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Residential
Property
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL
Landlord and Tenant Act 1985 – Section 27A**

LON/00AF/LIS/2009/0024 DECISION

Property : **15c Crystal Palace Park Road
London SE26 6EG**

Applicant : **Broomleigh Housing Association Limited**
Landlord

Represented by : **Ms A Clayton - Property Manager**

Respondent : **Ms Clare Ross Tenant**

Represented by : **Ms C Ross - In Person**

Date of Referral : **30 October 2009**

Date of Directions : **25 November 2009**

**Date of Hearing and
Further Directions :** **25 February 2010**

Date of Hearing : **7 May 2010**

Date of Decision : **17 June 2010**

Tribunal : **Mr John Hewitt Chairman**
Mr Mel Cairns MCIEH
Mrs Rosemary Turner JP BA

Decision

1. The decision of the Tribunal is that:

1.1 As at 26 January 2009 when the Applicant commenced proceedings against the Respondent the service charges payable by her amounted to £2,776.67. Since then the Respondent has paid to the Applicant the sum of £1,500.00 on account so that the net sum of the claim to service charges now stands at £1,276.67, as shown by the calculation at Appendix 2V2 annexed to this Decision;

1.2 The service charges payable by the Respondent to the Applicant for the relevant years were determined to be:

2006/7	£757.79	Column B in Appendix 1V3
2007/8	£732.95	Column E in Appendix 1V3
2008/9	£876.05	Column H in Appendix 1V3

1.3 The following matters, which are in the exclusive jurisdiction of the court, be remitted back to the court for determination:

The question of any arrears of ground rent;

The claim to statutory interest pursuant to s69 County Courts Act 1984;

The claim to a court fee of £225.00; and

The question of any costs of the court proceedings

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the page number of the first hearing file provided to us for use at the hearing A number in square brackets ([2/]) is a reference to the page number of the second hearing file provided to us.

Background

2. On 26 January 2009 the Applicant (Broomleigh) issued court proceedings against the Respondent (Ms Ross) and claimed:

Arrears of ground rent and service charges	£5,108.43
Statutory interest	£ 891.49

Further interest at the rate of £1.12 per day

Court fees

£ 225.00

3. By an order made 20 October 2009 [23] District Judge Brett ordered that "*the claim*" be transferred to the Leasehold Valuation Tribunal. We take that to be the claim to the service charges arrears only because we do not have jurisdiction to determine the other elements of the claim.
4. In paragraphs 6 and 7 of our Directions dated 25 February 2010 we explained how it was agreed between the parties that as at 26 January 2009 when the court proceedings were issued the service charges arrears claimed by Broomleigh stood at £3,539.66, subject to any adjustments that might arise from challenges made by Ms Ross to the service charges claimed for the years 2006/7, 2007/8 and 2008/9.
5. We have therefore focussed on the service charges claimed for those three years. Appendix 1V3 annexed to this Decision sets out a summary of the service charges claimed for those years. Those sums highlighted in yellow were those challenged by Ms Ross. The challenges may be summarised as follows:
 - Estate Grounds Maintenance;
 - Estate Caretaking;
 - Block Fire fighting;
 - Door Entry; and
 - Management Fee

The Lease

6. The relevant lease is dated 9 May 1988 [1] and was granted by the London Borough of Croydon to Rolf Bernhard Wiener and Eileen Winifred Stanbrook pursuant to the Right to Buy provisions of the Housing Act 1985. Subsequently the benefit of the lease was assigned to Ms Ross who lived in the demised premises for a while before moving out and subletting.

7. The lease granted a term of 125 years from 23 January 1984 at a ground rent of £10 per year and on other terms and conditions therein set out.
8. The lease obliges the landlord to insure the demised premises and to carry out repairs and to provide services. The lease obliges the tenant to contribute to the costs incurred by the landlord in complying with its obligations.
9. The service charge regime set out in the lease was not in dispute. The parties were agreed that Ms Ross was obliged to contribute:
 - Estate expenditure 3.0000%
 - Block expenditure 24.179%
10. The demised premises comprise a self-contained flat in a block comprising four flats.

