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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985

Case Reference:	LON/00AP/LSC/2011/0831
Premises:	6 DEVONSHIRE COURT, DEVONSHIRE HILL LANE, LONDON N17 7NJ
Applicant:	MARSHLEASE LIMITED
Representative:	N/A
Respondent:	MS URSULA RINIKER
Representative:	N/A
Date of hearing:	25/04/2012
Appearance for Applicant:	Ms Carol Cherriman
Appearance for Respondent(s):	Ms Riniker appeared and represented herself
Leasehold Valuation Tribunal:	Miss J E Guest Mr Stephen Mason BSc FRICS FCIArb (Chartered Surveyor) Mrs Sonya O'Sullivan
Date of decision:	07/06/2012

Decisions of the Tribunal

(1) The Tribunal makes the determinations as set out under the various headings of this decision.

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The Application

1. The Tribunal is required to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 as to the payability and/or reasonableness of service charges in respect of the period from 01/07/2004 to 30 June 2010.

2. Proceedings had been brought in the Edmonton County Court by the freeholder, Marshlease Limited, and the claim was transferred to the Tribunal by an order of District Judge Morley, dated 07/11/2011, in which it was directed that, *"The issue as to the entitlement of the Claimant to levy a service charge and the reasonable[ness] of the service charge be referred to the Leasehold Valuation Tribunal for a determination."*

3. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

4. The hearing lasted one full day. The Applicant was represented by Carol Cherriman of Michael Richards & Co. *("the managing agents")* appointed by Marshlease Limited. The Respondent represented herself.

The background

5. Devonshire Court comprises of two separate blocks of flats and two separate garages. Each block has two storeys. One block (1-6 Devonshire Court) comprises of four flats (Flats 1-4) that share a communal entrance/stairway and two maisonettes (Flats 5-6) that each have a separate entrance. The other block (7-10 Devonshire Court) contains four flats that share a communal entrance/stairway. The freeholder owner is Marshlease Limited and the leasehold interest of Flat 6 is owned by the Respondent pursuant to a lease dated 14/07/1978 and made between Maurice Arthur Pilgrim, John Warrington Packard and Louise Critoph (1) and Anthony Quirke and Pijic Quirke (2) and C.J. Pilgrim & Sons (Maintenance) Limited *("the Company")* (3) for a period of 99 years commencing on 25/03/1978 *("the lease")*.

6. Both parties confirmed at the conclusion of the hearing that an inspection was unnecessary. The Tribunal agreed that an inspection was not required and, furthermore, considered it to be disproportionate to the issues in dispute.

7. The service charges in dispute are as follows:

01/07/2004 – 31/12/2004	£12.62
01/01/2005 – 30/06/2005	£69.84
01/07/2005 – 31/12/2005	£56.45
01/01/2006 – 30/06/2006	£98.06
01/07/2006 – 31/12/2006	£99.61
01/01/2007 – 30/06/2007	£117.35
01/07/2007 – 31/12/2007	£145.02
01/01/2008 – 30/06/2008	£195.72
01/07/2008 – 31/12/2008	£71.67
01/01/2009 – 30/06/2009	£10.38
01/07/2009 – 31/12/2009	£59.18
01/01/2010 – 30/06/2010	£100.29

The total service charges at issue amounted to £1,101.60 for the 6 year period from 01/07/2004 to 30/06/2010. During this period, the Respondent had made one payment of £71.67. County Court proceedings had been issued by the Marshlease Limited *("the freeholder")* to recover the remaining charges of £1,029.93. The Respondent challenged both the reasonableness of the charges and also the freeholder's entitlement to recover the sums.

At the hearing, the Applicant informed the Tribunal that it was no longer seeking to recover the service charges for the period from 01/07/2004 to 31/12/2006 since the Applicant accepted that service charges for this period had been demanded late and were caught by section 20B of the 1985 Act. As a result of the Applicant's concession, **the sum in dispute between the parties amounted to £765.02.** There were clearly issues of proportionality given the amount at issue between the parties and the costs of the Tribunal. The Tribunal was disappointed that the parties had not been able to reach an accommodation.

