5221

CASE NUMBER: BIR/00FN /LSC/2010/0001

MIDLAND RENT ASSESSMENT PANEL

Landlord and Tenant Act 1985

Decision

In the matter of

Mr P N Dudhaiya	**Applicant**
- and -	
Leicester City Council	**Respondents**

On the Applicant's application under section 27A for determination of liability to pay service charges, and for an order under section 20C

Property: 48 Stubbs Road Leicester LE4 6DU

Tribunal: Mr WMS Tildesley OBE,
Mr G Freckelton FRICS

Date of Hearing: 6 July 2010 at Chamber of Commerce, Leicester

Applicant did not appear

Mr Trevor Tregaskiss for the Respondent

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DECISION

Summary of the Tribunal's decision

1. The Tribunal decides that the total service charge (including the repair charges in Provisions A and B) for the disputed years payable by the Applicant

5 (1) The service charge payable for the year ending 31 March 2008 is £192.25 (£123.50 service charge + £68.75 repair charge) instead of £230.39.

(2) The service charge payable for the year ending 31 March 2009 is £1,686.50 (£1,075.92 service charge + £610.58 repair charge) instead of
10 £2,026.44.

(3) The service charge payable for the year ending 31 March 2010 is £1,900.28 (£1,265.28 service charge + £635.00 repair charge) instead of £2,258.04.

2. The Tribunal decides that it would be just and equitable to make an order under
15 section 20C of the 1985 Act preventing the Respondent from recovering its costs incurred in the proceedings through the service charge.

The Application

3. On 19 January 2010 the Applicant applied to the Tribunal for a determination of the liability to pay service charges in respect of the property for the years ending 31
20 March 2008, 31 March 2009, and 31 March 2010.

4. The Tribunal issued directions of its own motion to progress the Application requiring the parties to file and exchange their cases on 9 April 2010 and 7 May 2010 respectively. The Tribunal initially intended with the parties consent to deal with the Application on paper. Following receipt of the Applicant's case in which he requested
25 an inspection of the property, the Tribunal decided to hold a hearing on 6 July 2010 at which evidence could be given.

5. The Tribunal inspected the property in the parties' presence on 6 July 2010 followed by the hearing at which the Applicant was unable to attend. The Tribunal decided to hear the Appeal in the absence of the Applicant. He was aware of the
30 hearing. At the inspection at which he was present the Applicant did not apply for an adjournment of the hearing.

6. Mr Brown, Mr Gotts and Mr Tregaskiss of Leicester City Council gave evidence to the Tribunal for the Respondent. Mr Brown dealt with the district heating system. Mr Gotts, who had 40 years experience as a quantity surveyor, conducted a
35 dilapidations survey of the property on 3 May 2007, which identified the costs of future repairs. The costs set out in the survey formed the basis of the repair charge contributions which the Applicant was required to pay under the terms of the lease. Mr Tregaskiss, who was employed by the Respondent as the Right to Buy Officer, spoke to his witness statements dated 9 April 2010 and 18 May 2010 which dealt with

the property, the various elements of the service charge, and specific points raised by the Applicant.

7. The Tribunal also considered the Applicant's witness statement dated 18 May 2010 which set out the details of the disputed charges. The Applicant had been employed in the building trade for 30 years. The Applicant considered that he had some knowledge of the expected life of repairs and their costs. At the inspection the Applicant supplied the Clerk with copies of service charge budget estimates for the year 2010 – 11 in respect of two properties in Leicester. The Tribunal disregarded the estimates because they had not been served on the Respondent. Further the Tribunal was not in a position to assess their relevance in the absence of the Applicant.

The Dispute

8. The service charges in dispute fell into three categories. The first category (Service Charges) comprised the ongoing running costs associated with the property. The second and third categories concerned the provisions for anticipated repairs and renewals which for the purpose of this decision are referred to as Provision A and Provision B.

9. The Appellant contended that specific Service Charges were excessive, for which there was no rational explanation. Under the charges for Provisions A and B the Applicant challenged the Respondent's assessment of when the repairs would be necessary. The Applicant submitted that there was considerable uncertainty surrounding the implementation of specific repairs, which questioned the reasonableness of the associated charges. The Respondent disagreed with the Applicant's submissions, arguing that the charges were reasonable.

The Property

10. The property was a one bedroom second floor flat comprising a lounge diner, kitchen, bathroom and store. The property had central heating which was connected to the district heating system. The property was part of a larger three storey block comprising 12 one bedroom flats (all on the second floor), 12 two bedroom maisonettes and one three bedroom maisonette. The block was built in 1973 and located on the St Marks Estate, which was a large intensive public housing development close to the centre of Leicester. The block had a brick framework filled in with PVC cladding and a concrete tile roof. The guttering, rain pipes and fascias were made of PVC, except the aluminium pipes on the walkway.In 1995 the Respondent undertook an extensive modernisation of the St Marks Estate which involved the replacement of flat roofs with pitched ones, and the installation of new PVC windows.

