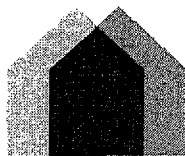


3025



**Residential
Property**
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00AM/LSC/2006/0155

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

Applicant: Fleetguild Limited

Respondent: Mrs T P Sheikh

Premises: 59 Cambridge Court, Amhurst Park, London N16 5AQ

Date of Application: 2 May 2006

Date of Hearing: 14 December 2006

**Appearances for Applicant: Mr A Cox – Lay Rep.
Mr A Lewin – Manager (Cambridge Court)
Mr C Hunt – Porter (Cambridge Court)**

Appearances for Respondent: In Person

Also in attendance:

**Leasehold Valuation Tribunal: Mr C C Leonard
Mr P M J Casey MRICS
Mr O N Miller BSc**

Date of Tribunal's Decision: 29 January 2007



**Residential
Property**
TRIBUNAL SERVICE

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

**DECISION BY THE LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985, as amended, Sections 27A and 20C

Ref :LON/00AM/LSC/20060155

Property: 59 Cambridge Court, Amhurst Park, London, N16 5AQ

Hearing date: 14 December 2006

Applicant: Fleetguild Limited

Represented by: Mr Cox

Respondent: Mrs T P Sheikh

Represented by: In Person

1. This case concerns service charges arising in the years ending 24 March 2004 and 24 March 2005. They are (subject to the jurisdiction of the courts and this tribunal) payable by Mrs T P Sheikh, the lessee of 59 Cambridge Court, Amhurst Park, London N15 5AQ (“the property”). The landlord is Fleetguild Limited.
2. Proceedings were taken by the landlord in the county court to recover unpaid service charges, arrears of rent and fees from the lessee relating to those two years. They have been defended on the basis that the service charges claimed from the lessee as her share (£2354 for 2004 and £2061.14 for 2005) are not fair and reasonable and that a lesser amount is due. No other issue of principle is raised in the Defence. The lessee also counterclaimed for breaches of the landlord’s obligation to keep Cambridge Court in good order and repair.
3. The matter was referred to this Tribunal by order of District Judge Price dated 18 April 2006, specifically for “the issue of reasonableness of service charges to be considered”, and stayed pending the tribunal’s determination.
4. **Statutory Regulation of Service Charges**
5. Paragraph 3 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 provides that... “Where in any proceedings before a court there falls for determination a question falling within the jurisdiction of a leasehold valuation tribunal, the court...may by order transfer to a leasehold valuation tribunal so much of the proceedings as relate to the determination of that question.”
6. Section 18 (1) of the Landlord and Tenant Act 1985 defines a service charge as “...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...”

7. Section 19 provides that

(a) “(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...”

8. Section 27A (1) of the Act provides that

“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...”

9. Section 27A (4) provides that “No application under subsection (1) or (3) may be made in respect of a matter which...has been agreed or admitted by the tenant...” Previous payment of a service charge is not in itself a bar to application.

The Scope of the Matters before the Tribunal

10. The tribunal may consider only the issue referred to it by the court for determination, which is to say the reasonableness of the disputed service charges for the years ending 24 March 2004 and 24 March 2005. Such service charges as have been admitted by the Lessee fall outside the jurisdiction of the tribunal under section 27A (4) and in any event, not being in issue, have not been referred to the tribunal by the court. Other matters, such as whether given charges are recoverable under the terms of the lease, have not been referred to and are not before the Tribunal.

The Lease

11. The lease for the property is dated 2 July 1970. It is a 125 year lease from 25 September 1968.

12. Paragraph 3 of the lease contains the lessee's covenants to pay the lessor a service charge equal to "a rateable share of the expense of:-

(a) Repairing cleansing building and maintaining the main walls and timbers of the building the roof chimney stacks gutters and main water pipes used or to be used in common by the occupiers of the flat and the occupiers of the other flats in the building

(b) Repairing cleansing building and maintaining all party walls or party roads fences pathways passages sewers drains pipes watercourses and other easements serving the flat and the building

(c) Cleansing decorating repairing and lighting of the common passageways staircases lifts entrance halls landings and access ways to all flats in the building

(d) The upkeep of the gardens surrounding the building

- (e) Insurance of the building in the full value thereof against loss and damage by fire and by aircraft and by articles dropped or falling therefrom and such other risks as the lessor shall deem to be advisable
- (f) Supplying hot water for domestic use only throughout the year and providing central heating for the building from the 1st of October to the 30th of April in each year
- (g) The costs and expenses incurred by the lessors in employing Managing Agents to manage the building and a firm of Chartered Accountants to prepare management account..."