8. Two bundles of documents were provided to the Tribunal containing the parties' respective documents, which were both considered fully by the Tribunal prior to the hearing. In addition, the parties were both given an opportunity at the hearing to take the Tribunal through their respective statements of case and make any submissions they might wish to make. The Tribunal were also provided with the following additional documents at the hearing, which were also carefully considered by the Tribunal in reaching its decisions, namely :

(a) office copy entries dated 25/04/2012 confirming that the freehold title was registered to Marshlease Limited as at 17/06/2004;

(b) a Companies House search in relation to the liquidation of C.J. Pilgrim & Sons (Maintenance) Limited that had last filed a return on 07/06/1992;

(c) a Health, Safety & Fire Risk Assessment commissioned by Michael Richards & Co. dated 01/11/2007 and reviewed on 14/10/2008;

(d) a Type 2 Asbestos Survey Report and Register commissioned by Michael Richards & Co. dated 30/03/2008;

(e) an additional copy of the Respondent's Statement of Case dated 22/02/2012 that replaced the version in the bundles in which page references were incomplete; and

(f) original photographs of Devonshire Court taken by the Respondent that were considered by the Tribunal and returned to the Respondent, at her request, at the conclusion of the hearing.

9. Following the hearing, the Respondent sought to make further submissions in an email sent to the Tribunal on 30/04/2012. It is not appropriate nor is it in the interests of justice for any party to seek to make additional submissions after the conclusion of a hearing. The Respondent was given more than ample opportunity to put forward her arguments to the Tribunal. In fact, the hearing was adjourned after the evidence had been taken in order to give the Respondent time to consider whether there were any additional objections she wished to raise. The Respondent used this opportunity and she made lengthy submissions to the Tribunal following the adjournment.

10. The Tribunal's decision was made on the basis of the evidence before it and what follows is a summary of the evidence heard.

11. The Respondent's email of 30/04/2012 also stated that she had subsequently formed the view that an inspection was 'imperative'. This request for the Tribunal to carry out an inspection related to an invoice in the sum of £199.75 dated 08/01/2007 in respect of the clearance of a blocked drain of which the Applicant has requested a contribution of 10% from the Respondent (the sum of £19.98). The Tribunal considers it to be wholly disproportionate to arrange to undertake an inspection in relation to costs of less than £20.00 that concerns works undertaken over 5 years ago and, accordingly, maintains its view (that was also the position of both parties at the hearing) that an inspection is not justified.

The Issues

A. The entitlement of the Claimant to levy a service charge

12. The Respondent vociferously maintained throughout the hearing that she was not liable to pay the Marshlease Limited *("the freeholder")* any service charges and that only the managing agents were entitled to payment. The Respondent's position was that the County Court proceedings were wholly misconceived as the freeholder had no locus standi.

13. The Respondent informed the Tribunal that she had acquired her leasehold interest in about 1985. The freeholder's interest was registered on 17/06/2004. The Tribunal were informed by Ms Cherriman that the managing agents had taken over management on 01/07/2004.

14. The Tribunal considered the terms of the Lease. Under Clause 2 (32) of the Lease, the Respondent is liable to pay service charges to the Company. Clause 2 (32) provides that quarterly demands be paid within 14 days of 31 March, 30 June, 30 September and 31 December. For practical reasons, the managing agents demanded service charges every 6 months in relation to actual expenditure incurred in the previous 6 months. Save for the issues concerning her liability to pay the freeholder and reasonableness, the Respondent did not raise any objection to demands being made every 6 months. The Tribunal took the view that this was a reasonable approach, particularly when having regard to the relatively small sums involved.

15. It was accepted by the parties that the Company had gone into liquidation in about the early 1990's.

16. Under Clause 6 (6) of the Lease, it is provided that, *"IF during the term hereby granted the Company shall go into liquidation the Lessors shall be entitled upon giving notice to the Lessee to undertake the obligations hereby undertaken by the Company and if the Lessors elect to do so the Lessors shall be entitled to recover from the Lessee all money hereby agreed to be paid by the Lessee to the Company".* [this is a reference to the second (6) under Clause 6 (6) as the Lease confusingly has two 6 (6) clauses].

17. The Respondent accepted that she had been given notice in accordance with Clause 6(6) but she disputed that this entitled the current freeholder to recover any service charges.

18. Clause 6 (6) took effect when the Company went into liquidation and the freeholder served notice. There was no variation of the Lease to appoint a new management company. The managing agents acting on behalf of the freeholder are only agents and not a management company. The managing agents are not party to the Lease and so have no entitlement to sue for breach of its terms.

