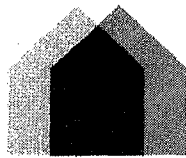


3632



**Residential
Property**
TRIBUNAL SERVICE

**LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)

Case Reference: LON/00AZ/LSC/2007/0308

Premises: Flat 3, 39 Whitbread Road, London, SE42BD

Applicants: Morgan & Hartland Ltd

Represented by: Mr M Powell, Juliet Bellis & Co. Solicitors

Respondents: Ms H Johnstone

Represented by: Ms J Samuels, Samuels & Co. Solicitors

Leasehold Valuation Tribunal:

**Miss A Seifert FCI Arb
Mr R A Potter FRICS
Mrs S Justice BSc**

Decision date: 7th March 2008

THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985 (as amended) – Sections 27A and 20C

Ref: LON/00AZ/LSC/2007/0308

Premises: Flat 3, 39 Whitbread Road, London SE4 2BD (“the Building”)

The Tribunal’s decision

1. This matter was transferred to the Leasehold Valuation Tribunal from the Croydon County Court by order of District Judge Burn dated 8th August 2007. The County Court claim concerns the payment of arrears of service charges for the period 24th June 2006 to 23rd June 2007. The Respondent challenges the reasonableness of some of the items included in the service charge claimed and in addition questions the reasonableness of some service charges paid previously. The counterclaim also makes a claim for damages for inconvenience, anxiety and loss of amenity, but this is not a matter for the jurisdiction of the Tribunal, which can only determine the reasonableness of the service charges.
2. Under section 27A of the Landlord and Tenant Act 1985 (as amended) (“the Act”) an application can be made to the Leasehold Valuation Tribunal for a determination as to the payability of service charges.

Under section 19 of the Act:

(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 in 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.

3. An application under section 20C of the act dated 7th December 2007 was made. The lessees of flats in the Building named in that application were Michael James Gittings and Alison Dorothy Brown of flat 1, Alonzo Rodrigo Avalos of flat 2 and Hazel Adams Johnstone of flat 3. They applied under section 20C of the Act for an order that the costs incurred or to be incurred

by the Applicant in connection with these proceedings are not to be taken into account in determining the amount of any service charge payable by the lessees specified in the application on the grounds that it would be just and equitable in the circumstances to make such an order.

4. The Building, 39 Whitbread Road, is a converted property divided into three residential flats.
5. A copy of the lease of flat 3 ("the lease") was provided. The lease was dated 25th July 1984 and was made between Rootpath Limited as lessor and Roy Aubrey Royer as lessee. The lessor's interest under the lease became vested in the Applicant, and the lessee's interest became vested in the Respondent.
6. The term of the lease was 99 years from 25th December 1982. The ground rent payable was £75 for the first 33 years, £150 for the second 33 years and £300 for the remaining 33 years payable in advance on the 25th December each year. In addition the lessee agreed to pay as additional rent the due proportion of such sum or sums as the lessor shall pay for keeping the Building insured against fire, public liability and other such risks as the lessor deemed necessary or expedient. The due proportion as set out in Part 6 of the Schedule to the lease was one third plus one third of the rental and maintenance of any entry phone system from time to time installed in the Building.
7. The lessee covenanted in clause 2(a) of the lease to pay the reserved rents on the days and in the manner prescribed. Clause 2(f) contained the following covenant on the part of the lessee.

2(f)(i). To contribute and pay the due proportion of the costs and expenses of the Service Obligations together with either the reasonable charges of the Managing Agent appointed by the lessor to carry out its obligations hereunder or (if the lessor shall undertake the management itself) a management fee of fifteen per centum of the said costs and expenses.

2(f)(ii). The contribution under paragraph (i) of this sub-clause shall be estimated by the lessor's managing agent (or by the lessor if the lessor shall undertake the management himself) as soon as possible after the beginning of each year and the lessee shall pay the estimated contribution by one instalment on the twenty-fifth day of December ...

