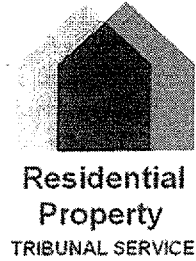


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**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL  
LANDLORD AND TENANT ACT 1985**

**LON/00AE/LSC/2007/0040**

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**Premises:** 7 Carmel Court, Kings Drive Wembley

**Applicants:** Wisestates Limited

**Represented by:** Mr Nicolls

**Respondent:** Ms Alpa Mulji

**Represented by:** Mr. A Mulji

**Tribunal:** Mr J Power FRICS  
Ms M Daley (LLBs)  
Dr Fox

**Date of Hearing:** 01/08/07

**Date of Decision:** 20.09/07

## **The Application**

1. This matter, involved two applications claim reference no Lon/00AE/LSC/2007/0040 and claim reference no Lon/00AE/LSC/2007/0070.
2. Application Lon/00AE/LSC/2007/0040 was transferred from the Willesden County court by order of District Judge Cohen dated 31.1.07. Application Lon/00AE/LSC/2007/0070 was as a result of an Application to the LVT for a determination under section 27A of the Landlord and Tenant Act 1985. . Both applications concerned the reasonableness of service charges in respect of properties at Carmel Court.
3. Directions were given on 21.3.07 that involved a direction that the matters be heard together. The Tribunal identified the following issues to be determined, the reasonableness of service charges for the year ending 2004 to 2006 and the estimate for 2007, in respect of major works, for claim Lon/00AE/LSC/2007/0070 and the reasonableness of service charges for the year ending 2004 to 2006.
4. This decision is in respect of Application No Lon/00AE/LSC/2007/0040, which was referred by Willesden County court.

## **Documents Received**

- (a) Two bundle of Documents from the Applicant
- (b) A Respondents bundle of Documents from Mr Mohammed

## **The Law**

### **5. Section 19 Landlord and Tenant Act 1985**

#### **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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.
- (3) An agreement by the tenant of a flat (other than an arbitration agreement within the meaning of section 32 of the Arbitration Act 1950 is void in so far as it purports to provide for a determination in a particular manner, or on particular evidence, of any question—
  - (a) whether costs incurred for services, repairs, maintenance, insurance or management were reasonably incurred
  - (b) whether services or works for which costs were incurred are of a reasonable standard, or
  - (c) Whether an amount payable before costs are incurred is reasonable.

#### **Section 27A Landlord and Tenant Act 1985**

- (i) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable.

## **Description of the Property and Inspection**

6. The Tribunal inspected the property on 22 May 2007. Carmel Court is situated on the north side of Kings Drive, Wembley. The property

comprises separate blocks and is linked with a similar development on the west side, known as Kings Court. Carmel and Kings are of similar size and the overall development provides 143 self-contained flats.

7. Carmel Court is generally of 3 storeys, traditional construction, with facing brick walls under a clay tile pitched roof. Generally the windows are metal with some replaced in recent times with PVC plastic units. Some of the flats are served with balconies.
8. The property was built some 50 years ago and is now showing signs of disrepair and some urgent maintenance work is required, particularly the renewal of external decorations.
9. Internally the flats are served by common staircases which the tribunal noted at the time of its visit were clean but with rather basic finishes and worn carpeting.
10. Both blocks are set in extensive landscaped grounds both to the front but more particularly to the rear. The areas are generally laid to lawn with mature trees at the rear and flowerbeds to the front. The Tribunal noted that the grounds were attractively maintained and provided a pleasant environment.
11. At the rear of the site was a battery of lock up garages, now no longer in use and with boarded up doors.

### **The Lease**

12. The relevant provisions of the lease are stated where referred to in the course of the proceedings

### **The Hearing**

13. The Procedure adopted by the Tribunal at the hearing was that Mr Mohammed would be invited to set out his case, with the landlord being given the opportunity to cross-examine the Applicant, Ms Alpa Mulji the Respondent was represented by her father, Mr Mulji would

outline the issues that Ms Mulji as Respondent had with the reasonableness of the charges, and then the Landlord would have an opportunity to deal with the issues that had been raised by both Tenants.