11. Access to the flats was gained through a communal entrance controlled by a door entry system. The block was connected with another three storey block by means of a covered flat roof walkway on the second floor providing an alternative means of fire escape for the flats.

12. The block was subject to mixed tenure, nine properties were long leaseholds granted under the *Right to Buy* legislation. The remaining properties were weekly assured tenancies with the Respondent as the landlord.

The Lease

13. The lease for the property was dated 18 February 2008 for a term of 125 years from 27 October 2003 with a nominal ground rent and made between the Respondent of the one part and the Applicant of the other part. The lease was granted under the *Right to Buy* legislation and incorporated various provisions of the Housing Act 1985.

14. As part of the *Right to Buy* process the Respondent served the Applicant with a *Secure Tenant's Right to Buy Landlord's Offer Notice* under section 125(1) of the Housing Act 1985. The Notice contained required information about the proposed service charges associated with the property. Paragraph 7 of the Notice supplied information of the various charges for services including an annual estimate. Paragraph 8(a) provided details of the Respondent's estimated provision for anticipated repairs and renewals within the initial period of five years from the date of the lease. Paragraph 8(b) described the forward estimated provision for works beyond five years.

15. The Notice specified that the provisions for repairs/renewals would be held as a reserve fund by the Respondent. The Notice supplied the Applicant with details of his expected annual contribution under each heading of the service charge, which was £1,097.22 (service charge), £270.52 (initial 5 year provision), and £599.55 (forward provision beyond 5 years). The Applicant and his legal representative raised no enquiries about his contributions for services and repairs prior to the granting of the lease.

16. Clause 3(2) sets out the Applicant's covenant to pay a contribution towards the costs of the services provided by the Respondent. Clause 3(2) states that

> "(2) to pay on demand to the Lessor at such times and in such manner as the Lessor shall direct a fair proportion (to be determined from time to time by the Lessor's Director of Housing) of the reasonable costs or estimated costs (including overheads) of any services incurred or to be incurred by the Lessor in observing and performing the provisions of sub-clauses (1) (2) (3) and (4) of Clause 4 hereof or as from time to time varied under the power in that behalf contained in sub-clauses (g) and (h) of Clause 6 hereof so far as such costs are chargeable to the Lessee by the Lessor under the provisions of Part III of Schedule 6 of the Act ..."

17. Clause 1 defined *services* as:

> "any services referred to in sub-clause (2) of Clause 3 and sub-clause (3) of Clause 4 hereof shall mean those services or costs specified in the Fourth Schedule hereto as may from time to time be varied by the Lessor under its powers contained in sub-clauses (g) and (h) of the Clause 6 hereof so far as the same are applicable to this Lease and the Premises in addition to those costs or estimated costs incurred or to be incurred by the Lessor in observing

and performing the provisions of sub-clauses (1), (2) and (4) of Clause 4 hereof".

18. Schedule 4 to the lease gives a comprehensive list of services which is incorporated as part of this decision. Clause 4(1) to (4) contained covenants by the Respondent that it would, inter alia, keep in repair (including decorative repair) the structure and exterior of the flat and the block and would ensure so far as practicable that *any services* which were provided from time to time were maintained at a reasonable level and to keep in repair any installation connected with the provision of those services.

19. The Lands Tribunal in *Leicester City Council v Theo Master* LRX/175/2007 decided that a lease with identical standard terms to the lease in this Appeal authorised the *Council*[1] to build up a reserve fund through the service charge against the estimated cost of future repairs. At [32] and [37] His Honour Judge Huskinson concluded that a correct construction of clause 3.2 would include:

> "[32] I accept that on the proper construction of clause 3(2) of the lease the *Council* is entitled to demand from the *Tenant* payment of a fair proportion of the reasonable estimated costs of repairs to be incurred by the *Council* in the future in observing and performing the repairing obligations under the lease and that this is not limited to the cost of services which have been performed (which was the LVT's primary conclusion) nor is it limited to the cost of services which have been identified as already being required although not yet performed (which was the LVT's secondary conclusion if its primary conclusion was wrong). Subject to certain limitations mentioned below I therefore accept the argument that the *Council* is entitled to build up a reserve fund through the service charge against the estimated cost of future repairs which are not yet needed but which will be needed in due course".

> "[37] Construing clause 3(2) in the light of the admissible background I conclude:
>
> (1)The words are sufficiently wide to allow demands in respect of reasonable estimated costs in respect of services not yet incurred.
>
> (2) There is nothing in clause 3(2) to indicate that these estimated costs must be incurred within any specific accounting year (there is no provision in the lease for accounting years) or within any particular time frame.
>
> (3) The *Council* is not restricted to making a single once and for all demand for the fair proportion of such reasonable estimated costs which are to be incurred. The clause entitles the *Council* to demand payment "at such times and in such manner as the Lessor shall direct", and in my view this is sufficiently wide to entitle the *Council* to demand that the fair proportion of the reasonable estimated costs of future repairs be paid not in a single payment but in instalments. Section 19(2) would apply with the result that in respect of every demand "no greater amount than is reasonable is so payable".

