place with tape. There were also some marks on a wall panel on the top floor which did not appear serious. The area of the common parts appeared to be equally as clean as the area outside the forecourts of the flats on each side of the stairwell.
 - 10 Having regard to the difficulties involved in a large social housing estate in East London with a diverse ethnic and social mix, the Tribunal considered that the estate was in reasonable condition at the time of the inspection.

The Hearing

- 11 At the original hearing Mr Brayshaw for the Respondent indicated that the statement in reply by the Applicant which had raised a number of new issues had been received very late and no opportunity had arisen to reply to them. As it was not anticipated that the hearing could be completed on 6th August the Tribunal indicated that it would commence the hearing but would give Mr Brayshaw the opportunity to file further evidence in rebuttal provided that such evidence was filed in good time for the adjourned hearing.
- 12 The Tribunal directed that the further evidence should be filed and served by 13th August if possible but in any event by no later than 16th August to give the Applicant's representatives ample time to consider the evidence.
- 13 At the hearing on 6th August the Tribunal heard the evidence of Ms Casey who was cross examined by Mr Brayshaw. The cross examination was not concluded by the close of the first day and Ms Casey attended for cross examination at the adjourned hearing on 20th August.
- 14 In the meantime the Respondent filed further evidence from Mr David Tull the Leasehold Services Manager, Mr Neal Gray the Estate Service Area Co-ordinator for the Burdett Estate and other estates in the area. And Mr Terry Patten the Estate Maintenance Co-ordinator for all the Poplar HARCA estates.
- 15 At the resumed hearing Mr Brayshaw completed the cross examination of the Applicant and called Mr Tull and Mr Gray to give evidence in accordance with their statements. Mr Patten and Mr Whatley who had also given a statement for the Respondent were unavailable to give evidence at the hearing but Mr Gray and Mr Tull dealt with most of the evidence in their statements and were cross examined by Ms Finn following which each party made closing submissions.

The Law

- 16 The Tribunal has a duty to determine the liability of a leaseholder to pay service charges under Section 27A of the Landlord and Tenant Act 1985. Service charges are only recoverable to the extent that they are reasonably incurred. The Tribunal therefore has the power to

disallow service charges where they are unnecessarily incurred, where they are excessive in amount and where the service provided is not of a reasonable standard.

- 17 Subject to those provisions the Tribunal does not have power to interfere with the management decisions of the landlord or to supervise every aspect of the provisions of services and to deal with every complaint which a leaseholder may have in respect of the provision of services. Where services are not provided and/or are provided but not charged for the Tribunal is not empowered to state that such services should be provided or to substitute its own view of the appropriate management decision.
- 18 This is particularly the case where the landlord is a social landlord and has mechanisms for consulting the general body of tenants and leaseholders before deciding on a particular policy. In addition such landlords, as in the present case, have procedures for dealing with complaints. In addition there is a housing ombudsman who is charged with the responsibility of dealing with maladministration.
- 19 It follows that where a particular service is not supplied and not charged for or is supplied but only to the extent of a limited number of hours per week, it is not for the tribunal to determine that the landlord should have devoted further hours to the provision of the service, where the cost to the leaseholders would have been greater.

The Lease

- 20 The Applicant holds under the terms of a lease dated 17th April 1990 for a term of 125 years from 7th August 1989 at a ground rent of £10 per annum. The Applicant acquired the lease under the Right to Buy legislation and has resided at the flat since the acquisition of the lease.
- 21 By clause 4(4) the Applicant covenanted to pay the service charges in accordance with the provisions of the lease. By Clause 5(5) the Respondent covenanted subject to the Applicant of the interim and final service charges due, to perform the various services specified under that clause, including, repairing 5(5)(a) and decorating 5(5)(b) the exterior of the premises and insuring the premises 5(5)(c) cleaning the common parts 5(5)(d)

- 22 By clause 5(5)(m) the landlord covenanted to "maintain and where necessary renew or replace any existing lift and ancillary equipment relating thereto"
- 23 Schedule 5 of the lease makes provision for the payment of the interim service charge and the service charge By Clause 1(2) of this schedule the service charge is defined as "such reasonable proportion of total expenditure.
- 24 Under the Fifth Schedule "Total expenditure " is defined as "the total expenditure incurred by the lessors in any accounting period in carrying out their obligations under Clause 5(5) of this lease and also of the cost of insuring against the making good of structural defects and any other costs and expenses reasonably and properly incurred "
- 25 "the "Service Charge" means such reasonable proportion of total expenditure as is attributable to the demised premises "