Tribunal's decision

19. Accordingly, the Tribunal found that the freeholder is the correct party to the proceedings and the freeholder is entitled to levy service charges.

B. Sections 47 and 48 of the Landlord and Tenant Act 1987

20. The Respondent also contended that none of the sums were due as the Freeholder had failed to comply sections 47 and 48 of the Landlord and Tenant Act 1987.

21. Sections 47 & 48 provide that any demand must contain the name and address of the landlord and that service charges are not due until that information is supplied.

22. Ms Cherriman acknowledged that demands had been issued that failed to correctly state the freeholder's name and/or address. The demands issued referred to other companies within the landlord's group and this was clearly confusing.

23. The Respondent was first provided with the correct name and address of the freeholder on 11/04/2006 when a service charge reminder was sent to her. She was only provided with an actual demand that gave the correct information on 01/01/2012.

24. The Respondent's position was that the Applicant's previous failure to comply with sections 47 and 48 was fatal and that all the sums remained irrecoverable.

Tribunal's decision

25. The Respondent was entitled to withhold payment of the service charges until the Applicant had complied with sections 47 and 48. The Applicant complied with the statutory requirements and gave the Respondent the necessary information on 1 January 2012 with an invoice containing all of the sums demanded and setting out the information required by sections 47 and 48 so that the service charges demanded were now due. The fact that the former demands did not contain this information is not fatal to the later recovery of the service charge once a demand has been served which complies with sections 47 and 48.

C. Summary of tenant's rights and obligations

26. In addition, the Respondent also asserted that the service charges were not payable as the freeholder had not complied with section 21B of the Landlord and Tenant Act 1985 in that she had not been provided with a summary of tenant's rights and obligations, which is a requirement for any service charges demanded on or after 01/10/2007. Under Section 21B(4), a tenant is entitled to withhold payment until a summary has been received.

27. The Respondent stated that she had first been provided with the required summary when it was attached to a 'statement of service costs' dated 14/09/2009 for the periods 01/07/2008 to 31/12/2008 and 01/01/2009 to 30/06/2009 and the Respondent agreed that the summary had also been attached to all subsequent demands. On behalf of the Applicant, Ms Cherriman stated that to her best knowledge and belief the demands had all been accompanied by the required summary.

Tribunal's decision

28. The service charges are payable from 01/07/2007 as a summary was attached to the demands for 2007 and 2008.

29. The Tribunal accepted Ms Cherriman's evidence that the demands had been served with the requisite summary for 2007 and 2008. This was supported by the freeholder having conceded that no valid demands had been served for the prior period.

D. Service charges

30. Under Clause 2(32), the Applicant is entitled to require the Respondent to pay a *"(a) reasonable proportion .... and (b) an additional sum in respect of administrative expenses of Ten per centum of the amount so required to be paid..."*

31. The managing agents have in general apportioned the service charges as 1/10th of the expenditure on the basis that there are a total of 10 units. The managing agents have also attempted if possible in more recent years to proportion costs according to which of the two buildings is concerned.

Period 01/01/2007 to 31/06/2007

Communal electricity costs: **£51.15**

32. The Respondent agreed that this amount was reasonable. There was no need for the Tribunal to make a determination as this sum was accepted as reasonable.

Refuse collection: **£79.44**

33. The Applicant informed the Tribunal that this cost related to the hire of wheelie bins from the local authority and produced invoices in respect of the same.

34. The Respondent considered this cost to be irrecoverable under the terms of the Lease and also unreasonable in that the individual bins could be obtained from the local authority free of charge and shared between the residents of Devonshire Court so as to reduce the number of bins required.

Tribunal's decision

35. The cost of the hire of the wheelie bins is recoverable under the terms of the Lease. The Tribunal is entitled to interpret the Lease where it is unclear and to consider the intention of the parties. Clause 5 (1) (c) requires that the dustbin area to be maintained. The Tribunal considers that the maintenance of the dustbin area should properly include the suitable provision of bins for the flats. It considers it is entirely appropriate for large bins to be hired in order to keep the dustbin area neat and tidy. This arrangement avoids the need for multiple bins and the Respondent's assertion that bins could be shared between residents was not considered to be feasible or practical.

36. The Tribunal found that the arrangement was a suitable practical arrangement and that the cost was reasonable. The sum of **£79.44** was, therefore, allowed in full.