The development 1-15 Crystal Palace Park Road comprises a number of blocks. Each block is divided into a number of self-contained flats. Evidently the freehold interest in a number of the blocks has been sold off in recent years. Ms Ross has been negotiating with Broomleigh for the purchase of number 15 by her and her fellow lessees, but a concluded agreement has not yet been arrived at.

Evidence and Submissions

10. Over the course of the hearings on 25 February and 7 May 2010 we heard oral evidence from:
 - Mr Ray Carroll Ground Maintenance Manager, Affinity Sutton
 - Mr David Beckford Operations Manager, Affinity Sutton
 - Ms Ross RespondentMs Ross also wished to rely on written statements of William Wyrer dated 8 April 2010, Thea Wright dated 18 January 2010 and Margaret Wright none of whom attended the hearing.

We considered detailed correspondence passing between the parties. In particular we considered a number of emails passing between Ms Ross and representatives of Broomleigh dealing with grievances over a number of years and which she believed helped to explain why her complaints tended to tail off and why she was focussing on the purchase of the freehold project.

A number of photographs were provided to us.

Ms Clayton and Ms Ross made detailed submissions to us.

The Issues

Estate Grounds Maintenance

11. Mr Carroll told us that he was appointed Estate Maintenance Manager in 2007. Mr Carroll told us that the estate originally comprised grounds at the front and back of each block 1-15 but this has changed over time as blocks have been sold off.
12. In general terms the range of work includes grass cutting and strimming edges of lawns, some planting and weeding of flower beds, maintenance and cutting back of trees, hedges, shrubs and bushes, leaf gathering and litter picking on estate areas.
13. Mr Carroll explained that generally estate grounds maintenance work is carried out 24 hours per week, usually by a squad of 4 men working 6 hours each. Exactly what work is undertaken on each visit will depend on the season, needs and priorities.
14. Mr Carroll took us through the structure of the management and supervision of the grounds maintenance team and the record keeping systems adopted. Examples are at [100-103, 2/26 and 2/52-55].
15. The gist of complaint by Ms Ross and some of her fellow lessees is that overall the service provided is of very poor quality and is expensive for the level of service delivered. Ms Ross cited a number of examples. Ms Ross submitted that the costs claimed should be reduced by 50%.

16. Mr Beckford told us that he has a BSc in Estate Management and he has been involved in residential property management for the past 15 years to 18 years.
17. Mr Beckford is responsible for financial management and he took us in detail through Broomleigh's structure and costs and its methodology in ascertaining the costs of the services provided. Mr Beckford was able to demonstrate the hourly costs incurred on a range of services which he believed were competitive and some of which were benchmarked against a commercial organisation which provides some services to some parts of Broomleigh's estate. Mr Beckford explained that a step change in costs arose from 2007/8 due to a thorough review of the internal costs incurred and the correct re-allocation of a number of overhead and other costs. He said that in prior years lessees had been undercharged.
18. Inevitably with an issue such as this we can but take a broad view. Ms Ross accepts that some service has been provided but that it was of a poor quality. Mr Carroll was impressive as a witness and we formed the view that he is a good and caring manager. We have little doubt that a basic and for the most part adequate level of service was provided but we were not persuaded that it was a first class service. In the light of the evidence before us we concluded that costs claimed were somewhat high for the level of service provided. Whilst we accepted the evidence of Mr Beckford as to the costs incurred and the allocation of them, the numbers do not of themselves necessarily show good value for money or cost efficient and well run departments.
Again we can but take a broad view as to what amounts to a reasonable cost for the level of service provided. We reject Ms Ross' submission of a 50% reduction because we find that to be too severe and quite unrealistic. We find that a reduction of about 30% is about right to bring the cost of the service down to a reasonable amount for what was delivered. We have therefore made adjustments and the

amounts we have determined to be payable are set out in Appendix 1V3.

