RESIDENTIAL PROPERTY TRIBUNAL SERVICE

SOUTHERN RENT ASSESSMENT PANEL

LEASEHOLD VALUATION TRIBUNAL

Residential Property TRIBUNAL SERVICE

Section 27A Landlord and Tenant Act 1985

Application for a determination of liability to pay service charges

DECISION AND REASONS

Case Number:	CH1/18UH/LIS/2008/0030
Property:	LEE CLIFF PARK WARREN ROAD DAWLISH WARREN DEVON EX7 0NE
Applicant :	MR JOHN ASPINALL AND OTHERS
Respondent :	MRS PAMELA PARMIAGANI
Date of Application:	30 JUNE 2008
Date of Hearing:	6 OCTOBER 2008
Appearances:	EILEEN O'CONNOR (Secretary to the Residents Association) and JOHN ASPINALL FOR APPLICANT, MRS PAMELA PARMIAGANI AND MR WARD FOR RESPONDENT
Witnesses:	NONE

In Attendance:	DAVID AND BERYL SWIFFEN (K9), MR ALLAN SEATON (J1), MRS JOAN BIRD (K15), MR D L FRANKLYN (K16), MR PETER MILLS (K1), MR AND MRS L GRAYSON (J3), MRS JULIA ASPINALL (H1), MRS EDNA DAVISON (J5), MRS JOAN SALISBURY (K14), MR AND MRS JOHN CRAPPER (J4) MR DARREN STOCKS AND SAM SECKER – CROWN Property Management MRS TRACY WILLIAMS Clerk to the Tribunal
Tribunal Members:	CINDY RAI LLB (Chairman) TIMOTHY DICKINSON BSc. FRICS (Valuer Member) PETER GROVES (Lay Member)
Date of Decision:	31/10/06

SUMMARY OF DECISION

The Tribunal decided:-

1. **Rates**

   The Applicants are not liable to contribute towards the cost of a rates bill which the Respondent suggested including the grounds. The copy of the rates accounts produced by the Respondent at the hearing clearly show that the rates liability is being assessed on the rental value of the chalets; the reference to refuse collection is not wrong but such costs in so far as they relate to services enjoyed by the Applicants are included in the council tax paid by each of the Applicants as leaseholders of their respective flats. [£84.07 not allowed]

2. **Stone Wall**

   The Tribunal concluded that the amount charged was payable by the Applicant . Whilst clearly the parties do not agree with regard to the quotations obtained by the Applicant these were obtained after the event and without reference to the bill of quantities. [£38.62 allowed]

3. **New Water Pipe**

   This cost was reasonable; it fell within the definition of a cost that could be recharged in the lease , was apportioned on a reasonable basis and was therefore payable by the Applicants. [£50.56 allowed]

4. Laundry Repairs

This charge (in so far as it relates to the laundry) is not a recoverable cost. Although it was suggested by the Landlord at the hearing that some of the costs claimed were for sundry repairs it is necessary for the Landlord to demonstrate clearly when claiming costs for common parts which might be recoverable that such costs are in accordance with what she is entitled to recover in the lease.[£13.63 not allowed]

5. Bank Charges

These are not recoverable since there is no provision in the lease enabling recovery. The scheme envisaged by the Commonhold and Leasehold Reform Act which amends and inserts section 42 into the Landlord & Tenant Act 1987 is that service charges once paid should be held in separate accounts on "trust" for the benefit of those contributing tenants. [£1.25 not allowed]

6. Ground Works

It was determined that these costs appeared to be both reasonable and reasonably incurred. The grounds appeared to be in good condition and were well cared for and the Tribunal determined that the Applicants should pay the amount claimed.

7. Section 20 (c) Landlord and Tenant Act 1985

The Applicant also made an application under section 20(c) of the Landlord and Tenant Act 1985. This was not formally referred to by the Applicant at the hearing.

Having reviewed the content of the specimen lease offered by the Applicant in the application and accepted by the Respondent as being typical the Tribunal determined that it contains no provision that would enable the Landlord to pass on any costs it has incurred in relation to the application to the Applicant. Therefore the application is unnecessary as the Landlord is not entitled to recover her costs. However it is formally noted that for this reason that the tribunal would have accepted the Applicants application had the Respondent attempted to pass on costs of defending the application to the parties (including the Applicant) liable to contribute towards the service charges.

8. The Application

This Application was made by the Applicant under Section 27 A of the Landlord and Tenant Act 1985 (the 1985 Act) in respect of the year ending 30.11.2007.

