RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985 SECTION 27A

CASE NUMBER LON/OOAU/LSC/2008/01717

IN THE MATTER OF 269B HORNSEY ROAD, LONDON, N7 6RZ

PARTIES:

LONDON BOROUGH OF ISLINGTON — Applicant

-and-

MR D O ANIKE — Respondent

APPEARANCES:

For the Applicant	Mr K Legge Senior Litigation Lawyer with Mrs Z Selassie} Miss L Johnson} all of Homes for Islington Miss L Dunkley}	
For the Respondent	Mr Anike in person	
Hearing Date	17 July 2008	
Tribunal	Mr A A Dutton Mr C Kane	Chair FRICS
Decision Date	24 July 2008	

REASONS/DECISION

A. BACKGROUND

1. This matter was transferred to us by an Order of the Clerkenwell and Shoreditch County Court dated 9 April 2008. This followed proceedings having been commenced by the London Borough to recover the sum of £867.02 from Mr Anike. In those proceedings Mr Anike had filed a Defence and following receipt of same the matter was remitted to us for the determination as to the amount of service charges, if any, which may be due and owing by Mr Anike.

2. Directions were issued by this Tribunal on 3 June 2008 and have been complied with. The matter came before us for hearing on 17 July 2008. The hearing was delayed because of some confusion on Mr Anike's part as to the venue but we were able to proceed after a short adjournment. The issues were confined to the service charge payable for the years 2005 to November 2007 in respect of two matters. The first was the communal aerial serving Mr Anike's property and the second was the standard of caretaking.

B. EVIDENCE:

3. Prior to the hearing we had been supplied with a bundle of papers prepared by the Applicants which included a copy of the lease, a Statement from Miss Johnson, a batch of inspection sheets and other papers to which we will refer as necessary during the course of these reasons.

4. Mr Legge, on behalf of the Council, confirmed that the sum of £867.02 which he said was due and owing excluded any ground rent. He told us that Mr Anike's property was in a block of twelve units forming part of the Simmons House Estate and that no record of any complaint had been received by the Council in respect of the television aerial or the caretaking. He then called Miss Johnson to give evidence in accordance with her Statement. She gave us a breakdown of the time spent by the member of staff who was responsible for the caretaking which indicated that he not only had the Simmons House Estate to look after but two others within 10-15 minutes walking distance. Apparently the caretaker spent some 29 hours per week at Simmons House and the remainder of his working week at the other blocks. His responsibilities were numerous. She also took us through some inspection sheets which were supposedly indicative of the standard of cleaning. She told us that she judged the level of cleaning but others calculated percentages and that the caretaker had to achieve not less than 90% for the standard to be acceptable. There were a number of anomalies between the percentages recorded insofar as Miss Johnson's inspection was concerned and the percentage that was actually

allocated to the overall task. She was not really able to help us because she did not involve herself in apportioning the percentages to the inspection she had carried out.

5. It also became apparent during the course of Miss Johnson's evidence that there was some confusion on the part of the Council as to their cleaning responsibilities. The lease clearly indicates that the cleaning of all common areas is the responsibility of the Council. However, documents produced on the morning of the hearing included a leaflet explaining the services provided to lessees and tenants. Under a heading "Your Obligations" it was stated that Mr Anike had to sweep and keep clean the communal areas outside his home. This was inconsistent with the lease terms. It is to be noted however that the Council was not making a charge for cleaning the balconies but only in relation to the stairways and landings and the rubbish chute area in Mr Anike's block and the remainder of the Simmons House and Hornsey Road Estate.

6. As to the television aerial we were told that no complaints had been made by Mr Anike and that the first the Council were aware of it was following the issue of proceedings. Earlier this year a letter was written by Mrs Selassie to Mr Anike indicating that an engineer had been called but had not been able to make contact and that if Mr Anike was to telephone the number disclosed on the letter a further appointment could be made. We were told that no contact was had with Mr Anike following this letter.

7. Mr Anike told us that he did not dispute the responsibility for making payments. He was however unhappy about the standard of caretaking and told us that he had reported the faulty aerial by telephone in 2005. He did indicate however that whilst he had been told in that telephone call that there would be a follow-up, there was not and he did not take the matter further. Instead it appears he acquired a television which required a digital reception and arranged for his own dish to be erected at the premises. It seems therefore since around 2005 Mr Anike has not made use of the communal television system.