The Issues

26 The Applicant raised six issues in connection with each of the service charge years. They were -

| | 2004/5 | 2005/6 |
|--------------------------------|---------|---------|
| (a) Block caretaking | £321.49 | £332.74 |
| (b) Estate caretaking | 29.08 | 30.10 |
| (c) Lift maintenance | 542.00 | 542.00 |
| (d) Communal Repairs | 225.57 | 155.00 |
| (e) Horticultural maintenance | 62.03 | 64.21 |
| (f) Maintenance Administration | 240.60 | 219.88 |

27 The Applicant also challenges the estimated figures for 2006/7 and 2007/8 but the details are not at present available. The issues in relation to each of the years is the same and the Tribunal proposes to deal with the six specific issues and if appropriate any adjustments can be made to the actual and estimated expenditure and the service charge demands so that final figures can be agreed between the parties.

28 The Applicant's contention is that the estate is run down and neglected, that the costs of the repairs and other services are excessive, that the services are poorly performed and that the situation has declined radically from the time when the estate was owned by the London

Borough of Tower Hamlets and it was renowned for its cleanliness and good state of repair. She maintains in her application that there are "so many areas of neglect I cannot understand where all the money has gone to".

29 Further the Applicant claims that her service charges have been incorrectly calculated and that the method of apportionment under the lease is unreasonable in that the flats on the ground floor do not contribute to wards the costs of the lift maintenance.

30 In addition the Applicant claims that her flat had been incorrectly measured and that she was being charged on the basis that the flat is 69.sq metres whereas in fact it was only 64.4272 sq metres.

The Tribunal's Determination

The Witnesses

31 As there were a number of direct conflicts of evidence in the case the Tribunal had to assess the credibility of the witnesses. The Tribunal found Mr Gray to be an honest and reliable witness who demonstrated a high level of competence in managing the estate.

32 The Tribunal did not however, find Ms Casey to be a reliable witness. She was prone to make rather wild and unsubstantiated allegations and her conduct often seemed to be designed to trip up the Respondent rather than genuinely deal with problems on the estate.

33 For example she alleged that she noticed an abandoned vehicle on the estate for many months but did not report it to the Respondent until May of this year. It was removed within a day. She sought to suggest that the Respondent's employees were unaware of the vehicle to establish her case. In fact according to Mr Gray the vehicle had been noted some time earlier and a sticker had been placed on it so that it could be removed. Unfortunately someone had removed the sticker and another had to be affixed before the vehicle could be removed.

34 Further the Applicant alleged without any evidence that the drug needles which had been found in the lift had been put there by employees of the Respondent. This was, in the view of the tribunal a highly reckless and damaging allegation and was entirely without foundation.

- 35 In addition she collected a petition from residents in her block regarding a children's playground on the estate but instead of submitting it to the Respondent to show the weight of feeling she simply included it in the papers placed before the Tribunal. She described the condition of the estate as "ruinous" which did not accord with the impression which the Tribunal gained on the inspection.
- 36 In addition the Applicant had not made complaints to the landlord about the condition of the estate or attended any of the meetings or asked any representatives to raise these issues on her behalf. Many of them only came to light after the landlord sought to recover arrears of service charges.
- 37 Accordingly the Tribunal felt unable to accept the evidence of the Applicant, who did not call any witnesses to support her case where it conflicted with the evidence of Mr Gray and Mr Tull for the Respondent who were prepared to make reasonable concessions in dealing with some of the allegations and demonstrated that Poplar HARCA took a number of steps to mitigate the effects of the increased service charges on the leaseholders on the estate.

The Specific Issues

(1) Block Caretaking

- 38 According to the Respondent the service of cleaning the blocks is provided by a caretaker who devotes a proportion of his time to the block. The Respondent claims for 334.33 hours of caretaking for the block in each year Mr Gray in his statement (para 4) sets out all the duties of the caretaker, including the sweeping and mopping of the staircases, lift entrances and lobbies as well as numerous other duties .He stated that Mr Prince, the regular caretaker for the block was one of the best caretakers and was well thought of by the residents on the estate and had been commended at meetings such as a meeting of residents in May 2007. He also produced photographs taken in June 2007 showing the general condition of the block at that time.
- 39 The Tribunal accepts that there may have been occasions when the block was not as well cleaned as at other times but the Tribunal considers that the general level of service was reasonable and that the

amounts charged for it were reasonable. It therefore proposes to allow the amounts for block maintenance.

