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**HM Courts  
& Tribunals  
Service**

**MIDLAND LEASEHOLD VALUATION TRIBUNAL**

**Property:** 26 Huntly Road, Edgbaston, Birmingham B16 8LQ

**Applicant:** Ms Mary Liu

**Respondent:** Birmingham City Council

**Case Number:** BIR/00CN/LIS/2011/0043

**Type of Application:** Application under Section 27A of the Landlord & Tenant Act 1985 for determination of the liability and reasonableness in respect of service charges.

**The Tribunal:** Mr C Goodall LLB MBA (Chairman)  
Mr R Kington FRICS MCI Arb

**Date of Inspection:** 4 May 2012

**Date of Determination:** 24 May 2012

**There was no hearing as the parties had requested a paper determination.**

## **DECISION**

1. The Tribunal determine that the service charge payable by the Applicant for the year ending 31 March 2007 is the sum of £298.50 as charged by the Respondent.
2. The Tribunal determine that the service charge payable by the Applicant for the year ending 31 March 2008 is the sum of £411.66 as charged by the Respondent.
3. The Tribunal determine that the service charge payable by the Applicant for the year ending 31 March 2009 is the sum of £253.53 instead of the sum of £524.35 charged by the Respondent.
4. The Tribunal determine that the service charge payable by the Applicant for the year ending 31 March 2010 is the sum of £555.27 instead of the sum of £821.69 charged by the Respondent.
5. The Tribunal determine that the service charge payable by the Applicant for the year ending 31 March 2011 is the sum of £248.13 instead of the sum of £347.05 charged by the Respondent.

## **BACKGROUND**

6. The Applicant, Ms Mary Liu, is the owner of the leasehold flat at 26 Huntly Road, Edgbaston, Birmingham B16 8LQ (herein called the Property). She purchased the Property in 2005 from the original lessee, who had been granted a 125 year lease of the Property by Birmingham City Council under the Housing Act 1985 on 30 Sept 2002 (herein called the Lease). Of course, the terms of that original lease bind both parties to this application.
7. The Lease contains provisions obliging the Respondent to maintain the building in which the Property is contained and provide certain other services and obliging the Applicant to pay a service charge to cover the cost of those services.
8. The Applicant felt that her service charges were too high. She therefore applied to the Midland Leasehold Valuation Tribunal for a determination of liability to pay and the reasonableness of the service charges.
9. This Tribunal considered the application on 4 May 2012, on the basis of the written representations made by both parties, neither party having requested a hearing. The Tribunal's consideration followed an inspection of the exterior of the Property, and the common parts of the building in which the Property is situated, and a general viewing of the whole site on which that building is located.

## **INSPECTION**

10. The Applicant was not able to attend the inspection. Ms Karen Nicholls, who is Leasehold Services Manager for the Respondent attended, with the neighbourhood caretaker responsible for the site.
11. The Property is one of 20 duplex flats in a four storey building at Huntly Road. The whole site contains sixteen blocks of flats, all of which are either council flats, or which have been purchased from the council under the right to buy legislation and are now private leasehold flats. Of those sixteen, nine are "low rise" flats, by which is meant that they consist of a block with in the region of 10 duplex flats with ground floor entrance, and a further 10 flats above. The Property is in one of these nine low rise blocks, and contains numbers 22 – 60 Huntly Road (even numbers only). It is attached to a second block of a further 20 flats (23 – 61 Huntly Road – odd numbers only) by a shared enclosed staircase. In this decision, 22 – 60 Huntly Road is described as "the Building". The Building is a low rise block.
12. There are also seven "high rise" blocks at the site. The Tribunal inspected the common parts of one of these blocks, which consisted of 8 storeys with 4 flats on each. There was a lift, an entrance lobby, and a balcony and communal area on each floor. It seemed to the Tribunal that there was a larger amount of communal area, and more plant and equipment required for the high rise blocks than the low rise blocks.
13. The communal area serving the Building consisted of a semi-enclosed passage along the length of the Building, one at ground level and one at second floor level, from which the front doors to the individuals flats were accessed. There was a stairwell and some service accommodation at one end (bin store and the like), and a shared stairwell at the other end. There are lawned areas across the site between the blocks. The passage was free of litter, and part of the wall had recently been painted. The passage roof and the windows and doors of the individual flats which abutted the passage were not particularly clean and well-maintained, no doubt because these elements are part of the individual flats rather than being within the common parts of the Building.