13. Paragraph 3 (ii) of the lease makes provision for preparation and certification of service charge accounts and for payment on account against periodically recurring charges.

14. Clause 3 (ii) (d) of the lease provides that a certificate of the lessor's expenses and outgoings, provided in accordance with the terms of the lease for any given financial year shall be conclusive evidence for the purposes of the matters to which it relates. Notwithstanding this provision the landlord did, as directed by the tribunal, produce invoices and accounts to justify the certified charges. There were a few anomalies in the documentary evidence of expenditure for 2004 but not so as to suggest that the lessee was overcharged.

15. The lessee confirmed to the tribunal that she does not take issue with the landlord's formulation of her share of the total service charge at 1.766%.

The Evidence

16. Although no direction has been made for the service of witness statements in this case, the Tribunal heard from the lessee, Mrs Sheikh, from the resident Porter at Cambridge Court Mr Christopher J Hunt and from Mr Lewin for the

managing agents, City Estates. Their evidence shall be referred to below where appropriate.

Inspection

17. The tribunal visited Cambridge Court on 23 October 2006. Cambridge Court comprises 67 flats with small areas of parking space and garden to the front and rear. The lowest level of the block, referred to as "the Warehouse", is used by the Landlord. When the tribunal arrived Mr Hunt, with the assistance of the Police, was in the process of ejecting an individual who was trying to gain illicit access to the block.

18. Generally, with some minor exceptions, the block appeared to be in a good state of repair and maintenance. It was clean and tidy. The surfacing of the car-park areas was poor and some car-park areas showed signs of neglect (although most did not). Inside Cambridge Court there were signs of very recent redecoration, but not on a scale that could disguise long-term neglect, of which there was no evidence. Gardens to the front and sides of the building were for the most part reasonably well maintained, though some small, less accessible areas were neglected. At the rear of Cambridge Court the open parking area borders onto another property with no visible wall or fence to mark the boundary. Close to that boundary is a shabby enclosure housing the rear fuel tank, which services the building's central heating and hot water system.

SERVICE CHARGES FOR THE YEAR ENDING 24 MARCH 2004

19. Porterage

The total charge for porterage for the year ended 24 March 2004 is £16,062.08. It breaks down as follows:-

Wages, NIC and payroll services:	£6,286.14
Value of Porter's flat:	7,500.00
Council tax and water rates:	948.41
Electricity for Porter's flat:	727.53
Telephone for Porter's flat:	<u>600.00</u>
TOTAL	£16,602.08

20. The lessee complains that the porter is not present on a regular basis. She relies on the fact that the postman holds a key to Cambridge Court to allow access of deliveries when the porter is absent. To her, this indicates that he is not present when he should be.

21. More broadly, she says that this charge is too high for what the Porter actually does. She criticises the standard of service, saying that the porter does not perform his duties (including keeping Cambridge Court clean, well maintained and secure) to an adequate standard and that work that should be done by him is done by others at an extra charge. She believes that tenants of sub-let flats at Cambridge Court get more of the benefit of his services than long-term leaseholders such as herself.

22. The lessee also challenges the electricity and telephone charges for the porter's flat. She suggest that that a quarterly charge up to say £120 would be fair for the telephone and about £80 per quarter for electricity, as she herself pays between £60 and £100.

The evidence of Mr Hunt

23. Mr Hunt does not have a written contract or a written description of his duties. His account is as follows. He is on call seven days a week, available to lessees and tenants to deal with any problems. He is normally available between 7 am and 6 pm but is on call 24 hours per day and is frequently called upon to deal with emergencies or problems late into the evening, as when recently he had to replace a dislodged TV aerial at 9 p.m. He takes some time off at the weekend to do his shopping but even then he always keeps his mobile telephone with him and can be contacted at all times.
24. On a typical day, he says, he will assist with the smooth running of the block, assist tenants with any problems arising. He will supervise cleaning which takes place six times weekly. He will test the fire alarm, put letters through doors and check that the lifts and boilers are functioning. He will pick up litter in the building and gardens. (This, he says, is an unending, constant task. Voluminous rubbish is regularly abandoned by tenants in the common parts and can accrue very quickly). He will perform routine maintenance duties such as unblocking drains. He must deal with regular petty vandalism, including the damaging of alarms set to trigger when lifts are immobilized by their doors being left open, and the theft of fire extinguisher cabinet keys. He will call out contractors to deal with problems where necessary, clearing this first with the managing agents except in cases of emergency.
25. In all his is a demanding, time-consuming job which means that he has little or no life outside of Cambridge Court itself. A lot of unpleasant work, such as clearing drains, cleaning spit from floors or picking up syringes left in the grounds by drug users, is he says not often seen by lessees. He also has to

guard the gardens from use by prostitutes and the building from entry by drug users.