Estate Caretaking

19. Mr Carroll took us through the range of caretaking services provided to the external areas, from the block entrance doors to the bin areas, the bin room, garage areas, car park areas, gullies and drains and drying areas, where appropriate. The range of tasks include the sweeping of areas and paths, replacing bins tidily into bin areas, litter picking and, as required, removal of or assisting in the removal of fly-tipping and bulk items such as furniture, vehicles and other items dumped.
20. Mr Carroll told us that generally the work is carried out twice weekly on Tuesdays and Fridays, by two men each working 2 hours per day. He said that generally the same two operatives provided the services.
21. Again Mr Carroll took us through the management and supervision structure of the team and Mr Beckford took us through the internal costings. Internal records were provided at [2/26-51].
22. Ms Ross again accepted that some service was provided but was critical of the general level of service and the relatively high cost. Again examples of her dissatisfaction were provided. Ms Ross submitted that the costs claimed should be reduced by 50%.
23. In many respects we can make the same comments as those set out in paragraph 18 above. We reject Ms Ross' submission of a reduction of 50% because we find that to be too severe and unrealistic.
24. We find that a reduction of about 15% is about right to bring the cost of the service down to a reasonable amount for the level of service delivered. We have therefore made adjustments and the amounts we have determined to be payable are set out in Appendix 1V3.

Block Fire fighting

25. Mr Beckford took us through the invoices which he relied upon to support the sums claimed [2/13-25]. It was explained to us that a contract was in place for routine inspections (four times per year) of the fire alarm systems covering 10 blocks so that 1/10th is allocated to 15 Crystal Palace Park Road. In addition spot repairs were carried out to the block as required.

The invoices addressed to Broomleigh claim a basic cost of the service, allow for VAT and then appear to apply a discount leaving a net sum 'payable'. Broomleigh's costs recharged have been based on the gross sum without regard for the discount. We were told that the 'discount' was a matter for the supplier and just the way it prepared its invoices but we found this to be unconvincing. We found the invoice to be clear as to the net sum 'payable'.

26. Ms Ross was critical of the level of service provided and claimed that on occasion routine inspections were missed due to lack of access to the main door. In part this was due to the lessees because they changed the front door lock without authority from Broomleigh. We were satisfied on the evidence that some adjustments to the costs were made to deal with lack of access. Overall we found that the cost of the service provided was a reasonable cost.

27. We have made adjustments to reflect the net costs as invoiced and we have calculated the costs payable as follows:

2006/7	Routine inspection	£245.05	
	Repair	£170.20	
	Repair	<u>£119.40</u>	
		£534.65	24.179% = <u>£129.27</u>
2007/8	Routine inspection	£289.92	
	Repair	<u>£131.06</u>	
		£420.98	24.179% = £101.79

	Lack of access adjustment		<u>£ 20.33</u>
			<u>£ 81.46</u>
2008/9	Routine inspection	£289.92	24.179% = £ 70.09
	Enfranchisement adjustment		<u>£ 25.79</u>
			<u>£ 44.30</u>

Block Repairs

28. Block repairs in 2007/8 were claimed at £105.39 [2/57]. Ms Clayton relied upon [2/58, 2/62 and 2/63] to support the sum claimed. The explanation was most unclear and unsatisfactory. We find that the documents relied upon do not persuade us that relevant costs were expended and that the costs allegedly incurred were reasonable in amount. We determine that no contribution is due from Ms Ross for the year 2007/8.
29. As to 2008/9, Ms Clayton relied upon the documents at [2/66, 69, 70, 76, 78, 79 and 126] and explained how the cost of £318.20 was arrived and at Ms Ross' share at £77.03. These documents were not challenged. We are satisfied on the evidence before us that the costs were expended, were reasonably incurred, are reasonable in amount and that Ms Ross' contribution to them is £77.03.

