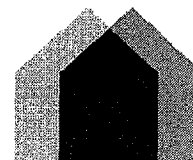


LON/00AP/LSC/2007/0017



Residential
Property
TRIBUNAL SERVICE

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL
FOR THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE
ON AN APPLICATION UNDER SECTION 27A OF THE
LANDLORD AND TENANT ACT 1985, AS AMENDED**

Applicants: Thorngrove Court Management Company Limited

Respondent: Ms Tamara Gumbs

Address of Property: 96 Somerset Gardens
Creighton Road
London
N17 8JW

Hearing date: 17th April 2007

Date of Decision: 14th May 2007

Appearances: Mr M Donnellan B.Ed(Hons), Managing director, Goldfield
Properties Limited – Managing Agent for the Applicants

For the Applicants

Ms T Gumbs

For the Respondents

Members of the Residential Property Tribunal Service:

Miss S J Dowell BA (Hons)
Mr I B Holdsworth BSc MSC FRICS
Mrs S Justice BSc (Hons)

THE RESIDENTIAL PROPERTY TRIBUNAL SERVICE

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

Property : 96 Somerset Gardens, Creighton Road, London N17 8JW

Applicant : Thorngrove Court Management Company Limited

(Landlord)

Respondent : Ms Tamara Gumbs

(Tenant)

Date Heard : 17th April 2007

Appearances : Mr M. Donnellan B.Ed (Hons), Managing Director, Goldfield Properties Limited - Managing Agents for the Applicants.

For the Applicant

Ms T. Gumbs in person.

For the Respondent

Members of the Leasehold Valuation Tribunal :

Miss S.J. Dowell BA (Hons)
Mr I.B. Holdsworth BSc MSC FRICS
Mrs S. Justice BSc (Hons)

Date of Tribunal's Decision : 14 May 2007

The application

1. This is a referral from Edmonton County Court, Case No. 6QZ88419 made by District Judge Silverman on 4th January 2007 for determination of liability to pay and reasonableness of service charges. The amount claimed by the landlord in the county court was £2,480.17 which was made up as follows:

Service charges for 2005	-	£1,074.21
Service charges in advance for 2006	-	£1,109.71
Court costs 1st January 2006 – 31st December 2006	-	£ 120.00
Agents' administrative fee for court action – 24.11.2006	-	£ 176.25
Total		£2,480.17

2. The Applicants are a management company owned by the lessees of 78 to 113 Somerset Gardens, Creighton Road, Tottenham, London N17 8JW. The freeholders of the building are Freehold Properties Limited. The Respondent is the long lessee of 96 Somerset Gardens which is located on the second floor of the building. She purchased this property in 2001.
3. We did not carry out an inspection of the building and did not have the benefit of a surveyor's report or any photographs, although we were provided with a copy of a plan of the whole estate. We were informed by the parties that the block consisted of 36 flats and was purpose-built in 1990. The block is of brick construction with a pitched roof and wooden window frames. There are three separate entrances to the block and each entrance serves twelve flats. The staircases are carpeted and there are no lifts. The Respondent's flat is a two-bedroom flat with one double and one single bedroom. The block is part of a larger development which consists of four blocks in all. However we were informed that the service charges for 78 to 113 Somerset Gardens were calculated on the basis of this block only.

The hearing

4. The hearing took place at 10 Alfred Place, London WC1 On 17th April 2007. Mr M. Donnellan, Managing Director of Goldfield Properties Limited, who are managing

agents for Thorngrove Court Management Company Limited, appeared for the Applicant. Ms Gumbs appeared in person.

5. The Applicant had not complied with the directions dated 12th February 2007 although Mr Donnellan was present at the pre trial review. The directions made at the pre trial review required that the Applicant should on or before 23rd February 2007 send to the Respondent a statement of case, with supporting documents, setting out clearly how the service charges had been calculated, with details of the items of expenditure and a copy of the lease. Mr Donnellan informed the Tribunal that it was his understanding of this direction that it was financial statements which were required and that he did not realise that all the supporting documents to prove the service charges should be disclosed. As a consequence of Mr Donnellan's failure to serve a statement of case it was necessary for him to give his evidence orally at the hearing.