2(f)(iii). As soon as practicable after the end of the year mentioned in Part 9 of the Schedule hereto and each succeeding year when the actual amount of the said costs and expenses and outgoings have been ascertained the lessee shall forthwith pay the balance due to the lessor or be credited in the lessor's books with any amount overpaid.

2(f)(iv). The Certificate of the Auditor for the time being of the lessor as to any amount due to the lessor under paragraph (iii) of this sub-clause shall be final and binding on the parties.

8. The Service Obligations were defined in Clause 1 of the lease as the obligations to provide services (if any) and other things undertaken hereunder.
9. Clause 3 of the lease contains the lessor's covenants.

By Clause 3(a) the lessor covenanted with the lessee:

3(a) (i) To insure and keep insured the Building against loss or damage by fire public liability and such other risks as the lessor deems expedient in an insurance office of repute in the full reinstatement value of the Building and will pay all premiums necessary for that purpose and in case of destruction or damage will cause all moneys received by virtue of such insurance to be forthwith laid out in rebuilding and reinstating the Building in all respects as it was before such destruction or damage and to produce to the lessee on demand a copy of the policy of insurance and the receipt for every such payment and consent to a note of the interest of the lessee and any mortgage of the lessee being endorsed on any such policy of insurance.

By Clause 3(b) the lessor covenanted with the lessee:

3(b)(i). To maintain repair redecorate and renew the Common Parts and the Service Conduits and the Estate and so far as applicable and practicable to keep the same reasonably lighted and in good condition and cultivation PROVIDED THAT the lessor shall not be liable for any temporary or accidental breakdown of any service.

3(b)(ii). So often as reasonably necessary but in any other case within every fourth year of the said term to decorate such part of the external walls (if any) previously so decorated and repaint the exterior ironworks gutters pipes and woodwork of the building in a proper and workmanlike manner and with suitable materials.

10. At the hearing the Applicant, Morgan & Hartland Ltd, the freehold owner and lessor, was represented by Mr M Powell, of Juliet Bellis & Co, Solicitors. The Respondent, Ms Hazel Johnstone, was represented by Ms J Samuels, of Samuels & Co, Solicitors.
11. Ms Samantha George, Property Manager employed by Haywards Property Services ("the managing agents"), attended the hearing and confirmed the contents of her witness statement dated 17th December 2007. Ms George also gave additional oral evidence.

12. The Respondent, Ms Hazel Johnstone, attended the hearing. She confirmed the contents of her witness statement dated 7th December 2007 and gave additional oral evidence.

The Applicant's Statement of Case

13. The Applicant lessor, Morgan and Hartland Ltd, served a statement of case dated 28th September 2007. This stated that the Applicant is a property investment company owned by Longmint Ltd. On 8th October 2003, the Applicant became the freehold owner of the Building which is registered under title number SGL416076 at Her Majesty's Land Registry.
14. The Applicant stated that it is only in a position to comment on the issue of the reasonableness of service charges since October 2003 when it acquired the Building. The Applicant employs Dunlop Haywards Residential Limited, trading as Haywards Property Services, in respect of carrying out its obligations under the leases of the flats contained in the Building.
15. The managing agents duties were described as including: forecasting service charge expenses such as health and safety checks; arranging buildings insurance; arranging general repairs; door entry system; preparing service charge budgets; procurement of necessary services; collecting service charge contributions for lessees; paying service providers on the lessor's behalf.
16. The service charge year to which the service charge relates runs from 25th December to the following 24th December in each year.
17. It was submitted that service charge budgets were forwarded to the lessees at the commencement of the service charge year, accompanied by a demand for the service charge contribution in the proportion of a third from each of the lessees.
18. Notwithstanding the requirement on Clause 2(f)(ii) that the lessees are required to pay the estimate service charge contribution in advance by one instalment at the commencement of the service charge year, in practice service charge demands have been made of each of the lessees demanding a pro rata contribution of 50% of the estimated contribution at the commencement of the service charge year. This is followed by a request for the remaining 50% in about June of the service charge year in question. The Applicant contended that this has been a practice adopted and accepted by the lessors and the lessees without objection since 2001.
19. The following sums were demanded in relation to flat 3 Whitbread Road in respect of 2005/06.