The original application was made by John Aspinall who was at the hearing referred to as being a Director (of the Residents Association) Subsequently the following parties were joined as applicants.

Davison , Franklin, Perry, Seaton, Grayson, Bird, Hayes, Reeves, Crapper, Swiffen, Neale , Eileen O'Connor, Kenneth Smith, Malcolm Smith, Peter Drew, Peter and Anne James, Robert Bevan, M Chater, Joan Sainsbury, Martin Murray and David Neale

All the applicants are leaseholders of flats within the Property. In the application the Applicant disputed his liability to pay the following items included in the service charges claimed by the Respondent:-

Rates	£84.07
Stone Wall	£28.62
New Water main	£50.66
Laundry Repairs	£13.63
Bank Charges	£1.25
Ground Works	£320.10

9 Inspection

The Tribunal inspected the Property prior to the Hearing and were accompanied at the inspection by Mr Aspinall and Mrs O'Connor for the Applicant and Mrs Parmiagani and Mr Ward for the Respondent. They were shown the exterior of the three Blocks in which the 33 flats are situate and noted the location of the Reception building. They were told that "A" block comprised 13 flats and "B" and "C" Blocks comprised 10 flats in each. They also inspected the route of the new water main and noted its location with reference to the House (referred to in the Applicants evidence). The inspected both the laundry and the adjacent store building in which garden equipment was stored. They were able to see the majority of the communal grounds and gardens and noted the location of the 14 chalets which belonged to the freeholder and also examined the stone wall which is also referred to in the Applicant's claim.

10 The Law

Section 20C of The Landlord and Tenant Act 1985 and section 27A are set out below.

S20C "Limitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court or leasehold valuation tribunal, or the Lands Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;

(c) in the case of proceedings before the Lands Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.".

S27A Liability to pay service charges: jurisdiction

(1) 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.

(2) Subsection (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 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 subsection (1) or (3) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

Section 42 of the Landlord and Tenant Act 1987 is set out below

S42 Service charge contributions to be held in trust.

(1) This section applies where the tenants of two or more dwellings may be required under the terms of their leases to contribute to the same costs, or the tenant of a dwelling may be required under the terms of his lease to contribute to costs to which no other tenant of a dwelling may be required to contribute, by the payment of service charges; and in this section--

"the contributing tenants" means those tenants and "the sole contributing tenant" means that tenant;

"the payee" means the landlord or other person to whom any such charges are payable by those tenants, or that tenant, under the terms of their leases, or his lease;

"relevant service charges" means any such charges;

"service charge" has the meaning given by section 18(1) of the 1985 Act, except that it does not include a service charge payable by the tenant of a dwelling the rent of which is registered under Part IV of the Rent Act 1977, unless the amount registered is, in pursuance of section 71(4) of that Act, entered as a variable amount;

"tenant" does not include a tenant of an exempt landlord; and

"trust fund" means the fund, or (as the case may be) any of the funds, mentioned in subsection (2) below.

(2) Any sums paid to the payee by the contributing tenants, or the sole contributing tenant, by way of relevant service charges, and any investments representing those sums, shall (together with any income accruing thereon) be held by the payee either as a single fund or, if he thinks fit, in two or more separate funds.

(3) The payee shall hold any trust fund--

(a) on trust to defray costs incurred in connection with the matters for which the relevant service charges were payable (whether incurred by himself or by any other person), and

(b) subject to that, on trust for the persons who are the contributing tenants for the time being, or the person who is the sole contributing tenant for the time being.

(4) Subject to subsections (6) to (8), the contributing tenants shall be treated as entitled by virtue of subsection (3)(b) to such shares in the residue of any such fund as are proportionate to their respective liabilities to pay relevant service charges or the sole contributing tenant shall be treated as so entitled to the residue of any such fund.

(5) If the Secretary of State by order so provides, any sums standing to the credit of any trust fund may, instead of being invested in any other manner authorised by law, be invested in such manner as may be specified in the order; and any such order may contain such incidental, supplemental or transitional provisions as the Secretary of State considers appropriate in connection with the order.

(6) On the termination of the lease of any of the contributing tenants the tenant shall not be entitled to any part of any trust fund, and (except where subsection (7) applies) any part of any such fund which is attributable to relevant service charges paid under the lease shall accordingly continue to be held on the trusts referred to in subsection (3).

(7) On the termination of the lease of the last of the contributing tenants, or of the lease of the sole contributing tenant, any trust fund shall be dissolved as at the date of the termination of the lease, and any assets comprised in the fund immediately before its dissolution shall--

(a) if the payee is the landlord, be retained by him for his own use and benefit, and

(b) in any other case, be transferred to the landlord by the payee.