26. Mr Hunt states that he provides the same service to sub-tenants and lessees alike, although short-term tenants may create more work. He does keep an eye on the work done by contractors called in to undertake maintenance and repair work, and has in fact picked up some skills from that which he uses in his work.
27. Mr Hunt stated in evidence that he uses his flat purely in relation to his residence and his duties as a porter. He does not have any items in the flat that use exceptional amounts of electricity but the electricity bill is inflated by the fact that security floodlights at Cambridge Court are charged to his electricity account. (The landlord has produced bills to verify the amount included in the service charge).
28. Telephone bills are treated differently. Mr Hunt stated that his father, also called C J Hunt and a former Cambridge Court porter himself, pays his telephone bills because he does not have sufficient money to do so. (Mr Hunt senior continues to provide services such as gardening, bulk rubbish clearance and general repair works to Cambridge Court). A proportion of the bill paid, representing an estimate of the amount attributable to his portering work, is charged by Mr Hunt senior back to the Managing Agents. The normal total is about £350 per quarter of which he thinks £200 a fair proportion. He pays for his mobile phone himself.
29. Mr Hunt changed his evidence to the tribunal in one respect. When describing his daily duties he stated that they include emptying bins twice daily. When challenged by the lessee he admitted that he does not empty the bins himself but stated that he pays the cleaner to do it. This seems an odd arrangement. It is not entirely satisfactory that Mr Hunt should have told the tribunal that he empties the bins twice daily when in fact he does not. However generally the weight of evidence indicates that he does the job he is there to do, and to a

reasonable standard. Mr Hunt cannot always be on the spot when the post arrives.

30. These are the Tribunal's conclusions in relation to the reasonableness of the portage charges. On the evidence there would appear to have been a porter at Cambridge Court for at least 20 years and the lessee, among others, benefits from the porter's presence. It is unlikely that the block would have the same degree of protection from damage and intruders without a resident porter present, and the portage system appears to work well at a relatively low cost. The porter's wages are modest and the additional charges paid by the landlord for wages, NIC and payroll services, at about £10 per month, are reasonable. The sum of £7,500 charged to represent the value of supplying the Porter's flat is not unreasonable either, assuming that this item properly falls to be recoverable as a service charge item under the terms of the Lease. That was not an issue before the Tribunal.
31. The tribunal finds no basis to criticise the level of the electricity bill attributed to the Porter's flat, which has been billed and paid for. The same can be said for council tax and water rates, which are charged as paid.
32. The arrangement in relation to telephone charges is unsatisfactory. Telephone bills should be paid by the Managing Agents with an appropriate refund by the Porter for any personal use. That said, the level of charge does not itself seem unreasonable given that the Porter operates from his flat and is constantly on call.
33. The total cost of portage for 2004 is less than £5 per week per unit. That is not an unreasonable charge for what Mr Hunt does. Some units may tend to benefit more than others from the service. That is true of all service charges and is not a basis for adjustment.

Electricity Supply to Common Parts

34. This was charged at £2,511.07, minus a refund of £110. The lessee has three points to make about this charge. In the county court her Defence contends that the charge is too high because there is often no light. Now that the Landlord has produced copy invoices to verify that these charges have been rendered and paid, she also observes that the invoices relied upon are based upon estimates rather than readings. Finally, there is reference in the documents to a “warehouse” meter and the “warehouse” is used exclusively by the landlord.

35. The tribunal does not believe there is much substance in the first and second points. Even if there have been periods without light to common parts – which seems inconsistent with the standard of maintenance observed on inspection – it does not follow that such light as has been supplied should not be paid for. It is common to receive electricity bills based on estimates and eventually these relevant charges are adjusted. As for the “warehouse”, the evidence of Mr Hunt is that the “warehouse” meter is so called because that is where it is located. It does measure electricity supply to the common parts of the building. The charges made are reasonable.