Summary of statutory provisions

6. The Landlord and Tenant Act 1985 as amended is herein after referred to as "the Act". All references are to the Act.

Section 18 – Meaning of "service charge" and "relevant costs"

- (1) "Service charge" 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.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters for which the service charge is payable.
- (3) For this purpose –

- (a) "costs" includes overheads, and
- (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19 – Limitation of service charges: reasonableness

- (1) 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 or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A – Liability to pay service charges: jurisdiction

- (1) An application may be made to a Leasehold Valuation Tribunal for a determination on 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.
- (2) Sub section (1) applies whether or not any payment has been made.
- (3) An application may also be made to a Leasehold Valuation Tribunal for a determination of whether, if costs were incurred for services, repairs,

maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –

- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under sub section (1) may be made in respect of a matter which
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

The lease

7. The Tribunal was provided with a copy of the lease in respect of 96 Somerset Gardens. This lease is dated 26th July 1991 made between Rialto Group Plc (the Developer), Atherton Properties Limited (the Landlord), Maurice Patrick Griffin and Rachel Griffin (the Tenant) and Thorngrove Court Management Company Limited (the Company) for a term of 99 years from 1st September 1990. The service charge year runs from 1st January to 31st December. The relevant provisions in relation to the service charges are as follows:

- The demise is described in paragraph 1.2 of the Particulars and the First Schedule.

- The service charge percentage is described at paragraph 1.7 of the Particulars as “1.359% subject to the provisions for variation contained in the Fifth Schedule”.
- “Building” is defined in paragraph 2.5 of the Particulars as “the buildings situate on the Estate comprising 36 self-contained flats”.
- The provisions in respect of the service charge are set out in the Fifth Schedule. Part A deals with definitions, Part B deals with performance of the services and payment of the service charge, Part C deals with the services and Part D deals with the additional items. Further reference to the Fifth Schedule will be made later in this decision.

Matters in dispute

8. After some discussion it was agreed between the parties that the service charges in dispute were the service charges for 2005, where the final accounts had been supplied and the service charges on account for 2006. Proceedings were issued on 11th December 2006 i.e. before the end of the 2005/6 service charge year. The service charge year runs from 1st January to 31st December (paragraph 3, Part A, Fifth Schedule of the lease). The tenant’s service charges for 2005 were £1,074.21 and the service charge on account for 2006 was £1,109.71. The Tribunal was not provided with copies of the service charge demands for these years, but it was agreed these were the sums in dispute. The Tribunal was provided with the financial statement of the Thorngrove Court Management Company Limited for year ended 31st December 2005.
9. In addition in the county court proceedings the sum of £120 for court costs (a previous case) and £176.25 for “agents admin fee for court action” were claimed.

Background

10. Mr Donnellan explained that Goldfield Properties took over the management of the block of the known as 78 to 113 Somerset Gardens on 1st April 2006 and that he had

been appointed as company secretary of Thorngrove Company Management Limited. He said that his company managed some 3,000 properties all of which were subject to residential management companies. The service charge arrears which are being claimed for 2005 relate to a period when a company known as CPM (CPM Asset Management Limited) managed the property. In addition the on account service charges for 2006 cover a period of three months (January to March) in 2006 when CPM managed the property. Mr Donnellan told the Tribunal that he was not able to produce any documentation to prove the service charges i.e. he had no invoices or receipts because they were in a file which was in storage and this file was not immediately available. Ms Gumbs pointed out, and indeed it is manifestly evident from her correspondence, which started in August 2002 that she had been asking to see copy documentation to support the service charge demands since that time.