#### **Mr Mohammed's evidence**

14. Mr Mohammed was the leaseholder of flat no 93 Carmel Court, Kings Drive Wembley. Although he was the Tenant he did not actually live in the premises, and the flat was rented out, His witness statement together with attachments was set out at pages 75-98. He had identified issues that he had with specific invoices, set out at page 387,390,400, 497 and 415 of the bundle.
15. Of the 2004 invoice, he queried whether he had received his share of a refund of £334.57 and also whether he had received a refund of his share of a sum spent in the 2004/05 in the amount of £695.07. Mr Mohammed also considered that there were invoices, which had been attributed to Carmel Court, which should not have been, for example an invoice at page 451 (which was specifically stated as referring to architectural and engineering work at 16 Kings Court). In accordance with Mr Mohammed's calculations £25.74 should have been credited to his account.
16. He was also concerned about an invoice for repairs to a door to the cleaner's office, which cost £250; Mr Mohammed considered that the landlord should pay for this himself. Mr Mohammed noted the charges at pages 83, was an invoice for Fez cleaners. Mr Mohammed did not think that this invoice provided enough information. He did not know what was being done, or why the 2007 cleaning estimate was lower than previous years. He referred to page 539 of the bundle, and pointed out that there was a lack of detailed information concerning what work had been undertaken.
17. He considered that for the periods that he was asking for a determination. The Management fee charged by Countywide estates, (which was payable by the tenants), should be less. He considered

that 6% was reasonable. He felt that the current fee was based on the fee that a local authority landlord might charge to tenants. Whilst Mr Mohammed considered Carmel court to be less management intensive, therefore in his view the fee should reflect the work therefore in his opinion a lower fee should have been charged.

18. Mr Mohammed also stated that the spend on legal fees was quite high. Mr Mohammed did not know if value for money was being obtained. He wanted more information about proceedings for the recovery of service charges, and how any money received was being applied.
19. He also queried the Entry phone rental and whether it was cheaper to buy, rather than rent.
20. He was concerned about the budgeted amounts and pointed out that in 2004/05 the actual cost for fire equipment was £250, but the current estimate was for £1,850.
21. He wanted the Tribunal to consider all of these matters in deciding if the charges were reasonable.

#### **Mr Mulji On Behalf Of Ms Alpa Mulji**

22. Mr Mulji was representing his daughter. He explained that he was an Accountant and a member of the Resident's Committee. Mr Mulji's daughter was not a resident at the premises neither was Mr Mulji, the premises flat 7 had been purchased for an investment and was occupied by tenants.
23. Mr Mulji stated that he had an issue with the 2003 service charges, this was for the period when Maunder Taylor had managed the property, he was objecting to all of the charges because they could not be verified.
24. Mr Mulji also objected to the Management charges, because he had asked for and had not had a copy of the management agreement between the Landlord and Countywide Estates. He also stated that the

Estate was poorly managed and referred the Tribunal to the condition of the estate.

25. He stated that he took no issue with £9,899 of the porter/ handyman's fees that could be proved by reference to invoices for this period. However he did not consider it reasonable that he paid for the period where there were no invoices to prove that the cost had been incurred. Mr Mulji also stated that given there was a porter/handyman; he queried why he should pay additional charges for rubbish removal and also gardening in this period of £4112. Mr Mulji referred to invoices from ACE gardening services.
26. Mr Mulji also made a general complaint about the condition of the estate, and queried the cost of cleaning the estate. He stated that the corridors and common parts were full of rubbish in 2004, and the carpet was in a poor condition.
27. Mr Mulji also queried the invoices for pest control for this period and also for 2005, (where he queried the amount of visits that had been made to deal with Pest control) and stated that Brent council provided free pest control services and stated that this should have been utilised. Mr Mulji also took issue with the insurance premium and whether the cost was affected by the garages, which were not part of his daughter's demise. He also wanted to know whether the agents received commission.
28. Mr Mulji was concerned about the overall cost of the management fees and also legal fees. In particular he expressed the view that there should not be any legal fees as in his view the cost of these should be born by the person being sued. He also criticised the Landlord's managers for initially bring proceeding in the county court against his daughter in the wrong name. He stated that as a result of this County Estates had incurred unnecessary cost.
29. Mr Mulji noted that the service charges for this period had a surplus of £37,025 given this he queried why this did this not result in a decrease in the budget for 2005.

