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RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

CASE NUMBER: LON/00BJ/LSC/2009/0572

IN THE MATTER OF THE LANDLORD & TENANT ACT 1985 (AS AMENDED) SECTION 27A

IN THE MATTER OF 1 BRIDLINGTON HOUSE PETERGATE LONDON SW11 2UB

Parties	:	The Mayor & Burgesses of the London Borough of Wandsworth	Applicant
		Ms Sandra Miller	Respondent
Representations	:	For the Applicant:- Mr Holbrook (Counsel) Mrs E Parrette from Wandsworth Borough Miss E Dring – Counsel's Pupil For the Respondent:- Ms Miller in person	
Date of Court Order	:	18th August 2009	
Date of Hearing	:	15th February 2010	
Tribunal Members	:	Mr A A Dutton – Chairman Mr B Collins BSc FRICS Mr C S Piarroux JP CQSW	
Date of Decision	:	1st March 2010	

DECISION

The Tribunal determines that the sum of £1,063.85 is due and owing by the Respondent to the Applicant and that payment of same should be made within 28 days of the date of this Decision

REASONS

A. BACKGROUND

1. Proceedings were commenced in the Wandsworth County Court on the 14th May 2009 claiming unpaid service charges of £1,063.85 together with contractual interest and costs. A Defence to those proceedings was filed by Ms Miller and as a result the court ordered on the 18th August 2009 that the matter be transferred to the Leasehold Valuation Tribunal to deal with the items in dispute.

2. At the pre-trial review held on the 6th October 2009, Directions were issued which include provision for mediation which was not pursued because Ms Miller did not attend the mediation appointment. The matter was therefore listed for hearing and subsequently came before the Tribunal on the 15th February 2010 for that purpose.

3. In the bundle before us, we had a copy of the claim form and Ms Miller's Defence in the County Court proceedings, Ms Miller's grounds of dispute and Wandsworth's response. In addition a Witness Statement from Elizabeth Dorothy Parrette was filed with numerous exhibits. The Tribunal had had the opportunity of considering the papers prior to the commencement of the case.

4. In addition to the papers filed, Mr Holbrook submitted a skeleton argument on the morning of the hearing and the case was adjourned for 20 minutes or so to give Ms Miller the opportunity of considering same.

B. THE HEARING

5. Following the short adjournment to give Ms Miller a chance to consider the skeleton argument, Mr Holbrook called Mrs Parrette and tendered her for questioning by the Tribunal and by Ms Miller. Mrs Parrette's Witness Statement described her as being the Leasehold Services Manager employed by the London Borough. The Witness Statement dealt with the concerns raised by Ms Miller in her Defence and in her grounds of dispute. These related to the hot water supply, a blocked drain, major works, a door entry phone system and cleaning and repairs. Taking each of those items in turn, we heard that Ms Miller had requested the Council to investigate problems she had with her hot water system following the works carried out to the flat above. It appears that there is now no issue concerning the hot water supply because Ms Miller told us at the hearing that she was making arrangements for her own heating system to be inspected and did not now wish to pursue that matter.

6. As far the blocked drain was concerned, we were told by Mrs Parrette that this had now been rectified and was dealt with as quickly as they were advised that the problem existed. There was some discussion at the hearing as to whether this was a problem caused by rainwater and Mrs

Parrette said that the Council would attend to view if it was raining and pooling reoccurred.

7. The next issue was the question of the window installation. We were told by Mrs Parrette that these works had been carried out some time in 2001. No charge had been made to Ms Miller for the window installation as they were covered by a structural defects guarantee that was provided to Ms Miller when she purchased the property in December 1994. Ms Miller accepted that this was the case, but it appears that her concerns, which were addressed by Mrs Parrette in her Witness Statement, was that some of the work following the installation of the windows was unsatisfactory in particular the installation of plastic sills over the existing wooden sills. Mrs Parrette said that no concerns had been raised by Ms Miller at the time and that she did not return a customer satisfaction survey. The Council did not accept that the property had been adversely affected by the installation of the double glazed units; indeed they believe it increased the value of the property. The question as to the covering of the internal timber sill with a plastic window board was discussed, but we were told that this was the most cost efficient way of dealing with the matter and that due to the passage of time, it was not possible to ask the contractor to return to carry out any additional works. It was noted that the Council had inspected in November 2009 and that some works of repair were required which we were told had been completed on the 7th December 2009.

8. As to the door entry phone system, Mrs Parrette told us that this had been built with the approval of the majority of leaseholders in the block (there are 6 flats), and that it provided a secure ground floor access to the 3 properties on the first floor which were accessed via a central communal staircase and balconies. Apparently this is a common type of installation across the Borough and is intended to provide security for the upper flats. We were told that consultation letters were sent out in May and June of 2000 and that under the terms of Ms Miller's Lease she is obliged to contribute towards the cost of these works.