Service charge accounts year ended 31st December 2005

11. The service charge accounts for the year ended 31st December 2005 have, at page 12, "notes to the detailed profit and loss account". This gives a breakdown of the service charges for 2005 which total £35,320. Of this sum Ms Gumbs had been asked to pay £1,074.21. Ms Gumbs had requested an explanation of the percentage she was paying as long ago as a letter dated 31st October 2003 written to CPM. She said that she was being asked to pay 2.92% of the total expenses but that she considered the breakdown of charges did not make sense. Mr Donnellan confirmed that in his view Ms Gumbs was being charged the correct amount.

Decision

12. We deal here with the service charge percentage, although the exact amount Ms Gumbs will be liable to pay for 2005 depends on our findings in relation to liability and reasonableness in respect of the items of expenditure set out below. Paragraph 1.7 of the "Particulars" of the lease defines the service charge in respect of this flat as "1.359% subject to the provisions for variation contained in the Fifth Schedule". No evidence was presented to us that there had been any variation. Our initial finding on the basis of the service charges accounts as drawn by the accountants, therefore is that

the maximum for which Ms Gumbs can be liable for 2005 is £480 i.e. 1.359% of £35,320.

Water rates

13. The amount charged to the block for 2005 was £4,747. Mr Donnellan told the Tribunal that water was metered for the block and that this was the cost during 2005. Ms Gumbs told the Tribunal that she and all the other lessees were individually billed by Thames Water for water rates and that she had paid this every year since she moved into the property. She was not able to produce any invoices to prove this.

Decision

14. Liability to pay for outgoings on the building is found in paragraph 21 of Part D of the Fifth Schedule which states “paying all rates taxes duties charges assessments and outgoings whatsoever (whether parliamentary parochial local or of any other description) including the cost of the supply of electricity water gas or other fuel for the provision of the services and for all purposes in connection with the building except insofar as the same are the responsibility of the individual tenant of any flat in the building.....”.
15. We accept the evidence of Ms Gumbs that she is paying the water rates for her own flat and can only conclude that the sum being charged by Thames Water for the metered consumption relate to the common parts.
16. We then went on to consider the reasonableness of these charges. We concluded that the charges in the sum of £4,747 were not reasonably incurred and that a reasonable expenditure for water for the common parts, being three entrances, the garden and the cleaning of windows, was £250 for the year.

Light and electricity – common parts

17. The amount claimed by the landlord is £1,168. The item shown in the accounts was “light and heat” but it was agreed that there was no heating in the common parts and

this is for lighting only. It included electricity, light bulbs and electrical repairs and the sum charged was £1,168. Ms Gumbs submitted that this sum was too high and that a more reasonable sum would be that based on 2002 figures when she paid £20.46 for electricity to the common parts and £11.69 for repairs and light bulbs.

Decision

18. Liability for payment of electricity for the common parts is to be found in the same clause of the lease as that set out in paragraph 14 above. In our view the sum charged is excessive and that electricity costs of £1,168 for three stairwells and an exterior light, was too high. We concluded that a reasonable sum for the year was £500.

Insurance

19. The sum for insurance claimed was £6,119 for the block. Mr Donnellan was unable to produce the schedule for the relevant year but did provide the current schedule for 1st April 2007 to 31st March 2008. This showed the total premium due of £7,098.33 which included a terrorism premium of £1,290.80. The building sum insured was £3,994,736. Mr Donnellan explained his company was told by the freeholders to place the insurance and that his company and the management company had no opportunity to select the insurer. Ms Gumbs submitted that the amount was too high and that her share for insurance had more than doubled since 2002. However she did not produce any quotes for comparison.

Decision

20. The lessee's liability to pay the buildings insurance is set out at paragraph 20 of Part D of the Fifth Schedule. On balance, bearing in mind there is no obligation on the landlord to accept the lowest quotation for insurance available and that Ms Gumbs had not produced any alternative quotes, we conclude that the sum of £6,119 was reasonably incurred for buildings insurance in 2005.

