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HM Courts & Tribunals Service

Residential Property
TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN A TRANSFER FROM THE COUNTY COURT AND IN CONNECTION WITH SECTIONS 19 AND 27A LANDLORD & TENANT ACT 1985

Case Reference:	LON/00BE/LSC/2012/0544
Premises:	Flat D, 47 Trinity Church Square, London, SE1 4HT
Applicant:	The Corporation of Trinity House of Deptford Stround ("the Landlord").
Representative:	Forsters LLP.
Appearances for Applicant:	(1) Miss G. Decordova, counsel (2) Miss Natasha Rees, solicitor. (3) Mr D Bray, Director of Bray Property Services Ltd (Managing Agents)
Respondent:	Ms Daryll Adler ("the Tenant")
Representative:	N/A
Appearances for Respondent:	(1) Daryll Adler (2) Mr J. Knight

Leasehold Valuation Tribunal:	(1) Mr A Vance LLB (Hons) (Chair) (2) Mr J. Humphrys, FRICS (3) Mrs G. Barrett
Date of Hearing:	18.12.12
Date of Inspection	25.01.13
Date of Decision:	29.01.13

Decision of the Tribunal

1. We have determined that certain of the sums demanded from the Respondent by way of service charge for the period by 25.12.05 to 24.03.12 are unreasonable.

2. Annexed to this decision at Appendix 1 are tables setting out the sums in dispute between the parties and our determination as to the sums that it is reasonable for the Respondent to pay towards those items.

Introduction

3. This matter comes before the Tribunal on transfer from Lambeth County Court following an order dated 03.08.12 in proceedings 2YJ06551.

4. Within those proceedings the Applicant sought to recover sums alleged due from the Respondent in respect of service charge arrears in the sum of £19,417.20 for the period 25.12.05 to 24.03.12.

5. The Respondent is the leasehold owner of Flat D, 47 Trinity Church Square, London, SE1 4HT ("the Property") a flat on the third floor a building located at 45, 46 and 47 Trinity Church Square ("the Building"). Following conversion of the three original houses, there are now nine flats in total. For ease of reference we refer below to these forming two 'blocks'. Each block has its own communal entrance, one at 45/46 and the other at 47 Trinity Church Square

6. The Applicant is the Respondent's landlord and has the benefit of the freehold reversion of the Property. The Building forms part of the wider Trinity Village estate owned by the Applicant.

7. Bray Property Services Ltd. has managed the Building on behalf of the Applicant since December 2011. Prior to that, the management function was carried out by Douglas and Gordon ("D&G"). D & G reported to Mr Bray who was responsible for managing the Trinity Village estate since March 2006.

8. The relevant statutory provisions are set out in Appendix 2 to this decision.

The Lease

9. The relevant lease is dated 04.03.94 originally granted by the Applicant to Sean Leonard Arnold for a term of 86 years and 9 months from 25.12.93. Following an

assignment of the lease dated 10.09.99 the unexpired residue of the term granted by the Lease is now vested in the Defendant.

10. The relevant provisions of the lease can be summarised as follows:

(a) The Tenant covenants to pay a fair and reasonable proportion (determined by the Landlord's surveyor) of the expenses and outgoings incurred by the Landlord in carrying out and performing the works, services and other matters referred to in the Fourth Schedule to the Lease.

(b) The expenses, outgoings and matters set out the Fourth Schedule include the Landlord's expenses of maintaining, rebuilding, repairing, cleaning and painting the main structural parts of the Building as well as the costs of insuring the Building. It also includes the costs, fees and expenses incurred by the Landlord and its Managing Agents in connection with the collection of rent and service charge and the general management of the Building.

(c) Paragraph 19 of the Fourth Schedule allows the Landlord to recover from the Tenant a reasonable sum for the provision of a reserve fund. Paragraph 2.3.8 of the Lease provides that the Landlord is entitled to expend the whole or any part of the reserve fund in payment of the expenses and outgoings incurred in performing its obligations as set out in the Fourth Schedule.

(d) The service charge year is the period 25th December to the 24th December in each following year.

(e) The amount of the service charge is to be ascertained and certified annually by a certificate signed by the Landlord's Auditor as soon as may be reasonably practicable after the end of the each service charge year;

(f) The expenses and outgoings incurred by the Landlord include a reasonable sum towards anticipated expenditure as well as expenditure of a periodically reoccurring nature. The Tenant is to pay an advance payment on account of estimated service charge for the forthcoming year commencing on 25th December each year such sum to be paid in 4 equal instalments on the usual quarter days.

(g) Interest on arrears of service charge is payable at the rate of 4 per cent per annum above the base rate of the Royal Bank of Scotland applicable from time to time and calculated daily.

Apportionment

11. The proportion of the service charge sought by the Applicant from the Respondent was 16.70% until February 2012. Following a Leasehold Valuation Tribunal decision in respect of 59-63 Trinity Church Square (LON 00BE/LSC/2011/0275) that was adjusted to 16.75% towards 'building costs', 16.67% towards 'common costs' and 16.75% towards audit and management fees [307, 320].

12. This was because the LVT considered that leaseholders that did not have access to common parts should not have to contribute towards the costs of decorating the internal common parts.

13. In applying that decision the Applicant made the same adjustments in respect of the leaseholders of flats in the Building.