Door Entry

30. The claim for £45.95 in 2006/7 was withdrawn by Ms Clayton.

Management Fees

31. Ms Clayton said that for some years the policy of Broomleigh was to charge 15% of expenditure within a minimum fee of £50.
32. Ms Ross was highly critical of the level of fees charged for what she submitted was an appalling level of service. It is clear to us that for several years Ms Ross has had a number of issues with Broomleigh. Some have been resolved to her satisfaction; but only after a great

deal of effort on her part. Some were not resolved and some were abandoned due to exhaustion and the need to move on. In general terms Ms Ross argued that Broomleigh were unresponsive to complaints made by her and her neighbours and failed to follow up on alleged discrepancies. On occasion cost of work had been allocated to the estate or block which had not been carried out. Ms Ross said that some contractors/suppliers had submitted invoices for works that had not been carried out and that not all invoices were checked and scrutinised. Ms Ross came to the conclusion that Broomleigh treated supplier's invoices with more reverence than lessee's complaints/assertions. Ms Ross argued that there was very little proactive management. Ms Ross submitted that the fees claimed should be reduced. Ms Ross did not wish to suggest a figure but was content to rely upon the expertise of the members of the Tribunal.

33. Ms Clayton made submissions to us and outlined to us the care and attention that Broomleigh gave to the management of its estate and the care of its tenants and lessees.
34. In our experience in the private sector fees assessed as a percentage of expenditure tend to be unattractive because they do not always encourage managing to keep costs as low as possible. Instead there is a preference for unit fees, agreed in advance which provides certainty and which also enables comparison with the local market easier to undertake.
35. The position in the public/registered social landlord sector is often different. The more so, where, as here, many of the services and management are provided in-house by direct labour teams.
36. In our experience 15% is within the range of what is reasonable to charge for management, although it is well towards the upper limit of the range. In principle we find that 15% is reasonable as a starting point. We have tested it against the sums actually claimed. In each of

the three years under review the actual sum claimed for management is less than £115. In our experience this compares very favourably with the level of fees that a local managing agent would charge for managing a block of four flats in a development such as 15 Crystal Palace Park Road. We take into account also the many criticisms which Ms Ross made of Broomleigh and we have some sympathy with the frustration Ms Ross has endured over the years. Nevertheless taken overall we find that Broomleigh did manage the estate and the block and whilst not perfect in every respect it did a reasonable job within the limitations it works under. For these reasons we have determined that the management fees of 15% of expenditure are reasonable in amount for the level of service provided. Having made adjustments to some expenditure in each year under review we have made consequential adjustments to the sums claimed for management. They are set out in Appendix 1V3.

Balancing Charges and the Cash Account

37. The several adjustments we have made are set out in Appendix 1V3 which show the service charges payable for each of the three years in issue.

38. For convenience and avoidance of doubt we explain below how we have arrived at the amount of the balancing debits/credit on Appendix 2V2:

2006/7

On account billed 1	£281.07
On account billed 2	<u>£225.23</u>
	£506.30
Service charges payable	<u>£757.79</u>
Balancing debit	£251.49

2007/8

On account billed 1	£379.66
On account billed 2	<u>£274.93</u>

	£654.59
Service charges payable	<u>£732.95</u>
Balancing debit	£ 78.36

2008/9

On account billed 1	£ 524.53
On account billed 2	<u>£ 524.53</u>
	£1,049.06
Service charges payable	<u>£ 876.05</u>
Balancing credit	£ 173.01

39. We have then applied the relevant figures to what might be regarded as the cash account – Appendix 2V2 to show how we have arrived at the sum that was due and payable when the court proceedings were commenced.
40. Again for avoidance of doubt we wish to make it clear that we have not taken into account any sums that were payable on account for the year 2009/10 or any balancing debit or credit for that year. We did not do so because it was outside of our remit.

Inspection

41. The Tribunal decided that it was not necessary to inspect the subject development.

The Law

42. The relevant law we have taken into account in arriving at our decision is set out in the Schedule to this Decision.

Reimbursement of Fees

43. No application was made for the reimbursement of any fees paid by the Applicant in connection with these proceedings.