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[1] The Tribunal has replaced the terms Appellant and Respondent (hence the use of italics) in the *Master* decision with Council and Tenant so as to avoid confusion in respect of the implications of the decision for this Appeal.

(4) The extent of the ability to demand payment of such sums will be limited by the requirement that the *Council* can identify "reasonable ... estimated costs" of services "to be incurred". Thus the *Council* would not be permitted merely to decide that for a property of a certain type it was prudent to obtain £X pa as a round sum towards a reserve fund. The demands can only be justified if there has been a properly prepared reasonable estimate of the costs of repairs to be incurred".

20. His Honour Judge Huskinson, however, decided that the Tribunal had jurisdiction to decide the reasonableness of the charges under the provisions for anticipated renewals and repairs. At [39] he said:

"The LVT helpfully considered the recoverability of the various items making up the service charge supposing that, contrary to its conclusion, a charge for future repairs by way of a reserve fund was permitted. On this basis the LVT concluded that the amount charged in respect of all of the items referred to in paragraph 8(a) of the section 125 notice were reasonable but that the amount charged in respect of certain items in paragraph 8(b) of the notice were unreasonable and that no amount was reasonably payable in respect of those items. The LVT reached its conclusion on this aspect having inspected the premises and heard the evidence. It was entitled to conclude that any anticipation of a want of repair in respect of those items was so uncertain as to make the contributions sought by the *Council* unreasonable. I do not consider that this conclusion was reached on a wrong basis of law, namely by the LVT effectively (as Mr Arden argued) going back to advising itself that a reserve fund was not permitted. This analysis was expressly being undertaken by the LVT on the supposition that, contrary to its conclusion, a reserve fund was permitted. Nothing has been advanced to me which would entitle this Tribunal to interfere with the LVT's decision on this point. Further this is not a matter which is in any event open to the *Council* on their grounds of appeal".

The Legal Framework

21. Under section 27A of the Landlord and Tenant Act 1985 (1985 Act) the Tribunal has jurisdiction to decide whether a service charge is payable and if it is the Tribunal may also decide:

the person by whom it is payable;

the person to whom it is payable;

the amount which is payable;

the date at or by which it is payable; and

the manner in which it is payable.

22. Section 19 of the 1985 Act provides that service charges must be reasonable for them to be payable.

"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 and the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

23. A charge is only payable by the lessee if the terms of the lease permit the lessor to charge for the specific services. The general rule is that service charge clauses in a lease are to be construed restrictively, and only those items clearly included in the lease can be recovered as a charge (*Gilje v Charlgrove Securities* [2002] 1 EGLR 41).

24. If the lease authorises the charges, they are only payable to the extent that they are reasonably incurred; and where they are incurred, only where the services for which they are incurred are of a reasonable standard.

25. The construction of the lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. Essentially the Tribunal will assess reasonableness on the evidence presented to it (*Yorkbrook Investments Ltd v Batten* [1985] 2 EGLR 100). As a general rule, the level of the service charge to be reimbursed by the lessee will be assessed with reference to whether the lessor would have chosen this method of repair, if the lessor had to bear the costs [*Hyde Housing Association v George Williams* LRX/53/1999 (Lands Tribunal)].

26. The Housing Act 1985 contains provisions restricting the service charges which can be imposed under a lease purchased through the right-to-buy legislation. Under section 125 the landlord is required to serve a Notice on a secure tenant who has claimed to exercise the right to buy and this right is admitted. The notice must contain information on the service charges and estimates for works including the tenant's likely contribution. By paragraph 16B(2) part III schedule 6 of the 1985 Act the tenant is not required to pay in respect of works itemised in estimates contained in the section 125 notice any more than the amount shown as his estimated contribution in respect of that item together with an inflation allowance

The Dispute

27. The parties accepted that the terms of the lease authorised the charges. The dispute centred on the reasonableness of the charges. The Tribunal intends to deal with the Service Charges separate from the charges under Provisions A and B.

Service Charges

28. The elements comprising the service charge and the respective amounts are set out in the table below. The Applicant was charged £230.39 (£128.50 Services plus £101.89 Provisions A & B) for the year ending 31 March 2008 which represented the proportion of the annual charge corresponding to the period from 18 February 2008 when his long term lease came into effect to the end of the financial year.

The Charge	**Ye 31 March 2008 (£)**	**Ye 31March 2009 (£)**	**Ye 31 March 2010 (£)**

Administration	114.00	118.56	125.16
Building Insurance	40.56	42.48	62.16
Cleaning	168.84	175.56	185.16
Door Entry System	101.76	105.84	111.72
District Heating	489.96	489.96	633.00
Lifts	75.12	78.12	82.44
TV Receiver	22.08	22.92	24.24
Way lighting	84.96	88.32	93.12
Total	1,097.28	1,121.76	1,317.00
Monthly Payment	91.44	93.48	109.75

29. The Applicant did not contest the charges for administration, cleaning, buildings insurance and lifts. His dispute concerned the charges for heating and hot water, door entry system, TV receiving and way lighting.