The Pre-Trial Review

14. A pre-trial review ("PTR") took place on 19.09.12 at which both parties attended and at which the Tribunal identified that the following issues were to be determined:

(a) The reasonableness and payability of service charges for the period 25.12.05 – 24.3.12; and

(b) Whether an order for reimbursement of application/hearing fees should be made.

15. The Tribunal was unable to further identify the issues in dispute. An order for directions was made by the Tribunal the same day.

16. At the PTR both parties agreed to mediation that was due to take place on 09.11.12. Directions prior to that date were to be complied with in any event. If settlement was not agreed at the mediation the remaining directions ordered at the PTR were to be complied with.

17. The directions made at the PTR included provision for the Applicant to send to the Respondent by 03.10.12 a schedule setting out in respect of each service charge year a breakdown of the service charges claimed, the total expenditure on each item and the apportioned amount claimed from the Respondent *(5th direction)*.

18. The Respondent was directed to return a copy of that schedule to the Respondent by 17.10.12, specifying what items of expenditure were agreed and what were in dispute

with reasons to be provided for any dispute. It was directed that if no reasons were given that the Tribunal may be entitled to conclude that the item is agreed. The Respondent was also to send to the Applicant by that same date any alternative quotes or documents in which she wished to rely together with any legal submissions in relation to the service charges claimed including arguments if liability to pay was in issue *(6th direction)*.

19. The Applicant was then to reply to the items disputed by the Respondent by commenting on and returning a copy of the schedule to the Respondent by 31.10.12 along with: (a) a statement setting out the relevant service charge provisions of the lease and any legal submissions; (b) copies of all relevant invoices relating to the matters in dispute as well as any other documents on which the Applicant wished to rely; and (c) copies of all relevant service charge accounts and estimates for the years in dispute as well as all demands for payment, details of payments made and copies of any consultation notices under s.20 of the 1985 Act *(7th direction)*.

20. Following conclusion of the hearing on 20.12.12 we were of the view that additional information was required from the parties concerning the contributions demanded from the Respondent towards the reserve fund. We also considered that an inspection of the Property was required. Directions were issued the same day.

Inspection

21. The inspection took place on the morning of 24.01.13. The Respondent was present and provided access to her flat and the common parts of both blocks. We had sight of the basement well and the front elevation. We were unable to gain access to the garden area and only had a limited view of the rear elevation by viewing it from street level. We viewed the condition of the front parapet from street level and by opening the Respondent's window. We were able to view part of the rear roof from the small balcony area at the rear of the mansard level of her flat. The Applicant did not attend the inspection nor did the managing agents.

The Hearing, Decision and Reasons

22. Following the PTR the Respondent sent the Applicant a cheque in the sum of £9,000 that was accepted in part payment towards arrears for the period 25.12.05 – 24.12.11 [362]. A cheque in respect of ground rent was returned.

23. Ms Decordova informed us that the Applicant was late in complying with the provisions of the 5th direction made at the PTR. Schedules were sent to the Respondent providing a breakdown of the service charges claimed for the period 25.12.05 to 24.12.10 by courier on 05.10.12 [356]. However, schedules and breakdowns for the periods 25.12.10 to 24.12.11 and 25.12.11 to 24.03.12 were not sent to the Respondent until almost a month later on 01.11.12 [345].

24. The Respondent acknowledged that she received schedules by courier on 05.10.12. However, she informed us that she believed she only received schedules for the service charge years ending December 2008, 2009, and 2010 and not for the 2005, 2006 and 2007 service charge years. She accepted that the 2005, 2006 and 2007 schedules been sent to her at some point but could not recall exactly when she received them. It was her case that this late receipt and non-receipt of invoices and documentation was the reason why she only returned the copy schedules for the 2008, 2009 and 2010 service charge years to the Respondent and why these were the only schedules containing her comments that were before the Tribunal.

25. The Tribunal found the Respondent's evidence concerning receipt of these schedules unclear and unpersuasive. In our view the evidence supports Ms Decordova's submissions that the 2005, 2006 and 2007 schedules were sent along with the 2008, 2009 and 2010 schedules and received by the Respondent on 05.10.12. If that was not the case we would have expected her to have mentioned this to the Respondent. There is no such mention in her email of 08.10.12 to the Applicant acknowledging receipt of schedules on 05.10.12 [354] and nor is there any indication of this in any subsequent correspondence sent by the Respondent to the Applicant's solicitors or the Tribunal.

26. It appears that the Respondent returned the schedules for 2008, 2009, and 2010 to the Applicant's solicitors with her comments on 16.10.12 [349]. They then sent her copies of invoices and supporting documentation in respect of the disputed items under cover of their letter of 01.11.12 [345].

27. In a letter dated 22.10.12 [349] the Applicant's solicitors reminded the Respondent that the directions ordered at the PTR provided for schedules to be sent without supporting documentation in the first instance with her to then indicate whether or not the charges were disputed. Despite this reminder and despite subsequent correspondence sent by the Applicant's solicitors requesting comments on the 2006

to 2007 schedules (email 31.10.12 [348] and letters dated 01.11.12 [345]; 06.11.12 [344] and 26.11.12 [334] the Respondent did not return completed schedules for those years nor for 2011 and 2012 (although of course the Applicant acknowledged that these were only sent on 01.11.12).

28. Ms Decordova informed us that the Respondent's delay in returning these schedules meant that the Applicant did not consider there was merit in proceeding with the mediation hearing booked for 09.11.12. It considered that there was too much uncertainty over what was in dispute for the mediation to be likely to be successful.