8. Insofar as the cleaning was concerned he told us that he had met with Miss Johnson on a couple of occasions and had expressed concerns but there did not appear to be any evidence that he had raised specific queries with the department direct. He gave an instance of a bin having been emptied and left blocking a communal area and disputed the cleaning regime. He did not feel that the stairs and landings were cleaned on a regular basis perhaps only as often as every 2-3 weeks. He accepted that the ground floor may have been done and that some agent was included to mask smells but apart from that he complained that the general standard of cleanliness of his block was unsatisfactory.

9. When asked by the Tribunal as to what level of financial contribution to the cleaning he should make, after some pressing, he indicated that he thought perhaps £5 per week would not be unreasonable.

10. We were told during the course of the hearing that Mr Anike's total liability at the date of the hearing was £1,146.91. There was some confusion as to how the sum of £867.02 as claimed in the court papers had been reached. It appeared to include a sum of £10.40, a contribution towards the Islington Leaseholders Association, which should have been a credit. It appears therefore that the amount we are asked to consider should be reduced to £856.62 being the sum originally claimed in the County Court less the allowance for the Association charge which we understand should not have been made.

11. At the conclusion of the hearing Mr Legge made submissions as to costs. His view was that the lease did not entitle the Landlord to recover costs under the service charge regime and accepted therefore that an Order under s20C of the Landlord and Tenant Act 1985 would be appropriate. He did however feel that Mr Anike should make a payment for costs in accordance with Schedule 12 paragraph 10 of the Commonhold and Leasehold Reform Act 2002. He also asked for reimbursement of the hearing fee of £150.

12. Mr Anike believed that the case had been justified and pointed to the fact that there had been a clarification of the balcony cleaning obligations which had not come to light beforehand and which he felt would not have come to light had it not been for these proceedings. He asked that he should be entitled to recover some costs for his attendance which he put at £10 representing his travel costs.

13. As a result of matters discussed at the hearing we agreed to inspect the subject premises in the afternoon.

C. INSPECTION:

14. Simmons House and Hornsey Road is a mixed estate. It covers quite a substantial area with, we were told in the hearing, some 80 or more units of residential accommodation. There also appears to be a fairly substantial garage block. We were able to inspect the building in which Mr Anike's flat was to be found and consisted of a three storey self-contained block attached to the remainder of the estate and fronting Hornsey Road. There was a somewhat spartan and utilitarian common parts consisting of stairs to the upper floors which were tiled. The walls were likewise in some cases tiled. The entrances to the

flats ran from balconies off the common entrance ways and it was these balconies that the Council accepted they did not clean. The general standard of cleaning to the stairs and common areas in Mr Anike's block was satisfactory but no more. There was evidence of some dust on the handrails and it had a slightly grimy feel. It was clear however that cleaning was undertaken fairly regularly as there was no litter or other mess to be found in the common areas. The estate itself which we had the chance of walking round was by and large in good order. There was evidence of some minor litter problems but nothing of a serious nature which could not have been dealt within a half-hour clean-up.

D. THE LAW:

15. The law applicable to this matter is to be found at s27A of the Landlord and Tenant Act 1985 which states as follows.

    Section 27A(1) of the Act provides that 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.

16. In addition the Applicants made a claim for the recovery of costs pursuant to the Commonhold and Leasehold Reform Act 2002. Schedule 12 paragraph 10 provides that one party can be required to pay costs not exceeding £500 to another party where in our opinion the defaulting party has acted frivolously vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. See paragraph 10(2)(b).

17. In addition there is also authority under the Leasehold Valuation Tribunal (Fees)(England) Regulations 2003 at Regulation 9 to reimburse fees to one of the parties. However at Regulation 9(2) we shall not require a party to make such reimbursement if at the time the Tribunal is considering whether or not to do so the Tribunal is satisfied that the party is in receipt of any of the benefits the allowances or Certificates mentioned in Regulation 8(1). Regulation 8(1) sets out a number of benefits including Income Support, Housing Benefit, Job Seekers Allowance.

