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**HM COURTS AND TRIBUNALS SERVICE**

**LEASEHOLD VALUATION TRIBUNAL**

LON/00AC/LSC/2010/0775

LANDLORD AND TENANT ACT 1985 SECTION 27A.

LEASEHOLD VALUATION TRIBUNALS (PROCEDURE) (ENGLAND)  
REGULATIONS 2003.

Correction Certificate under Regulation 18(7) of the above Regulations:

PROPERTY: Flat 3, 79, Hutton Grove, London, N12 8DS

1. In paragraph 52 of the decision a table was produced setting out the sums owed by the Respondent to the Applicant. Item 6 of that table should have read **£1,457.26** instead of £1,423.12 and the total sum owed should have read **£2,836.94** instead of £2,680.17.

2. A revised table is shown below:

Item No.	Date	Description	Amount - £
1.	30 Mar 2009	Hedge cutting works	0
2.	1 May 2009	30 April 2006 end of period balancing charge	122.63
3.	1 May 2009	30 April 2008 end of period balancing charge	55.01
4.	1 May 2009	31 October 2008 end of period balancing charge	663.82
5.	1 May 2009	30 April 2009 end of period balancing charge	538.22
6.	7 Aug 2009	Contribution to external repairs/decorations	1,457.26

Total

**£2,836.94**

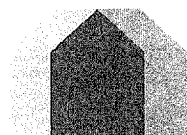


Chairman:

.....

Date:

22nd August 2011



Residential  
Property  
TRIBUNAL SERVICE

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL**

**LANDLORD AND TENANT ACT 1985 – SECTION 27A AND S20C**

**Ref: LON/00AC/LSC/2010/0775**

**Property:** Flat 3, 79, Hutton Grove, London, N12 8DS (the subject property)

**Applicant:** Museprime Properties Limited

**Appearances for the Applicant:** Ms C Cherriman (Property Management) of Michael Richards & Co.

**Respondent:** Ms S Manteen

**Appearances for the Respondent:** Ms S Manteen  
Mr A Forouzanfar (the Respondent's son)

**Date of Hearing:** 14<sup>th</sup> March 2011

**Tribunal:** Mrs H C Bowers (Chairman)  
Ms M Krisko FRICS  
Miss R Emblin

## DECISION

- 
- The total service charges that are payable by the respondent for the period in question is £2,680.17.
  - Section 20C - An order is made pursuant of section 20C of the Landlord and Tenant Act 1985 that any costs incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs in determining the amount of any service charge.
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### **Introduction**

1) The Applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985, as amended (the Act) of the reasonableness and/or liability to pay service charges.

2) The case was transferred from Barnet County Court by order of Deputy District Judge Isenberg dated 18<sup>th</sup> October 2010 which stated that the claim against the Respondent was reduced to £3,409.24 and that the service charge of the claim is transferred to the Leasehold Valuation Tribunal for determination.

3) A paper pre trial review was held and Directions were issued on 22<sup>nd</sup> November 2010. The issues that require determination by the Tribunal have been identified are as follows:

Item No.	Date	Description	Amount - £
1.	30 Mar 2009	Hedge cutting works	120.75
2.	1 May 2009	30 April 2006 end of period balancing charge	136.54
3.	1 May 2009	30 April 2008 end of period balancing charge	83.01
4.	1 May 2009	31 October 2008 end of period balancing charge	951.97
5.	1 May 2009	30 April 2009 end of period balancing charge	659.71
6.	7 Aug 2009	Contribution to external repairs/decorations	2,547.32

## **Background**

4) The Applicant is the freeholder of 79 Hutton Grove. The Respondent holds the leasehold interests (as Lessee) in Flat 3, 79, Hutton Grove.

## **The Lease**

5) The Tribunal was provided with a copy of a lease of Flat 3, 79 Hutton Grove that was dated 1<sup>st</sup> October 1970 which was originally between Pilgrim, Long & Sons Limited as the Lessor, Leah Jacobs as the Lessee and Pilgrim, Long & Sons (Maintenance) Limited as the Company. As the copy of the lease for Flat 3 was not legible, a further copy of a lease for Flat 5, 79 Hutton Grove was provided. It was confirmed by the parties that this was in identical terms as the lease for the subject property.

6.) Under the terms of the lease, the lessee covenants to pay and contribute a due proportion of the expense of making repairs, maintaining, amending, supporting, rebuilding and cleansing the common parts of the building, of which the subject property forms a part.