Due Date	Detail	Amount
24 Jun 06	Half yearly Service Charge in Advance	482.00

20. At the end of the service charge year an adjustment was made when actual expenditure was ascertained and the accounts for actual expenditure were prepared.
21. The following sums were also demanded in relation to flat 3 in respect of estimated service charge for 2006/07.

Due Date	Detail	Amount
25 Dec 2006	Half yearly Service Charge - 25 Dec 06 – 23 Jun 07	842.00

The Applicant's claim £842.50 was 50% of the Respondent's anticipated contribution for the service charge year ending in December 2007. End of year accounts showing the actual expenditure for 2006/07 had not been prepared by the date of the hearing.

The Respondent's Reply and the Applicant's Response

22. The Respondent, in her Reply dated 26th October 2007 to the Statement of Case, set out a number of challenges to the Applicant's claim. The Applicant responded to these challenges in a statement in its Response. The Respondent's challenges and the Applicant's case in respect of the items challenged are referred in detail later in this decision.

The Respondent's case

23. In the Reply, the Respondent disputed the following service charges items:
- 2003/04 and 2004/05 – Buildings insurance.
 - 2005/06 – Management fees.
 - 2006/07 – Budgeted expenditure for management fees.
 - 2006/07 – Budgeted expenditure for health and safety checks and general repairs.
24. The Respondent did not dispute the reasonableness of any of the service charges for the service charge years 2001/02 and 2002/03. Ms Samuels also confirmed that the Respondent was not challenging the charges for auditor's fees, notwithstanding that the accounts were not audited by an accountant or auditor.
25. The Respondent accepted that she had a potential outstanding liability overall of £782.87 in respect of various service charge years as set out in detail in a schedule attached to her Reply.

Service Charge Items Challenged

2003/04 and 2004/05 - Buildings insurance

26. Ms Samuels confirmed at the commencement of the hearing that the challenge to the charges for buildings insurance only related to the service charge years 2003/04 and 2004/05. She said that the dispute was based on

whether the Building was insured throughout this period. The question was the extent and duration of the building insurance.

27. Ms Samuels referred to a letter dated December 2004 from Sally Glover, an Assistant Property Manager at the managing agents, to the Respondent. This stated:
"... There are no arrears at your property, but I thought I should advise you that your building remains uninsured due to non-payment of Service Charges."
28. Ms Samuels acknowledged that in a letter dated 25th October 2005 from Sheila Tingey of the Managing agents to the Respondent, it was later stated that:
"... I should like to reassure you with regard to the buildings insurance on your property. I note from our records that a letter was sent to lessees advising that the premium could not be paid due to the high level of arrears at the property which had resulted in the service charge account for 39 Whitbread Road being seriously overdrawn. However, I can confirm the premium was paid as a loan from Haywards on behalf of the freeholder."
29. Mr Powell, representing the Applicant, explained that there had been major changes in the operation of the managing agents firm. The managing agents had been instructed in respect of the Building since October 2003. They had relocated their offices in July to September 2007 from Croydon to Basildon. Staff refused to relocate. New property managers had been taken on and therefore there was no property manager available to give evidence that had first-hand knowledge of this case at the relevant time. All the properties had been re-allocated. Ms George had been allocated 65 properties. There had been difficulties in obtaining information. All the files were electronic.
30. He submitted that the managing agents had made efforts to confirm the position in respect of building insurance. They had been unable to find the insurance documents. Investigations had been made in respect of the archived files. Requests for information had been made to the brokers Layton Blackham.
31. It was submitted in the Applicant's statement in response that the building insurance expenses for the years ending December 2004 and December 2005 in the sums of £1243.11 and £804.16 [stated as £804.11] were reasonable.
32. The managing agents had provided an expenditure report signed and dated 24th February 2006 stating that two payments had been made in respect of building insurance. These were the sum of £1024.81 on 23rd August 2003 and £1243.11 on 23rd August 2004.
33. A computerised record relating to building insurance showed that a payment was made by cheque in October 2003 to Royal & Sun Alliance for £1243.11. However, another computerised record relating to building insurance showed that a cheque dated 24th March 2003 for £1,024.81 was paid for buildings insurance for the period to September 2004.