5 **The Parties' Evidence and Submissions**

Heating and Hot Water

30. The property was connected to a district heating and water system which served about 400 properties on the St Marks Estate. The Applicant did not understand the basis for the calculation of the charge. The Applicant considered that the charge was
10 excessive for a one bedroom flat. The Applicant supplied no evidence to substantiate the excessive nature of the charge.

31. Mr Tregaskiss believed that the service charge for heating was derived from a calculation performed in the 1970's, which had been updated in subsequent years. This charge was then apportioned between the users of district heating systems
15 throughout the area covered by the Respondent. The Applicant's apportionment was determined by a formula which related to the number of bedrooms in the property.

32. The formula was based on guidance issue by the former Office of Deputy Prime Minister. The formula was as follows:

1 bed dwelling: 1.00 unit

20 2 bed dwelling: 1.25 units

3 bed dwelling: 1.50 units

4 bed dwelling: 1.75 units

33. The Respondent provided details of the estimated total costs of district heating for the whole authority for 2010/11 which amounted to £2,349,000.00. The heating was supplied to long leaseholders, tenants subject to weekly assured tenancies, and various public service providers such as health authorities and libraries. The Respondent increased the charges for district heating by 29 per cent for each of the years ending 31 March 2010 and 31 March 2011 to reflect the high costs of gas, heating oil and electricity and to ensure that the district heating account broke even over the three year period from 2008/09 to 2010/11. . The Respondent, however, was now predicting a deficit for that three year period due to the harsh winter in 2009/10.

Door Entry System

34. The Applicant did not understand how the charge was arrived at. He pointed out that the system had not been working and was replaced with a new system about two months ago. The Applicant took particular exception to being charged for the door entry system because he was paying £80.50 a year into a reserve fund for its future renewal.

35. The Respondent indicated that the Applicant's contribution was the same as that paid by lessees and tenants subject to weekly rental agreements occupying the block in which Applicant's flat was located. The full Council had approved the charges. The Respondent referred to the decision in *209 Glenhills Boulevard, Eyres Monsell, Leicester BIR/00FN/LSC/2005/0008* in which the Tribunal decided that the charge for the door entry system was reasonable.

36. The Respondent accepted that the system had been replaced. During the six months prior to the replacement eleven repairs had been carried out on the system. The Respondent supplied details of the contract costs for maintaining the door entry system, and the number of properties affected by the contract, which produced an estimated monthly cost for each tenant of £5.00.

TV Receiver

37. The Applicant had no understanding of the basis for the calculation of the charge. He asserted that he had an ordinary television aerial and did not use the service provided by the Respondent.

38. The Respondent provided its tenants and lessees with a television receiving service through either Virgin Media or a communal aerial system. The Respondent was currently upgrading the service to a full digital integrated reception system at no extra cost to its tenants and lessees. In the Respondent's view it was irrelevant that the Applicant had chosen not to use the service. At the inspection the Tribunal noted that the reception for the Applicant's television set was being provided by the communal system not by an individual aerial.

39. The charges for the service were historical and updated each year following a resolution by the full Council. The Respondent referred to the *Glenhills Boulevard* decision in which the Tribunal decided that the charge for the TV reception service was reasonable.

Way lighting

40. The Applicant stated that the lighting in the common parts was on 24 hours a day, which was completely unnecessary. In his view the lighting should have been regulated by a time lapse switch or photostatic control. The Applicant referred to *Mihovilovic v Leicester City Council* (BIR/00FN/LIS/2007/0008) in which the Tribunal reduced the charge for way lighting because it did not have a photostatic control.

41. The charge for way lighting which covered the common areas and an outside light by the entrance was historical and upgraded each year by the Respondent. There was no up-to-date information on the actual costs of the electricity used. The way lighting for the block was regulated by a photo static cell. The Respondent, however, accepted that the controls for the lighting had not operated recently due to unauthorised interference which meant that the lighting had been on constantly.

Consideration on the Service Charges

42. The Tribunal finds both parties' evidence on the service charges unsatisfactory. The Applicant challenged the reasonableness of the charges principally because there was no rational basis for them. The Applicant, however, failed to follow through his challenge with evidence substantiating his claims. He supplied no evidence to demonstrate that the charges were excessive. Further he offered no indication as to what he considered to be a reasonable amount for the respective charges. Equally the Respondent acknowledged that the disputed charges were historical and bore no relationship to the actual costs of providing the services. The Tribunal also considered the decisions in *Glenhills Boulevard* and *Mihovilovic* on the reasonableness of specific service charges were of no assistance as they were confined to their individual facts.

43. As previously identified, there is no presumption either way on burden of proof in deciding the reasonableness of a service charge. Essentially the question of reasonableness will be decided on the entirety of the evidence.