(2) Estate Caretaking

- 40 The allegations made by the Applicant were similar to those made in relation to the block but there was an additional allegation concerning the failure by the caretakers to remove an abandoned vehicle which she alleged had been left on the estate for about a year.
- 41 In the course of evidence it became clear it had not been left for a year but had been left on the estate for some months. As stated above the Applicant did not report this vehicle until 31st May and it was removed the following day.
- 42 However, as Mr Gray pointed out it was not possible to remove a motor car until a sticker was affixed to the car and it was left for a period. He stated that a sticker had been affixed to the vehicle but when the contractor came to remove it, the sticker had been removed and the whole process had to be gone through again. It followed that the Respondent had been aware of the abandoned vehicle well before it was reported by the Applicant because otherwise it would not have been possible to remove it within 24 hours of being first reported. If the Applicant had reported it earlier that would no doubt have been explained to her, but she waited because she had already issued her application to the Tribunal and no doubt considered that it would be useful evidence in her case. If she had felt so strongly about the welfare of the estate she would have reported it earlier.
- 43 In addition she complained about the failure to bait the holes on the estate where rats appear. In answer the Respondent pointed out that the estate was close to a canal and that rats were a problem.. The Applicant alleged that she had telephoned about rats and had been told she had to notify the local authority who had responsibility for clearing the rats and blocking up the holes. The Respondent was unable to produce the person who spoke to the Applicant but stated that when residents reported the presence of rats, Poplar HARCA reported the fact to the local authority.

44 Therefore even if on one occasion the Applicant was told to report the matter to the local authority, the Tribunal accepts that the general policy was for the landlord itself to report the matter and since the ultimate responsibility rested with the local authority the Tribunal could not see any basis for reducing the service charges for the estate caretaking.

45 The Respondent admitted that after the inspection in May when rats were found and removed by the London Borough of Tower Hamlets, repair work was required to the holes which had not been carried out by the time of Mr Tull's first statement on 20th June 2007.

(3) The Lifts

46 In about 1998 a decision was made to separate the properties in the block so that access could not be obtained along the upper landings in order to improve security in the blocks. This involved the installation of an additional lift at one end of the building and was done using government funding for the purpose. It was also done after consulting the tenants and leaseholders in the block and the estate and was generally in accordance with their wishes at the time when they were balloted as to whether they wished to transfer from the local authority to the Respondent.

47 The works involved the installation of a new lift and an additional staircase to permit access. The money was provided through government funding and the leaseholders were not recharged for the installation of the additional lift.

48 Since that time it has been necessary to carry out cyclical repairs and maintenance to the lift and in particular to the old lift which is over 30 years old. The costs of such repairs are charged to the leaseholders on the upper floors since the ground floor flats are excluded from the calculation of floor area.

49 This means that the bills for lift maintenance are disproportionately higher for the residents of the upper flats. Although this system is detrimental to the residents of the upper flats it is not in breach of the provisions of the lease and the landlord has to determine what it

- considers an appropriate policy for recharging and the Tribunal is unable to say that the system employed is manifestly unreasonable.
- 50 The Respondent states that is continuing the policy which existed when the blocks were owned by the London Borough of Tower Hamlets and they have simply continued it. At some stage it may be appropriate to consult with the residents on the estate to consider whether the policy should be changed so that the ground floor flats which obtain some, though less benefit from the lifts may make some contribution. However this is a matter of internal management and not for the Tribunal to determine. It appears to the Tribunal that whatever formula is employed there will be "winners " and "losers".
- 51 Following a discussion with the Applicant in July the Respondent reduced the expenditure to the block for lift maintenance for 2004/5 and 2005/6 by £2,975.69 and £1,315.93 respectively. This was damage which had been caused to the lifts by using the jet steam cleaning system and the contributions to annual costs were reduced to £749.59 for 2004/5 and £786.50 for 2005/6. However the Respondent contended that since the actual costs for lift maintenance for those years had been capped at £542 and £456 respectively no further reduction was justified.
- 52 In addition certain costs are incurred each year for health and safety inspections but as from April 2007 the need for such inspections has been reduced and costs should be limited. Damage to the lifts is often caused by vandalism, flooding and anti social behaviour. The Tribunal finds that such behaviour is a major cause of the damage to the lifts and is not caused in any way by employees of Poplar Harca save in the case of the damage caused by the jet steam cleaning.
- 53 The Tribunal accepts that the works carried out for the repair and maintenance of the lifts was necessary and reasonable and has in any event been capped below the actual costs.