34. A schedule of arrears dated 6th June 2007 in respect of flat 3 showed a charge for building insurance of one third of £1243.11 for the period 1st September 2003 to 1st September 2004. The figure of £1024.81 shown on the computerised record referred to above did not appear on the schedule of arrears.
35. The Tribunal also noted that a statement of maintenance, included a claim for £1243.11 paid to the Royal Sun Alliance on 23rd August 2003. The period of insurance relating to this payment was stated to be 14th September 2002 to 13th September 2003.
36. In her witness statement Ms George referred to having made enquiries to clarify why there were two transactions in relation to insurance at the Building, the first being a cheque payment to Layton Blackman in respect of insurance to September 2004 on 24th March 2004 and the second on 6th October 2003 being a cheque payment to Royal & Sun Alliance in the sum of £1243.11.
37. She stated that she had made enquiries of both Royal Sun & Alliance and Layton Blackham, but had received no substantive response. This situation had not changed by the date of the hearing.
38. The managing agents also provided an expenditure report signed and dated 4th April 2006 stating that a payment of £804.16 had been made for building insurance on 19th January 2005. Information on an electronic file included a certificate of insurance for building insurance from Zurich for the period 19th January 2005 to 19th January 2006.
39. Ms George said that the Applicant had changed brokers and the insurance was effected through a block policy. There was a change in the effective date for the insurance. There were no certificates of insurance for the earlier years.
40. Ms Samuels said that in view of the evidence now provided, the Respondent was not challenging that insurance premiums had been made by the Applicant. Since the Applicant had produced the documentation to show that the Building had been insured since 19th January 2005, a claim that the insurance had not been paid was not being pursued.
41. There was evidence that the Building was insured from 19th January 2005. However, she submitted that it appeared from the evidence that the Building was not insured from 2nd September 2004 to 18th January 2005.
42. The managing agent's letter in December 2004 stated that the Building was then uninsured. However, Ms Samuels said this went to the issue of whether the management fees were reasonable and reasonably incurred rather than whether the charges for building insurance were paid or were reasonable

The Tribunal's decision in respect of charges for Building Insurance.

43. Initially the Respondent submitted that it was unreasonable to be charged service charges for building insurance for the service charge years 2003/4 and 2004/5 in the absence of evidence that such charges were incurred in the absence of a receipted invoice from the insurers.
44. The Respondent's challenge to the building insurance charges for 2003/04 and 2004/05 was based on whether the insurance premiums had been paid and if so how much was paid. Ms Samuels submitted that in view of the documents produced in the course of these proceedings the Respondent was not pursuing a challenge to the insurance charges on that basis. The question of whether or not the building was uninsured was only relied on in respect of the reasonableness of the management fees.
45. The Tribunal considers that no satisfactory explanations were provided by the Applicant in respect of the inconsistencies and discrepancies in the documents produced. However, the Respondent does not now dispute that some insurance premiums were paid by the Applicant.
46. Having considered all of the evidence, the Tribunal finds that the total sums of £1243.11 (2003/04) and £804.16 (2004/05), were reasonable and reasonably incurred and one third of these sums was payable by the Respondent.

2005/06 - Management fees

47. With regard to 2005/06, the Respondent disputed the reasonableness of management fees in the sum of £369.96 on the basis that this represented an increase of 31% over the charge in the previous service charge years.
48. Various schedules and documents showed that the charges for all three flats together for management fees were as follows.