7.) In clause 2(34) of the lease the tenant covenants with the landlord to *"To pay to the Company within fourteen days of Twenty fourth June and Twenty fifth December in every year on being required so to do a sum representing (a) one sixth part of the amount expended by the Company - (as to the first payment) from the date hereof to the next following Twenty fourth June or (as the case may require) Twenty fifth December – in the performance of its covenants hereinafter contained and (b) an additional sum in respect of administration expenses of Ten per centum of the amount so required to be paid as aforesaid within Fourteen days of each such half yearly days."*

8.) Clause 5 of the lease provides that the Company will maintain, repair, redecorate and renew the external structure of the building, the utility services to the building, the pathways, drying and dustbins areas, the gardens and grounds and the fences and boundaries of the building. Additionally the

Company is to insure the building and to keep books of account on a half year basis.

### **Inspection**

9.) The Tribunal did not consider that it was necessary to make an inspection of the property as the issues in dispute were points of principal or interpretation. However we understand that the development comprises six flats within one building, set in communal grounds.

### **The Law**

10.) Section 18 of the Act provides:

- (1) *In the following provisions of this Act "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, improvement 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 period"*

"Section 19

- (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

- (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”*

Section 20C of the Act states:

- (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, residential property tribunal 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) *.....*
  - (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.*
- (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.*

### **Representations**

11.) There were detailed written representations from both parties and oral submissions. Whilst the full details of the parties' submissions were considered by the Tribunal, a brief summary of each case is detailed in the following paragraphs.

### **Applicant's Case**

12.) Ms Cherriman spent some time going through the "statement of amounts due/paid" (page 5 of the bundle). At the 23<sup>rd</sup> May 2005, the account had been in balance. On 18<sup>th</sup> December 2006 a sum of £185.71 had been due, but this sum has subsequently been written off. On 16<sup>th</sup> February 2007 a sum of £423.18 had been due, but this had been settled by a cheque payment from the previous lessee of the flat. On 23<sup>rd</sup> February 2007 the sum due was £278.22; this had been partially settled by a payment of £141.68 from the previous lessee and the only sum outstanding was **£136.54** (item 2 to be determined). The following sums of £195.35 (26<sup>th</sup> April); £267.98 (9<sup>th</sup> August 2007) and £300.50 (21<sup>st</sup> February 2008) were settled and not in dispute. On 27<sup>th</sup> June 2008 a sum of £219.18 became due; a credit of £136.17 was settled against this amount, leaving **£83.01** in dispute (item 3 to be determined). A sum of **£2,547.32** due on 9<sup>th</sup> October 2008 was item 6 to be determined; there was credit of £1,090.06 against this item leaving a figure of £1,457.26 in dispute. A sum of **£951.97** became due on 13<sup>th</sup> November 2008 (item 4 to be determined). A sum of **£120.75** became due on 30<sup>th</sup> March 2009 (item 1 to be

determined). Finally a sum of **£659.71** became due on 17<sup>th</sup> July 2009 (item 5 to be determined)

**Item 1 – Hedge cutting works - £120.75**

13.) Ms Cherriman confirmed that the Applicant was not pursuing this item. This item was therefore conceded.

**Item 2 - 30 April 2006 end of period balancing charge - £136.54**

14.) In respect of this period the only item disputed by the Respondent was a total contribution for flat 3 for £120.87 which was the cost of the cleaning and gardening. In response to the question raised as whether this was a “Qualifying Long Term Agreement”, Ms Cherriman stated that the contract only required one month’s notice to be given by either side to terminate the agreement. The Tribunal were provided with a copy of the specification of works for a subsequent gardening contract that was from Suburban Jungle Limited and was dated 19<sup>th</sup> February 2008. It was explained that the contract for this relevant period was on the same terms.

15.) The contract for this period involved the cleaning of the common parts and to mow the rear lawns. The property was described as having a rear lawn area of approximately 20m x 9m. The common parts of the building were described as having a hall on the ground floor and landing areas on the first and second floors with a flight of stairs between each floor.

16.) In response to the point raised about repairs and maintenance works that were carried out prior to Ms Mateen's ownership, as a general point Ms Cherriman explained that on the acquisition of a property any apportionment of any service charge contributions should be dealt with by a retention sums held by the solicitors.