E. DECISION

18. There are but two service charge matters we need to consider. The first is the television aerial. Under the terms of the lease in the Third Schedule Part I headed "Building Element"

at paragraph (a)(iii) there is provision for the Local Authority to maintain services which includes gas, electricity, water and television aerials. Accordingly there is this service provided by the Local Authority and a service which Mr Anike should pay for. We heard from Mr Anike that he had made one telephone complaint in 2005 which he had not followed up. There is no evidence of him having made any further complaints and certainly nothing in writing. It appears that about the same time Mr Anike decided to install a digital system which meant that he did not need to use the Council's television aerial. The Council for their part say that they have no record of any complaint whatsoever and that the first they knew about it was following the proceedings and that in January of this year they arranged for an engineer to attend who unfortunately could not get access. Attempts to make an appointment for the engineer to visit have not been successful, we understand because Mr Anike has not responded.

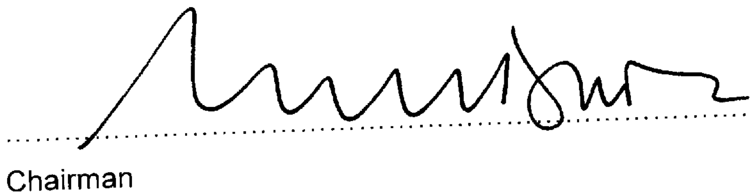
19. It is not unheard of for Lessees to contribute towards services for which they get no benefit. There is authority for example the fact that you may have a lift in your block which you do not use as you live on the ground floor does not exclude you from contributing towards same. We find that in this matter there is an obligation on the Council to provide the television aerial and the fact that Mr Anike chooses not to use it, does not mean that he can avoid contributing towards it. To be frank the costs involved are minimal. For the year 2006/7 for example it was only £5.15. Nonetheless it is an expense which Mr Anike must meet.

20. We then turn to the question of the caretaking. Our inspection confirms that cleaning was undertaken. The system employed to check the cleaning arrangements seems somewhat haphazard. It seems surprising to us that the person who carries out the survey (Miss Johnson) is not also the person who marks it. There appeared to be some conflicting percentages quoted. The estate the caretaker has to manage is quite substantial and we wonder whether in fact he is being stretched to provide the best service that may be available. Nonetheless at the time of our inspection the common parts to Mr Anike's block were tidy as was the remainder of the estate. There is clearly a misunderstanding on the Council's behalf as to their cleaning obligations in respect of the balcony but we were satisfied that Mr Anike is not charged for this. In questioning from the Tribunal he accepted that a reasonable charge of £5 per week could be made. It was then pointed out to Mr Anike that in, for example, the year 2006/7 the total charge to him was just under £250 giving rise to a charge of less than £5 per week for the caretaking services.

21. We find that whilst there may be shortcomings in the service in our view it provides reasonable value for money. Under £5 per week is, we would have thought, the minimum a tenant would expect to contribute towards the cleaning not only of their own block but of course the common areas. We find therefore that the charge levied by the Local Authority in respect of cleaning services is reasonable and is payable in full.

22. We turn then to the question of costs. The first matter is those costs payable under the 2002 legislation. We have to be satisfied that Mr Anike has acted in the manner contrary to paragraph 2(b). We do not think he has. There clearly is an anomaly in regard to the extent of the cleaning services provided by the Local Authority. His complaint was, to a certain extent, centred on the balcony in front of his property although he was unhappy about the general cleaning standards to the other common parts. The Council clearly has misunderstood its obligations with regard to the balcony area and in those circumstances we do not find that Mr Anike should pay any costs. We bear in mind also that the County Court proceedings were under the Small Claims Track and that it would be unlikely that costs would have been awarded against Mr Anike in any event. Insofar as the hearing fee is concerned we heard that Mr Anike was seeking employment and in our view it would be inappropriate for him to be required to reimburse the hearing fee. Equally however we do not feel it is appropriate for the Council to reimburse Mr Anike any costs that he may have incurred.

23. We find therefore that the sum of £856.62 is due and owing and should be settled by Mr Anike within the next 28 days. There was a discussion between the parties as to the possibility of agreeing some form of instalment arrangement and we would urge Mr Anike to contact the Local Authority to reach agreement as to how these arrears are cleared and also to ensure that all future payments are made at the correct time.



Chairman

Dated 24 July 2008