

LON/00AG/LSC/2005/0022

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
ON APPLICATIONS UNDER SECTIONS 27A AND 20C
OF THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Applicant: Ms Hannah Walker

Respondent: London Borough of Camden

Re: 16 Alpha Court, Raglan Street, London NW5 3BY

Application received: 9th February 2005

Hearing date: 3rd June 2005

Appearances: Ms Hanna Walker

Applicant

Mr J Sheehy

Mr A Horne

Ms J Botha

Mr H Yates

(for Respondent)

Members of the Leasehold Valuation Tribunal:

Mr G F Bowden TD MA FRICS

Mr C Kane FRICS

Dr AM Fox BSc PhD MCI Arb

16 ALPHA COURT, RAGLAN STREET, KENTISH TOWN, NW5 3BY

1 Introduction

- 1.1 This was an application by Ms Hannah Walker, the long-lessee of Flat 16 Alpha Court, under section 27A of the Landlord and Tenant Act 1985, (“the 1985 Act”) for the determination of liability to pay service charges.
- 1.2 The service charges in question related to the past years 2001; 2002; 2003; and 2004. A determination was also sought for the current year 2005, and for the future year 2006.
- 1.3 The matters at issue were set out in the Statement of Case (Trial bundle p. 13 and 14), which set out the basic facts relating to the lease between the Applicant and the Respondent, the London Borough of Camden - in particular the covenants in the lease for the payment of service charge monies by the tenant; and the obligation of the landlord to inspect, maintain and repair the demised premises.
- 1.4 The Respondent contended that the Applicant was in breach of her obligation to pay a proportion of the service charges for the years in question. This the Respondent set out as below in particulars of invoices (bundle p.16).

Invoice No	Invoice Date	What Invoice is for	Original Amount	Amount for Heating Outstanding
343395118	24.11.2001	Service charges for 2001/2 part year	£955.55	£420.40
343522586	27.11.2002	Service charges for 2002/3	£1448.61	£271.25
343719045	28.11.2003	Estimate Service Charge for 2003/4	£1354.64	£720.01
343954567	19.01.2005	Final accounts adjustment for 2003/4	£ 146.17	£ 31.35
343881403	3.12.2004	Estimate Service charges for 2004/5	£1254.76	£675.91
Total				£2,118.92

2. **Hearing**

- 2.1 The Applicant, Ms Walker, in presenting her case, explained that the subject property was a one room studio flat, in a council-owned block. Heating is provided by the council- landlord by way of warm air from an air vent at the top of the main room. The vent sends hot air from the main boiler in the block to the flat where an electric fan circulates it in the living room.
- 2.2 The system provides space-heating, but not hot water to the flat. The space heating provided by the system is negligible and has to be augmented by the occupant's own heating appliances.
- 2.3 Ms Walker moved into the flat in 1996 and purchased the lease of the property in 2000. During the early years of her occupation, the heating

system was inefficient to the point of being ineffective. It subsequently emerged that the system was blocked and this was not rectified until November 2002.

- 2.4 Ms Walker stated that when she purchased the lease of the flat in 2000 the service charges were £500 per annum. However the following year these increased to £1,500 per annum.
- 2.5 Mr J Sheehy of Camden Home Ownership Services, presenting the case on behalf of the Respondents, stated that there was a single heating system for the eight flats, Nos 15-22 Alpha Court. The heating cost of the subject block was incorporated into a borough-wide pool, for which each tenant paid a proportionate cost.
- 2.6 Mr Sheehy stated that the largest cost element in providing the service was maintenance of the system. As a result of a tendering exercise, the maintenance contract was let to Seaflame . The resultant costs for the Applicant's flat were the heating charges as set out in para 1.4 above.
- 2.7 A dramatic fluctuation of heating charges was apparent for the four years in question with a low of £271.25 for 2002/3; and a high of £751.36 for 2003/4; resulting in an average heating charge over the four year period of £550 per annum.

- 2.8 In answer to question from the Tribunal Mr Sheehy acknowledged that a figure of this order seemed “quite a lot” for a studio flat.
- 2.9 Mr Harry Yates, Mechanical and Electric Services Manager at the Planned Maintenance Group of the Respondent-council, gave evidence in accordance with his witness statement [bundle p223] as to the tendering procedures leading to the appointment of Seaflame, and the arrangements and risks involved in the servicing and maintenance of the Borough’s heating system. In answer to question from the Tribunal as to whether the present arrangement were the best possible means of providing heating for the subject flat, Mr Yates acknowledged that an individual heating system might be more cost- effective. However he believed that the existing heating was “appropriate to the property”, having regard to the risk element of the hazards involved in any heating system.
- 2.10 Subsequent to the hearing the Applicant submitted, on 23 September 2005 a summary of her case before the Tribunal in June, and set out further problems requiring attention by the Respondent-council. The response from Camden (dated 3 October 2005) was attached and noted by the Tribunal.
- 2.11 At the close of the Hearing Mr Sheehy undertook to provide a further report from Mr Yates confirming which of the flats connected to the borough-wide communal heating system received constant hot water. This report was received by the Tribunal on 10 October 2005. It provided a detailed and

useful technical analysis of the condition and operation of the present system and its problems. Its conclusion was that :

“The existing warm air heating is a primitive form of heating and does not provide the comfort or environment expected of today’s standards”.

3. **Decision**

- 3.1 The Tribunal gave careful consideration to all the evidence before them, the comprehensive trial bundle of documentary evidence; the oral evidence at the Hearing; the subsequent submissions of the Applicant, and the further report by the Respondent.
- 3.2 The Tribunal considered this evidence, in the light of its statutory duty under section 27A of the Landlord and Tenant Act 1985, to determine the liability to pay service charges, including the reasonableness of the charge. Since in this case the liability to pay service charges was acknowledged by the Applicant, the only issue in dispute was whether the charges were reasonable or not for the years in question.
- 3.3 The heating service provided by the Respondent-council to the subject flat amounted to the provision of a warm-air system, for a period from October to April of approximately six months. This, on the evidence given and accepted by the Tribunal, amounted only to ‘back -ground’ heating and required further

augmentation by the tenant's own heating appliances. The system did not provide hot water.

- 3.4 The Respondent- council's cost of providing this limited service, and the method of calculating and apportioning the charge to be made to lessees resulted in high and widely fluctuating figures from one year to the next (paragraph 1.4 above) resulting in an average charge of £550 per annum.
- 3.5 Judged by any objective yardstick such a sum seems excessively high for the limited heating service provided. The Tribunal decided that it was, in all the circumstances, an unreasonable sum to charge.
- 3.6 The Tribunal, from their professional knowledge and experience, determined that a realistic and reasonable sum for the service provided would be in the region of £10 per week during the 26 weeks of the winter period, indicating a starting figure of £260 per annum. To this should be added a sum to reflect the risk element, explained at the hearing, inherent in maintaining such a system. This the Tribunal determined at approximately 15%, resulting in a rounded figure of £300 per annum.

3.7 On the basis of the above, the Tribunal determined that the service charge sums payable for the years to be

2000-2001	£300
2001-2002	£300
2002-2003	£300
2003-2004	£300

3.8 The Tribunal further determined that it would not be reasonable that the sum payable for 2004-2005 should be more than that for previous years, that is to say, £300.

CHAIRMAN .. *Cerald Bowden*

DATE .. *24 November 2005.*