	£	Total service charge £
25 th December 2001 – 24 th December 2002	282.00	2129.30
25 th December 2002 - 24 th December 2003	282.00	1626.16
25 th December 2003 – 24 th December 2004	282.00	1869.76
25 th December 2004 – 24 th December 2005 (Budget)	350.00	2890.00
25 th December 2005 – 24 th December 2006	369.96	2368.45
25 th December 2005 – 24 th December 2006 (Budget)	564.00	5054.00

49. The Respondent claimed that the actual figures for 2004/05 had not been provided and she had assumed that the figure for management fee was the same as for the previous year. However, in its Response, the Applicant stated that this was not correct and provided a statement of maintenance

expenditure provided by the managing agents signed and dated 4th April 2006. This showed a management charge claimed of £116.64 per flat for the period 25th December 2004 to 24th December 2005.

50. The Applicant submitted that the management fee of £369.96 for 2005/06 was a small increase in percentage terms and was reasonable having regard to the inflationary pressures during the period in question.
51. Ms Samuels submitted that the management fees were charged on a percentage basis. She submitted that a fee of 15% of actual total expenditure incurred was reasonable as a management charge. Ms George said that all of the managing agent's management fees are charged on a per unit basis and not on a percentage basis. When asked by Ms Samuels why the charges in various years equated to about 13%, 14% or 15% of the total costs, Ms George said that if this was so, then it was a coincidence.
52. In the Response it was submitted by the Applicant that the percentage increases are a potentially misleading approach in this case particularly as there was no increase in management fees during the service charge years 2002, 2003 and 2004. The Respondent's Reply referred to management fees prior to the Applicant's ownership of the Building and prior to the managing agents being engaged. The management fee of £282, presumably inclusive of VAT, amounted to £94 per unit per annum. This was some way below a reasonable amount and therefore the submission that the Applicant's managing agents fees appear to be reasonably high in comparison should be approached with caution.
53. Mr Powell said that as part of the managing agents relocation/restructuring a decision had been taken to apply an across the board management charge of £175 plus VAT (£205.65 including VAT) per unit of similar properties managed. The managing agents and subsidiaries in the same group manage approximately 1,800 properties. He said that the work carried out included preparing budgets and service charge accounts, chasing for payment, and commissioning a survey. He submitted that the amount charged was at the lower end of the reasonable scale for management charges even if the management was regarded as minimal.
54. The reasonableness of the management fees for 2005/06 were also challenged on the basis that there had not been any maintenance carried out at the since the Respondent became the leaseholder owner of flat 3 in September 2001. There had been correspondence between the Respondent and the managing agents in respect of the Respondent's dissatisfaction with the level of services to the Building.
55. Mr Powell also submitted that the Respondent had produced no quotations or other evidence showing comparative charges by other managing agents to support her contention that the fees were unreasonably high.
56. The Respondent referred to her letter to the managing agents dated 17th November 2004 with regard to the disrepair to the roof. It was submitted that

these matters were unresolved and that rainwater was still leaking into the Respondent's flat and into the communal hallway. The lessor had not carried out its repairing obligations by failing to carry out necessary repairs. The lessor had failed to insure the Building for three months and failed to comply with its obligation to insure under the terms of the lease. She submitted that there should be a deduction in the management fee to reflect this.