Fuel for Central Heating and Hot Water

36. This was charged at £32,450.74 for the year ended 24 March 2004. The lessee maintains that this is too high as “previously” £12,000 was charged, and that the cost of the fuel has gone up disproportionately. The landlord contends that fuel charges have increased with the price of oil, and has produced invoices and delivery notes to verify that the oil charged for was purchased. The figure of £12,000 – in fact £12,800 - dates back to 1989, and that a switch was made to a cheaper supplier in 2003.

37. The lessee has pointed to some apparent minor errors and/or omissions in the paperwork, and mentioned that copy delivery notes produced by the landlord are unsigned, but none of this would clearly indicate, as she suggests, that the fuel invoiced and paid for was not delivered to Cambridge Court. Mr Hunt says that it was, and the invoices support him.

38. The Tribunal would accept the landlord's contention that an annual charge amounting to less than £500 per flat is not unreasonable for a year's supply of heating and hot water to the entire block, including common parts. There is no reason to adjust this item.

Boiler Repairs and Maintenance

39. This was charged at £6,279.82 for the year ending 24 March 2004. The lessee's county court defence is that this charge is disputed because there has been no hot water on many occasions. She told the tribunal that the boiler keeps breaking down and suggested that a lower cost might have been incurred had there been a service contract in place.

40. The landlord has produced invoices to support the charge, which confirm that the works in question were not just to the boilers but also to water-tanks, the cold water system and pumps. The charge made includes the costs of servicing the boilers as well as chlorination of the water system, replacement valve, repairs to a leak etc.

41. The tribunal's conclusion is that the charge is reasonable. Repairs and maintenance have to be paid for. If as the lessee says the boiler breaks down frequently and there is often no hot water then the cost of frequent repair will be unavoidable unless it is to be replaced. It has been serviced and the tribunal has seen no evidence that a service contract would have costs less. The lessee has not suggested that the boiler should have been replaced before 2004. If it had been, the cost would have been considerable.

Lift Repairs and Maintenance

42. Cambridge Court is serviced by four lifts. Two are service lifts and two passenger lifts. The charge for lift repairs and maintenance in the year ended 24 March 2004 was £7,946.07. The lessee resists this on the basis that the lifts are often not working. She contended to the tribunal that this bill could have

been reduced by a regular maintenance contract, eliminating call-out charges. She also contended that these lifts, elderly and of unusual (Italian) design, should have been replaced years ago but do not need replacing now. The logic of this last argument is difficult to follow.

43. The landlord has produced documents to substantiate the service charge made, as well as the existence of a servicing contract. The lifts are elderly and in frequent need of attention. Replacing them would be very expensive.
44. The lessee complains that lifts have been left unpainted. This appears to be a reference to the service lifts, of which she has produced photographs. The tribunal accepts the landlord's contention that service lifts need not be kept in the same decorative repair as the passenger lifts used by residents. To do so would be unnecessarily expensive.
45. The tribunal find no basis on which to conclude that this charge is unreasonable.

Charge for Balance of Major Works

46. £31,277.51 was included in the service charge for the year ended 24 March 2004. This represented the balance of the charge for a major programme of redecoration and refurbishment undertaken between 2002 and 2003. The lessee contends that works were not undertaken to an appropriate standard and has produced a number of pictures to support this contention. Of these pictures only one set - of a metal-framed window on an exterior wall - seemed to the Tribunal to raise any real issue, and they show water damage rather than bad decoration. The evidence of Mr Hunt is that the damage shown in the pictures is the consequence of a water leak. Redecoration was not undertaken until the damaged areas had dried out.
47. The conclusion of the tribunal is that the pictures do not evidence refurbishment work of a poor standard. They demonstrate only that damage inevitably occurs from time to time and that it cannot always be repaired

immediately. The evidence produced by the landlord indicates that the works for which the charge is levied were undertaken after the appropriate section 20 consultation was made, and were paid for on certification by a supervising surveyor in the usual way. If the supervising surveyor had not been satisfied with the work he would not have authorised payment. In relation to major works the tribunal's conclusion is that it is not possible on the evidence to say that the lessee received anything other than value for money.

48. The figure charged appears to be justified by the documentation and the tribunal finds no reason why this charge should be adjusted.