44. On balance the Tribunal preferred the Respondent's evidence in respect of the heating, TV receiver and way lighting charges. The Respondent offered a rationale for the charges which was derived from historic costs and updated on a regular basis. The updating took regard of either the actual costs of providing the service in the case of the heating or inflationary pressures, and required the authority of the full Council. The Respondent apportioned the total for the respective charges between the users of its residential premises by means of a formula based on the number of rooms which appeared to follow a recommendation from the former Office of Deputy Prime Minister. The Tribunal accepts that a formula based approach was the only realistic method by which the Respondent could determine the charges for individual tenants and lessees having regard to the size of its residential estate. In contrast the Applicant offered no coherent alternative rationale for the charges. Essentially the Appellant's challenge consisted of a series of assertions not backed up by evidence. The Tribunal considered the Applicant's evidence that the lighting in communal parts had been on constantly irrelevant because the charge for way lighting was not based on usage. **The**

Tribunal, therefore, holds that the charges for heating, TV receiver and way lighting reasonable.

45. The Respondent, however, was able to supply information on the current costs for maintaining the door entry system which worked out at about £5.00 a month for each tenant. The Tribunal considers that the actual costs of providing the service a more accurate indicator of reasonableness than a historic cost which has been updated over the years. **The Tribunal, therefore, decides that a charge of £5.00 a month was reasonable for the door entry system which also takes account of the number of times the system was not working because of faults.**

46. The effect of the Tribunal's decision on reasonableness is that the service charges for the door entry system in each of the disputed years are reduced to £60.00 which means that the annual service charge for the years ending 31 March 2009 and 31 March 2010 is £1,075.92 and £1,265.28 respectively. The proportionate charge for the year ending 31 March 2008 is £123.50. **This produces an overall reduction of £102.56 in the service charge element for the disputed years.**

Provisions A and B

47. The Respondent carried out a dilapidations survey on the property on 3 May 2007 for the purpose of calculating the anticipated repairs charges during the currency of the lease. The survey identified the various parts of the building that would require future repair, the expected life of the part before renewal, the present cost as at the date of the survey of replacing the parts, the size of the area covered by the part and the rate per square metre. With this data the Respondent was able to calculate an annual contribution for the repairs. The annual contribution for some repairs applied either to the whole block which housed the flat or the collective flats in the block, which required in both cases an apportionment of the annual contribution to arrive at the annual charge for the Applicant. Some repairs were restricted solely to the subject flat.

48. The Applicant's annual contribution for each works was collated in two schedules. The first schedule related to those repairs which would be carried out in the initial five years of the lease, and formed Provision A. The second schedule related to those works which would take place beyond the initial period of five years and known as Provision B. The schedules formed part of the section 125 Notice given to the Applicant before he completed the purchase of the property.

49. The dilapidations survey established the baseline annual contribution for each repair. The baseline contribution for the year ending 31 March 2008 was increased in the two subsequent service charge years by an inflation allowance which was fixed in accordance with the Housing (Right to Buy) (Service Charges) (Amendment) (England) Order 1986 (1986 Order). The Respondent undertook a review of the dilapidations survey every five years to check that its assumptions on repairs and costs were correct. The review may result in increased costs or a reimbursement of charges already paid.

50. The Applicant relied on his knowledge and considerable experience in the building trade to argue that the survey was flawed. He considered that some repairs were unnecessary or would not be required for a longer period than that specified in the survey. In the Applicant's view the flawed assessments in the survey inflated the repair charges and rendered them unreasonable. The Respondent, on the other hand, pointed out that the survey was drawn up by Mr Gotts who had 40 years experience as a quantity surveyor including 19 years surveying properties subject to the Right to Buy legislation. Mr Gotts stated that the assumptions made on the time before renewal were derived from his expert opinion and experience. .

51. The Lands Tribunal in *Theo Master* decided that the Respondent under the terms of its Right to Buy leases was entitled to build up a reserve fund through the service charge against the estimated cost of future repairs but that charges to the fund had to be reasonable in accordance with section 19 of the 1985 Act.

52. The Leasehold Valuation Tribunal (LVT) in *Glenhills Boulevard* considered the reasonableness of repair charges in a Right to Buy lease. The Tribunal agreed that the establishment of reserve funds have benefits for the freeholder and leaseholder in funding infrequent and major works of repair. The Tribunal, however, was of the view that it was not reasonable to expect or require leaseholders to contribute to a reserve fund in respect of relatively minor and inexpensive works that were not anticipated to be carried out for another fifteen years. The approach taken by the LVT in the *Masters* decision was to consider reasonableness from the perspective of the likelihood of when and if the repairs would be carried out. The Tribunal considered that charges would be unreasonable if the proposed repairs would take place so far in the future and there was uncertainty on whether the works would be required where there was no evidence of a defect or expectation of a defect. The Lands Tribunal approved this part of the LVT's decision in *Masters*.

53. This Tribunal accepts that the creation of a reserve is eminently a sensible and reasonable measure. The reserve enables the build up of sums which can be used to pay for large items of infrequent expenditure and for major items which arise regularly. The application of the legal concept of reasonableness to the charges for a reserve, however, imports notions of proportionality and balance in respect of the level of the charges and the risks covered. In this respect it is important to set the Respondent's dilapidations survey in its legal context. Under section 125 of the 1985 Act the Respondent was required to serve a notice on the Applicant which specified the prospective charges for services and repairs. By paragraph 16B(2) part III schedule 6 of the 1985 Act the Respondent was bound by the level of the charges for the repairs and would not be able raise them subject to an inflation allowance. The Tribunal considers that the legal context had a bearing upon the dilapidations survey prepared for the subject property. The Tribunal formed the view that the survey covered every potential risk of repair and renewal to the property and that the assessments of the period of time before repair was of necessity conservative.