30. For 2005 Mr Mulji queried the lack of Electricity bill, for the common parts.
31. He also queried the following invoices; page 521 in the sum of £2937.50 because he could not see how it had been allocated and page 484, which was for bollards, as there was no estimate obtained, and in his view the amount of bollards 215 were excessive. Mr Mulji also questioned the cost of painting the bollards in the sum of £500 at page 531, the invoices for cutting the grass at page 528 & 529 (for six days in December and two days in February). He also queried the cost of the gardening in 2006, stating that in his view there should be no additional charges for gardening given that a handyman/porter could have undertaken this work.
32. He also queried the invoice at page 553 for cleaning of the communal stairways and windows in the sum of £2090 and he also queried why the tenant's were being charged for an Asbestos survey at page 571, When an earlier survey had been undertaken which he stated covered the same work.
33. For 2006 Mr Mulji also took issue in addition with an invoice for 6 wheelie bins at page 660 at a cost of £110.95. Mr Mulji also took issue with an invoice for £6804.43 for Connick tree care (Tree Surgeons), and he wanted to know why this cost had been incurred. Mr Mulji wanted to know whether other estimates had been obtained. Mr Mulji queried an amount for debt collection agents acting on behalf of L and D property maintenance in particular he was concerned with the charges and interest. As in his view this cost would not have been incurred if the original invoice had been paid on time. There was an invoice at page 677, which related to removal of rubbish and cement. He wanted to know how this invoice had been apportioned between the two blocks Carmel and Kings and whether it related to building works.



34. Mr Mulji queried why at page 713 there was an invoice for solicitors Flodgate Fielder, and also Anthony wells and Associates. He wanted to know what work had been done by them.
35. Mr Mulji was also critical about the fact that there was no separate service charge bank account held by the landlord and the fact that amounts held in the reserve fund had been used to pay for service charge general items.
36. In the course of cross-examination, Counsel Mr Nicholls asked Mr Mulji whether he accepted that Service Charges are paid into a separate bank account, under the name of County Estates. Mr Mulji did not accept this, and neither did he accept that under the terms of the sixth schedule of the lease, the reserve fund could be used for temporary deficiency. .
37. Counsel asked Mr Mulji why he had not answered request to clarify his queries on the service charges? Mr Mulji stated that it was not his job to set out information he required, it was the landlord's job to provide sufficient information, especially as he had set out his queries over the years.
38. When asked by counsel about whether he accepted that work had been undertaken and that the service charge was due Mr Mulji stated that he could not accept whether amounts incurred were justifiable without seeing the invoices.

#### **The evidence of Laura Bushaway Solicitor for Teacher Stern Selby**

39. Laura Bushaway had been called specifically to outline the steps that had been taken to bring proceedings against Ms Alpha Mulji, as in the course of his evidence Mr Mulij had criticised the cost incurred in bring proceedings against the wrong defendant, namely himself who had been named as A Mulji, when the premises, was in his daughter's name Alpha Mulji. Laura Bushaway indicated that they had written to the Muljis and asked them to clarify who the correct defendant was. She had received no reply.

40. She also dealt with the legal proceedings that that been issued against tenants at Carmel Court. She explained that she had an hourly rate of £200 + Vat., although she dealt with some matters at Carmel Court on the basis of a fixed fee agreement. She referred the Tribunal to documents, and invoices that had details redacted. In respect of one matter that Mr Mulji raised concerning an invoice for variation of a lease at page 577 she stated that she could not comment on the matter but that it was recoverable under the lease as it was to assist with the recovery of service charges. Of an invoice at page 731 she confirmed that the invoice was sent in error.
41. In cross-examination Mr Mulji queried why Ms Bushaway had not used the information held by the land registry to obtain the right information. He also stated that the landlord had been criticised by the judge because of the error in issuing the proceedings with A Fuji as the defendant.

#### **Evidence of Sarah Belsham**

42. Sarah Belsham stated that she was a property manager for County Estates from Cowley Middlesex, and had two statements at pages 150-158 and 159-164 of the bundle. She had become directly responsible for the premises in 2004, after the previous manager Paul Charter employed by County Estates had left. She accepted that some invoices were missing in 2003; this was because they had not all been handed over by Maunder Taylor. Invoices that were missing in 2004-2006 might be in the archive as invoices were kept for a year and then archived. Gibson Appleby Accountants would however have seen the invoices.
43. Sarah Belsham stated that they worked on the budget for the premises in about October, before year-end, and that they based the budget on what they considered needed to be spent at the property. So for example if something needed to be done, this was built into the budget, however because of the arrears, insufficient money was collected and was therefore not available to carry out the work. She

accepted that she had wrongly informed Mr Mulji that the reserve fund had not been used for day-to-day expenses. Sarah Belsham also accepted that the certified accounts did not use the same headings as the budget, and that this was confusing, (however in the course of the proceedings new accountants were appointed)