**Item 3 - 30 April 2008 end of period balancing charge - £83.01**

17.) It was explained that the only item that was outstanding item for this period was a contribution from flat 3 of £134.45 for the gardening and



cleaning contract. Ms Cherriman explained that her comments for this period were the same as for those made in respect of the second item above.

**Item 4 - 31 October 2008 end of period balancing charge - £951.97**

18.) In this service charge period the total contribution from all the flats within the development was £3,820.36. This sum was made up from (Cleaning £706.61, Gardening £1,985.75 and Hedge Cutting £1,128). The contribution claimed for flat 3 was £636.70. For this period the new company Suburban Jungle Gardening was undertaking the gardening work and a separate company was undertaking the cleaning work. Ms Cherriman acknowledged that the third item of £1,128 for hedge cutting was the sum in relation to the first item of £120.75 and had already been conceded as not being payable by the Ms Mateen. Ms Cherriman also conceded the sums of £59.14 in respect of "Health and Safety" and £53.85 for "Accountancy Fees".

**Item 5 - 30 April 2009 end of period balancing charge - £659.71**

19.) Within this period there are disputes in respect of the repairs and maintenance, the cleaning and gardening and the cost of the asbestos survey.

20.) The total sum for repairs and maintenance for the period was £944.63. The Applicant claims that two items are not service charge items and should be credited back to the service charge account and with a direct claim to Ms Mateen for the sums. The first item is a sum of £64.63 which Ms Mateen acknowledges is due directly from herself. As yet this sum has not been credited back to the service charge item. The second item is a sum of £86.25 in respect of the removal of a fridge that had been left outside of the building. The sum of £88.25 has been credited back into the service charge account and should be recovered directly from Ms Mateen. Ms Cherriman had no knowledge as to how long this item had been left outside.

21.) In respect of the cleaning and gardening contract there had been a new cleaning contractor, Beechwood Cleaning that had commenced in March

2009 and were instructed on the same monthly contract. The gardening had continued with Suburban Jungle Gardening.

22.) Ms Cherriman suggested that clause 2(10) of the lease allowed the Applicant to recover a contribution towards the Asbestos Survey and Register, but acknowledged that this was a little weak and left this issue to the discretion of the Tribunal. In response to questions from the respondent, Ms Cherriman confirmed that the work was undertaken in line with the Health and Safety Executive and that even if the asbestos was undisturbed that as a minimum there should be an annual inspection. It was confirmed that asbestos had been identified in the glue for the floor tiles.

#### **Item 6 - Contribution to external repairs/decorations - £2,547.32**

23.) This item was in respect of major works to the building. Ms Cherriman provided details of the section 20 consultation that had taken place and included a letter to one of the leaseholders' nominated contractors to invite them to tender for the works. The documentation included a second, stage 2 notice as a consequence of the late submission of a tender by the leaseholders' nominated contractor. However this had no impact on the final projected cost of £14,432.50 plus fees of 10% and VAT. However, the works had cost significantly less than the tender price and was £7,762.50 plus fees, a total of £8,538.25. The contribution from each of the leaseholder should be £1,423.12. A credit note had been made to show a credit for each leaseholder of £1,090.06. Miss Cherriman conceded the difference between the sums and that the figure that the Applicant was seeking was £1,423.12.

#### **Respondent's Case**

24.) Included in the papers submitted to the Tribunal was the Respondent's Statement in Reply together with the Scott Schedule for the relevant items. Several items were noted to be agreed and as such the Tribunal has not spent any time on those issues.

#### **Item 1 – Hedge cutting works - £120.75**

25.) This item was conceded.

**Item 2 - 30 April 2006 end of period balancing charge - £136.54; Item 3 - 30 April 2008 end of period balancing charge - £83.01 and Item 4 - 31 October 2008 end of period balancing charge - £951.97**

26.) In respect of the gardening contract, Ms Mateen questioned why there was a monthly payment as there was no grass cutting in the winter months. Whilst there was no dispute as to the amount of the management fee or the bookkeeping fees, a general point was raised that it was expected that there would be a general level of service and there was concern that there was no management to check that work had been carried out.

27.) In respect of the cleaning of the common parts it was stated that these areas had not been cleaned and that they had been smelly and dirty. In particular it was stated that in 2006 the external area with access to the bin area had been very untidy.