The Schedule
The Relevant Law

Landlord and Tenant Act 1985

Section 18(1) of the Act provides that, for the purposes of relevant parts of the Act 'service charges' 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.

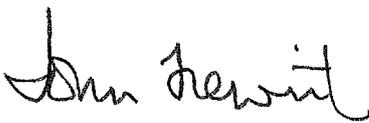
Section 19(1) of the Act provides that relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

- (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 are of a reasonable standard;

and the amount payable shall be limited accordingly.

Section 27A of the Act provides that 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.



John Hewitt

Chairman

17 June 2010

	A	B	C	D	E	F	G	H	I
	2006/7			2007/8			2008/9		
Expenditure	Claimed by Applicant	Determined by LVT		Claimed by Applicant	Determined by LVT		Claimed by Applicant	Determined by LVT	
Part A (3.0000%)									
Estate Grounds Maintenance	£ 163.18	£ 145.00		£ 385.80	£ 269.00		£ 380.96	£ 267.00	
Estate Rubbish Collection	£ -			£ 8.94	£ 8.94		£ 31.10	£ 31.10	
Estate Caretaking	£ 190.61	£ 162.00		£ 229.89	£ 195.00		£ 220.35	£ 187.00	
Estate Repairs	£ -			£ -			£ 2.66	£ 2.66	
Abandoned Vehicles	£ 2.78	£ 2.78		£ -			£ -		
Part B (24.179%)									
Block Electricity	£ 64.75	£ 64.75		£ -			£ 74.10	£ 74.10	
Block Firefighting	£ 149.19	£ 129.27		£ 85.08	£ 81.46		£ 44.93	£ 44.30	
Block Repairs	£ 9.03	£ 9.03		£ 105.39	£ -		£ 77.03	£ 77.03	
Block Rubbish Collection				£ 0.58	£ 0.58		£ 6.74	£ 6.74	
Door Entry	£ 45.95	£ -		£ -			£ -		
Part C									
Insurance	£ 146.12	£ 146.12		£ 82.37	£ 82.37		£ 71.85	£ 71.85	
Sub Totals		£ 658.95			£ 637.35			£ 761.78	
Management Fee (15%)	£ 115.74	£ 98.84		£ 134.71	£ 95.60		£ 136.46	£ 114.27	
Totals	£ 887.35	£ 757.79		£ 1,032.76	£ 732.95		£ 1,046.18	£ 876.05	

John Hewitt

Date					
23.01.06		Agreed Debit Balance			£1,810.73
	Part A	Add Subsequent debits:			
03.04.06		On account 2006/07 1	£ 281.07		
02.10.06		On account 2006/07 2	£ 225.23		
		Balancing debit 2006/07	£ 251.49		
02.04.07		On account 2007/08 1	£ 379.66		
02.10.07		On account 2007/08 2	£ 274.93		
10.09.08		Balancing debit 2007/8	£ 78.36		
07.04.08		On account 2008/09 1	£ 524.53		
01.10.08		On account 2008/09 2	£ 524.53		
		Total	£ 2,539.80		£ 2,539.80
		Sub Total			£4,350.53
	Part B	Less Subsequent payments/credits:			
22.05.06		Estate gardening	£ 48.56		
		Management fee	£ 7.28		
30.08.06		Payment	£ 900.00		
11.10.06		Balancing credit 2005/6	£ 183.68		
19.12.06		?	£ 55.16		
		?	£ 8.27		
01.05.07		Estate caretaking	£ 104.73		
		Management fee	£ 15.70		
06.12.07		Estate rubbish collection	£ 9.20		
		Management fee	£ 1.38		
13.12.07		Electricity	£ 59.91		
		Management fee	£ 6.98		
		Balancing credit 2008/9	£ 173.01		
		Total	£ 1,573.86		£ 1,573.86
26.01.09	Part C	Balance when court proceedings issued			£ 2,776.67
24.02.09		Less subsequent payment			£ 1,500.00
	Part D	Balance due			£ 1,276.67

John Dent

16/06/2010