54. The Tribunal adopted the approaches advocated in the LVT decisions in *Glenhills Boulevard* and *Masters*. The Tribunal considered the likelihood of when and if the potential repairs would be carried out, and whether the risk could be covered by as

and when necessary repairs rather than renewal. The Tribunal had regard to the parties' submissions on the state of the repair and the expected life before renewal. The Tribunal also took it account the findings from its inspection of the property.

Provision A

5 55. The table below sets out the works identified in the survey to be carried out in the initial five years of the lease together with the annual contribution expected of the Applicant.

Works	Likely Cost at Current Price (£)	Responsibility	Annual Contribution (£)
Soil/Service Stacks	872.20	Block (B)	30.53
Windows Open Louvre	135.49	Flat (FL)	11.25
Doors – internal – unglazed fire (a)	36.56	B	1.28
Doors – internal – unglazed fire (b)	73.12	FL	6.07
Doors – internal – unglazed fire (a)	219.20	FL	18.19
Doors – internal – unglazed fire (a)	62.23	FL	5.17
Communal glazing	18.22	FL	1.51
Shared Path	30.36	FL	2.52
Plumbing service	13.81	I (Individual)	13.81
Electrical – internal lights	25.78	FL	2.14
Electrical – way lights	205.92	FL	17.09
Electrical – way lights	411.84	FL	34.18
Electrical – way lights	41.18	FL	3.42

Electrical – way lights	61.78	FL	5.13
Floors –mastic asphalt	112.20	FL	9.31
Electric Door Entry system	970.85	FL	80.58
Drying Racks	93.22	FL	7.74
Painting External	42.90	FL	3.56
Painting Internal	202.10	FL	16.78
Painting Internal	7.54	B	0.26
Total			**270.52**

56. The Applicant disagreed with the Respondent's expected life before renewal of six years in respect of the shared soil/service stacks. The Applicant argued that the stack would not need replacing for another sixty years. The Tribunal preferred the
5 Applicant's assessment. The soil stack was internal, made of PVC, and unlikely to deteriorate for a considerable period of time. In those circumstances the Tribunal held that the charge was unreasonable, and should be omitted from the provision.

57. The Applicant suggested that the open louvre window did not require replacing for another 30 years. The inspection of the property, however, revealed that wooden
10 slats were missing from the window which was temporarily patched up with hardboard. The Tribunal agreed with the Respondent's survey report.

58. The Applicant contended that the internal doors would not require replacing for another 16 years, whilst the external door for the bin store would last for another 30 years. The Applicant pointed out that the front door to the block had just been
15 replaced. Unbeknown to the Respondent's Right to Buy Section, the three internal glazed doors had already been replaced which according to the Respondent reduced the Applicant's annual contribution from £18.19 to £14.82 for these three items. The Respondent also accepted that a new front security door had been installed. The Respondent undertook to reconsider the charge for this door at its next review. The
20 Tribunal confirmed the reduction to £14.82 but made no other alterations to the Applicant's annual contribution for the respective doors.

59. The Applicant disputed the charge for plumbing arguing that it was his responsibility. The Respondent stated that the charge was for the plumbing service to the first stop cock in the property. In those circumstances the Tribunal confirmed the
25 charge.

60. The Applicant challenged whether the various items under the electrical headings would actually be renewed at the end of the stated periods, as suggested in the survey. He believed that it was more likely that electrical items would be repaired as and when necessary rather than being replaced at specific intervals. The Tribunal
5 considers that the Applicant's view has merit, and closer to the commercial reality of property management. The Tribunal decides that the charges for electrical items were unreasonable, and should be reduced by 50 per cent.

61. The Tribunal notes that the door entry system has been replaced. The Tribunal assumes that the present charge was necessary to cover the cost of the new
10 installation, and that the charge would be reconsidered at the next review of the survey.

62. The Applicant had no comments in respect of the other items included in Provision A.

63. The Tribunal, therefore, decides the following changes to the 2007/08 baseline for
15 Provision A:

Charge	Baseline Charge (£)	New Charge (£)	Difference (£)
Soil Service Stack	30.53	Nil	30.53
Internal Glazed Door	18.19	14.82	3.37
Electrical Items (5 in total)	61.96	30.98	30.98
Total			**64.88**
New Baseline	**270.52**	**64.88**	**205.64**

Provision B

64. The table below sets out the works identified in the survey to be carried out after the initial five years of the lease together with the annual contribution expected of the Applicant.