Repairs and maintenance: £525.22

37. An invoice in the sum **£182.12** dated 10/04/2007 for clearing rain water outlets and gutters was accepted by the Respondent.

38. An invoice in the sum of £199.75 was disputed by the Respondent as this related to work carried out on 08/01/2007 to clear at drain that was blocked by grease and fat. The Respondent stated that she had not encountered this problem and that the drain did not relate to her property so she as not liable to pay a proportion of this costs. The Applicant's position was that this was work to the main drain and that it could not ascertain the source of the problem.

39. An invoice dated 18/04/2007 for £143.35 in respect of works to remedy a leaking overflow to a mains water storage tank. The Applicant conceded it had subsequently been acknowledged that the water tank involved was shared only between two flats (not involving the Respondent's property) and that the cost has been credited back to her account.

Tribunal's decision

40. The charge of **£199.75** was reasonable for jetting a drain and it was appropriate for the Applicant to seek a 1/10th of this sum from the Respondent, particularly as this works were carried out over 5 years ago and the cost was not challenged at the time.

Book keeping: £375 (excl. VAT)

41. Book keeping costs for the 10 units at Devonshire Court have been charged at a total of £750 plus VAT per annum. The Respondent did not produce any evidence indicating that such costs were unreasonable and she instead invited the Tribunal to reach its own decision as to what would be a reasonable

amount. The Tribunal noted that there had been no increase in the charge since the managing agents took over in 2004.

Tribunal's decision

42. The Tribunal decided that the sum of **£250.00** (plus VAT) was reasonable, i.e. £500 plus VAT per annum for blocks of flats totalling 10 units, from 01/01/2007, increasing to £375 plus VAT from 01/01/2009 onwards. In reaching this assessment, the Tribunal relied upon its own expertise as requested to do so by the Respondent. The Tribunal considered that the sum of £75 plus VAT for the period 2007 -2008 was high given the limited extent of the charges. The Tribunal considered that the cost would, however, increase over time and decided that the sum of £750 per annum would have become a reasonable charge by 2009.

Administration expenses:

43. The Respondent accepted that the Applicant was entitled to recover administration expenses of 10% subject to her general objections regarding the charges.

Tribunal's decision

44. As the total sum of **£512.46** was due for this period, the administrative expenses amounted to **£51.25** plus VAT.

TOTAL DUE FOR THE PERIOD
£866.43 (including VAT) x 10% = £86.64 [reduced from £117.35]

Period from 01/07/2007 – 31/12/2007

Communal electricity: **£56.90**

45. This sum was accepted by the Respondent.

Refuse collection: **£79.44**

46. The Tribunal's decision is set out at paragraphs 35-36 above and, therefore, this sum has been allowed in full.

Health and Safety: £443.98

47. The Applicant accepted that the figures in relation to the Health Safety & Fire Risk Assessment and resultant works had not been calculated correctly and that the sum due was **£437.51**.

48. The Respondent objected to paying for the assessment and works as she was of the view that they related to communal areas. The Respondent referred to Clause 2 (10) in which she is responsible for, "*.. the expense of making*

repairing maintaining amending supporting rebuilding and cleansing all road ways passageways pathways drains pipes watercourses water pipes party walls and fences party structures easements and appurtenances belonging to or used or capable of being used by the Lessee..."

49. The Respondent's position was that she was effectively residing in a terraced house as she shared no communal areas save for the general grounds/ footpaths and that she had no access to the communal areas shared by Flats 1-4 and Flats 7-10.

50. The Respondent also relied upon the opinion of C J Saunders & Co solicitors set out in their letter to the Company dated 29/08/1991 regarding the interpretation of 'common parts'. The Respondent asserted that this interpretation of the Lease was binding pursuant to Clause 2 (10) of the Lease, which continues , *"... such proportion in the case of difference or dispute to be determined by the Surveyor for the time being of the Lessors (whose decision shall be final and binding)..."* The Respondent's view was that the firm of solicitors who wrote on 29/08/1991 were also surveyors, although there was no indication of this on their letterhead.

51. Ms Cherriman agreed that the layout of the building was unusual and she conceded that there was no specific clause in the Lease that specifically related to such an assessment/works but her position was that the costs related to the whole of Devonshire Court and that is was necessary in order to ensure that the freeholder met with its statutory obligations.