(8) Subsections (4), (6) and (7) shall have effect in relation to any of the contributing tenants, or the sole contributing tenant, subject to any express terms of his lease (whenever it was granted) which relate to the distribution, either before or (as the case may be) at the termination of the lease, of amounts attributable to relevant service charges paid under its terms (whether the lease was granted before or after the commencement of this section).

(9) Subject to subsection (8), the provisions of this section shall prevail over the terms of any express or implied trust created by a lease so far as inconsistent with those provisions, other than an express trust so created, in the case of a lease of any of the contributing tenants, before the commencement of this section or, in the case of the lease of the sole contributing tenant, before the commencement of paragraph 15 of Schedule 10 to the Commonhold and Leasehold Reform Act 2002.

11 Hearing

At the Hearing Mrs O'Connor presented the Applicants case. In response to questions from the Tribunal she confirmed that in fact Mr and Mrs Crapper were the leaseholders of J5 and not K5 as shown in the application made by them together with other named leaseholders to be joined into the proceedings. The application can now be treated as having been made on behalf of 22 of the leaseholders. The Tribunal have been supplied with a copy of a typical lease in the Applicants bundle (the Lease) which is actually the lease of Flat J5. Neither party have suggested that any of the other leases are substantially different.

The following definitions are contained in the Lease:-

The Building - the building within the Property shown edged blue on Plan 1 The plan is not coloured.

The Property - comprises all the land together with all walls boundaries fences and paths thereto belonging (but not the buildings erected thereon) all which is shown on plan number 1 annexed and thereon edged red

The Demised Premises - are defined in the First Schedule

The Reserved Property - means that part of the Building and Property not included in the demise of any Flat and being more particularly described in the Second Schedule and which is intended to be retained by the Lessor.

[The Second Schedule is as set out below]

The Reserved Property

Firstly all those paths roads yards and other land forming part of the Property not allocated exclusively to any Flat and halls reception areas staircases landings passages sand other

parts of the Building which are used in common by the owners or occupies of any two or more of the Flats

Secondly all those the main structural parts of the Building including the roof foundations and main walls and external parts thereof (but not the glass and frames of the windows of the Flat not the interior surfaces of such of the external walls as bound the Flats) and all cisterns tanks drains sewers pipes wires ducts and conduits not solely used for the purpose of one Flat and

Thirdly the boundary walls and garden walls of the Property insofar as they may belong thereto or be party walls.

The Common Parts - means that part of the Reserved Property within the Building

The Retained Land - means all that land (save for the Property) in respect of which the Lessor is registered at HM Land Registry as proprietor with absolute title under Title No. DN206744 [A copy of the official land registry plan was given to the Tribunal at the hearing]

The covenants by the Lessor are contained in the Sixth Schedule. The broad requirement is that;-

1 The Lessor shall so often as reasonably required (inter alia)

Decorate the exterior....

Maintain repair rebuild and renew the main structure ...(which includes cisterns tanks sewers drains pipes wires ducts and conduits not solely used for the purpose of a flat

2 Insure

3 Keep the Common Parts in a good and tenantable state of repair.....

4 Give reasonable notice before carrying out works to Reserved Property if it needs access to the Demised Property.....

[We have not reproduced the wording exactly but would refer both parties to the actual wording as set out in the Lease]

Rates

Mrs O'Connor stated that the Applicant queried why a proportion of the Respondent's rates was being recharged . Each Applicant paid its own Council Tax. They had never contributed to other rates payments before.

Enquiries from the Tribunal led to the production by the Respondent of a copy of a rating account from which it became apparent that the amount upon which the recharge was based related to the rating of the chalets. Therefore it was not, as the Respondent had suggested a rates demand in respect of the communal areas.

On that basis the Tribunal determined that the charge made which amounted to £84.07 for each leaseholder was not payable. The Respondent had relied upon advice from her

accountant in seeking to recharge the rates. What she had not done was to examine what it was that was being rated. Since each leaseholder paid its own council tax it was already paying a share of the costs of the refuse disposal.