#### **THE SERVICE CHARGE OBLIGATIONS IN THE LEASE**

14. The Respondent has to keep in repair the structure and exterior of the Building (implied into the Lease under Housing Act 1985 Sch 6). It also has to, by virtue of the covenants it makes in clause 4(b) of the Lease, paint the external parts of the Building that are usually painted, generally maintain the Building and the staircase lighting, and keep the lawns and the roads and pathways mown and in good repair, clean and tidy. It must insure the Building.
15. In return, the Applicant must pay annually "a reasonable proportion" of the costs of carrying out those obligations, plus a contribution towards a reserve to meet future costs (if charged), and a management charge of 10% of the cost of the services.
16. The Respondent can collect an advance payment towards the annual service charge, by requesting contributions on 24 June and 25 December in each year. The Respondent must arrange for the accounts for the service charge to be signed off each year by the City Housing Officer.

### THE DISPUTE IN THIS CASE

17. The Applicant says that the service charges demanded from her are too high. It is unclear which years are being disputed. It is possible the Applicant is restricting her challenge to the three years 2008/9, 2009/10 and 2010/11. Alternatively, she is challenging those years plus the two earlier years, 2006/7 and 2007/8. The application form has all five years inserted, but the first two are then crossed out. On page 7 of the application, the years 2008-11 are described as being in dispute. On the other hand, in her statement on the application form, the Applicant complains of the day to day costs for 2007 (we assume this refers to 06/07) and 2007/8. In her letter to the Respondent dated 23 December 2011, and therefore after her application to this Tribunal, she states "I think the service charge from 2006 – 2011 are unreasonable high (sic) than normal".
18. Although the Respondent has taken the years in dispute as being just the three years from 2008/9 onwards, information has been provided by it that covers all five years. The Tribunal has therefore considered all five years, as it appears likely that the Applicant did intend to question the charges for each of those years.
19. The amounts demanded from the Applicant over the 5 years starting with 2006/7 are as follows:
- |         |         |
|---------|---------|
| 2006/7  | £298.50 |
| 2007/8  | £411.66 |
| 2008/9  | £524.35 |
| 2009/10 | £821.69 |
| 2010/11 | £347.05 |
20. In her application, the Applicant does not give the correct charges for 2006/7 and 2007/8, referring to those years as incurring charges respectively of £272.52 and £298.50. The Tribunal consider that she must have meant 2005/6 in respect of the first of these sums.
21. The amounts charged each year are shown on a certificate of the annual service charge prepared by the Respondent (see 16 above). These have been copied to the Tribunal and are in similar form for each year. There are two elements of the service charge listed in these certificates which are of particular concern to the Applicant, namely the cleaning charge, and the charge for day to day repairs. Charges for repairs administration, communal electricity, grounds maintenance and insurance have not been challenged by the Applicant. The Tribunal accepts these charges at face value, without having carried out any investigation into the amounts actually charged, or the manner in which they are apportioned between the blocks.
22. But, as cleaning and day to day charges have been challenged by the Applicant, the Tribunal has considered whether these charges are payable, in the light of the legal powers it has to determine the matters raised in the application, which are set out now.

## THE LAW

23. Under Section 27A of the Landlord & 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:-
- (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
24. Subsection (1) of Section 19 the 1985 Act provides that:
- “Relevant costs shall be taken into account in determining the amount of the 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.”
25. A service charge is only payable by the Lessee if the terms of the lease permit the Lessor to charge for the specific service. 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] 1EGLR41).
26. 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 (this is a summary of s19(1) in para 24 above).
27. 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 decide reasonableness on the evidence presented to it (*Yorkbrook Investments Ltd v Batten* [1985] 2EGLR100).
28. In the light of this legal background, the Tribunal now considers each aspect of the service charge that is in dispute in this case.