9. The next matter dealt with was the question of cleaning and repair. We were told that deep cleansing of the refuse chamber took place on a regular basis. The bin chamber is not locked and is left open to allow residents to deposit rubbish which means that sometimes it becomes a toilet facility for people visiting the area, there being a playground near by. The cleaning however takes place on a regular basis. As to the clearing of rubbish, we were told that in 2001 a protective knee rail was fitted around the front of the ground floor properties to provide a 'defendable space' for those residents on the ground floor. The pathway to each front door was highlighted in different coloured paving and from then on it was concluded that this enclosed area in effect belonged to the residents and it was their responsibility to keep the same clean.

10. In re-examination by Mr Holbrook, we were told that some photographs that were before us were taken in October 2009 and that an inspection had taken place of the property in November 2009, when Mr Lawrence, the surveyor, had agreed that there was some staining to the front wall of Ms Miller's property, possibly caused by water pooling. It was not felt however that any remedy was required at the time and the drain was unblocked. We were told that the Council only became aware of the blockage when Ms Miller raised this in these proceedings. Discussions took place as to the number of times that the estate is inspected and we were told that the

cleaners attend on a regular basis (daily), although do not necessarily report faults they find as they are not employees of the Council. Insofar as the cleaning of the areas in front of the ground floor flats were concerned, Mrs Parrette accepted that under the terms of the Lease this area did not belong to the Lessees and the question of cleaning this area was to be reviewed.

11. We then heard from Ms Miller. In her Grounds of Dispute document, she had raised the issues which we have referred to in Mrs Parrette's evidence. She told us that insofar as the hot water supply was concerned, she merely wanted the local authority to check and ensure that the installation of the new system to the flat above had not affected her property. It was not a matter, however, that she had decided to take any further. She accepted that the blocked drain had now been cleared, but was concerned that it could block again, particularly as the area in front of her property was not kept clean. She told us that the drain had been flooding for some 6 months before it was brought to the attention of the local authority.

12. Insofar as the window installations were concerned, she agreed that she had not been charged and that some minor repair works had agreed to be carried out. As we indicated above, her concern was the windowsills that had been fitted over the originals, which she felt were unattractive and would affect the value of her property. She also said that an operation manual for the windows had never been delivered, although promised.

13. In respect of the door entry system in which she was obliged to pay £2,127.66, she raised the following concern. Firstly she was concerned that there had not been proper consultation with the lessees to obtain their agreement to the matter proceeding. Apparently, a vote was intended and although she had not participated she appeared to be suggesting that it was inappropriate for Council tenants to vote and that she as a long leaseholder had been prejudiced. Secondly she pointed out that the installation of the door entry system had no direct benefit to her and indeed that local youths were still finding ways of making access to the upper floor level.

14. In respect of the cleaning and repairs, an issue that she raised outside those contained in the Defence, she was concerned that the refuse chamber was not cleaned and was smelly and unacceptable. The general cleaning was also criticised. Although the cleaner was seen regularly it appeared that they did not sweep the area outside the front of her property, nor keep the area around the playground to the front properly cleaned. She did not think that the cleaning was value for money.

15. Ms Miller also explained to us the reasons for the time that it had taken to challenge these various issues. She told us that she had suffered a double bereavement which had been hard to cope with. In addition also, she had been attempting to make a success of a business that she was running which had not worked out. We were also told that the local authority appeared to have recovered money via her mortgagees and that she had made payments towards service charges in the past, although it had been suggested to her that was not the case. She was cross examined by Mr Holbrook concerning the delays in raising these issues, and the problems that there had been in trying to gain access to her property for the purposes of inspecting in relation to the hot water problem and the lack of attendance at the arbitration hearing. She accepted that in the last 7 to 8 years, because of matters beyond her control, she had not been able to deal with

various issues, but that she now felt better and able to handle these issues for the future.

16. Mr Holbrook told us at the conclusion of the hearing that the Council would not be seeking costs in respect of these proceedings.

C. THE LAW

17. The law applicable to the determination of service charges is to be found at Section 18 and 19 of the Act and in particular at Section 27A introduced under the Commonhold and Leasehold Reform Act 2002 which enables us to determine whether a service charge is payable and, if it is, by whom, to whom, the amount, the date upon which it is payable and the manner in which it is payable.

D. FINDINGS

18. This is a somewhat sad case. We have a great deal of sympathy for Ms Miller in the personal difficulties that she had at the start of this Millennium. However, and unfortunately for her, they are not issues that we can in reality consider when we determine whether or not service charges are payable. The complaints that Ms Miller raised fall into a number of categories which, as a result of the passage of time, have to an extent taken care of themselves. We find that the problem in respect of the hot water supply was never a service charge issue in the first place and was not a reason for her to withhold service charge contributions.