Works	Likely Cost at Current Price (£)	Responsibility	Annual Contribution (£)
Roof - concrete tiles	656.25	B	22.97
Roof - roof light	24.59	I	24.59

Roof – pitched lantern roof light	220.96	B	7.73
Flat roof	123.85	FL	10.29
Guttering	133.67	B	4.69
Rain water pipe PVC	79.72	B	2.79
Rain water pipe PVC	9.38	FL	0.78
Rain water pipe aluminium	35.06	FL	2.91
Other pipe work dry riser	16.87	FL	1.40
Fascias	243.50	B	8.52
Walls Pointing	902.63	B	31.59
Walls Pointing	267.39	FL	22.19
Cladding	24.11	I	24.11
Cladding	176.00	B	6.16
Windows PVC	73.01	I	73.01
Windows Aluminium	627.76	FL	52.11
Doors – entrance – internal	20.47	I	20.47
Doors external – bin store	31.42	FL	2.61
Doors steel	17.77	B	0.62
Doors – security panel	388.26	FL	32.22
Shared Paths	6.29	FL	0.52
Drainage	238.40	B	8.34

Floors PVC Tiles	107.98	FL	8.96
Floors PVC Tiles	18.23	FL	1.51
Floors PVC Tiles	26.64	FL	2.21
Floors quarry Tiles	56.18	FL	4.66
Heating district	216.68	I	216.68
Balustrade	34.37	FL	2.85
Handrail	24.94	FL	2.06
Total			**599.55**

65. The Applicant submitted that the useful life for the roof and the roof light lantern was 100 years rather than 48 years predicted by the Respondent. According to the Applicant the roof light would have a life of about 30 years as opposed to the 18 years suggested by the Respondent. The Tribunal preferred the Applicant's assessment. The roof had been replaced in 1995. In the Tribunal's view there was no compelling reason why a pitched roof with concrete tiles would not extend beyond the term of the lease. In those circumstances the Tribunal removed the charges for the replacement of the roof and the roof light lantern, and reduced the charge for the roof light to 0.6 (18/30)[2] of £24.59 which equalled £14.75.

66. The Applicant asserted there was no flat roof in any part of the building of use to him. The Applicant, however, overlooked the flat roof of the walkway and associated aluminium rain pipes which provided his property with an alternative means of escape. The Tribunal is satisfied that the charges for the flat roof and the aluminium pipes were reasonable.

67. The Applicant suggested that the PVC guttering and rain pipes would last for 30 years instead of the 18 years proposed by the Respondent. The Tribunal found on its inspection that the PVC guttering and rain pipes were in good condition. In those circumstances the Tribunal considers the Applicant's suggestion of 30 years a more accurate estimate than 18 years for the life before renewal of rain goods. Thus the Tribunal adjusts the charge for the PVC guttering and rain pipes at 0.6 of the charge (fraction of 18/30) which works out at £4.95 (£8.26 x 0.6).

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[2] The Tribunal has not applied the specific formula used by the Respondent to calculate the Applicant's annual contribution for repairs. The term of years described as the "life before renewal" forms a critical part of the formula. In those circumstances the Tribunal has used a more straightforward approach to determine the new charge which is represented as a proportion of the existing contribution. The proportion is calculated by dividing the Respondent's term of years by the Tribunal's term of years. The Tribunal considers this approach produces a reasonable outcome.

68. The Applicant contested the requirement to re-point the brickwork after 16 years. He considered that re-pointing of the whole building would only be necessary after 50 years. The Tribunal noted that parts of the gable end close to the entrance was in need of pointing but the rest of the brickwork was in good condition. The Tribunal was of the view that pointing would be carried out as and when required, rather than as a complete renewal. In those circumstances the Tribunal favours an expected life of 50 years which produced a combined charge of £17.20 (£53.78 x 16/50).

69. The Applicant argued for a 50 year life term for the drainage rather than 26 years suggested by the Respondent. The Tribunal understood that the drainage related to the underground drains that served the property. The Tribunal considers it highly unlikely that the drainage system would require complete replacement during the currency of the lease. The Tribunal, therefore, deletes the charge for drainage.

70. The Applicant raised no objections to the Respondent's proposed lifespan of 23 and 28 years respectively for the PVC windows and PVC fascia boards and soffits. The Applicant, however, contended for a 40 year useful life for the cladding plastic facing board compared to the 23 years suggested by the Respondent. The Tribunal considers the Applicant's position contradictory, and decides that the 23 year term is the appropriate period for the cladding.

71. The Applicant asserted that the PVC floor tiling had been replaced about five years ago, not the 12 years as stated by the Respondent. The floor tiling did not show signs of significant wear and tear which tended to support the Applicant's assertion of five years. The Tribunal, therefore, decides that the life before renewal for the PVC floor tiles should be 25 years rather than the 18 specified in the survey, which results in an amended charge of £9.13 (£12.68 x 18/25). The Applicant did not challenge the charge for the quarry tiles

72. The Respondent advised that the heating repair charge related to the replacement of the radiators and pipes in the Applicant's one bedroom flat. The Applicant considered the total cost of £2,383.50 excessive for the replacement of radiators and pipes. The Tribunal agrees with the Applicant's proposition. The Tribunal holds that an appropriate cost would be £1,000 which resulted in an annual contribution of £90.91 (£1,000/11[3] years).