Tribunal's decision

52. The assessment related to a general inspection of 1-10 Devonshire Court including the common parts. The report of the assessment sets out in detail the various statutory regulations that must be met not only in relation to the health and safety of the occupiers and their visitors but also the freeholder's own workman/contractors for which 1-10 Devonshire Court is for them a place of work.

53. The Tribunal rejected the Respondent's view that her premises are similar to a terraced house. The Respondent is not a freehold owner and she must recognise that leasehold ownership carries with it a responsibility to contribute to works that she may feel are not of direct benefit to her.

54. The Tribunal considered the assessment, report and works to be in keeping with accepted standards and practice in order to comply with statutory requirements that might otherwise cause difficulties in relation to insurance.

55. The Tribunal accordingly found that the sum claimed is recoverable from the Respondent and reasonable.

Book keeping:

56. The Tribunal's decision is set out at paragraph 41 above and the sum payable for this period is **£250.00 plus VAT**.

Administration expenses:

57. The Respondent is liable to pay 10% of £573.85, i.e. **£57.39 plus VAT**.

TOTAL DUE FOR THE PERIOD
£935.03 (INCL VAT) X 10% = £93.50 [a reduction from £145.02]

Period from 01/01/2008 – 30 June 2008

Communal electricity: **£61.59**

58. This amount was accepted by the Respondent.

Refuse collection: **£79.44**

59. The Tribunal allowed this amount in full for the reasons as stated at paragraphs 35-36 above.

Health & Safety: **£875.38**

60. The Applicant conceded that it would not claim the cost of a Water Hygiene Risk Assessment of £264.38 or the cost of a Water Hygiene Log Book and Schematics of £176.25.

61. The Respondent objected to the remaining invoice of **£434.75** in relation to an Asbestos Type 2 Survey for the same reasons as set out at paragraphs 48-50. In addition, the Respondent contended that the asbestos survey was only in relation to the loft space of Flats 1-4 and tiles in communal areas and that it was not an inspection of the entire building.

62. The Applicant's position was that the buildings as a whole had to be assessed and that it was necessary to identify the presence of asbestos in order to meet their statutory obligations to any contractor on site.

Tribunal's decision

63. The asbestos survey related to 1-10 Devonshire Court and included external and internal inspections. The Applicant had undertaken the survey in compliance with the Health, Safety & Fire Risk Assessment that recommended such a survey to ensure that it met its statutory duties to its contractors under the Health and Safety at Work Act 1974, etc. For the reasons set out at paragraph 52-55 above, the costs are recoverable from the Respondent and the costs are reasonable.

Book keeping: £440.62 (incl. VAT)

64. For the reasons as set out a paragraph 42 above, the Tribunal considered the sum of **£250.00 plus VAT** to be reasonable

Administration expenses

65. The Respondent is liable to pay 10% of £575.78, i.e. **£57.58 plus VAT.**

TOTAL DUE FOR THE PERIOD
£937.19 (INCL VAT) X 10% = £93.72 [a reduction from £195.72]

Period from 01/07/2008 to 31/12/2008

Service of demand

66. The Respondent contended that the charges for this period were not due as she stated that she did not receive the demand until a replacement was sent to her on 21/11/2011. The Respondent's position was that the costs had been incurred more than 18 months prior to the demand and were, therefore, not recoverable (section 20B Landlord and Tenant Act 1985).

67. Ms Cherriman's position was that the original demand had been served within time. She stated that the demand had been sent in their franked mail and that it had not been returned through their 'dead mail' system.

Tribunal's decision

68. The Tribunal accepted Ms Cherriman's evidence that the demand had been issued at the time.

Communal electricity: **£62.04**

69. This amount was accepted by the Respondent.

Refuse collection: **£79.44**

70. The Tribunal allowed this amount in full for the reasons stated at paragraphs 35-36 above.

Repairs and Maintenance

71. There are two invoices that have been charged to the Respondent for this period. An invoice dated 01/11/2006 for gutter/rainwater pipe maintenance and repairs for **£180.00** and also an invoice for a leaking stop cock of £143.35 that had been charged to the Respondent and another flat that shared the same water tank. Ms Cherriman and the Respondent agreed that the half the sum charged to her in relation to the latter invoice would be reduced to **£35.84.**

Tribunal's decision

72. The invoice in relation to the gutter repair/maintenance is reasonable.

Health & Safety: **£176.25**

73. This related to asbestos labelling undertaken following the recommendations in asbestos survey. It, therefore, follows for the reasons set out at paragraphs 52-55 above that the Respondent is also liable for these costs.