19. The blocked drain was resolved as quickly as it was reported to the local authority. Ms Miller told us that she was aware the drain had been blocked for some 6 months but did nothing to raise this until she filed her Defence in the county court proceedings.

20. Insofar as the installation of windows is concerned, there can be no claim in respect of the sums expended as Ms Miller was not required to make a contribution. Her complaint relates to the standard of workmanship, but these windows were installed in 2001 and if she was concerned as to the installation of plastic windowsills, this should have been raised at the time and pursued, but was not. Again, we do not find that this is a reason for her to avoid paying the service charges.

21. Insofar as the door entry phone system is concerned, we do have sympathy with Ms Miller's position. The construction of a porch and associated door entry phone connections in truth substantially benefits the first floor properties, but does not so substantially benefit the ground floor. However, as is often the case with leasehold properties, the responsibility to contribute under the Lease does not necessary coincide with the benefits that may be received from such contributions. Turning to the Lease, we find in the Fourth Schedule of the Lease under the heading 'Council's Obligations in respect of the block', the following wording at paragraph 5:-

"To do such things as the Council may decide are necessary to ensure the efficient maintenance, administration or security of the block including but without prejudice to the generality of the foregoing installing door entry systems, employing caretakers, porters and other staff ....."

It seems therefore that under the terms of the Lease the works to improve the security and install the door entry system is recoverable. Further, under the Fifth Schedule relating to the Council's obligations in respect of the estate, there is a further right for the Council to:-

"Do such things as the Council *may decide are necessary to ensure the efficient maintenance, administration and security of the estate...."*

22. Accordingly, the right to create the porch seems to be set out therein. The lessees' obligation to contribute is contained in Clause 3 paragraph (b) of the Lease which states as follows:-

"Subject to the provisions of Clause 5 to pay the Fourth Schedule percentage of the costs expenses and outgoings of the Council in complying with its obligations contained in the Fourth Schedule hereto and the Fifth Schedule percentage of the costs expenses and outgoings of the Council in complying with its obligations contained in the Fifth Schedule hereto."

For the avoidance of doubt, those respective percentages are 15.603% and 1.3%.

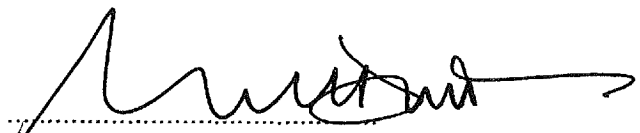
23. Accordingly we find that Ms Miller must make her contribution towards these works. The provision of the porch has provided an enhancement to the premises generally as the photographs that we were provided with showed. The property before the porch was built and after in our view shows an improvement of the ambiance and the appearance of the block.

24. Finally we turn to the question of cleaning. We accepted Mrs Parrette's evidence that the rubbish chamber was cleared regularly, and without some security it is inevitably going to encourage an unpleasant usage, the more so as of course there is a basketball court and children's play area in close proximity. It may be that some form of locking arrangement could be installed giving the lessees and the refuse collectors access without the general public. So far as the cleaning of the block was concerned, Mrs Parrette provided us with a work schedule for the caretaking service which indicated that the refuse chamber was swept on a daily basis, as were the communal stairs and landings. It appears, however, that the external areas in front of the ground floor properties are no longer cleaned, and we question whether that is appropriate. It does not seem to us that the Council can "foist" this area of land upon the lessees and expect them to keep it clean. Against that of course, it is our view that the low fencing and the demarcation is a benefit to those lessees and we understand that some have taken advantage and may have installed potted plants, etc., to make the area look as though it is theirs. The fact of the matter, however, is that the Lease does not demise this area to the lessee and in those circumstances it seems to us that the local authority is still obliged to keep it clean. We suspect however this may have some impact on the cleaning costs, although quite what that would be is difficult to say. However, we do not believe that this entitles Ms Miller to avoid paying service charge costs in respect of cleaning because as again with the door entry phone system she is obliged to make contributions towards the costs incurred by the Council which includes an obligation to clean and maintain the landscaped areas and play areas as well as the exterior of the block.

25. In summary therefore we find that Ms Miller is obliged to pay the local authority the amount that they have claimed and although we have indicated

that this should be done within 28 days, we hope that the Council will listen to any representations that Ms Miller may make with regard to payment programmes.

26. As the Council has indicated they do not intend to make a claim for costs, we do not need to consider provisions of Section 20C in this application.



ANDREW DUTTON - Chair

Dated 1st March 2010