44. Counsel Mr Nicholls asked Sarah Belsham about the Handy Man. She stated that the handy man Alex Robinson had been employed in about 2004, and that there had been no break in his employment. He worked from 8.30am until 4.30am and had 20 days leave a year. Sarah Belsham then set out an extensive list of his duties. In late 2004 he had requested additional support, this had resulted in Ace Maintenance being engaged, this was a one man firm, who charged £100 a day and assisted with work, for example removing sofas and freezers as there was quite a lot of dumping at the property.
45. Sarah Belsham stated that the invoice at page 531 had been incurred because the bollards were painted to protect them, and as a result of an on-going graffiti problem at the estate. She also addressed the issue raised about the bin, and explained that the six bins that had been purchased had not been of the type normally supplied by the council. Sarah Belsham stated that in respect of one of the invoices that had been identified as cleaning Allied Cleaning Solutions, this had been for emptying the garages of rubbish that had been dumped.
46. In respect of the cleaning, Sarah Belsham stated that when County took over the management of the Carmel Court, Fez Cleaners were employed. In 2005 County Estate took the view that the cost of cleaning was too high, and the quality was not good, given this, the decision was made to re-tender the contract, the winning contractor ACS pulled out, T Barton had then been appointed.
47. There was a written contract and a cleaning specification at page 284; they cleaned on Monday, Wednesday and Friday. Sarah Belsham inspected every 6 to 8 weeks. Sarah Belsham stated that there was a problem with fly tipping, and rubbish was being left in the garages.

48. In so far as the pest control was concerned Sarah Belsham stated that there was an abundance of rats and mice at the estate. Rent-a-Kill were not turning up so they had employed Discreet Pest Control since 2005. Discreet were under a contract to attend a certain number of times a year.
49. Ms Belsham dealt with the Management Fees; she stated that they relied on a standard RICS contract and the management charge was based on a charge per flat. The charge was cheaper than Maunder Taylor's charge although it had recently been increased. Ms Belsham stated that there were a number of management problems at Carmel Court. When asked by the Tribunal about these in terms of difficulty, Ms Belsham stated that it had proved a very difficult block to manage.
50. In relation to the insurance, Sarah Belsham explained there had been problems in obtaining insurance. They had been unable to obtain insurance that included the garages, and in 2006 Norwich Union had initially refused to provide cover. The managing agents had been unable to obtain insurance elsewhere, at reasonable cost, and so had negotiated with Norwich Union. The insurance company had wanted to have an excess of £50,000 for escape of water. They had been able to negotiate down to £25,000. Sarah Belsham stated that County Estate had received commission from the insurance company.
51. Mr Mulji had complained about the cost of the bollards. The installation of the bollards were not major work, they had cost less than the section 20 consultation amount (£250 per flat).
52. Sarah Belsham stated that she had also considered the invoices referred to by Mr Mulji and Mr Mohammed and was able to clarify that in the case of invoice for First Maintenance this had been allocated on the basis of the actual work carried out between Kings and Carmel Court, as was also the case with documents at pages no 561 in relation to the accountant Gibson Appleby's charges.

53. In respect of the Asbestos survey, the survey had been necessary to deal with the 2002 regulations
54. At the hearing on 6 July 2007, the landlord's agent asked for leave to produce a further witness statement from Paul Rayden, although Mr Raydon was not present, Ms Belsham was able to deal with the matters set out in his statement.
55. Sarah Belsham stated that she had had conversations with Paul Rayden concerning the matters set out in his statement. Ms Belsham confirmed that new accountants had been engaged (Vantis). Who would use the same budget headings as Ms Belsham. Ms Belsham confirmed that the management fee had initially been calculated at £197.91 per flat. She confirmed that the managing agents considered that they were entitled to retain the insurance commission.
56. In Cross-examination Ms Belsham was asked by Mr Mohammed about why the commission was not passed on Ms Belsham stated that she considered that the managing agent were entitled to keep it. Mr Mohammed asked about the state of the property and damp stains that were on the wall. Ms Belsham reiterated her comments about the problems in carrying out work because of the arrears and stated that some work had been carried out on overflowing pipes. She was asked about whether all Lessees were pursued equally and confirmed that they were.
57. In Cross-Examination Mr Mulji asked Sarah Belsham whether the RICS code of practice were being adhered to in respect of matters such as the separate bank account, the use of the reserve fund, and the way in which interest was paid. Ms Belsham denied any breach. Mr Mulji criticised the fact that invoices were missing, and the fact that the managing agents were unable to produce the original signed contract between themselves and the landlord. He also asked Ms Belsham about why the budget was set so high given that there were consistent under spends, Ms Belsham stated that there were years when the managing agents had been unable to undertake necessary

work such as tree surgery because of arrears, this meant that the money was not being spent, because they were unable to pay for all of the work that the premises required.

