

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
UNDER THE LANDLORD AND TENANT ACT 1985 (as amended) SECTIONS
27A and 20C**

PROPERTY: 71 ST JOHNS COURT LONDON N4 2BD

APPLICANT: Dr ZOUHAIR KHAZNE

RESPONDENT: LONDON BOROUGH OF HACKNEY

Represented by: Mr D CASSIDY

Mr A KESARISINGH

TRIBUNAL

Mrs T I Rabin JP Chairman

Mr M Cairns MCIEH

Mr O Miller BSc

Date of Tribunal's decision: 2007

71 ST JOHNS COURT LONDON N4 2BD

FACTS

1. The Tribunal was dealing with an application by transferred from the Edmonton County Court by order of District Judge Silverman for the Tribunal to determine the level of service charges payable by the Respondent Tenant, Dr Khazne to the Applicant landlord, London Borough of Hackney in respect of Flat 71 St John's Court London N4 2BD ("the Flat"). At the hearing the Applicant requested that the Tribunal deal with service charges for the service charge years 1st April 2005 to 31st March 2007 in respect of expenses incurred by the Applicant at St Johns' Court aforesaid ("the Building") and the St John's Court Estate. ("the Estate"). The application is dealt with under Section 27A (1) Landlord and Tenant Act 1985 as amended ("the Act"). The Applicant is the long leaseholder of the Flat and a copy of the lease of the Flat ("the Lease") has been produced to the Tribunal.

HEARING

2. The hearing took place on 22nd October 2007 at 10 Alfred Place London WC1E 7LR. Dr Khazne was present and gave evidence and the Applicant was represented by Mr Cassidy, service charge recovery team leader and Mr Kesarisingh, service charge account team leader. The issue before the Tribunal was whether the service charges levied for the Flat should properly include costs incurred in relation to the common parts of the Building and the Estate on the basis that the Respondent has a separate entrance and no access to the common parts of the Building.

THE LAW

3. The Tribunal's jurisdiction is set out in Section 27A (1) of the Act as follows:-
 - (1) Where an amount is alleged to be payable by way of service charge an application can be made to a Leasehold Valuation Tribunal for a determination whether or not any amount is payable and, if so, 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
 - (2) Subsection (1) applies whether or not payment has been made

EVIDENCE

4. The Respondent maintained that he should not be charged for services from which he did not directly benefit. The Flat was on the ground floor of a seven storey block with a separate entrance and he was not provided with a key to the common parts of the Block. He also believed that he should not be liable for any part of

costs incurred in relation to the common parts of the Block and the Estate with the exception of services in the immediate vicinity of the Flat. He gave three examples of costs he considered to be inappropriate and these are as follows

- (a) clearing blocked drains in the car park
- (b) clearing blocked drain at Flat 67
- (c) reglazing windows between second and third floors

These were just some of the items for which he did not consider he had any liability. He also complained that he had been obliged to pay for reglazing a window in the Flat which was broken by children playing football. His position was that he should not be asked to pay for services he did not use, such as lift, stairs, communal lighting and car park.

5. The Respondent stated that he had not paid any service charges at all due to lack of funds. On questioning he acknowledged that he did have a responsibility to contribute towards the insurance and the administration charges for the Estate and the maintenance and lighting of the area immediately outside the Flat as well as the garden and street lighting immediately outside the Flat. He did not consider that he should have any further responsibility for the Estate repairs as they related to public highways and should be covered by council tax. The Lease had been prepared thirty years ago and is now out of date and should be discarded and rewritten.
6. The Applicant stated that the maintenance costs for the common parts of the Building were payable under the terms of the Lease. Similarly, the Respondent was obliged to pay a contribution towards the cost of repairing, cleaning, lighting and maintaining the Estate and the Tribunal was referred to the Ninth Schedule of the Lease where the costs for which the Respondent was liable to contribute were clearly set out. It was explained that when there was reference to an individual flat in the Block, this reference was to the flat occupier who had reported the problem. The Applicant operated a policy of only charging ground floor leasehold properties for lift and door entry maintenance if they are able to access the lift and have use of the door entry system. This is a policy which the Applicant retains the right to review at its discretion.