Administration costs: £43.00

74. The Applicant stated that these costs related to obtaining office copy entries in order to establish which leaseholder was responsible for guttering and that it transpired that the matter did not relate to the Respondent so she was not subsequently charged for the costs that followed from the Applicant's enquiries.

Tribunal's decision

75. It was not reasonable to recover the costs of the office copy entries from the Respondent given that the subsequent charges were applied to the leaseholders concerned.

Legal and professional fees: **£2.50**

76. This related to identifying the ownership of an unauthorised vehicle and this cost was accepted by the Respondent.

Book keeping:

77. For the reasons set out at paragraph 42 above, the Tribunal found that the sum of **£250 plus VAT** was reasonable.

Administration expenses

78. The Respondent is liable to pay 10% of £571.91, i.e. **£57.19 plus VAT.**

TOTAL DUE FOR THE PERIOD
£897.01 (INCL VAT) X 10% = £89.70 + £35.85 = £125.54 [a reduction from £267.39]

Period from 01/01/2009 – 30/06/2009

Communal electricity: **£66.24**

79. This sum was accepted by the Respondent.

Refuse collection: **£77.74**

80. For the reasons set out in paragraphs 35-36 above, the Tribunal considered this sum to be reasonable.

Book keeping:

81. For the reasons stated in paragraph 42 above, the Tribunal considered that the sum of **£375 plus VAT** was reasonable.

Administration expense:

82. The Respondent is liable to pay 10% of £143.98, i.e. **£14.40 plus VAT**.

TOTAL DUE FOR THE PERIOD
£591.79 (INCL VAT) X 10% = £59.18 [no reduction]

01/07/2009 – 31/12/2009

Communal electricity: **£32.60**

83. This sum was accepted by the Respondent.

Refuse collection: **£77.74**

84. For the reasons set out in paragraphs 35-36 above, the Tribunal considered this sum to be reasonable.

Health & Safety: £241.50

85. This related to an asbestos re-inspection.

Tribunal's decision

86. The view of the Tribunal, which Ms Cherriman accepted, was that the areas of asbestos raised in the first inspection could be checked on a regular basis by the managing agents and that there was no need incur the expense of an additional inspection so this amount was disallowed.

Book keeping:

87. For the reasons set out in paragraph 42 above, the Tribunal considered the sum of **£375.00 plus VAT** to be reasonable.

Administration expense:

88. The Respondent is liable to pay 10% of £110.34, i.e. **£11.03 plus VAT**.

TOTAL DUE FOR PERIOD
£554.27 (INCL VAT) X 10% = £55.43 [a reduction from £100.29]

Period from 01/01/2010 – 30/06/2010

Communal electricity: £32.92

89. This sum was accepted by the Respondent

Refuse collection: £158.86

90. For the reasons set out in paragraphs 35-36 above, the Tribunal allowed this sum in full.

Bookkeeping:

91. For the reasons set out at paragraph 42, the Tribunal considered the sum of **£375.00 plus VAT** to be reasonable.

Administration expense:

92. The Respondent is liable to pay 10% of £191.78, i.e. **£19.18 plus VAT**

TOTAL DUE FOR PERIOD
£654.94 (INCL VAT) X 10% = £65.49 [no reduction]

Total sums due from 01/01/2007 to 30/06/2010

93. The Tribunal found that the Respondent liability amounted to **£579.50**.

Costs

94. The Applicant agreed that it would not seek to recover the costs so no order was made under section 20C of the Landlord and Tenant Act 1985.

Next steps

95. This matter should now be returned to the County Court for determination of any outstanding matters.

Chairman: Miss J E Guest

Date:07/06/2

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(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, improvements or insurance or the Landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) "costs" includes overheads, and

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

Section 19

(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 provisions 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.

(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.

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(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 Upper 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 residential property tribunal, to a leasehold valuation tribunal;

(c) 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;

(d) in the case of proceedings before the Upper Tribunal, to the tribunal;

(e) 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.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003 Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(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 matter of an application under sub-paragraph (1).

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—

(a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or

(b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—

(a) £500, or

(b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a

determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.