Cleaning, garden maintenance and repairs

21. The sum charged in 2005 was £11,738. In 2004 these costs were £8,378. Mr Donnellan explained that the breakdown of the recurring charges on a monthly basis is £136.50 plus VAT for cleaning, £304.29 plus VAT for gardening and £73.30 plus VAT for windows which on a yearly basis is £7,248.67 including VAT. The balance of £4,489 was for repairs to the block. Mr Donnellan told us that that block was cleaned once a week, gardening took place two days a month between April and October and one day a month from November to March. The gardening included litter picking. The windows of all the flats and the common parts were cleaned during the summer months but not during the winter months. Mr Donnellan said that there was considerable vandalism in the block, that doors were kicked in, bollards in the car park were damaged, there was constant evidence of drug use in the exterior common parts and on one occasion excrement had been found on the stairs. He said keys were frequently lost and had to be replaced and security locks were being introduced in the block. Also large items of rubbish were said to be dumped on the site not infrequently, involving clearance costs.
22. Ms Gumbs submitted that these charges were excessive and that she had seen hardly any repairs being carried out. She said that bollards in the car park had been broken for some very considerable time and that these charges, which were not supported by any documentary evidence, were excessive.

Decision

23. The lessee's liability for these charges are to be found in paragraphs 10, 11, 12, 13, 14 and 15 of Part C of the Fifth Schedule of the lease. We are satisfied that the total annual sum of £7,248.67 inclusive of VAT for cleaning of the common parts, gardening and window cleaning is reasonably incurred. However we were not satisfied that the sum of £4,489.33 was reasonably incurred for repairs. This is a large sum to be charged for running repairs taking into account this is a relatively small block of 36 flats with only three entrances. We accept that there may have been some vandalism which affected the common parts so there was a need for running repairs however we did not receive a satisfactory explanation as to why the costs had

increased by 40% from the previous year, nor were we provided with any invoices or receipts. We conclude that a reasonable sum for the cost of repairs to the common parts in this year is approximately £1,200 and our decision is that a reasonable sum for this item for 2005 is a total £8,500.

Security/aerial/door entry system

24. The annual charges for these items were £1,337. In 2004 they were £305. Mr Donnellan explained that in 1990 the developers had installed a door entry system and a television aerial but that in order to avoid the capital expenditure these had been the subject of rental agreements. In addition there were call out fees when the entry phones were damaged.
25. Ms Gumbs said that she could not understand this increased expenditure and that she believed that the company responsible for the rental agreement deliberately damaged the door entry systems in order to obtain more work. In her view she did not think that the children in her block would do this as alleged by the Mr Donnellan. She also submitted that if there was damage to locks these should be dealt with by an insurance claim.

Decision

26. We are satisfied that the lessees are liable for this charge under paragraph 27 of Part D of the Fifth Schedule. However we were not satisfied with the explanation of why the charges had increased from £305 in 2004 to £1,337 in 2005. In the absence of a satisfactory explanation and of any receipts and invoices we conclude that a reasonable sum for this item of expenditure in 2005 is the same as the previous year i.e. £305.

Plumbing and drainage

27. The sum charged for plumbing and drainage in 2005 was £1,125 and in 2004 was nil. Mr Donnellan explained that these were for costs to the common parts but that it was expenditure incurred by CPM and he was not able to give an explanation for it. Ms

Gumbs said there had been no expenditure on this item in 2004 nor in 2003 and that she was not aware of any plumbing and drainage work which had been carried out in the block.

Decision

28. In principle the lessees would be liable for the cost of this work under paragraph 10 and paragraph 12 of Part C of the Fifth Schedule. However we are not satisfied that any such work had been carried out as no evidence was provided and therefore the costs which have been charged are not reasonably incurred and we conclude that no sum should be allowed for this item in 2005.

Management charges

29. The sum claimed was £6,568. Mr Donnellan said that this was the sum which was charged by CPM. The Tribunal pointed out to Mr Donnellan that the lease at paragraph 29 of Part D of the Fifth Schedule set out the maximum sum which could be charged which Mr Donnellan accepted.
30. Ms Gumbs submitted that the management fees were too high for poor quality management and that the block and the estate generally was now in a considerably worse state than when she first purchased her property in 2001.