(4) Communal Repairs

- 54 The cost of communal repairs has increased substantially over previous years. Mr Tull explained that this was one of the unintended consequences of the Commonhold and Leasehold Act 2002. Prior to

- that Act where the cost of a repair exceeded £100 per resident or £1,000 for the cost of the works it would be necessary to comply with the consultation procedures under the 1985 Act. Consequently a number of minor repairs were carried out and even though the cost exceeded £100 per dwelling the Respondent chose to bear the additional costs in order to avoid the time and expense of going through the consultation procedure.
- 55 Now that the limit has been raised to £250 per flat before the consultation procedures apply the Respondent charges repairs up to £250 in full and this means that a large number of repairs are charged at full costs whereas previously the additional cost was borne by the landlord. Many more repairs are now charged in full.
- 56 As a result the contributions of leaseholders including the Applicant increased significantly and the Respondent introduced a system for 2004/5 whereby the maximum contribution was capped. In the case of block repairs the figure was capped at £400 per leaseholder and as stated above the cost of lift maintenance capped at £54.
- 57 In addition the Respondent provided that no leaseholder's total service charge for the year 2004/5 would be increased by more than £300 over the amount paid in 2003/4. Mr Tull stated that the shortfall fell on the housing revenue account and had to be met by the tenants.
- 58 As the Respondent was a social landlord and had to take steps to recover the amounts due under the terms of the lease it was unable to provide the same degree of protection for the leaseholders in the year 2005/6.
- 59 With regard to the defects which were pointed out by the Applicant the Respondent stated that by the time of the resumed hearing the missing panel had been replaced in the staircase and a job order had been issued for the repair of the broken window on the Applicant's landing.
- 60 The Tribunal concluded that the system in operation by the landlord was reasonable, that the unforeseen consequences of the 2002 Act had resulted in increased service charges for repairs but that the Respondent had done its best to cushion the leaseholders from the effects of such charges for the first year at least and that the amounts

claimed by the Respondent for the years in question were reasonable for repairs which were necessary for the maintenance of the estate.

61 The Tribunal also accepted that regular inspections were carried out to the estate by the estate officers and that when defects were reported they were repaired within a reasonable time. Anything beyond emergency repairs would depend upon the seriousness of the defect and any budgetary constraint but the Tribunal considered that despite occasions when items might be occasionally left unrepaired, overall the Respondent maintained a reasonable system for carrying out communal and block repairs and that the amounts charged to the leaseholders was not excessive.

(5) Horticultural Maintenance

62 The Applicant maintained that the grassed areas and the shrubs were neglected and that the amounts charged by the Respondent for horticultural work was excessive.

63 As already stated the Tribunal observed work being done including work to the grassed areas at the time of the inspection and the condition of the greenery on the estate did not show signs of neglect. In addition photographs were produced by Mr Patten in his witness statement showing that in June 2007 the grassed areas were in good condition and appeared to be well cared for and cut back where necessary.

64 The Tribunal was not persuaded that the horticultural work was neglected although there might have been times during the year when it would receive more attention than at others. The Tribunal did not consider that for the amount of work involved in tending the green areas on the estate the amounts charged by the Respondent were excessive and that they fairly represented the costs incurred.

Maintenance Administration

65 The Applicant claimed that the cost of administration was excessive having regard to the service provided by the Respondent and the numerous complaints which she made regarding the failure of the management to properly respond to complaints and to manage the estate efficiently.

66 Mr Tull explained that there were two elements of administration namely one for housing management and one for repairs and maintenance administration. The charges were based on the total cost of providing the leasehold services across the whole of the Respondent's portfolio and dividing between the number of units, so that each leaseholder paid a unit cost of the provision of the service.

67 Mr Tull in his witness statement set out all the services which are provided by the landlord and they are very extensive and far exceed those which would be provided by a private landlord. Residents are consulted and there are committees of tenants who meet regularly with the landlord and demand a high level of service provision for the estate.

68 The Tribunal noted that there were considerable problems of anti social behaviour, graffiti and that a high level of management provision and repairs were necessary for managing these properties. Although the cost of maintenance administration was not cheap, the Tribunal could not find that the costs charged were excessive and represented costs which the landlord had properly incurred.