Block light and apportioned electricity charges

The Applicants have been charged the sum of £305.24 for the electricity supplied to light the exterior of each of the three blocks. They claimed this charge is excessive. It appears that the actual charges are not separately metered so as to enable this charge to be accurately recharged. On the evidence put forward by the Respondent she was able to estimate reasonably accurately a charge for one of the Blocks (which was separately metered) and had therefore assumed it was appropriate to charge a similar amount for each of the other two blocks. She considered it appropriate that the leaseholders should also contribute towards the electricity costs incurred in powering tools used in the gardens and lighting the entrances and the car park but has stated that the actual amount recharged and shown in the service charge account for the year ending 30.11.2007 only relates to the block lighting. It would appear that such charge can properly be recovered under the terms of the Lease

New Water Main Pipe

The Tribunal had seen evidence as to the location of this pipe which came from the water main connection in or under the highway adjacent and more less straight towards the reception building. A spur apparently had been taken "off" to serve the house and another spur served the block of flats which were closest to Beach Road. The Respondent stated that a pipe of a greater diameter had been fitted to improve the water pressure. The evidence of parties was not precise and it was not absolutely clear why the new water pipe had been installed. Both parties seemed to agree that the original metal water pipe has been replaced with a new 63mm plastic pipe.

The Respondent claimed that the installation of the new pipe was necessary to replace a damaged pipe; and it was thought that the installation of a length of new pipe would be suitable for serving not only the block at the front of the Park but also in due course to connect into the other blocks. In fact the Respondent had taken a spur off to serve the house too. For this reason only a percentage of the cost had been charged to the Respondents.

The Applicants claimed that the work was carried out for the sole benefit of the house and that therefore they should not contribute, but the main does serve one of blocks of flats too. They disputed the need for the installation of a pipe of such a large diameter but in fact the Tribunal having considered the information they were provided with thought that the diameter of the pipe of 63 mm was reasonable. Concern was also expressed by the Applicants that the works were not guaranteed and that proper invoices had not been produced.

The Respondent stated that there had previously been complaints about poor water pressure but no real evidence with regard to the pressure was actually presented to the tribunal by either party. Neither party seemed to agree as to whether in fact there had been any actual improvement in water pressure. The Respondent denied having installed extra bathrooms or sinks in the house. It was however agreed by both parties that a leak or series of leaks last December had resulted in some emergency repair work being

necessary. It was not clear what had caused the leaks and there was some suggestion that the replacement pipe was of a metric diameter which had contributed to a difficulty connecting it to the actual main. Neither party was very clear as to the cause of the leaks. There was some agreement however and acceptance that a repair was necessary. The Respondent also mentioned some flooding to the store but it was not really clear if that had occurred prior to the installation of the new pipe or afterwards and whether there was any causal link to the installation of the new pipe.

The Tribunal determined that the amount charged which was 66% of the actual cost seemed to be reasonable. It also seemed reasonable for this charge to be split equally between the three blocks because this was consistent with the way in which such repairs were dealt with and in accordance with the provisions for recovery of the costs of such works in the lease. Clearly the replacement or repair of a water pipe which served a block of flats is recoverable under the terms of the Lease and the apportionment of cost between the Landlord and the Tenants in recognition of the benefit to the house seemed reasonable.

Laundry Repairs

From an examination of the Lease it does not appear that there is any provision within it that would enable the Respondent to recover these costs from the leaseholders. The Respondent said that the laundry was provided as a service and that the amounts charged in the coin operated machines barely covers the electricity. Clearly the laundry serves the chalet occupiers too.

It is a communal facility but not one which the leaseholders have a right or expectation to use. Therefore it is not reasonable to recharge them for the costs of repairs. The Respondent did suggest that the costs may have been badly described in the account she had produced. If that was the case it would simply support the potential benefit of producing clearer details of the expenditure and allocating it properly and in accordance with the provisions of the lease with regard to what is recoverable from the leaseholders.

The Tribunal determined that it was not reasonable for the Applicant to pay any part of these charges.

Bank Charges

These are not recoverable under the lease and therefore cannot be charged to the Applicants. In addition he Applicants believe that the service charges paid on account should be held on Trust for them. They rely upon section 42 of the Landlord and Tenant Act 1987 which provides that moneys held on account of service charges are deemed to be held on a statutory trust and should be held in one or more separate accounts. . In fact the Landlord is holding the service charges in a separate account At present the Landlord is not in breach of the statutory provision. Although the Commonhold and Leasehold Reform Act 2002 does make provision for further safeguards the relevant provision of that Act are not yet in force.

Ground Works.