Decision

31. Liability to pay for management fees is found in paragraph 29 of Part D of the Fifth Schedule which states “ a sum not exceeding 10% of the Annual Expenditure which sum shall be the Management fee of the Company or its successors in title.” This requirement in the lease has been blatantly ignored by CPM by charging the sum of £6,568 in 2005. It has also been blatantly ignored by Thorngrove Court Management Company Limited who have allowed this sum to be passed on to the lessees and have sued the Respondent for a sum which includes this inflated management fee. The lease makes it clear that 10% is the maximum sum which can be charged and in our view, having considered the way this property was managed in 2005, which appears to

have had scant regard for the RICS service charge residential management code, we conclude that a reasonable sum would be 5% of the annual expenditure which allowing for the deductions we have made above and the non challenged items below amounts to £910.

Bank charges

32. The lessees were charged the sum of £106 in bank charges in 2005. Mr Donnellan said that this was a sum which had been charged when CPM were managing the property. Ms Gumbs submitted that she could see no reason why any bank charges should be levied when the account was in credit and indeed there were funds deposited for the reserve fund. Mr Donnellan conceded that it was his company's practice to ensure that there were no charges for the client account monies held on behalf of lessees.

Decision

33. We can find no provision in the lease which permits the landlord to charge the lessees bank charges. If we are wrong about this we conclude that in any event the bank charges which have been included in the service charge accounts are not reasonably incurred as the lessees' client account should have been conducted on their behalf without the need for charges.

General expenses not challenged

34. The following expenses were included in the service charge accounts for the year ended 31st December 2005 but were not challenged by the tenant:

Printing postage and stationery	-	£ 101
Sundry expenses	-	£ 30
Refuse disposal costs	-	£1,659
Company secretarial expenses	-	£ 202
Accountancy fees	-	£ 541

Summary of relevant costs to be taken into account in determining the amount of the service charge for 2005

35. Summary of relevant costs to take into account in determining the amount of the service charge for 2005 as follows:

Water rates for common parts	-	£ 250
Electricity, light bulbs and repairs	-	£ 500
Buildings Insurance	-	£6,119
Cleaning, gardening, window cleaning and repairs	-	£8,500
Security/aerial/door entry system	-	£ 305
Plumbing and drainage	-	Nil
Bank Charges	-	Nil
Printing, postage and stationery	-	£ 101
Sundry expenses	-	£ 30
Refuse disposal costs	-	£1,659
Company secretarial expenses	-	£ 202
Accountancy fees	-	£ 541
Total - £18,207		
Management fee at 5% - £910		
Total - £19,117		

36. Share of Ms Gumbs, being 1.359% in accordance with paragraph 1.7 of the lease, is £259.80.

Service charges on account for 2006

37. In paragraph 8.2 of the Fifth Schedule the tenant is obliged to pay on the 1st of January the service charge percentage of the amount reasonably estimated by the company or its managing agents as the annual expenditure for the year ending 31st December. Mr Donnellan explained that his company took over management of the block on 1st April 2006. They produced an estimate of service charges showing a total of £28,600 for 2006. However the directors of Thorngrove Court Management Company Limited decided that additional sums were required and that they would rely

on the original estimate submitted by CPM at the beginning of the year. The total costs on CPM's estimate were £37,953. On that basis a demand had been made of Ms Gumbs for £1,109.71. The sum of £37,953 included a contribution to the reserve fund of £5,000. Mr Donnellan relied on the CPM estimate at page 19 of the bundle which set out all the items of the estimated amounts. We note at this stage that no reference was made to the costs for the previous year and no indication is given as to how these estimates were reached. However we were provided with the accounts for 2004 which set out the expenditure for both 2004 and 2003. Ms Gumbs' general complaint about these charges was that the new managing agents, Goldfield Properties Limited had promised to reduce costs but had failed to do so. In fact they had simply adopted CPM's estimate after having submitted a lower figure to win the contract to manage the block.