29. Resolving this uncertainty took this Tribunal a considerable amount of time at the start of the hearing. The Respondent confirmed that she was challenging service charge items for all the years between 25.12.05 to 24.03.12 and that she wanted the Tribunal to determine the reasonableness of these charges even though she had only returned completed schedules for 3 of those years. She did not seek to argue that the sums in question were not lawfully payable, only that the sums in question were not reasonable.

30. Fortunately, the Applicant's solicitors had included in the hearing bundle invoices and supporting documentation on which it sought to rely for all of the years in question. Although these bundles were received very late in the day it meant that we were in a position to deal with all the years disputed by the Respondent.

31. However, the figures specified in the schedules prepared by the Applicant and included in the hearing bundle did not, in all cases, match the figures specified in the certified accounts for the relevant years. With the agreement of both parties we proceeded to determine the issues in dispute based on the figures stated in the audited accounts theses being more reliable given apparent inaccuracies in the schedules.

32. Although it was only provided to the Tribunal on the day of the hearing we allowed in evidence the witness statement of Mr Bray dated 14.12.12 on the basis that the Respondent would not suffer undue prejudice. We considered that as she had received it on the Friday prior to the day of the hearing she had received sufficient time to consider and respond to its contents.

33. Where below we decide that a sum is *payable* by the Respondent we have determined that it is recoverable expenditure under the provisions of the Fourth Schedule to the Respondent's lease and payable, apportioned accordingly.

(a) Cleaning

34. The Respondent disputed the reasonableness of these costs for service charge years 2007/8 [invoices at 165-176], 2008/9 [223 -234], 2009/10 [472-483] and also in respect of the 2011/2012 interim charge

35. Throughout these periods the invoices of the Applicant's contractor remained at £30 per month for the cleaning of the 'blocks' at 45/46 and 47 Trinity Church Square. Mr Bray informed us that the services provided related to the cleaning of the common parts and that his regular inspections had satisfied him that cleaning was being carried out to a reasonable standard in blocks 45/46. He believed that contractors attended once a fortnight. However, in block 47 he believed that contractor was only providing an intermittent service on an ad hoc basis. This was because the residents had taken upon it to carry out the cleaning themselves. It was his submission that the charges were reasonable for the service actually provided.

36. The Respondent confirmed that at some point in 2006 the residents of block 47 decided to clean the small communal areas themselves. She conceded that there was no formal agreement entered into in this respect and that her lease was not varied to provide for this.

Decision and Reasons

37. Under the terms of the Respondent's lease she is obliged to contribute towards the costs of the cleaning of the communal areas of the Building. This includes the entrance hall and stairway areas in both of the blocks. There is no formal agreement between the parties to vary that obligation.

38. No challenge was pursued in respect of the cleaning of the communal areas in 45/46 and in our view the sum of £30 per month is a reasonable sum to pay for fortnightly cleaning of just blocks 45 and 46 regardless of whether or not the cleaning of block 47 is erratic or even non-existent.

39. We determine that the sums demanded are reasonable payable by the Respondent in full for each of the years in dispute and also in respect of the interim charge..

(b) Audit & Accountancy

40. The Respondent disputed the reasonableness of these costs for all of the service charge years 2005/6 to 2009/10 inclusive and also in respect of the 2011/12 interim charge.

41. Her position was that the sum demanded for the work that was likely to have been carried out was excessive and that a sum of about 50% less would be reasonable.

42. Mr Bray informed us that he had recently looked into whether or not a cheaper provider could be identified but that he was unsuccessful in that attempt. In his view the auditor's charges were very competitive.

Decision and Reasons

43. We have noted the fairly small size of the Building and number of limited number of transactions that would have needed to have been considered in order to produce the annual audited accounts. It is our opinion that the sums demanded are at the high end of what is reasonable.

44. However, the Respondent has produced no alternative quotes for this work. In her Statement of Case all she says is that *"At this time I am unable to determine whether the charges are reasonable and complete."* Although in her witness statement she says that *"I also plan to submit competitive quotes where appropriate"* (point 9) none have been provided.

45. In the absence of any alternative quotes we do not consider there is sufficient evidence to support a determination that the sums demanded for each of the audited service charge years are unreasonable. We determine that the sums demanded are reasonable and payable by the Respondent in full for each of the years in dispute save that in respect of the interim charge for 2011/12. We have no evidence before us to explain the increase from £460 in 2010/11 to £550. That is a very substantial increase and whilst we anticipate that some additional work may be required in respect of reserve fund matters we consider it to be excessive. Allowing that additional work and for inflation we consider £490 to be a reasonable sum.

(c) Management Charges

46. The Respondent disputed the reasonableness of these costs for all of the service charge years 2005/6 to 2009/10 inclusive and also in respect of the 2011/2012 Interim Charge

47. Mr Bray confirmed that these charges are calculated on a unit basis, apportioned equally amongst the nine flats. The apportioned sum was £309.22 per unit plus VAT for 2005/6 [402-405] rising to £395.45 plus VAT per unit in respect of the 2011/12 interim charge.

48. Mr Bray's evidence was that the services provided included the collection of service charges, overseeing pest control, cleaning and general repairs as well as management of the sinking fund.