Garden Maintenance and Rubbish Clearance

49. The lessee, while maintaining that this task was formerly done by the resident porter, was prepared to accept the actual charge of £345 representing sums paid to Mr Hunt's father for gardening works and maintenance during the year ended 24 March 2004. The tribunal noted that the gardens are not kept to a high standard but the level of charge reflects this.

Cleaning Materials and Light-bulbs

50. For the year ended 24 March 2004 this was charged at £11,717.58. The lessee contends that this charge is excessive, and that such materials could not have been needed. She suggests that an appropriate charge would be about £100 per month. The landlord produced an invoice indicating that this charge includes the cleaners' bills as well as the supply of separate materials such as refuse bags, light-bulbs, cloths and cleaning materials for Mr Hunt himself.

51. There is no basis on which to conclude that this charge is unreasonable.

Surveyors' Fees

52. The lessee was prepared to accept that Surveyors' fees, charged at £998.75, were reasonable. The tribunal agrees with this concession.

General Repairs

53. This was charged at £996.36. The lessee argues that the standard of repairs is inadequate. The tribunal has not reached that conclusion. The lessee's second point is that general repairs should be undertaken by the Porter and included within the charge for portage. The tribunal agrees with this except insofar as the work in question might require particular skills or equipment which would not be reasonably available to the porter. On that basis the tribunal would regard only £135, charged by Mr Hunt senior in various invoices for repairs to and replacement of parts in the lighting system, as outside the scope of a reasonable charge. The item should be reduced by that amount.

Paladin Hire

54. This item was charged at £698.24 for the year ended 24 March 2004. In her county court Defence the lessee indicated that the landlord, not the residents, has use of the paladins. However before the tribunal the lessee accepted that the paladins were needed. She did not take issue with the charge for paladin hire except for £240 included in this item but in fact invoiced by Mr Hunt senior and representing money paid by him directly to dustmen for extra collections. Her point, that these charges should have been rendered unnecessary by the provision of sufficient paladins, is a good one. The charge of £240 is inappropriate and the service charge should be reduced by that amount.

Insurance

55. The lessee does not take issue with the cost of insurance itself but with the payment of a fee to a broker for arranging cover. The Tribunal would not accept such a contention. The function of a broker is to obtain the best cover available at the best price. This is standard practice and there is no evidence to suggest that an unreasonable charge was made by the broker. Nor, on the evidence of Mr Lewin, is there any connection between the insurance brokers and the Managing Agents.

56. A separate charge of £550 was made under the heading "Insurance re Contract Work". This was linked to the major works undertaken, but there was after the passage of time some uncertainty on the Mr Lewin's part as to why it had been necessary. Evidently it had been considered necessary at the relevant time and the lessee had no point to make in respect of it. The tribunal has seen nothing which would suggest that the charge was unreasonable.

Fire & Security

57. This was charged at £1,196.61. The lessee did not take issue with this charge for this particular year.

Accountant's Fee

58. This was charged at £799 inclusive of VAT and the lessee did not take issue with it.

Management Charge

59. This was charged at 10% of expenditure excluding major works and surveyors' fees, a total of £8,984.28 plus a separate charge of £500 in relation to the major works. VAT is payable on both charges. The lessee takes issue with the management charge for two reasons. First, she maintains that the management service has not been to an adequate standard. This is illustrated by a series of allegations in her county court counterclaim, detailing various failures to repair and maintain. None of these allegations have been substantiated by the evidence before the tribunal. Litter and rubbish may have accumulated from time to time and keys have gone missing from fire cabinets (Mr Hunt asserts that they can easily be opened without them). However nothing the tribunal has seen indicates that there has been substantial neglect. The overall impression is that a reasonable, if imperfect, service has been provided at a reasonable cost.

60. Secondly, the tenant complains that the management charge includes the cost of fuel, which she says was previously excluded when the charge was calculated. Mr Lewin disputes this and says he simply took over the previous managing agent's charging practice.
61. The managing agent has no written Management Agreement, but says Mr Lewin, is not connected with the freeholder – it is entirely independent and it performs the same service for a number of clients. Mr Lewin states that he would normally include professional fees, such as accountants' or surveyors' fees, in calculating his 10% management charge except where specific fees are rendered for large jobs.
62. The Tribunal's view is that fees should not be payable on fees, particularly where as here) this results in VAT being levied on VAT, and that it is generally good practice for the cost of fuel to be excluded from the management charge. The IRCS Code of Residential Management Practice currently recommends that charges should be unit-based.
63. That said, the charge levied by the managing agents in this particular instance is not excessive in total and does not merit adjustment except insofar as the underlying costs upon which it is based have been adjusted by the tribunal.