THE TRIBUNAL'S DECISION

7. The matter has been referred to the Tribunal by the Edmonton County Court and the Tribunal can only deal with the amount the subject of the County Court proceedings, namely the service charges due from 1st January 2006 to 1st January 2007, in the sum of £1985.16, having given credit for all the costs of the lift in accordance with the Applicant's policy..
8. Tribunal considered the evidence from both parties. Dealing first with the terms of the Lease, the Tribunal noted that under Clause 3 (A) of the Lease, the lessee covenants to pay

“ a due proportion of the reasonably estimated amount, required to cover the costs and expenses incurred or to be incurred by the lessor in carrying out the obligationsin this Clause and Clauses 6 and 8 and the Ninth Schedule hereof “

and also: by Clause 3(B) the lessee covenants to pay:

“ on demand the amount by which the estimated sum paid by the lessee to the lessor under sub-clause 3(A)... is less than the due proportion payable by the lessee of the total moneys properly and reasonably expended”

9. The obligations of the Applicant to which the Respondent is obliged to contribute under the terms of the Lease are set out in the Ninth Schedule and includes the main structure of the Building and all exterior and party walls and structure, electrical and other fittings and windows and all doors save the doors giving access to the individual flats and all roofs and chimneys. The Applicant is also responsible for the services and conducting media for those services as well as wireless and TV masts on the Building. There is an obligation to keep the Building and the Estate adequately lighted and cleaned including the passages, common halls, landings, steps, doors, windows, forecourts and courtyards. There is also an obligation to maintain the Reserved Property as described in the Third Schedule which includes the remaining parts of the Estate not included in the Building and an obligation to repaint the Building and the internal common parts in accordance with the lessor's repainting cycle.
10. The Respondent, is bound by the terms of the Lease, which is a contractual document governing the respective obligations of the parties. He cannot seek to change the terms before the expiry of the lease unilaterally and the Tribunal would only have jurisdiction to vary the Lease if it were defective, and there is no evidence that this is the case. The Respondent is therefore liable to discharge all moneys covered by the covenants in Clauses 3 (A) and (B) of the Lease and that includes the costs of cleaning, lighting and redecorating the common parts of the Block. It also includes an obligation to contribute towards all the costs of the lift, although the Respondent is benefiting from a current policy whereby ground floor leaseholders who do not have access to the lifts are not required to contribute. However, if this policy changes, the Applicant will be entitled to demand a contribution towards the lifts as before.
11. The Respondent has expressed unwillingness to contribute towards the costs of the car park and driveways on the grounds that he does not have a car. However he does have the benefit of roadways and parking areas which he could use if he wished and he must have been aware of the obligations when he purchased the Lease. As these are included in the definition of Reserved Property in the Lease, he must contribute towards them. The roadways and parking areas of the Estate are clearly off the highway and should not be maintained at the public expense but form part of the Estate as defined in the Lease.
12. The Respondent stated that he had failed to pay any service charges during the period from 1st April 2006 to date was due to the fact he had no income since he had been obliged to give up his career as a doctor once he had become registered disabled. The Tribunal's jurisdiction is limited to whether or not service charges are properly payable and not to questions of hardship. The Applicant had pointed

out that the Respondent did not occupy the Flat as his residence and that he had alternative options to deal with his financial difficulties. The Tribunal agrees with this view. The Respondent's complaints relate to the perceived unfairness of the terms of the Lease and his lack of funds. He has at no time claimed that the services were not provided or were of a poor standard.

CONCLUSION

13. The Tribunal found that the service charges claimed by the Applicant were properly chargeable under the provision of the Lease. The Respondent has benefited from a concession currently in force which relieves him of any obligation to contribute towards the lift and an appropriate allowance has been made for the period from 1st April 2005 to 31st March 2007. The Tribunal finds that the service charges of £1,985.86 for the period 1st January 2006 to 1st January 2007 in payable in full and immediately as the service charges are well overdue.

Section 20C of the Act

14. The Tribunal considered whether it would be appropriate for an order under Section 20C of the Act to the effect that the costs of these proceedings are not proper costs to be included in the service charges. The Respondent stated that they would not include the costs of these proceedings in the service charges. On the strength of that assurance, the Tribunal considers that it is not necessary to make such an order.

CHAIRMAN.....



MRS. T. I. RABIN

DATED: 22nd October 2007