49. The Respondent contended that as the service provided was below an acceptable standard (as highlighted by the charges she was disputing in these proceedings) it should be reduced

Decision and Reasons

50. In our view the sums demanded are higher than what is reasonable. Although no alternative quotes have been provided by the Respondent we have reached that conclusion by applying our own expert knowledge. In our experience, the fees charged are in sums that would normally reflect the top end of the market in respect of a property in a very good location and where a managing agent is providing a full service as envisaged by the Royal Institution of Chartered Surveyors ("RICS") Service Charge Residential Management Code, 2nd edition.

51. We have had regard to the size of the Building, the limited nature of the services provided and our concerns about the way in which the managing agents have dealt with the issue of major works and planned preventative maintenance.

52. This is a Building consisting of only nine units. The communal areas are small. There is no caretaker or lift servicing the Building. The annual accounts included in the bundle show that sums expended in general repairs and maintenance are low.

53. Our concerns over issue of major works and planned preventative maintenance are set out below but, in summary, we are of the view that there has been a lack of clarity and transparency as to what major works are being planned and what how the managing agents intend to utilise the reserve fund to pay for such works.

54. We also consider that a proactive managing agent would have taken more urgent steps to recover outstanding service charges given the Respondent's history of non-payment.

55. In our view a reasonable sum for the Respondent to pay for 2005/6 is £275 per unit plus VAT. For following years we consider a 5% increase to allow for inflation is appropriate. Details are set out in the table at Appendix 1.

(d) Pest Control

56. The Respondent disputed the reasonableness of these costs for the service charge years 2005/6 to 2009/2010 inclusive.

57. The Applicant's contractor throughout these years was Igrox Limited whose invoices show that the sum of £350 plus VAT was charged per quarter for what is described as 12 visits per annum to treat in respect of rat and mice.

58. Mr Bray stated that he was not aware of any problem involving rats but that he believed the contractor treated in respect of both mice and rats. He confirmed that no other pest treatment was carried out.

59. Mice, he said were a particular problem in the basement flats and rear gardens and that this had been exacerbated by substantial building works at a site across the road that had been going on for the last 4-5 years.

60. He believed that a team of two men visited the Building every month and set and inspected bait traps in the basement wells, common parts and rear gardens as required. He also stated that the sum paid to the contractors included the costs of any necessary treatment during the year.

61. The Respondent disputed that regular bait traps were laid by the contractors. The one outside her door has, she said, been there for about six years. She conceded that she had no knowledge as to whether or not there were problems in the basement areas but was aware that the tenant in the top floor flat, 45D, had experienced problems with mice. In her view the sum demanded was unreasonably high.

62. She did not dispute the sum of £546.25 in respect of pigeon-proofing works carried out in 2008.

Decision and Reasons

63. The Respondent acknowledges that one of her neighbours has had a problem with mice and by her own admission does not know what the position might be in the basement areas. Given Mr Bray's involvement with this Building for several years and his ability to access areas of the property that the Respondent cannot we accept his evidence that the inspections billed for were actually carried out and that baiting was required.

64. Our visual inspection of the Building showed that bait traps were present outside the basement flat and on some the landings in the communal areas. However, on the

available evidence we do not accept that the infestation problem was likely to have been so severe to justify fees as high as those paid to Igrox Limited.

65. There is no evidence in the documentation before us setting out how what treatment was carried out. Whilst we have had the benefit of Mr Bray's witness statement and oral evidence he was not the managing agent at the time this treatment and baiting was carried out and he was unable to provide any specific details to assist in interpreting the very limited information provided in the invoices that said no more than *"Treatment against Rats, Mice"*.

66. We also note that since his appointment as managing agent Mr Bray has managed to identify cheaper contractors. For the service charge year 2010/11 the audited accounts show only £600 being expended for pest control [460]. In his witness statement he confirms that only £864 was expended on pest control in 2011/2012 despite a number of callouts to flats in addition to the normal quarterly visits.

67. In our determination no more than the sum of £750 plus VAT is a reasonable annual sum for this item for all the years in dispute. We make no inflationary allowance as, in our view, demand for work is more likely than not to have meant that contractors would have kept their prices static as, indeed, Igrox Limited have done.

(e) Electricity Charges

68. The Respondent queried the charges for 2007/8 only (£92). In her statement of case the she states that the electricity bills provided by the Respondent seemed to vary significantly. Her challenge appeared to be that the only costs related to the lighting in the communal areas, the cost of which was minimal.

Decision and Reasons

69. The bills provided [121-130] indicate that the electricity charges incurred are minimal. It is the standing charge and VAT that comprises by far the majority of the sums billed. Such charges are inevitable and we determine the sum to be reasonable.

(f) General Repairs and Maintenance

70. Initially, the Respondent challenged the sums incurred in respect of 2007/8, 2008/9 and 2009/10.

71. However, following an explanation as to how this sum was calculated for 2007/8 (£317.38 relating to painting works [142] and £223.26 in respect of guttering works) the Respondent did not maintain her challenge for this service charge year.

72. In addition, the challenge to the charges for 2009/10 was not pursued further by the Respondent following clarification that the sum relied upon by the Applicant was £538 (as stated in the annual accounts) and not £868.37 (as stated on the schedules prepared for these proceedings).

73. As to the 2008/9 service charge year the sum incurred was £1,778. Only one of the invoices relating to this item [194-199] was challenged by the Respondent. This was the reasonableness of the sum of £374.90 charged by Anchor Door Systems Limited in respect of a visit to investigate a reported fault to the door entry system to the Building and a second visit the following day to remove a defective handset and to install a new item. The Respondent queried why these costs were not covered by the annual service contract for the entry phone held by The Entryphone Company Limited [185-86].