Percentage

38. The same arguments were put forward regarding Ms Gumbs' percentage for which she was liable and our decision is the same as for the year 2005. Ms Gumbs is liable to pay 1.359% of the total service charge and including the reserve fund.

Contract maintenance - cleaning, gardening and window cleaning

39. Both parties made the same points as they had in relation to 2005 in respect of the cleaning, gardening and window cleaning. We are satisfied that the lessee is liable to pay these costs (see paragraph 23 above). We are also satisfied that the sum of £7,248.67 including VAT was reasonably incurred for these services in the year 2005 (see paragraph 23 above). In our view it is reasonable to add 2.5% to this figure for inflation for the estimate for 2006 which results in a figure of £7,430.

Buildings insurance

40. Both parties made the same points as they had in relation to 2005 in respect of insurance. We are satisfied that the lessee is liable to pay these costs (see paragraph 19 above). We conclude that the amount which it is reasonable to pay for buildings

insurance on account in 2006 is £6,270 which is the figure of £6,119 allowed for in 2005 plus approximately 2.5% inflation.

Directors and officers insurance

41. The sum claimed is £445. Mr Donnellan explained that he had advised the directors that this insurance should be taken out when he had taken over management of the building. It had not been implemented by CPM but that was not a reason for the directors and officers not to be insured which he considered to be essential. Ms Gumbs submitted that this insurance was not necessary as it had not been in charged in previous years.

Decision

42. We are satisfied that the lessees are liable to pay this charge under paragraph 28 of Part D of the Fifth Schedule which includes the cost of the company administering itself. It is our view that it is essential for the directors and officers to be insured because of the liabilities to which they are exposed in respect of the management company. No alternative figure was put to us by Ms Gumbs. In our view the sum of £445 is reasonable for an estimated charge for this item.

Insurance valuation

43. The sum of £100 was charged for the insurance valuation. Mr Donnellan was not able to produce any documentation in relation to this valuation which he said had been carried out by CPM. Ms Gumbs said that she did not believe that it was carried out in 2006 nor did she think it was necessary.

Decision

44. It is our view that this sum could be claimed under the insurance provisions in paragraph 20 of the Fifth Schedule. However we are not satisfied that it was reasonable to charge in advance the sum of £100 and we disallow this item in total.

Bank charges

45. The sum claimed was £109. The parties put forward the same arguments as for the year 2005. Our decision is the same as for the year 2005 i.e. either the lessee is not liable for these charges or if she is this is not a sum which can be reasonably charged in advance.

Company Secretary

46. The sum of £235 is included in the estimate. Mr Donnellan explained CPM made this charge for acting as company secretary although his firm did not. Ms Gumbs said she did not understand what this charge was for and that it should not be made.

Decision

47. In principle this sum could be charged under paragraph 28 of the Fifth Schedule of the lease. However Mr Donnellan pointed out that his company carried out this function without a charge. This charge is therefore a charge for CPM acting as company secretary for the first three months of 2006. We conclude that this sum is not a reasonable sum to pay in advance and disallow the sum of £235 in total.

Legal costs

48. The sum of £637 is included in the estimate. Mr Donnellan explained that legal charges were made by CPM for sending out rent arrears letters. Ms Gumbs submitted that these legal costs did not exist and were not payable.

Decision

49. Paragraph 24 of the Fifth Schedule provides that a service charge is payable for the cost of enforcing or attempting to enforce the observance of the covenants on the part of any tenant of any flats in the building. However there is no explanation as to how this figure of £637 has been calculated and on Mr Donnellan's admission these were not legal costs charged by a solicitor. In those circumstances we conclude that the

lessee is not liable for these costs or, if we are wrong about that, we disallow this sum in total as it is not an amount that is reasonably payable in advance under the terms of the lease.