SERVICE CHARGES FOR THE YEAR ENDED 24 MARCH 2005

Porterage

64. This is charged at £16,523.34, which is still less than £5 per week per unit.

The breakdown of charges is similar to 2004 although council tax and electricity charges are higher and the telephone charge is £800 as compared to the previous year's £600. The issues raised by the lessee are the same as for the previous year and notwithstanding its reservations over the system of charging for telephone calls, which should be changed, the tribunal's conclusion is that overall this charge is not unreasonable.

65. The lessee did raise a specific query in relation to the cost of payroll processing, but on the evidence this is charged at £9.60 per month plus VAT and Mr Lewin gave evidence to the effect that this charge covers dealings with the Inland Revenue. This does not seem to be excessive.

Electricity Supply to Common Parts

66. The lessee has admitted the charged figure of £3,316.36 (before a recharge of £110).

Fuel

67. The concerns raised by the lessee are the same as for the previous year. The overall charge of £44,746.98 for the provision of central heating and hot water to the entire block, including the common parts, comes to £668 per unit, reflecting, the landlord says, normal fluctuations in use as compared to the previous year. The landlord has produced invoices to confirm the expenditure and the tribunal see no evidence to dispute the charge.

Boiler Repairs and Maintenance

68. This was charged at £2,710.15. As for the previous year, this includes repairs to a main storage tank and pipework. The sum claimed is supported by invoices and there is no reason to adjust this charge. In her County Court Defence, the lessee suggested a lower charge of £1,620 “because there has been no hot water on many occasions” but it does not seem to the tribunal that an occasional lack of hot water justifies an adjustment to service charges that reflect properly incurred costs of necessary repairs.

Lift Repairs and Maintenance

69. This is charged at £3,406.10. Invoices justify the charge. The issues raised are the same as for previous years. The lift is old, it needs regular maintenance and invoices have been produced to justify the charges. There is no reason for this item to be adjusted.

Sundry Expense

70. This item is charged at £160. It comprises payments made to dustmen for extra weekly collections, which should have been catered for by the provision of sufficient Paladins. For the reasons previously given the Tribunal is of the view that this item should be disallowed.

Garden Maintenance and Rubbish Clearance

71. This is claimed at £765 and is opposed for two reasons. First of all, the tenant says that the standard of garden maintenance and rubbish clearance is inadequate. Secondly, the work has been performed by Mr Hunt senior whereas the lessee would say that it should fall within the general duties of the Porter. The landlord has produced invoices to substantiate the charges sought. The tribunal’s view is that, taking into account the evidence offered by Mr

Hunt, there will be elements of garden maintenance and clearance that will fall outside what is to be expected of a Porter. This item should be allowed.

Cleaning Materials and Replacement of Light-bulbs

72. This item (£9,254.59) has been admitted.

Professional Fees

73. This item was charged at £2,091.51. The landlord has produced invoices to substantiate the charge. The invoices relate to an asbestos survey at Cambridge Court along with inspection and repair of defective plumbing affecting four flats. The lessee raised the issue of whether the work in question was purely for the benefit of the landlord, being to four flats let by the landlord. In evidence, Mr Lewin confirmed that the repairs were to a defective stack pipe, not exclusive to any particular flat, and that in any event the tenant's assumption about the ownership of the flats was incorrect. The Tribunal has no reason not to accept this evidence. The charge is reasonable.

General Repairs

74. This is charged at £5,767.88. The charge is challenged on the basis that Cambridge Court is not maintained to an adequate standard. For the reasons given above the tribunal would disagree with that general contention but of the invoices produced by the landlord in support of the figure claimed, invoices to the value of £160 rendered by Mr Hunt senior would appear to have been charged for minor works that would seem to fall within the general duties of a Porter, and for that reason should be disallowed.

75. Before the tribunal the lessee also suggested that the cost of the installation of security gates to prevent roof access by intruders, apparently for drug use, was unnecessary. She indicated that the evidence of Mr Hunt in relation to occasional attempted access by undesirable intruders was exaggerated or untrue.