## THE CLEANING COSTS

29. The cleaning costs charged for the Building over a 5 year period, to be apportioned between the 20 flats in the Building, were:

|         |           |
|---------|-----------|
| 2006/7  | £1,207.44 |
| 2007/8  | £2,007.20 |
| 2008/9  | £6,922.99 |
| 2009/10 | £6,844.45 |
| 2010/11 | £1,454.76 |

30. No supporting information or documentation was provided to the Tribunal to explain how these costs were calculated.
31. In its documentation, the Respondent explained that in June 2007 the cleaning regime for the site at Huntly Road changed due to the introduction of a Neighbourhood Caretaking and Cleaning Scheme which "resulted in the increase of cleaning charges". It appears that a contracted service was replaced with direct labour, and this caused an increase in costs, though in fairness it is the Respondent's case that it also resulted in an improved cleaning service. It is probable that the increase in cleaning costs from 2006/7 to 2007/8 is explained by this change. But the Tribunal cannot see that the significant increase from 2007/8 to 2008/9 is explained by this reason.
32. The Respondent also says that:

"the method of apportionment used for 2008/9 and 2009/10 was based on the actual cost of providing the service to a particular scheme divided by the number of high rise and low rise properties in the scheme. This resulted in a large increase in cleaning charges. Last year [i.e 2010/11] the Respondent reviewed the method used to apportion the charges and agreed to apportion them as in line with the way tenants service charges are apportioned which resulted in the charges reducing for lower rise blocks."

No details of the apportionment methodology used to divide the total site costs between the individual blocks were provided. The Tribunal considers that it is highly likely the apportionment method used for 2008/9 and 2009/10, which resulted in a cleaning cost more than 3 times as high as in 2007/8 and over 4 times as high as 2010/11, is suspect, and the review carried out by the Respondent in 2010/11 produces more obviously reasonable cleaning costs.

33. The Tribunal accepts that the law does not require that the Respondent must use the cheapest method available of providing cleaning services; the issue is whether the method used results in a charge that is "reasonably incurred". The Tribunal take the view that the task of cleaning the Building is not an overly onerous or time-consuming one. The semi-enclosed corridor and the stairwells need to be swept regularly (weekly seems sufficient) and kept clear of litter. The very few windows need to be cleaned. It would be reasonable to carry out

emergency cleaning as required, which should be relatively inexpensive as cleaners would be on the larger site every day. There is not much more than this, in the view of the Tribunal, that is required. The Tribunal considers that a time commitment for a cleaner of in the region of four to five hours per week should be sufficient to cover the cleaning needs of the Building.

34. There is a list of duties contained in para 19 of the Respondents Statement of Case that are undertaken by the Neighbourhood Caretakers and Cleaners. There is no information that assists the Tribunal in understanding the distinction between the roles of caretaker and cleaner, or which duties in the list fall into which role. Clearly some of the duties also apply only to high rise blocks, such as “cleaning the ground floor entrance and lifts”. The Tribunal considers that any services charged to the Applicant must fall clearly within the obligations of the Respondent under the lease. In respect of those services which fall under the heading of “cleaning”, the Tribunal considers that it is not reasonable to incur cleaning charges for anything beyond the cost of the service outlined in para 33 above.
35. In the opinion of the Tribunal, using its expert knowledge and doing the best it can in the absence of any labour cost figures, it was plainly unreasonable in 2008/9 and 2009/10 to incur a cost of nearly £7,000 per annum for the cleaning of the Building. The Tribunal considers that an annual cost of £2,000 is a sum that would be reasonably incurred for cleaning in those years, and this sum should be substituted as the cost of cleaning for 2008/9 and 2009/10. The Applicant’s share of this sum is £100 for each year. The Tribunal does not disturb the cleaning costs for 2006/7, 2007/8, and 2010/11.