2006/07 – budgeted expenditure for Management fees

57. The figure shown on the Budget for the period 25th December 2006 to 24th December 2007 for management fees was £564 with a total budgeted expenditure for the service charge year 2006/07 of £5054.
58. The Respondent disputed the reasonableness of the management fees. The Respondent repeated her comments in respect of the management charges in 2005/06.
59. A report on the condition of the property was prepared by David J Ashworth of Ash Surveyors, Chartered Building Surveyors on the instructions of the managing agents. This was dated 23rd February 2006. This referred in detail to a number of defects at the property and recommended remedial work. Preparation of a schedule of works was suggested.
60. Under cover of a letter dated 20th March 2006, Mr Ashworth submitted his invoice for £446.50 including VAT for preparing the report.
61. Ms Samuels submitted that the Health and Safety Checks and General Repairs included in the estimated service charge for 2006/07 had not been carried out. In the circumstances, if, as the Respondent contended, the management charge was based on a percentage of the cost of works and services, this should be reduced proportionately to 15% of the actual cost. If the management fee was calculated on a fixed fee basis then it should be reduced by 50% because the managing agents had not carried out the works recommended in the Ash report.
62. Ms George said that there were constant problems with the lessees of the flats in the building being in arrears. The Applicant alleged that the reason that the work was not carried out was outstanding arrears of service charges. She said that repairs had not been carried out due to the arrears and that the Health and Safety checks were not carried out for the same reason. The question of the arrears had been passed to the credit control department of the managing agents. However, this was before Ms George took over the management of the Building and she was not currently in a position to prove that there had been constant arrears. Ms Johnstone contended that none of the lessees had been asked to pay.
63. Ms George made enquiries as to the current balance in the service charge fund. She stated that there was a credit balance of £2.09 in the fund at the date of the hearing. She could not shed light on the £3000 balance

mentioned in a letter dated 25th October 2005 from the managing agents to the Respondent.

64. The budgeted management fee of £564 for 2006/07 amounting to £188 per unit. The Applicant submitted that irrespective of percentage comparison with previous years, such a charge is reasonable in respect of management fees.

The Tribunal's decision in respect of management fees for 2005/06 and 2006/07 (budget)

65. As referred to in the section relating to Insurance charges above, there was no documentary evidence that the Building was insured between September 2004 and 18th January 2005. The management fees challenged are 25th December 2005 to 24th December 2006 and the budgeted charge for the following year. The period during which the Building may have been uninsured is not within either of these periods. However, even taking into account the recent relocation of the managing agent's offices and changes in staff, the records produced in respect of the insurance and other service charge items were generally inadequate and contained numerous discrepancies and inconsistencies in respect of which no satisfactory explanation was provided. The statement of service charge expenditure dated 24th February 2006 signed by the managing agents and attached to the Applicant's Response contained two different figures for payments for the insurance for the year to September 2004. The Respondent also claimed that no or minimal repairs had been carried out at the Building during her period of ownership and this was not disputed at the hearing.
66. Notwithstanding the above, the Tribunal considers that, albeit of a poor standard, there was some management provided. The figure charged was at the lower end of the type of charges to be expected. However in all the circumstances the Tribunal considers that a reasonable figure for the Respondent's contribution to management fees for 2005/06 is £100.
67. The Tribunal finds that the sum of £100 (including VAT) is payable by the Respondent for management fees for the service charge year 2005/06.
68. Although there was no specific challenge to the management fees in 2004/05, this was because the Respondent had incorrectly assumed that the charge was the same as the previous service charge year. The Applicant has been unable to show that the Building was insured from September 2004 until 19th January 2005 as referred to in the section of this decision relation to building insurance. As stated above the managing agents records include inconsistencies and discrepancies which had not been satisfactorily explained. In the circumstances, having considered the evidence, the Tribunal considers that a reasonable charge for management fees for 2004/05 is also £100 and reduces the charge for this item accordingly.
69. The claim to management fees for 2006/07 is an estimated service charge and the total figure of £564 is claimed (lessee's contribution £188). The lease provides for an adjustment at the end of the service charge year if the actual

expenditure is less than the estimated charge. This is an estimated charge and is based on the assumption that the lessor will perform its covenants under the lease. The Tribunal does not consider that the charge, being an estimated charge, is unreasonable. The Tribunal makes no adjustment to this charge.

70. The sum of £564 (including VAT) is a reasonable estimated charge and is payable by the Respondent for estimated management fees for the service charge year 2006/07 and £188, being one third, is payable by the Respondent.

2006/07 - Budgeted expenditure for Health and Safety checks and General Repairs

71. The Respondent submitted that no health and safety checks of general repairs have been carried out to the premises in the period 25th December 2006 to 24th December 2007.
72. The sum claimed in the estimated service charge for Health and Safety checks was a total of £1,800. The Respondent's contribution based on one third was £600.
73. The sum claimed in the estimated service charge for General Repairs was £1000. The Respondent's contribution was £333.33.
74. Ms Samuels submitted that it was common ground that certain budgeted works had not been carried out.