The Respondent said that Mark was employed full time by her and occasionally undertook additional employment outside his contracted hours. The Applicant does not believe that it

is necessary to have a full time employee. There are only 14 chalets and they suggest that some of his time is spent servicing and cleaning the chalets. They believe that the number of hours charged to the service charge account is excessive and is not a fair reflection of the time actually spent by Mark working solely on the grounds and undertaking duties exclusively for the benefit of the Applicants. The total amount recharged for the current year is £7,405.77 and is referred to as being for sundry works. Reference was made to a decision of another tribunal in which according to the Applicant that tribunal determined that 200 hours over 42 weeks was a reasonable amount of hours to charge the leaseholders. The Applicant also queried what was agreed by the Respondent that she would charge for the ground works. When it became clear that in fact the parties had not finally agreed anything and that they could not agree a regular weekly number of hours the Respondent apparently stated that instead she would employ a managing agent and this would result in the Applicant paying an increased amount. The Applicant asked Crown Property Management to quote an amount that they considered would be reasonable to manage to whole site. It is not clear what that organisation were told regarding the scope of the their duties but they apparently stated that service charges for a similar site which they managed were about £600 per year which include the fees payable to the managing agents. It was also suggested that Crown Property Management concluded that the site could be managed by one person spending 8 hours a week on site. However the Respondent believes that would be wholly insufficient. There are some 3 acres of ground which she says require daily attention.

The Respondent stated that much of the work carried out at her house was carried out "privately" during Mark's holidays. He receives 6 weeks paid holiday each year. No charges were made to the Applicant or to the service charge account during this period. She does however accept that professional management of the site is necessary. She said however, given that the site is approximately 3 acres it is unrealistic to suggest that it could be maintained properly by someone spending just 8 hours each week on site.

Generally from the inspection the gardens and grounds are currently both well maintained and tidy. The site is extensive and sprawling comprising both woodlands and banks which probably require continuing maintenance. In the past the leaseholders have complained of a lack of maintenance and certainly the charges seem to reflect this It was not disputed that in May 2007 the grounds were unkempt. Since then the parties agreed that the grounds have been improved and currently appear well maintained.

It was suggested by the Respondent that the information obtained by the Applicant with regard to service charges payable by the leaseholders on other sites within the vicinity is not entirely accurate. The Respondent believes that if a management company undertook the ground works they could cost at least as much as she had charged the Applicants and probably more. The Applicants do not appear to challenge the actual costs of what has been carried out but the lack of information with regard to the works. They would like comparative estimates to be obtained and to ensure that when substantial works are undertaken guarantees are obtained. They expressed a desire to be able to verify accounts which deal with specific large items of expenditure. They desire greater transparency in the accounting process and perhaps more involvement.

What concerned the Tribunal was that the Respondent recharged the full cost of the tools purchased to enable Mark to carry out his maintenance of the site, to the service charge

account. Some allowance should be made for depreciation. Furthermore it is not clear to whom the tools actually belong. If they belong to the leaseholders because they have "paid for them" it seems unreasonable that the Respondent should seek to charge for their use. She said however that if she did charge she would credit the service charge account with the hire fees.

The Tribunal concluded that the costs of the ground works appeared on balance to be both reasonable and reasonably incurred. The hourly rate charged for Mark seems to be considerably less that the rate the Tribunal considered might be charged by a contracted gardener.

On balance the Tribunal thought that the amounts charged for the ground works were reasonable. They believed that the hourly rate for employing a gardener is probably more than the amount being charged for Mark ; The grounds are extensive enough to require both regular maintenance and expertise.

The Wall

The Applicants stated that they wanted evidence with regard to the invoiced costs and would have liked to see actual receipts. It seems that this evidence could not be provided. The Respondent had bought the stone "for cash" and had produced an indicative account retrospectively. The Applicants do not dispute the cost of the stone. They did question the amount of stone used. The Tribunal were told that a ton of stone remains "in stock" and available for use. Quotations were provided by the Applicants but after the event. They did not necessarily accord with the Bill of Works (a specification) which the Respondent had provided. Until the wall was repaired the boundary was incomplete. Certainly the repair does come within the definition of Reserved Property in the Lease.

Only part of the wall has been rebuilt and this was evident from the inspection. However part is double skinned and this apparently needed deep foundations although the Applicants seemed to dispute if this was done. That part which is single skinned is clearly built on top of what was existing and is not particularly attractive. However apparently there had been an intention to render it to match the side wall and that was put forward as a justification for its rather rough appearance.

The Applicants question why there is no invoice; why the invoice for the stone is post dated and illustrative only; and why the work is not guaranteed. The estimates produced to the Tribunal do not appear to be estimates for a job similar to that which was actually carried out and therefore do not give any accurate indication of what the costs should or might have been.