The Measurements of the flat

69 This issue was not dealt with in argument at the hearing and the Tribunal is not able to reach any conclusion on the measurements of the flat. If this continues to be an issue it is suggested that the parties agree that an independent person re measures the area of the flat to see whether the Applicant is being charged for an areas greater than that covered by the demise.

70 The difference in amount payable is relatively small (approximately £47.12 per annum) but if it is incorrect then an appropriate adjustment should be made. The Tribunal however makes no finding on this matter and the Applicant must continue to pay her service charge on the basis on which it has always been calculated and paid in the past without complaint, until such time as the parties agree a different formula or expert evidence is put before another Tribunal to determine that question.

Section 20C Costs and Reimbursement

71 In the light of the findings of the Tribunal that the service charges imposed by the Respondent were reasonable and that the Tribunal had declined to accept the allegations made by the Applicant both in her witness statements and in her oral evidence, there were no grounds for making a Section 20C order although Respondent indicated that it may not seek to recover the costs through the service charge account.

72 The Applicant had obtained a waiver of fees because of her physical disability and low income so there was no need for the tribunal to consider the question of reimbursement.

Schedule 12 Paragraph 10 Costs

73 At the conclusion of the hearing Mr Brayshaw invited the Tribunal to consider making an order for costs under Schedule 12 Paragraph 10 in the exercise of its discretion.

74 In support of his application he alleged that the Applicant had made wild and unsupported allegations, that she had been unwilling to compromise on any issues and had put the landlord and the other leaseholders on the estate to considerable expense in defending her allegations.

75 Ms Firm for the Applicant contended that the tribunal ought not to make such an order as the Applicant was merely exercising her rights to challenge the service charges which had increased significantly. She also pointed out that the Applicant suffered from physical disability, that she was on a low income and would be adversely affected by an order for costs against her.

76 The application was made pursuant to the Tribunals jurisdiction under Schedule 12 paragraph 10 of the Commonhold & Leasehold Reform Act 2002 which provides as follows:

- (1) *A Leasehold Valuation Tribunal may determine that a party to proceedings shall pay the cost incurred by another party in connection with the proceedings in any circumstances falling within sub paragraphs (2).*
- (2) *The circumstances are where –*

- (a) he had made an application to the Leasehold Valuation Tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7 or*
- (b) he has in the opinion of the Leasehold Valuation Tribunal acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.*

77 The Tribunal found that although the proceedings as conducted by Ms Firm were handled sensibly and with proper restraint, it was apparent that they were being driven by Ms Casey in a manner which was in the opinion of the tribunal wholly unreasonable as illustrated by her evidence and the findings of the tribunal as stated above.

78 The Tribunal considers that there are cases which come before it where one or two leaseholders mount a campaign against a landlord and put the landlord to enormous expense in dealing with every single allegation raised. In the case of social landlords this is particularly unfortunate since in the experience of the Tribunal most of them endeavour to conduct themselves in a reasonable manner in the interest of the leaseholders as a whole. They are non profit making organisations and many of the decisions which are challenged at the tribunal are decisions which are supported by the majority of leaseholders and residents on the estates in question.

79 Such unrestrained conduct is in the view of the Tribunal vexatious and certainly unreasonable and the Tribunal will not hesitate in such cases to mark its disapproval of such conduct by an order under Schedule 12 Paragraph 10.

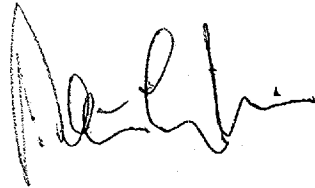
80 In the present case the Tribunal considers that the conduct by the Applicant does in fact fall within this category and that in the light of the compromises proposed by the Respondent and the explanations which were given ought not to have persisted in the present application because by doing so she has added to the costs of other leaseholders on the estate.

81 The Tribunal is conscious of the fact that Ms Casey is a person of limited means with a physical disability had this not been the case the order which the Tribunal proposes to make would have been

considerably higher. In the circumstances the Tribunal orders that the Applicant should pay the sum of £50 towards the cost which have been incurred in this case.. This sum should be added to the service charge and paid on the next instalment

Chairman Peter Leighton

Date 16th October 2007

A handwritten signature in black ink, appearing to read 'Peter Leighton', is written over the printed name. The signature is cursive and somewhat stylized.