28.) An issue was raised as to whether any sum claimed for cleaning and gardening under the service charge was limited to £100 for each year. It was suggested that the work was provided under a "Qualifying Long Term Agreement" and as there had been no section 20 consultation, then the maximum sum that could be recovered would be £100 per leaseholder for each year in question.

29.) Regarding the bookkeeping costs, it was suggested that the cost should be £37.50 per half year rather than the sum that was charged of £44.06.

30.) In respect of repairs and maintenance in this year a sum of £83.23 was claimed from flat 3. It is stated that Ms Mateen was not the leaseholder of the flat when these items of expenditure were incurred.

**Item 5 - 30 April 2009 end of period balancing charge - £659.71**

31.) Regarding the removal of the fridge, Ms Mateen had been unsure of the disposal arrangements. The fridge had been left for a short time outside,

perhaps 3 to 4 weeks. There had been a general clean up and items such as a bike an old suitcase, old clothes, a curtain pole and the fridge had been removed. Also during this period it was raised that £128 had been spent on the repair of a faulty light fitting and this was considered to be excessive. A sum of £105.75 had been spent to adjust the time switches on 14<sup>th</sup> November 2008 and a further £95 was spent on the same item on 1<sup>st</sup> December 2008. It was considered that these items were excessive.

32.) Regarding the Asbestos Survey for this period, a question was raised as to how often this work should be undertaken.

#### **Item 6 - Contribution to external repairs/decorations - £2, 547.32**

33.) In respect of the major works, the Respondent had stated that there had been no care taken with the work and that tiles had not been removed to improve the overall finish.

#### **Section 20C**

34.) The Respondent has made an application for an order under section 20C of the Landlord and Tenant Act 1985, to prevent the Applicant from recovering and costs in respect of the current application in any future service charge period. There were no submissions from the Applicant on this point.

#### **Decision**

##### **Item 1 – Hedge cutting works - £0**

35.) This item was conceded.

##### **Item 2 - 30 April 2006 end of period balancing charge - £136.54**

36.) The first issue to consider under this period is the item of repairs and maintenance that occurred prior to Ms Mateen's ownership of flat 3. We do note that there have been subsequent payments made by the previous leaseholder to the service charge account. However, we concur with the submission of Ms Cherriman that any balancing sum or reconciliation from the date of purchase to the next accounting period should have been dealt with as a conveyancing matter and this is not a consideration of this Tribunal. There is

no evidence to indicate that the cost of the works were unreasonable or that the works themselves were of an unreasonable standard.

37.) The next item is the cleaning and gardening contract. The Tribunal were not provided with the copies of the relevant contracts. However, we accept the comments from Ms Cherriman that these contracts were subject to a notice period of one month by either side. As such they would not be Qualifying Long Term Agreements and as such the limit of £100 per annum pr leaseholder would not apply.

38.) As to the quality of the cleaning that was undertaken we accept the comments made by Ms Mateen that the cleaning was not satisfactory and that at the time of her initial occupation the gardening had been poor. From the information provided by the parties we are of the opinion that the area to be cleaned should take no more than one hour to clean on a weekly basis at an hourly rate of £15 this would calculate to £780 for the cleaning. In addition we allow a weekly sum of £15 over 34 weeks to reflect the necessary gardening work. In total this would provide an overall cost of £1,290 per annum and therefore the sum for the six month period would be £645. And Ms Mateen's contribution to this would be £107.50.

39.) In respect of the bookkeeping costs, it would appear that the difference between the sum of £37.50 as stated by the Respondent and the figure charged of £44.06 would relate to VAT. In the opinion of the Tribunal it is entirely reasonable that VAT would be recovered and as such the Tribunal confirm the sum of £44.06.

40.) Given the small adjustment required to the 10% management fee the total sum recoverable from this period, after previous deductions have been made, is determined to be £122.63.

41.) Summary: Total £240.22, plus 10% (£24.02) = £264.24, less the sum paid of £141.61 leaves £122.63.

**Item 3 - 30 April 2008 end of period balancing charge - £55.01**

42.) For the reasoning provided in paragraph 38 above, we determine that the reasonable charges in respect of the cleaning and gardening contracts should be £107.50 in respect of flat 3. After adjustments to the 10% management fee and various reconciliations, the total due for flat 3 for this period is £55.01.

43.) Summary: Total £173.80, plus 10% (£17.38) = £191.18, less sum paid of £136.17 leaves £55.01.