73. The Tribunal did not make an adjustment to the charge for the security front door which had recently been replaced in view of the Respondent's undertaking to amend the charge on the next review of the depreciation survey. The Applicant suggested a 40 year life for the miscellaneous items identified in the survey. The Applicant provided no justification for the term of 40 years, in which case the Tribunal adhered to the survey findings for the miscellaneous items. The Applicant did not challenge the charge for the shared path.

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[3] The Respondent estimated the life before renewal as 12 years, which was reduced by one year to 11 years when calculating the annual contribution.

74. The Tribunal, therefore, decides the following changes to the 2007/08 baseline for Provision B:

Changed Charges	Baseline Charge (£)	New Charge (£)	Difference (£)
Roof - concrete tiles & lantern roof light	30.70	Nil	30.70
Roof - roof light	24.59	14.75	9.84
PVC guttering and rain pipes	8.26	4.95	3.31
Re-pointing	53.78	17.20	36.58
Drainage	8.34	Nil	8.34
PVC Floor Tiling	12.68	9.13	3.55
Heating	216.68	90.91	125.77
Total			**218.09**
New Baseline	**599.55**	**218.09**	**381.46**

Provisions A and B

5 75. The outcome of the Tribunal's analysis of the reasonableness of the repair charges is that the combined baseline for the two provisions is £587.10 compared with £870.07. The new baseline results in reduced charges for the repair element of the service charges for the disputed years. Thus:

Year	Original Charge for Repair Element (£)	Amended Charge for Repair Element (£)	Variance (£)
2007/08	101.89	68.75	33.14
2008/09	904.68	610.58	294.10
2009/10	941.04	635.00	306.04
Total			**633.28**

76. The explanation for the charges are as follows:

(1) 2007/08: £101.89 = £72.50 (charge for March 2008) and £29.39 (£72.50/ £163.94 x £66.45) (charge for the period 18 February to 29 February 2008).

5 (2) 2007/08: £68.75 = £48.92 (new monthly charge for March 2008 and £19.83 £29.39 (£48.92/£72.50) (charge for the period 18 February to 29 February 2008).

(3) 2008/09:The repair element was increased by 4 per cent in accordance with the 1986 Order. £904.68 = (12 x £75.39, monthly repair charge

10 notified 26 February 2008).£610.58 = £587.10 plus £ 23.48 (4 per cent).

(4) 2009/10: The repair element was increased by 4 per cent in accordance with the 1986 Order. £941.04 = (12 x £75.39, monthly repair charge notified 27 March 2009). £635 = £610.58 plus £ 24.42 (4 per cent).

Summary of the Tribunal's decision

15 77. The Tribunal decides that the total service charge (including the repair charges in Provisions A and B) for the disputed years payable by the Applicant

(1) The service charge payable for the year ending 31 March 2008 is £192.25 (£123.50 service charge + £68.75 repair charge) instead of £230.39.

20 (2) The service charge payable for the year ending 31 March 2009 is £1,686.50 (£1,075.92 service charge + £610.58 repair charge) instead of £2,026.44.

(3) The service charge payable for the year ending 31 March 2010 is £1,900.28 (£1,265.28 service charge + £635.00 repair charge) instead of

25 £2,258.04.

The Service Charge Demands

78. The Respondent did not include a copy of the statutory notice: *Service Charges – Summary of Tenant's Rights and Obligations* with its demands for the disputed service charges from the Applicant. The Respondent instead attached the Notice

30 relevant to Administration Charges. The Respondent's explanation for not including the statutory notice relating to Service Charges was that its legal department had advised that the relevant statutory instrument had not come into force.

79. The relevant provisions dealing with the service of the statutory notice: *Service Charges – Summary of Tenant's Rights and Obligations* came into force on 1 October

35 2007. Under section 21B of the Landlord and Tenant Act 1985 a demand for a service charge which has fallen due after 1 October 2007 must be accompanied by the Notice in a prescribed form. The statutory instrument, *Service Charges (Summary of Rights and Obligations and Transitional Provision) (England) Regulations SI 2007/1257* defines the details of the prescribed form.

80. It would appear that the Respondent has failed to comply with the statutory requirement regarding the service of the *Notice of Rights and Obligations.* The Notice relevant to administration charges was not the prescribed form for service charges. The Tribunal has no power to waive the statutory requirement. In those circumstances the Applicant is entitled to withhold payment of the service charge until the default is rectified (section 21B(3) of the 1985 Act).

Section 20C Order

81. The Applicant applied for an order under section 20C of the 1985 Act preventing the Respondent from recovering its costs incurred in the Tribunal proceedings through the service charge. The Respondent opposed the Application.

82. The Tribunal holds that the Application had merit which has resulted in a reduction in the total service charge payable. The Tribunal, therefore, decides that it would be just and equitable to make the order.

MICHAEL TILDESLEY OBE
MEMBER OF MIDLAND RENT ASSESSMENT PANEL
RELEASE DATE: 26 JUL 2010