58. Mr Mulji also asked about why some of the companies used did not show their VAT registration. He also queried whether all of the lessees were treated fairly and asked about arrears owned by Mr Haroun. Ms Sarah Belsham denied any difference in treatment. Mr Mulji wanted to know why the legal costs were not credited back into the service charge account. Ms Belsham could not explain where this recovery was shown. Mr Mulji challenged whether the asbestos work was infact different, and queried why Gibson Appleby and Country Estates had the same address. Ms Belsham denied this. In re-examination Counsel asked about the invoice and it was established that the original invoice had been photocopied onto Country Estate headed paper.

### **Closing Submissions**

59. Counsel Mr Nicolls stated that he wanted the Tribunal to cast their mind back to the visit to the premises. It had been a warm sunny morning and the Tribunal had been able to see the extent of the grounds and the fact that they were being maintained. Rubbish was being disposed of. The bollards that had been referred to in evidence were in place and were painted white which was in keeping with the grounds.
60. Section 27 A of the Landlord and Tenant Act 1985 required the Tribunal to consider by whom the service charges were payable, to whom they were payable, the amount, and the date that the expenses were incurred.
61. The section 19 test is the reasonableness of the charges. For Mr Mulji the period was 2003- 30 June 2006 for Mr Mohammed the period was 2004- 30 June 2006.

62. The landlord stated that reasonable cost had been incurred, and a candid sensible approach had been taken, Errors had been revealed these errors had been corrected. In fact there were however very few documents with errors. Mr Mulji was an accountant, but The Tribunal were however not conducting an audit, and did not have to adopt an invoice-by-invoice approach.
63. Both Mr Mulji and Mr Mohammed did not live at the property, and this may have affected their knowledge of what went on at the property, and indeed their motivation to pay.
64. Counsel stated that the starting point in considering the charges were the leases; the lease for flat 7 was at page 182 The tenants covenant at 4 (a). Which set out the obligation to pay the maintenance contribution. The definition period set out the maintenance year as the expiry of the term ending on 31 December .The maintenance proportion was set out at page 215 and confirmed as being 1.1604 %in the case of Mr Mulji and 1.2956 % in Mr Mohammed's case. At page 219 clauses 5 of the lease set out the terms on which the funds were to be held. Clause 2 (c) allowed the Landlord to re-coup shortfalls from the lessee not recovered from his contribution and 2 (e) of the lease provided that allowance had to be made for such sums.
65. Counsel stated that clause 3 dealt with repayments of any surplus, and that page 315 of the bundle had identified a surplus (which had since been repaid) and also at page 309. Counsel stated that as far as 2003 was concerned such invoices as the landlord has been able to produce have been produced. There was evidence that the record keeping improved over time, however the oldest invoices cannot be found.
66. The Tribunal however needed to consider the reasonableness of the service charge. Counsel stated that it does not automatically follow that no cost had been incurred because, of a lack of invoices. The landlord had relied on professional accountants such as Gibson Appleby. There was no evidence that they had not seen the invoices

so as not to justify the figures in the accounts. Therefore a logical inference could be drawn, for example a handyman had been employed throughout 2004-05, an inference could be drawn that the handyman had been employed continuously, likewise the managing agents had been continuously employed and electricity had been provided and thus an inference could be drawn that those costs had been incurred by the landlord. The purpose of the maintenance fund was set out at page 203 of the bundle in the lease.

67. Counsel referred the Tribunal to the summary of cost at page 307, this referred to joint cost, which were defined at page 207 of the lease. Electricity the next head of cost was recoverable by reference to clause 2(3) of the lease. Clause 18 of the sixth schedule provided for repairs.
68. Counsel referred to Para 2 of the sixth schedule which required the landlord to cultivate and preserve in good order and condition the gardens and grounds of the building and *in particular lop and top the trees therein*. Counsel then referred to the next item in the summary of cost of cleaning, which Counsel stated was covered in Para 3 of the sixth schedule. Counsel stated that pest control was covered by Para 18 in the sixth Schedule which was a catch all which covered necessary work such as Pest Control, The next item in the summary of cost was Insurance was covered by Para 12; Accountants fees Para 9 and Para 18, whilst the management fees were covered by Para 1; the entry phone and fire equipment were covered by Para 18; legal fees were covered by Para 8 and there was a wide ranging right to recover legal cost incurred separate from that is any recovery action against individual tenants. Counsel stated that if the landlord did recover any cost it would have been unreasonable not to account for this recovery in the service charges.
69. Counsel stated that Para 6 of the sixth schedule of the lease covered the Porter's wages; the sundry category was caught under Para 18 of the lease. Counsel also referred to Para 19 of the sixth Schedule at page 208 which permitted the landlord to *place on deposit at a bank*