**Item 4 - 31 October 2008 end of period balancing charge - £663.82**

44.) During this period the total claimed for the cleaning was £706.61 and overall we find this a reasonable sum and confirm this figure. In respect of the gardening, there were two elements, one for the gardening costs of £1,985.75 and one for hedge cutting at £1,128. We accept the hedge cutting costs of £1,128 as reasonable and confirm this figure. However, as mentioned above in respect of the gardening we consider this sum to be excessive. We consider that the total annual amount should be £2,291.25 and that the contribution for the half year should be £1,145.63. These three items would equate to a sum of £496.70 as the contribution for flat 3.

45.) The Applicant has conceded the sum claimed from Ms Mateen of £59.14 for a Fire Health & Safety Risk Assessment. Additionally it is conceded that the sum of £53.85 for Accountancy fees is not payable by Ms Mateen. After adjustments to the 10% management fee and various reconciliations, the total due for flat 3 for this period is £663.82.

46.) Summary: Total £603.47 plus 10% (£60.35) = £663.82.

**Item 5 - 30 April 2009 end of period balancing charge - £528.22**

47.) There were several issues to consider in the repairs and maintenance section. The total amount for this category of works was £944.63. It was stated by the Applicant and accepted by the respondent that a sum of £64.63

should be deducted from the service charge and charged directly to Ms Mateen. The inclusion of a further sum of £86.25 for the removal of a fridge/freezer was disputed. From the statements made from Ms Mateen this item had been left outside for some time, with no clear indication as to ownership/intention. This was removed with other items that had been left outside the building. It is the opinion of the Tribunal that this is an activity involved with the maintenance of the building and the external areas and as such would be included in the service charge provisions. We determine that the sum of £86.25 should be included in the service charges. In respect of the other issues raised by the Respondent the tribunal considers that there was no evidence to suggest that the work to repair faulty light fittings was not unreasonably incurred. However, we did note that a total of £200.75 was spent on adjusting the time clocks. We did consider that this was excessive and that a sum of £50 should be allowed for this item. The total sum due for repairs and maintenance was £729.25 and Ms Mateen's contribution would be £121.54.

48.) An issue was raised as to whether the total sum of £425.50 in relation to an asbestos survey and record. The Tribunal are of the opinion that the wording of the service charge provisions in the lease is limited and does not allow for the recovery of this item. This sum is therefore to be excluded from the service charge calculations. The total sum due from Ms Mateen after the various adjustments and the recalculation of the management charge is £538.22.

49.) Summary: Total £489.29 plus 10% (£48.93) = £538.22.

**Item 6 - Contribution to external repairs/decorations - £1,457.26**

50.) Whilst the Respondent had indicated that she had not been happy with the quality of the work, we were not provided with any evidence as to any particular issue. We note that the actual sum expended under the major works contract was significantly lower than the tender prices that were submitted. Given the lack of evidence we are of the opinion that the sums incurred were

reasonable and that the work was to a reasonable standard. We determine that the sum of £1,457.26 is payable by the Ms Mateen.

### Section 20C

51.) The lease would not appear to allow for the recovery of expenses in respect of proceedings at a Leasehold Valuation Tribunal. However, if there was scope within the provision of the lease that would allow such recovery, then we have had consideration to the nature of this application. There have been a number of concessions made by the Applicant that may not have come to light without the progress of this matter to the Tribunal. Additionally there has been a determination by the Tribunal in respect of a number of issues that favour the respondent. Given these factors, we are of the opinion that it would be reasonable for the Tribunal to order that any costs arising from this application, should not be treated as "relevant costs" in future service charge years.

52.) A summary of the Tribunal's decision is set out below:

Item No.	Date	Description	Amount - £
1.	30 Mar 2009	Hedge cutting works	0
2.	1 May 2009	30 April 2006 end of period balancing charge	122.63
3.	1 May 2009	30 April 2008 end of period balancing charge	55.01
4.	1 May 2009	31 October 2008 end of period balancing charge	663.82
5.	1 May 2009	30 April 2009 end of period balancing charge	538.22
6.	7 Aug 2009	Contribution to external repairs/decorations	1,423.12

**Total**

**£2,680.17**



This matter is to be transferred back to the County Court for completion of this matter.

Chairman  
Helen Bowers

19<sup>th</sup> April 2011