74. Mr Bray was uncertain as to whether or not these costs were covered by the warranty with the manufacturer or the annual service contract and could not explain why these costs were billed for separately.

Decision and Reasons – the 2008/9 Charges

75. It is unfortunate that Mr Bray was unable to clarify whether or not these works could have been carried out under the service contract or under the warranty. However, this was not a point specifically advanced by the Respondent in her statement of case in which she states *that "I have no knowledge of the entry phone invoices".*

76. As the specific challenge to this item was only raised on the day of the hearing the Applicant had no opportunity to investigate the point and to respond. As such, we are not satisfied that the costs in question are unreasonable and we determine they are payable by the Respondent

(g) Health & Safety

77. The Respondent queried the charges for 2008/9 (£604) and 2009/10 (£438).

78. In respect of 2008/9 the two invoices in question related to fees for a Health & Safety inspection survey and report (£201.54) [207] and for a fire safety risk assessment and report (£402.50) [208].

79. The Respondent's challenge to this item appeared to be that the sums in question were excessive given that all that was carried out was an inspection without any remedial works being carried out. She stated that she had obtained quotes from health and safety fire experts in the sum of £2000 that included the costs of such works.

80. As to the 2009/10 charges there are two invoices relating to this item [260-261]. The only sum challenged by the Respondent was the sum of £39.84 for a 10% administration fee charged by D & G in respect of an asbestos survey. She asked why this fee was not included within the management charges sought by D & G.

Decision and Reasons – the 2008/9 Charges

81. In carrying out these inspections (that Mr Bray informed us they are carried out every two years) we consider the Applicant is acting responsibly and in accordance with its obligations under the lease. The quotes apparently obtained by the Respondent were not before the Tribunal and did not, in any event, appear to be comparable to the reports actually commissioned.

82. Having regard to the available evidence we consider the sum to be reasonable and payable by the Respondent.

83. However, having had the benefit of inspecting the Building, our view is that it is unlikely to be reasonable to carry out a Health & Safety inspection as frequently as every two years.

Decision and Reasons – the 2009/10 Charges

84. We do not consider it appropriate for D & G to demand an administration fee for commissioning an asbestos survey. We have had regard to the provisions of the RICS Service Charge Residential Management Code, 2nd edition which, at paragraph 2.4, sets out what (subject to the terms of any written agreement) should be included in a managing agents annual fee. This includes arranging periodic health and safety and fire risk assessments in accordance with the statutory requirements.

85. We have not seen a copy of the contract between the Applicant and D & G. Nonetheless, it is our view that bearing in mind the RICS guidance the sum demanded to be unreasonable and should have been included within the management fee.

(h) Entry phones

86. The Respondent challenged the charges for the 2005/6 and 2009/10 service charge years (£476 and £347 respectively).

87. As to the 2005/6, out of the five invoices [406-410] the Respondent disputed only the sum of £370.13 for Simply Alarming Security Ltd. attending the Building to check a fault on the entry phone system and the supply and install of a bell locking release and entry phone speech unit. In her view these costs appeared high.

88. In respect of the 2009/10 charges, out of the three invoices included in the bundle [243-245] the Respondent challenged only one, that for £229.13 from Anchor Door Systems that the Respondent challenged on the basis that it was too high.

Decision and Reasons – the 2005/6 charges

89. The Respondent did not dispute the need for these works and supplied no alternative quotes or estimates. On the available evidence we do not find these costs to be unreasonable and determine they are payable by the Respondent.

Decision and Reasons – the 2009/10 charges

90. The disputed invoice related to the costs of attending the Building to investigate a fault to the main entrance door, collecting and returning access keys and carrying out adjustments to an overhead door closer.

The Respondents assertion was unsupported by alternative quotes. On the available evidence do not consider the costs in question to be unreasonable and we determine that they are payable by the Respondent

(i) Miscellaneous Expenses

91. The Respondent initially challenged the sum of £428 incurred in respect of the 2009/10 service charge year. This sum appears in the annual accounts as expenditure directly debited from the sinking fund. We were informed that the sum related to retention paid out in respect of major works [262-263]. Following this explanation the Respondent did not pursue her challenge to these costs.

(j) Major Works - 2007/8 service charge year

92. This sum of £8,132 was deducted from the reserve fund during the year ending December 2008. This sum related to major works concerning (i) parapet repairs in the sum of £4,678.75 plus VAT [146] and (ii) the repair, renewal and redecoration of external timber entrance doors in the sum of £2,242 plus VAT [148]. Relevant extracts of the specification of works were provided by the Applicant at the hearing.

93. Documents relating to the consultation procedure under s.20 of the 1985 Act were included amongst the Respondent's documents in the hearing bundle [643, 655, 657 and 659] and the Respondent made no assertions concerning non-compliance with the statutory consultation procedure.

94. The Respondent disputed that the parapet works were actually carried out. Contrary to Mr Bray's assertion that scaffolding was in place for about two months, she could not recall any scaffolding being erected during the relevant period. She agreed that at this time two workmen painted her front door and that they then leant out of her living room window, rubbed down flashings on the roof outside her window and then left. As far as she was aware no works were done at that time to repair cracks in the parapet walls and that the cracks remain present.

