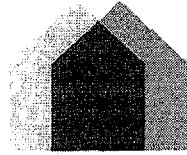


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Residential  
Property  
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**

**Landlord and Tenant Act 1985 section 27A**

**LON/00BK/LSC/2007/0096**

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**Premises:** 122 Lauderdale Mansions, Lauderdale Road,  
Maida Vale, London W9 1NG

**Applicant/tenant:** Dr Nermeen Yanus Varawalla

**Respondent/landlord:** Parkgate City represented by Lauderdale  
Mansions (West) Ltd

**Tribunal:** Adrian Jack (Chairman), James Driscoll

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**Background**

1. The Applicant is a long leaseholder of 122 Lauderdale Mansions. She holds under a 999 year lease from 1979. The Respondent is her landlord.
2. By an application dated 9<sup>th</sup> March 2007 the tenant sought determination of her liability to make a contribution to the lift charges for flats 118 to 138 Lauderdale Mansions in the service charge years 30<sup>th</sup> September 2003 to 29<sup>th</sup> September 2004, 30<sup>th</sup> September 2004 to 29<sup>th</sup> September 2005, 30<sup>th</sup> September 2005 to 29<sup>th</sup> September 2006, 30<sup>th</sup> September 2006 to 29<sup>th</sup> September 2007 and onwards. She was being charged one eleventh of the cost of maintenance and repair of the lift.

**Hearing**

3. The application was listed today for a pre-trial review. The tenant appeared in person. The landlord was represented by Mr Doval of counsel.
4. The Tribunal was sitting with two members and, thus constituted, had jurisdiction to make a final determination of such issues as it was appropriate to determine.
5. The Tribunal indicated to the parties that the central issue for determination was the true construction of the lease. The tenant submitted that she did not benefit from the lift, therefore on the true construction of the lease she did not have to contribute to the cost of the lift.

6. Mr Doval disputed that as a matter of fact the lift did not benefit the tenant's flat. However, after discussion he and the tenant agreed that the Tribunal should determine the question of construction on the basis that the tenant's factual contentions were established. If the Tribunal found in favour of the tenant on the construction of the lease, then the landlord would be entitled to a further hearing to determine the factual question of whether the lift did in fact benefit the tenant.

#### **The law**

7. Section 27A of the Landlord and Tenant Act 1985 gives the Tribunal the power to determine whether service charges are payable.

#### **Issue**

8. In this case the lease provides for the tenant to pay "a reasonable proportion of the cost to the Management Company of providing a lift in the Building (including the cost to the Management Company of all works of maintenance and repair to and the replacement of the motor and cables and other equipment necessary for the running of the lift) such proportion to be calculated by the Management Company on the basis of the demised premises as one flat in proportion to the total number of flats in the Building served by the lift."
9. The tenant argued that, because the lift did not benefit her, the "reasonable proportion" was therefore nil. Mr Doval argued that the clause itself provided that a "reasonable proportion" was one divided by the number of relevant flats.
10. In fact the number of flats in the block is twelve. However, one of the flats is occupied by the porter. The porter serves not just this block but also other blocks on the estate. An issue might therefore have arisen as to whether the appropriate number of flats to take into account (on the assumption that the landlord's argument was right) was twelve rather than eleven. However, the tenant did not take this point in her application to the Tribunal and told the Tribunal that she did not wish to pursue this issue before it.
11. The Tribunal considered that the point had potentially wider relevance to other tenants on the estate. If a charge in relation to the lift was to be notionally applied to the porter's flat, then that might well affect the service charge liability of other tenants on the estate. Accordingly the Tribunal accepted that tenant's position and did not make any determination in respect of the appropriate proportion.
12. In our judgment Mr Doval's argument is correct. The lease defines "a reasonable proportion" as being the proportion of the tenant's flats to the total number of flats in the building. In our judgment the tenant is obliged to pay a proportion of the cost of the lift, regardless of whether it in fact benefits her or not. Since the parties were agreed that one eleventh was the appropriate proportion, the Tribunal determines that the tenant is liable to pay the amounts claimed.

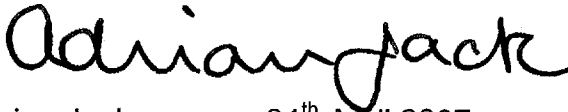
#### **Costs**

13. So far as the costs of the application payable to the Tribunal are concerned, the Tribunal has a discretion as to who should pay them. In this case the tenant has lost comprehensively. Accordingly she should bear the costs of making the application. We therefore make no order in respect of these costs, leaving them to fall on the tenant.

14. The tenant applies for an order under section 20C of the Landlord and Tenant Act 1985 so that the landlord is unable to recover its own legal and other costs of the application from her. Since the tenant has lost her application, the Tribunal considers that there are no grounds for making such an order, which is accordingly refused. The Tribunal makes no finding as to whether the lease provides for recovery of such costs by the landlord.

**Determination**

15. Accordingly the Tribunal determines that the tenant is liable to contribute to the cost of maintenance and repair of the lift in the service charge years 30<sup>th</sup> September 2003 to 29<sup>th</sup> September 2004, 30<sup>th</sup> September 2004 to 29<sup>th</sup> September 2005, 30<sup>th</sup> September 2005 to 29<sup>th</sup> September 2006, 30<sup>th</sup> September 2006 to 29<sup>th</sup> September 2007 and onwards.
16. The Tribunal makes no order for costs. The Tribunal refuses the tenant's application under section 20C of the Landlord and Tenant Act 1985.



Adrian Jack

24<sup>th</sup> April 2007