*or with a local authority sums representing the reserve...and to withdraw the same from deposit as required in order to meet the expenses referred to in that paragraph or to meet any temporary deficiency in the moneys available to meet the expenditure referred to in paragraph 2(a) of that part of the schedule.*

70. Counsel referred the Tribunal to the balance shown in the account at page 266 in the sum of £8193.47. Counsel stated that 2 (C) of the lease also allowed the landlord to recover from the lessee all unpaid service charges. Counsel referred to the fact that Mr Mulji also stated that interest was not separated out, so that both the reserve funds and the service charge account interest was not shown separately. Counsel stated that this was not necessary, and the accountants had shown the interest in the accounts.
71. Counsel then considered the specific matters raised by both Mr Mohammed and Mr. Mulji. Mr Mohammed had complained that the budget headings and the fact that the accounts had different categories which made the accounts difficult to follow. The Landlord's agents accepted this, and they had responded to the criticism by changing accountants.
72. Mr Mohammed had also complained about the fact that the tenants were charged for the repairs to the cleaner's door. Counsel stated that where the landlord has a cleaner, it is clear that they need somewhere to store their belongings. The general catchall provision in Para. 18 schedule 6, enabled the landlord to recover the cost of repairing this item.
73. Counsel stated that insofar as the managing agents' fees were criticised these were 20% cheaper than when Maunder Taylor was the managing agent. Insofar as the Insurance commission was concerned there was no basis for saying that it should be repaid, if the insurance commission could not be retained then in all probability the managing agents would have to increase their charge. The insurance commission was an incentive.

74. Counsel stated that the legal fees had been dealt with by Laura Bushaway, who had explained the charging basis used by Teacher Stern Selby as solicitors for the managing agents. He also stated that the landlord had accepted some of the legitimate queries concerning the 2004 charges, the reasons for both a porter and gardener being employed had been dealt with. A copy of the cleaning specification had been provided. The Management fees had been criticised by the tenants.
75. Counsel stated that of Mr Mulji's wide-ranging criticisms concerning the lack of information from the landlord, this did not affect the liability of the tenant to pay the service charges. Mr Mulji had alleged that his daughter was treated differently from Mr Harouni. The landlord denied this, and it was stated on the landlord's behalf that they did not treat Mr Harouni differently from other tenants at the estate.
76. However as far as the 2004 charges were concerned Mr Mulji accepted that some services had been provided by the handyman/porter, and also that electricity had been provided. Mr Mulji had queried the repairs, but had accepted the charges for the intercom, he had also criticised the expenses of the bins (he had said that Brent Council would supply free bins) and that there was a free pest control service. Counsel stated that this evidence was unreliable.
77. Insofar as the Management charges were concerned Counsel stated that there was a contract albeit that it was not in writing. Again even though there were some invoices for the handyman/porters wages, it was agreed that he had been continuously employed through out that period.
78. Insofar as the work to the bollards were concerned this was set out at page 489. However, this was not a major work, as it was under the prescribed limit of £250 per tenant.
79. Counsel stated that the errors had been dealt with in the invoices, and the pest control and asbestos invoice had been dealt with in Ms

Belsham evidence. Counsel invited the Tribunal to find that the charges were reasonable, and payable in accordance with section 19 of the Landlord and Tenant Act 1985.

*Mr Mohammed's Closing Submissions*

80. Mr Mohammed commenced by saying that he had been sent summary charges, and had had queries, which were not being answered. He therefore had no choice but to go to the LVT. Mr Mohammed referred to page 81, which was a summary of disputed service charges. From this document it was clear that £2280.69 was accepted as having been overpaid.
81. Mr Mohammed stated that he always paid his service charges and this was the first year that had had only made a part payment. He referred to page 77 Para 22, which set out his case concerning the legal fees; he considered that the landlord had not provided sufficient information concerning recovered legal cost. He did not consider the management fees to be reasonable. In his view the charge was not fair and did not reflect the total cost; he stated that he was aware of a previous LVT case in which the management charge had been set at 10% for local authorities and 6% for private sector landlords.
82. He stated that when he brought the case he was concerned about the major works, and the fact that the budget was difficult to follow. He accepted that new accountants might help. However if you added up the invoices it still did not tally with the amount in the account. He did not accept that the managing agents were entitled to keep the insurance commission.
83. The flat was small and in his view the building was not well managed. There were problems with the overflow pipes even though the lease stated that this was the landlord's responsibility. He was not antagonistic towards paying service charges, but had withheld for the reason set out.
84. He made an application, under section 20 C, in respect of the cost of the proceedings. He also wanted to apply for a refund for his £100 fee

to the LVT as he considered that if his queries had been answered he would not have brought the case to the Leasehold Valuation Tribunal.