Sundries

50. The sum of £163 was claimed for sundries. Ms Gumbs challenged these and Mr Donnellan conceded that this figure should not be included in the service charge estimate.

Minor repairs

51. The sum of £1,442 was claimed for minor repairs. Mr Donnellan said this was an “educated guess” of the cost of repairs which would be required to the block during the year. Ms Gumbs challenged this on the basis this sum was excessive.

Decision

52. We confirm the lessee’s liability as set out in paragraph 23 above. We allowed £1,200 for repairs in 2005 and it is our decision that the same sum should be allowed in the service charge estimate for 2006.

Door entry system

53. The sum of £250 was claimed for the door entry system. Both parties put forward the same arguments as for 2005.

Decision

54. Liability for this item is set out in paragraph 26 above. Our decision is that the sum of £206 for the door entry system, having been told there is a contract in place, is a reasonable sum for the estimate for 2006.

Light and electricity – common parts

55. There were two items in the estimate, electrical repairs/light bulbs at £250 and electricity for the common parts £1,442. We have dealt with these items together in order to be consistent with the previous year. The parties put forward the same arguments as for the previous year.

Decision

56. The lessee is liable for these costs as set out in paragraphs 14 and 18 above. However we conclude that the sum of £1,692 is excessive and that the sum of £500 is a reasonable estimate being the same as the previous year.

Water rates

57. The sum of £4,310 is claimed. The parties put forward the same arguments as for the previous year.

Decision

58. We are satisfied that the lessee is liable for the same reasons set out in paragraph 14 above. However as in the previous year we cannot accept that the sum of £4,310 is a sum which is reasonably payable and we conclude that £250 is a reasonable sum to pay in advance based on the sum we decided for 2005.

Health and safety inspection

59. The sum of £463 is claimed. Mr Donnellan said that CPM did a health and safety inspection every year and that there was one on the file for 2005 and 2006. It was his understanding that CPM carried this out themselves and he accepted that it was not necessary to carry out such an inspection every year. He said the report was sent to the directors only. Ms Gumbs said that she did not believe such a report existed as she had never seen it. She said there had been a leak in the electricity cupboard for years

and described the ceiling as “black and falling down” which did not suggest that any inspection had been carried out or if it had that it had not been acted upon.

Decision

60. Mr Donnellan was not able to explain to the Tribunal the legislation which required a health and safety inspection to be carried out every year at a cost of £463 to the lessees. We are not able to find a requirement in the Fifth Schedule that a service charge should be paid for this service. If we are wrong about that we disallow this expense in any event as we do not consider this is a sum which is reasonable to be paid by the lessees in advance.

Asbestos testing

61. The lessees had been charged the sum of £450 for asbestos testing. Mr Donnellan was not able to give the Tribunal any information about this test. Ms Gumbs said that she did not believe it had taken place and that she had never received any letters from the management company or anyone else to tell her that this testing was to be carried out nor what the result of the test was.

Decision

62. We are satisfied that if an asbestos test was necessary and was carried out it would come within paragraph 22 of the Fifth Schedule i.e. “abating any nuisance and executing such works as may be necessary for complying with any notice by a local authority in connection with the building”. However Mr Donnellan could give us no explanation of why this asbestos test was carried out nor could he provide us with a report nor could he give us an explanation why a purpose-built building in 1990 might have contained asbestos. In those circumstances we do not consider it is reasonable for this charge be made in advance and we disallow it in total.

Reserve fund

63. The landlord claimed a total of £5,000 to be added to the reserve fund. The accounts for 2005 show a reserve of £15,719. Mr Donnellan explained that a further £5,000 was to be collected in order to have sufficient funds to be able to carry out major works to the block. Ms Gumbs submitted that £15,000 was sufficient and there was no requirement or need to raise further funds.