95. She agreed that the door works were carried out but considered the sum charged to be excessive.

Decision and Reasons

96. Nowhere in her Statement of Case or elsewhere in the documents before the Tribunal does the Respondent allege that the major works were either not carried out or carried out to an unreasonable standard. Her assertions were made orally to the Tribunal and are not corroborated by any other evidence, expert or otherwise.

97. If the Respondent had made a specific challenge prior to the hearing the Respondent could have adduced its own evidence to respond to these assertions, perhaps from the surveyor who oversaw these works.

98. On the available evidence and on the balance of probabilities we accept Mr Bray's evidence that the works were carried out as set out in the specification of works and as certified by the contract administrator for both set of works [146, 148].

99. Whilst our inspection of the Building showed that cracking was present to the parapet we are of the view that this cracking *could* have occurred since the works carried out in 2007/8. Given the lack of evidence provided by the Respondent to the contrary we

are not prepared to conclude that the major works to the parapet did not take place and we determine that the sum incurred is reasonable and payable by the Respondent in full (as apportioned).

100. As to the works to the external doors, the Respondent provided no evidence by way of quotes or otherwise in support of her assertion that the costs incurred were unreasonable. In our view as an expert tribunal and having had the benefit of perusing the specification of works provided at the hearing we consider the costs to be reasonable having regard to the size of the block (nine flats) and the works carried out.

101. In our determination the sum demanded is reasonable and payable in full (as apportioned).

(k) Sums demanded towards the Reserve Fund

The Applicant's position

102. The Applicant is intending to carry out further major works in the Building. Notices under s.20 of the 1985 Act were sent to the Respondent on 02.03.12 [556] and 12.10.12 [557]. Both refer to the planned installation of a fire alarm system in the common parts of the Building.

103. Details of two estimates in respect of the fire installation works were provided with the Notice dated 12.12.12, one from Format Prop' M Ltd in the sum of £15,452.71 including VAT and the other from 2020 Services Ltd. totalling £15,624.00 including VAT.

104. Exhibited to Mr Bray's witness statement is a Health, Safety and Fire Risk Assessment Report carried out by ESP Consulting dated 23.03.12 [314]. That report identifies the following as high risk items:

- Flat Doors – recommended that the front doors of Flats 45 and 47 be fitted with fire doors.
- Installation of a LD2 fire detection and warning system in the common areas of No 45 and 47 with one detector and sounder on each floor plus detectors and sounders in the entrance/hallway to each flat including Flats 45A and 46 and 47A.

- Infilling of low level glazing gap to prevent a small child being able to fall through the window.

105. Several medium and low risk items were identified including the provision of emergency lighting. Underneath each item is a space for an estimated cost of the work to be inserted. None of the have been completed. The only estimates provided are those that accompany the Notice dated 12.12.12 and these do not refer back to a specification of works. No such specification is included in the hearing bundle.

106. Additional works over and above these fire installation works are planned for 2013 and the Applicant is seeking to raise the sums needed to carry out those works through demands for contributions towards the reserve fund. In its statement in response to our directions of 20.12.11 the Applicant states *inter alia* that:

(a) The amount held in the reserve fund for the Building as at 31.12.12 was £95,531. £57,155 was shown in the audited accounts for 2011 with provision for 2012 being £54,000.

(b) D & G had a planned preventative maintenance schedule for the Building for 2007 with a total estimated expenditure of £77,350 as evidenced by a report dated August 2006 from Nelson Bakewell property consultants [623-637]. We note that this report refers to work to the roofs, front, side and rear elevations, external areas and internal common parts. We also note that further expenditure in the sum of £81,700 was anticipated as being required in 2012 as part of a cyclical maintenance programme. However, it appeared that no works were actually carried out in 2007.

(c) The contribution demanded from the Respondent in the years ending 2006 and 2007 was £668 in each year. Nothing was demanded in the years ending 2008, 2009 or 2010.

(d) In order to fund the external major works project the sum of £7,014 was demanded from the Respondent in the year ending 2011.

(e) £9,045 was demanded from her in the year ending 2012, again by way of quarterly instalments. This was collected to fund the planned works including the fire safety installations in the common parts. The total cost of these planned current works amounts to £24,464.50 of which, it is stated, the

Respondent's share is £9,045 (calculated at 16.75%). This figure and apportionment is also confirmed in the witness statement of Mr Bray.

(f) Sums to be demanded in respect of reserve fund provision for 2013 total £62,000. Planned expenditure for works in 2013 is £133,124.31 added to which is a fee described as being "S.20 fees" of £2,160 making a total planned expenditure of £135,284.31. A specification of works is to be drawn up shortly and S.20 notices served.

The Respondent's position

107. Before us, the Respondent contended that the costs of the proposed fire installation works were excessive and that as a result the sum budgeted for was unreasonable. She relied upon two estimates that she had obtained. One in the sum of £1,495 plus VAT quoted for the provision of four automatic smoke detectors in the common staircase [301-302]. The other in the sum of £2,019 plus VAT included provision for fire extinguishers, alarm panels, multipoint detectors and emergency lighting. Two further quotes were attached to her response to our directions of 20.12.11.

108. Also attached to her response to our additional directions was a quote from Doveguard Construction Limited ("Doveguard") dated 18.01.13 in which they quote for redecoration of the common parts and external previously painted surfaces. The sum quoted is £35,352 plus VAT and includes provision for external decorations, decorations to the internal common parts and scaffolding. She also attaches an earlier letter from Doveguard dated 22.11.12 in which they indicate that they previously carried out decoration works to the Building in September 2004 and that the final account was £27,000 plus VAT.