The Tribunal's decision in respect of the estimated charges (2006/07) for General Repairs and Health and Safety checks.

75. The Applicant, in accordance with the lessor's covenants in the lease, is under an obligation to amongst other things, carry out repairs to the Building. The Applicant is also obliged to carry out appropriate Health and Safety checks at the Building. It appeared from the correspondence that such repairs and checks were needed. It was anticipated that such works would be carried out during the service charge year. It is common ground that these were not carried out. However, bearing in mind that this charge is an estimated service charge, and that it is assumed that the lessor will carry out its obligations under the lease when the charge is estimated, the Tribunal considers that the estimated service charge is reasonable in the circumstances. The lease provides a mechanism for adjusting the estimated charges when the actual expenditure for the service charge year is known and end of year accounts prepared.
76. The Tribunal finds that the sums of £600 (contribution to general repairs) and £333.33 (contribution to health and safety checks) are reasonable as estimated service charges for these items and are payable by the Respondent.

Legal fees

77. The Respondent claimed that the Applicant had charged legal fees of £80, issue fees of £120 and interest of £49.17 to the Respondent's service charge account. It was submitted that these sums related to the County Court proceedings, had not been awarded by the Court and should not have been included in the service charge.
78. The Applicant submitted that the above costs were sought under clause 2(m) of the lease which contained a covenant by the lessee to pay the lessor all costs, charges and expenses including legal cost and surveyors fees which may be incurred by the lessor in or in contemplation of any proceedings under section 146 of the Law of Property Act 1925.
79. The Tribunal finds that the above charges are not chargeable as part of the service charges under the lease. The Tribunal is only concerned with the service charges in this case.
80. The Tribunal makes no finding as to whether such costs are recoverable from the Respondent under clause 2(m), which is not related to the service charges but to an individual obligation of the lessee.

The Right to Manage

81. The right to manage pursuant to the Commonhold and Leasehold Reform Act 2002 was acquired in respect of the subject premises on 8th October 2007. The Applicant submitted that from that date the Respondent ceased to be liable to pay service charges to the Applicant. The Respondent contended that it was appropriate to offset the Respondent's payment of service charges during her period of ownership of flat 3 against the actual service charge expenditure incurred by the Applicant.
82. The Tribunal considers that this was not a matter for consideration in these proceedings. The charges in respect of which a determination is sought related to charges falling due prior to the acquisition of the right to manage. Also, the right to manage is currently subject to separate proceedings in the Leasehold Valuation Tribunal.

Application under Section 20C of the Act

83. Mr Powell stated that in the particular circumstances of this case and because of the lack of available information, the Applicant would not be seeking to recover the costs of or incidental to these proceedings.
84. In the circumstances it was not necessary for the Tribunal to make an order under section 20C of the Act.

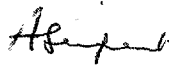
Summary of decision on disputed items

85 The following sums were reasonable and/or reasonably incurred / payable by the Respondent.

- 1] Service charge year 2003/04 – £410.23 (one third of £1243.11)
(Building insurance)
- 2] Service charge year 2004/05 – £265.37 (one third of £804.16) (Building insurance)
- 3] Service charge year 2004/05 - £100 (Management fee)
- 4] Service charge year 2005/6 - £100 (Management fee)
- 5] Service charge year 2006/07 – £188 (Management fee)
£ 600 (General repairs)
£333.33 (Health and safety checks)

All the above figures are inclusive of VAT. The figures for the service charge year 2006/07 are subject adjustment under the term of the lease when the actual expenditure is ascertained and the end of year accounts are prepared.

CHAIRMAN: Miss A Seifert



DATE: 7th March 2008

Members of the Leasehold Valuation Tribunal

Miss A Seifert FCI Arb
Mr R A Potter FRICS
Mrs S Justice BSc