Decision

64. The landlords are permitted to maintain a reserve fund under paragraph 30 of the Fifth Schedule. Paragraph 30.1 reads "Such sum (to be fixed annually) as shall be estimated by the Company to be reasonably required to provide a reserve fund for items of expenditure in connection with the provision of the Services or any of them to be or expected to be incurred at any time during the period of 3 years commencing with the date upon which the estimate is made". The tenant is therefore liable to contribute to the reserve fund and in our view it is reasonable to charge an additional sum of £5,000 in the service charge estimate for 2006. Both parties acknowledged that the block had become run down and from our own knowledge and experience we conclude that the sum of £20,000 is a reasonable sum to hold in a reserve fund in order to be able to carry out major works.
65. We emphasize that the lease requires that the items of expenditure must be incurred or be expected to be incurred during the period of three years commencing with the date upon which the estimate is made.

Management fees

66. The sum of £6,552 was included in the service charge estimate for 2006. The parties put forward the same arguments as for the previous year.

Decision

67. We repeat the points made about liability in paragraph 31 above for management fees. The estimate for 2006 covers three months management by CPM and nine months by Goldfield Properties Limited. We reiterate our concern about the quality of the management of this block whilst at the same time acknowledging that Goldfield Properties are endeavouring to improve the management of the block. However it was apparent to us during the hearing that Mr Donnellan was either not familiar with the RICS's residential management code or was familiar with it but had decided not to comply with it. Either way we do not consider it appropriate to allow the full 10% for management fees being the maximum allowed in the lease and we conclude that the amount which is reasonably payable in respect of the estimate for 2006 is 7.5% of the estimated annual expenditure excluding reserve fund monies which amounts to £1,332.10.

Sums not challenged

68.	Audited accountancy costs	-	£577
	Bulk refuse clearance	-	£750

Summary of service charge estimates for 2006

69.	Cleaning, gardening and window cleaning	-	£7,430
	Buildings insurance	-	£6,270
	Directors and officers insurance	-	£ 445
	Insurance valuation	-	Nil
	Audit and accountancy fees	-	£ 577
	Bank charges	-	Nil
	Company secretary	-	Nil
	Legal costs	-	Nil
	Sundries	-	Nil
	Minor repairs	-	£1,200
	Electricity	-	£ 500
	Water rates	-	£ 250

Bulk refuse collection	-	£ 750
Door entry system	-	£ 206
Health and safety inspection	-	Nil
Asbestos testing	-	Nil
Reserve fund	-	£5,000

Total - £22,628.00

Management fees at 7.5% on annual expenditure (excluding reserve fund) of £17628 -
£1,332.10

Total - £23,960.10

70. Share of Ms Gumbs, being 1.359% in accordance with paragraph 1.7 of the lease, is £325.61.

Additional items claimed in county court proceedings

71. The landlord had also claimed in the county court proceedings the sum of £120 for a court fee which Mr Donnellan explained must have been incurred in a previous set of proceedings by CPM. He conceded that the landlord would not pursue Ms Gumbs for this sum.
72. However there was a further sum of £176.25 for “agents Admin Fee for court action” shown on the “tenant’s account summary” provided by Mr Donnellan. This is dated 24th November 2006 and must therefore be a charge which had been made by Goldfield Properties Limited. We are at a loss to understand the basis on which Ms Gumbs has been sued for this sum. There is no contractual obligation on her to pay it and it is not a sum which was included in the service charge estimate for 2006. In those circumstances we disallow the sum of £176.25 for the agents admin fee for court action.

Conclusion and report to Edmonton County Court as ordered by District Judge Silverman on 4th January 2007

73. Our jurisdiction in this case is limited to determining the liability for and reasonableness of the service charges in dispute which were claimed in the county

court proceedings 6QZ88419. The claim is set out at paragraph 1 above. We have found that Ms Gumbs is not liable for the additional amounts claimed of £120 for court costs in the previous case and £176.25 for “agents admin fee for court action”. We have found that Ms Gumbs is liable for the sum of £259.80 for actual service charges incurred in 2005 and for £325.61 for service charges on account in 2006 making a total of £585.41.

..... Jane Dowell

Jane Dowell

Chairman

Dated this 14 day of May 2007