The Tribunal considered that notwithstanding that the wall was not particularly attractive and that the job carried out was not necessarily what the leaseholders would have liked the wall appeared to be robust and fit for purpose and the work and the cost was therefore reasonable and that the Applicants should pay for it. On the basis that it was considered that it would have been necessary to dig a trench under the double part of the wall and form a concrete footing then lay a stone wall in cement mortar to the required height.

Clearly a different approach with regard to the way this type of repair was carried out might possibly avoid the angst that the construction of this wall appears to have caused.

Whilst the parties do not agree with the bill of quantities prepared and the quotations obtained by the Applicant after the event the tribunal decided that the amount charged was reasonable having regard to the costs incurred in relation to the materials and labour for the double skinned wall. Generally it was noted that

(a) An amount of Stone remained in stock

(b) The general poor appearance of the single stone wall apparently resulted from an original intention to render it, at least in so far as it faced inwards (where the rendering would or could "match" in with the side wall.

(c) New water main

The Tribunal determined that the cost of the water pipe was reasonable. No evidence was produced by either party as to the need for the existing water pipe to be replaced. There were references by both parties to leakage. It was suggested the leakage may have resulted in the flooding of the stores but there appeared to be general agreement that the most recent leaks had been due to problems occurring the connection of the new metric gauge water pipe to the existing imperial gauge pipe work.

(d) The Applicant suggested that the pressure had improved but no evidence of any kind was produced other than hearsay. It seemed to the Tribunal that if it was accepted that the replacement pipe was necessary the apportioned costs was fair. It seemed appropriate to divide the charge between all the leaseholders on the basis that other charges for repairs to specific blocks had been so shared in the past and the actual division was in accordance with the lease.

12 Service Charges to be held on trust

Section 156(1) of the Commonhold and Leasehold Reform Act 2002, which is not yet in force save insofar as it confers a power to make regulations, inserts new sections 42A and 42B of the Landlord and Tenant Act 1987 relating to the statutory trust of service charge funds in s 42. The payee will be required to hold any sums standing to the credit of the trust fund in a designated account at a relevant financial institution.

The payee will be required to hold any sums standing to the credit of the trust fund in a designated account at a relevant financial institution. A tenant is given the right, exercisable by notice in writing, to require the payee either to provide facilities for him to inspect and take copies of documents evidencing that the requirements have been complied with, or to send copies of such documents or afford him reasonable facilities to collect such documents. The payee must comply with the notice within the period of 21 days beginning with the day on which he receives it. Where the payee is required to provide facilities for inspecting documents he must do so free of charge but may treat such costs as his costs of management. The payee may make a reasonable charge for doing anything else in compliance with a requirement imposed by notice under s 42A

Section 42 of the Landlord and Tenant Act 1987 effectively imposes a statutory trust with regard to payments made on account of service charges not yet incurred. Service charges

must be held in trust for the specified leaseholders (which would include the Applicant) but this does require a designated trust account to be created. The section imposes a statutory trust and requires that the moneys be held in a separate account.

The Lease also provides that if a sinking fund is created (and the Landlord may do this but is under no obligation) the fund will also be held in trust. No evidence was adduced by either party as to the existence of such a fund. Also it was noted that the lease provisions would enable Landlord to recover service charges from the purpose of funding a sinking fund.

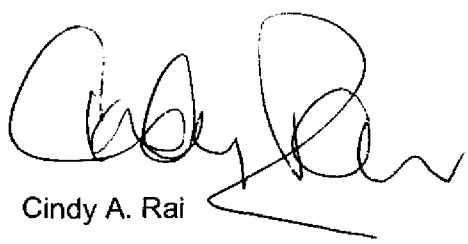
Although the Applicant has referred on several occasions to the Respondent being in breach of section 42 she is not. Clearly it would be appropriate however for the Respondent to anticipate as much as possible the changes that may be required when the new sections 42A and 42B referred to above come into force.

13. Decision

It was not necessary to determine the Section 20C claim as the Lease does not enable the Landlord to recover the costs of the proceedings as part of the service charge.

The service charges disputed in the year ending 30.11.2007 were allowable or not as set out in the Summary of the Decision set out above.

The specific questions raised by the Applicant with regard to the statutory trust created by section 42 of the Landlord and Tenant Act 1987 have been addressed in paragraph 12.



Cindy A. Rai

Dated 31/10 2008

LLB Chairman

A Member of the Tribunal

Appointed by the Lord Chancellor