109. The Respondent's disputes that the contributions demanded towards the reserve fund in the service charge years ending 2011 and 2012 are reasonable. She does not appear to be arguing the same in respect of the sums of £668 demanded in 2006 and 2007.

110. She concedes that a contingency fund should be put in place to carry out works but her case appears to be that the current anticipated costs are unrealistic and unreasonable. She relies upon the 'historic quotations' annexed to her further

submissions as an indication as to what might be a reasonable sum. She asserts that the building is in reasonable condition.

Decision and Reasons

111. The only matter that this Tribunal is required to determine in respect of this item is whether or not the sums demanded from the Respondent towards the reserve fund are reasonable and payable by her.

112. As stated above, she does not appear to be challenging the sums of £668 demanded in 2006 and 2007 but in the event that these are in issue we consider that this was reasonable provision for anticipated future works.

The 2010/11 reserve fund demands

113. In the year ending 2010/11 the sum of £7,014 was demanded from the Respondent which we are told was demanded in order to fund the external major works planned for 2013. It appears that an additional reserve fund provision of £62,000 was required in order to fund these works that are estimated to cost £135,284.31.

114. In our view there appears to be significant merit in the Respondent's contentions that the anticipated costs are excessive. Our inspection of the Building led us to conclude that the external and internal appearance is generally good. Internal walls were sound and whilst redecoration is warranted we did not identify any major areas of concern. From our limited visual inspection of the roof it appeared to be in good condition although as indicated above cracking was evident to the parapet.

115. The Doveguard quotation obtained by the Respondent, in our view, supports the Respondent's assertions that the anticipated costs are unreasonably high. It is clear that Doveguard carried out significant work to the Building in 2004. This is evident from the documents submitted by the Respondent and included in the hearing bundle at pages [585 – 599]. At pages [585-590] is a detailed specification of works including roof works and external and internal repair and redecoration. Their current quote appears to relate to the whole of the Building (hence the reference to internal staircases) and is in a sum considerably less than that budgeted for by the Applicant.

116. However, we are conscious that Doveguard may not be quoting like for like. We are also conscious that the Applicant has yet to obtain a specification of works for the planned major works and that it has not yet engaged in the s.20 consultation procedure. The anticipated sum may, therefore reduce once these events have

occurred. Obviously any sum overpaid by the Respondent towards the reserve fund would remain held to her credit if the actual costs were less than anticipated. We have also had regard to the obligation on the Applicant to maintain the Building and its need to secure funds to enable it to do so. On the other hand, the sums demanded from the Respondent are considerable and the burden on her now would have been less if reserve fund contributions were demanded in 2008, 2009 and 2010.

117. We also note that the estimate for the works planned for 2007 amounted to £77,350 (as evidenced by the August 2006 Nelson Bakewell report). This included work to the roofs, front, side and rear elevations, external arrears and internal common parts. Although additional work was planned for 2012 in the sum of £81,700 virtually all of the work identified was a duplication of the work planned for 2007 by way of cyclical maintenance programme. We recognise that no works were carried out in 2007 but even allowing for further deterioration in the condition of the Building we consider the costs of the anticipated works to be surprisingly high.

118. Nevertheless, we are conscious that the audited accounts for the year ending 2011 show that the reserve fund balance brought forward was only £15,271. Even if the cost of the planned works was closer to the sum of £81,700 envisaged by Nelson Bakewell as opposed to the current estimated costs of £135,284.31 there is still a substantial shortfall that needs to be raised.

119. As will be seen below we consider that the sum demanded from the Respondent towards reserve fund contributions 2011/12 is excessive. Bearing in mind this reduction, the fact that both parties agree that *some* works are required and in light of the low amount standing to the credit of the reserve fund at the beginning of 2010 we do not find it unreasonable for the Applicant to demand the sum of £7,014 from the Respondent in respect of the planned major works programme. We determine that sum to be payable by her.

120. However, we stress our determination only concerns the reasonableness of the reserve fund contributions sought and that we are making no determination as to the reasonableness of the costs of the anticipated expenditure.

121. The Respondent is aware that she has the opportunity to make representations concerning the costs of the planned work as part of the s.20 consultation procedure and that she has the right to challenge the reasonableness and payability of these costs by way of an application to the LVT. It is hoped, however, that the parties will

engage constructively with one another and that no such application will need be made.

122. We are also of the view, from the documents that we have seen, that more can and should be done by the Applicant to explain why the sums being demanded from the Respondent are required and how they are to be utilised. It seems to us that demands have been made without a clear explanation on these points. We note from the letter at pages [639] of the bundle that D & G received several enquiries from leaseholders in 2007 who did not fully understand the planned property maintenance and that on 13.03.07 it wrote to the leaseholders stating that a demand for reserve fund contributions was being removed pending further review with residents [642]. We trust that the Applicant will take the required steps to ensure that there is no uncertainty over the works currently being proposed.

The 2011/12 reserve fund demands

123. The Applicant has stated that the sum of £9,045 is being demanded from the Respondent by way of her reserve fund contribution for the year ending 2012 towards anticipated expenditure in 2013. This is expressed to include the installation of fire safety installations in the common parts referred to above.