*Mr Mulji's Closing Submissions*

85. Mr Mulji stated that the Tribunal and parties had been at the Tribunal for three days and that the managing agents had not been helpful. He stated that he understood that the Management Agents were not members of the Institute of Chartered Surveyors. He made a number of wide ranging criticisms of County Estate, the fact that they did not provide him with information requested; they had not complied with the RICS requirements to keep all records for 6 years, and the way that the reserve fund was managed.
86. The Tribunal had visited and seen the estate; he stated that because of poor management the value of the property had gone down by 25 %. The property had been purchased for an investment income, the income was approximately £9000, and the service charge was over £2000 plus the management fees. Mr Mulji considered that the reserve funds were being badly managed; he stated that the assets were at risk because of the negligence of county estate. He stated that the reserve fund could only be used as a temporary measure and that this was not the case here. He stated that the managing agents were incompetent in the way they had brought legal proceedings against A Mulji which could have been either Mr Mulji or his daughter Alpha.
87. He stated that the Landlord had shown favouritism in that Mr Harouni had been treated differently in that an arrangement had been made not to charge him his service charge fees. He also stated that no legal fees had been shown as recovered in respect of the legal action taken and invited the Tribunal to find that the charges were not reasonable.
88. He also stated that he wished to make an application under

Section 20 C. He stated that the Landlord should not be allowed to claim the cost of these proceedings as service charges.

*In reply to the section 20 C application*

89. Counsel stated that in relation to the cost the Tribunal should decide on the basis of what was just and equitable in all the circumstances. The Tribunal should consider the degree of success of the tenants, and the proportionality. Mr Mohammed did not make a previous complaint. Of Mr Mulji he stated that he did not accept his criticisms. Many of the matters raised had been simply background. The landlord was entitled to his cost under Para 8 of the lease at page 205.

### **Decision of the Tribunal**

90. The Tribunal have considered the reasonableness of the charges for each of the periods set out in the application and have made the following decision-:

#### **The Service Charges for 2003**

91. In 2003, there was a change of managing agent at the premises, and the premises ceased to be managed by Maunder Taylor and were then managed by County Estate Management Ltd. Both the Respondent Ms Mulji, who was represented by her father and the Applicant, Mr Mohammed complained that they could not be sure that the expenses were incurred during this period. As they were not able to inspect the invoices. However the Tribunal have listened carefully to the evidence. Firstly County Estate Management Ltd produced audited accounts. In order for these accounts to be audited by accountants, the invoices must at that stage have been available for inspection. It was also clear that there were difficulties with the hand over of documentation from one managing agent to another, and there is evidence that after County Estate Management Ltd took over the

management, that they were able to produce invoices in support of the expenses and there was no pattern of poor record keeping.

92. It was also clear that the expenditure for the 2004 period onward was in line with the earlier year. For this reason the Tribunal does not reject the service charge for this period because of the absence of some of the invoices.

93. The Tribunal considered that the charges for electricity for the common parts, and the repairs and maintenance, were reasonable. There was also evidence that work such as cleaning and garden maintenance had been carried out. The Tribunal noted that the garden was extensive and was well kept and that it contained mature trees and plants and foliage

94. The Tribunal also accept that the charges for Entry phone rental and maintenance and fire protection and legal expenses were reasonable and accordingly the Tribunal consider that the sum of £ 1,022.59 (as set out at page 267, and subject to the deduction give below) set out in the demand are reasonable.

#### The Service charge for 2004

95. In relation to the porters wages the Tribunal heard evidence that a full-time porter was employed, to assist in the up keep of Carmel Court, The Tribunal inspected the site, and were satisfied that the duties described by Ms Belsham were carried out, and that given the range of duties and the size of Carmel Court and Kings Court, the porter's wages were reasonable, The Tribunal also considered that

given the size of the grounds it was reasonable for additional expenses to be incurred, for help in the upkeep of the grounds.

96. The Tribunal also consider that there was no evidence at any stage that a porter had not been engaged, and that even in the absence of invoices, there was physical evidence of the presence of the porter through out this period.
97. The Tribunal consider that in relation to the complaints concerning the invoices for pest control, that these complaints were not justified by reference to the evidence. The Tribunal accepted that the open nature of the buildings, which had accessible areas and the presences of rubbish, could lead to the need for regular pest control. Neither of the tenants denied this. Mr Mulji asserted that the local authority would carry out the work without making a charge. No evidence was presented to support this assertion, and in the absence of evidence to the contrary, the Tribunal find that the cost for pest control is reasonable.
98. The Tribunal consider that the cost of replacing the door to the cleaner's property was a legitimate expense that could be incurred against the service charges under clause 18 of the sixth Schedule of the lease. The Tribunal consider that the charges demanded in the sum of £1,494.66 were reasonable (save for the adjustments made by the tribunal in the paragraph 104 below).