76. This contention is difficult to accept given that Mr Hunt was in the process of ejecting an attempted intruder when the tribunal inspected the property and given the history of the neighbouring area, which on the landlord's evidence and to the tribunal's knowledge has suffered from street prostitution and drug use. The lessee's suggestion also jars with her complaint (which he denies) that Mr Hunt has repeatedly left certain exterior doors unlocked, so compromising the block's security. If there were no real threat to the building's security, the alleged failures would be immaterial. This reinforces the tribunal's impression that much of the criticism aimed at Mr Hunt by the lessee is unfair.

Paladin Hire

77. This item was charged at £513.24. In evidence the lessee has indicated that she would not dispute this figure.

Paragraph 12 - Insurance

78. This item was charged at £11,544.24 (minus a recharge of £300) and has been admitted by the lessee.

Insurance Regarding Contract Work

79. This item was charged at £870.91 and was admitted by the lessee.

Fire & Security

80. This item was charged at £2,390.70 and was admitted by the lessee.

Accountants' Fees

81. These are charged at £763.75 and have been admitted by the lessee.

Management Charge

82. This has been charged by the managing agents at £12,268.48 and in her county court Defence the lessee's suggested figure was £10,000 "as services provided are not up to standard". For the reasons already given the tribunal would disagree. The tribunal would repeat the observations made above as to the best basis for a management charge but in all the circumstances the charge of 10% for 2005 should remain, adjusted as necessary to reflect the adjustments to underlying charges made by the Tribunal.

SUMMARY

83. Generally the tribunal has found complaints of overcharging and poor service to be unsubstantiated. Only the following adjustments are required on the basis of reasonableness;

2004

84. The charge for general repairs should be reduced by £135.00 to £861.36. The charge of £698.24 for paladin hire should be reduced by £240.00 to £458.24. The 10% general management fee of £8,984.28 should consequently be reduced by £37.50 to £8,946.78. The service charge payable by the lessee will accordingly be reduced by $(£412.50 \times 1.766\%) = £7.28$; from £2354.00 to £2346.72.

2005

85. The charge of £160 for sundry expenses should be reduced to nil. The charge of £5767.88 for general repairs should be reduced by £160 to £5607.88. The 10% management fee of £12,268.48 should consequently be reduced by £32 to £12,236.48. The service charge payable by the lessee will be reduced by $(£352 \times 1.766\%) = £6.21$; from £2061.14 to £2054.93.

Application under Section 20C of the Landlord and Tenant Act 1985

86. The lessee has applied under section 20C for an order to the effect that the costs of the tribunal proceedings should not be added to the service charge in any event. The tribunal's view is that such direction should not be made. None of the lessee's major complaints have been substantiated and such adjustments as have been made by the tribunal are minimal.
87. The lessee has complained that the landlord did not make detailed information, such as copy invoices, available to her prior to the hearing before the Tribunal and that (as the tribunal has recorded) the landlord refused to enter into a mediation procedure. As to the first point, it must be borne in mind that the terms of the lease provide at paragraph (3) (ii) (d) that a certificate summarising the landlord's expenses and outgoings during the financial year to which it relates shall be conclusive evidence for the purposes of the lease of the matters which it purports to certify. There is no obligation upon the landlord to produce documentation on demand.
88. Had the lessee herself complied with the Tribunal's timetable for the exchange of information, she would have received the final bundle much sooner than she did. In the event, she confirmed at the hearing that she had received the bundle in good time to consider its contents and if she desired to open a dialogue with the landlord.
89. It is regrettable that the landlord chose not to utilise a mediation procedure in this instance but all the indications are that no measure of agreement would have been achievable in this case and that a mediation procedure might well have been as protracted and expensive as the hearing itself. In the circumstances it would appear to be wrong to penalise the landlord in the way contended for by the lessee.

The Costs of the Wasted Hearing

90. The landlord was prepared to accept an order under paragraph 10 of schedule 12 to the Commonhold and Leasehold Reform Act 2002, in connection with the costs incurred on the abortive hearing set for 23 and 24 October 2006, provided that the costs reflected only the modest loss to the lessee as a result of attendance. That amounts to one lost day's earnings of £200.00 and travel expenses of £12.00. The tribunal orders that the landlord should pay that sum of £212.00 to the lessee.

Dated 29 January 2007

A handwritten signature in black ink, consisting of the letters 'C' and 'L' in a stylized, cursive script.

Colum Leonard

Chairman