124. However, the Applicant has not provided any explanation as to why the sum budgeted for in respect of the installation of a fire detection system amounts to the stated sum of £24,464.50 as opposed to quotes received in the sum of £15,452.71 and £15,624.00. No details of additional works over and above the fire detection system works has been drawn to our attention although it may be that the balance relates to provision towards the planned major works.

125. Furthermore, the Respondent's apportioned contribution towards the sum of £24,464.50 does not amount to £9,045 as stated by the Applicant. 16.75% of £24,464.50 is £4,097.80.

126. In the absence of any explanation we determine that the sum that is reasonable for the Respondent to pay is £4,097.80.

Section 20C Application

127. The Respondent seeks an order under section 20C of the 1985 Act that none of the costs of the Applicant incurred in connection with these proceedings should be regarded as relevant costs in determining the amount of service charge payable by the Applicant. It does not appear to be in dispute that the lease allows for such costs to be recovered as service charge.

Decision and Reasons

128. We do not consider it just and equitable to make an order under s.20C limiting the costs the Respondent can recover as relevant costs.

129. The Applicant has only succeeded on a few of the challenges she has raised, many of which were only raised substantively on the day of the hearing. Whilst there was non-compliance with directions by both parties we do not accept, based on the evidence before us that the Applicant has acted unreasonably following the transfer of these proceedings from the county court.

Reimbursement of Fees

130. The Applicant sought reimbursement of its hearing fee on the basis that it had been compelled to resort to these proceedings in order to recover sums due to it. The Respondent resisted this on the basis that the Applicant had not complied with the LVT directions.

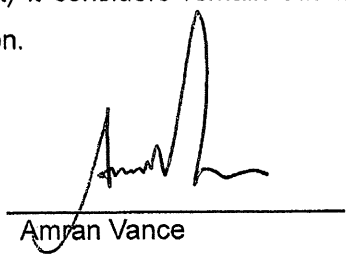
Decision and Reasons

131. We make no order in respect of reimbursement of fees. As stated above both parties failed to comply with the Tribunal's directions. We recognise the efforts that the Applicant made to seek to direct the Respondent's attention to what was required by way of compliance with directions. Nevertheless, we were considerably hampered in reaching this determination by the very late supply of hearing bundles and the lack of evidence provided by the Applicant in respect of reserve fund contributions demanded from the Applicant including why these were considered to be reasonable.

Concluding Remarks

132. This matter will now be remitted back to the County Court. Both parties are encouraged to seek to reach agreement where possible before this matter is next

considered by the County Court. If restored for further hearing the Applicant should ensure that the Court is provided with updated figures of what sums (including interest) it considers remain outstanding from the Respondent bearing in mind this decision.

Chairman: 

Amran Vance

Date: 29.01.13

Annex 1

2005/2006 Service Charge

Item	Amount Demanded	Amount Allowed
Audit & Accountancy	£329	£329
Management Charges	£3,270	£2908.13 (£275 @17.5%VAT x 9)
Pest Control	£1,645	£881.25
Entry Phones	£476	£476

2006/2007 Service Charge

Item	Amount Demanded	Amount Allowed
Audit & Accountancy	£425	£425
Management Charges	£3,366	£3053.53 (£288.75 @17.5%VAT x 9)
Pest Control	£1,645	£881.25

2007/2008 Service Charge

Item	Amount Demanded	Amount Allowed
Cleaning	£324	£324

Electricity	£92	£92
Audit & Accountancy	£448	£448
Management Charges	£3,500	£3206.23 (£303.19 @17.5%VAT x 9)
Pest Control	£1,636	£881.25
General Repairs and Maintenance	£702	£702
Sinking Fund Provision for Major Works	£8,132	£8,132

2008/2009 Service Charge

Item	Amount Demanded	Amount Allowed
Cleaning	£360	£360
Audit & Accountancy	£414	£414
Management Charges	£3,640	£3294.82 (£318.34 @15%VAT x 9)
Pest Control	£2,156	£862.50 plus £546.25 not in dispute
General Repairs and Maintenance	£1,778	£1,778
Health & Safety	£604	£604

2009/2010 Service Charge

Item	Amount Demanded	Amount Allowed
Cleaning	£360	£360
Audit & Accountancy	£434	£434
Management Charges	£3,719.12	£3534.80 (£334.26 @17.5%VAT x 9)
Pest Control	£1,645	£881.25
General Repairs and Maintenance	£538	£538
Health & Safety	£438	£398.33
Entry Phones	£347	£347
Miscellaneous Expenses	£428	£428

2010/2011 Service Charge

Item	Amount Demanded	Amount Allowed
Cleaning	£360	£360
Audit & Accountancy	£460	£460

Management Charges	£3,798	£3790.51 (£350.97 @ 20%VAT x 9)
Reserve Fund Contribution	£7,014	£7,014

2011/2012 Interim Charge

Item	Amount Demanded	Amount Allowed
Cleaning	£360	£360
Audit & Accountancy	£550	£490
Management Charges	£4,303.20	£3980.00 (£368.52 @ 20%VAT x 9)
Reserve Fund Contribution	£9,045	£4097.80

Annex 2

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18 - Meaning of "service charge" and "relevant costs"

(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 – Limitation of service charges: reasonableness

(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.

20C. Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court[, 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;

(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.

Section 27A – Liability to pay service charges: jurisdiction

(1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to –

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

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

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

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

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

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

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

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

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

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