#### The service charge for 2005

99. The Tribunal considered the charges incurred in 2005 to be reasonable, The Tribunal had been invited to go through a number of detailed invoices and Ms Belsham had provided detailed explanation for the invoices concerned. The Tribunal accept that given the extensive nature of the grounds it was reasonable that the landlord obtained additional assistance in the upkeep of the garden.
100. Insofar as the bollards were concerned, the Tribunal decided that these items were not major works and that the cost of the bollards and the painting of the bollards were reasonable. The Tribunal also

find that the other heads of cost such as porters wages, electricity, general repairs, gardening, cleaning, pest control, insurance, accountancy fees, fire equipment, legal fees and bank charges are reasonable. Accordingly the Tribunal consider that the demand for service charges at £1,386 were reasonable.

The estimated charge for 2006

101. The Tribunal have considered the estimated charge. The Tribunal are disappointed that the actual charges were not available at the time of the hearing. The Tribunal considered the heads of cost such as Porters wages, Electricity, General repairs, gardening, cleaning, pest control, insurance, Accountancy fees, Fire equipment, Legal fees and Bank Charges are reasonable. However when considering the management charges, the Tribunal considered the effectiveness of the management at Carmel court.

102. The Tribunal have listened carefully to the evidence concerning the issue of the insurance. Neither the Respondent nor the Applicant was able to provide the Tribunal with any case-law authority concerning the retention of the insurance commission. The Tribunal therefore considered the evidence concerning whether the current insurance was reasonable, and whether the current price was affected by the fact that commission had been received.

103. Neither, Mr Mohammed or Mr Mulji presented any evidence concerning the cost of obtaining insurance. Both accepted the charge for insurance as reasonable. The Tribunal heard evidence concerning the difficulties in obtaining insurance, and the efforts made by the managing agent in obtaining insurance at a reasonable cost. Given this the Tribunal find that the cost of insurance is reasonable and that the commission need not be credited to the service charge account.

104. The Tribunal note that there was a considerable service charge arrears problem at Carmel court, and that despite a considerable amount spent on legal cost, the arrears problem still existed. There was little evidence of strategic planning to deal with this issue. The



Tribunal decide that there ought to be a reduction in the management charges to reflect the fact that there are failures in management, and have accordingly reduced the charges to £200 per unit plus vat. (For 73 flats at £235 plus vat). The revised management charges will accordingly be

- (i) 2003 Service Charges in the sum of £ 17,155.00
- (ii) 2004 Service Charges in the Sum of £17,155.00
- (iii) 2005 Service Charges in the sum of £17,155.00
- (iv) 2006 Service Charges in the sum of £17,155.00

105. Accordingly the Tribunal find that the following service charges were reasonable and payable for the following periods by Alpha Mulji in the sum of

106. The Tribunal have accordingly reduced the service charges payable to reflect the reduction in the management fee and find that the following amounts are payable by reference to each of the periods in question.

- a) For 2003 The Tribunal find that tenant's contribution should be £1101.13 - £292.50 =£808.63
- b) For 2004 The Tribunal find that the tenant's contribution should be £1057.62
- c) For 2005 The Tribunal find that the tenant's contribution should be £1355.93
- d) The Tribunal find that the interim charge for 2006 of £843.32 is reasonable subject to the management fees not exceeding the figure set out in Para. 102 above
- e) The Tribunal note that in the evidence of Ms Belsham at Para 18 and 19 of her further Witness Statement a credit of £1.95 was give to the Respondent in respect an error in an invoice at page 516 and £0.34 in respect of an error in an invoice at page521.

107. The Tribunal find that the Respondent Alpha Mulji owes the sum of £ 4063.23.

108. The Tribunal have considered the Respondent's application under section 20 C; and the helpful comments made by Counsel in his closing submission:- That the Tribunal should decide on the basis of what was just and equitable in all the circumstances. The Tribunal should consider the degree of success of the tenants, and the proportionality.

109. Given the findings of the Tribunal, the Tribunal consider that it is reasonable in all the circumstances for the Applicant to be able to recover the cost of these proceedings, save that the cost should be reduced by 20% to reflect the findings of the Tribunal. The Tribunal also consider that any issues concerning the charges, are subject to the Tribunal's Jurisdiction under section 18 and 19 of the Landlord and Tenant Act 1985, as to the reasonableness of the charges.

Chairman..........

Dated.....20-9-07.....