#### DAY TO DAY EXPENSES

36. The Applicant also challenges the day to day expenses charged as part of the service charge. The amounts charged for the five years for which the Tribunal has figures are as follows:

|         |           |
|---------|-----------|
| 2006/7  | £416.13   |
| 2007/8  | £1,707.40 |
| 2008/9  | £629.02   |
| 2009/10 | £6,051.10 |
| 2010/11 | £2,943.18 |

These are global figures for the Building to which the Applicant has to contribute one twentieth.

37. These amounts are shown on the top line of the annual certificates as a single amount. The Respondent has supplied a breakdown of these amounts at pages 2 – 63 to 2 – 67 of the Respondent’s Bundle. No invoices or rates have been given. Generally, the charges are of a “one-off” nature, being items such as call out charges for blocked rubbish chutes, minor repairs to electrics or pipes or communal equipment, such as door opening systems, and gutter repairs. The Tribunal has looked carefully at each element of the day to day repair charges. It considers that generally these charges are reasonably incurred – it is inevitable that minor repairs will arise at a site such as this, and in the absence of a more detailed

challenge, there is no evidence or obvious legal basis for the Tribunal to disallow the day to day expenses.

38. However, it is necessary to make one exception to this general approach to day to day expenses, which arises out of the gutter repairs carried out in 2009/10. In that year, a charge of £5,000 was made for "Gutters: Gutter/soil/down pipe blocked: : front elevation: gutter." In her witness statement, Karen Nicholls, the Respondent's Leasehold Services Manager explains this charge as follows:

"A charge was included in the 2009/10 service charges for a repair to the gutters and soffits. I confirm that the total cost of the repair was £8,088.27. No consultation was carried out so the contribution per leaseholder was capped at £250 with a block cost of £5000."

39. The Tribunal has no reason to query this explanation. Repair and maintenance to gutters is required from time to time. The Respondent has properly limited the charge as it did not consult on this charge, or seek dispensation from consultation. The impact of this is that the service charge for 2009/10 will be significantly higher than in surrounding years because of this large charge for gutter repairs.

40. But in 2010/11, there are three items of expenditure which, it seems to this Tribunal, should not have been necessary in the light of the substantial amount of money spent on the guttering in the previous financial year. These three items are described as follows:

"Gutters: Gutter – broken or missing: : 46-48 Huntly Road; FRONT ELEVATION; plastic" for which a charge of £508.24 was made.

"Gutters: Gutter – leaking; front guttering above door area; ; front elevation; plastic; Customer In" for which a charge of £216.64 was made.

"Repair gutter front scaffold ordered" for which a charge of £1,073.70 was made.

41. Having spent in excess of £8,000 on gutter repairs to the front elevation in 2009/10, the Tribunal considers that, using its expert knowledge and experience, and on the balance of the evidence available to it, the expenditure on guttering in 2010/11 was either not reasonably incurred, or was only incurred because the earlier work was not carried out to a reasonable standard. The Tribunal therefore disallows a total of £1,798.58 from the day to day expenditure for 2010/11, reducing the Applicant's contribution to day to day expenses by £89.93 to £57.23 for that year.

### **THE FRONT DOOR**

42. This issue is mentioned for completeness, as it is of concern to the Applicant. The Applicant says she withheld a part of her service charge in 2008/9 because repairs had not been carried out to the front security door of the Building which was malfunctioning in March 2008. The Respondent says that a repair was carried out in December 2008 under job reference



2201542/1. Although the cost of this repair was budgeted for in the estimated service charges for 2008/9, the actual cost in the day to day expenses breakdown is shown as nil. The Applicant has therefore not been charged for this repair. This was explained to the Applicant by the Respondent in a letter dated 8 June 2009.

43. If the Applicant feels that the delay in carrying out the repair has resulted in her suffering further loss, that would be a breach of contract claim, and is not within the jurisdiction of this Tribunal to determine. This issue can therefore have no impact upon the decision of this Tribunal.

### SUMMARY

44. The result of the decisions of the Tribunal above have been to vary the service charges for cleaning in the 2008/9 and 2009/10 years, and to vary the charge for day to day services in the 2010/11 year. As a result, the management charges (which are a fixed 10% of the service charge under the lease) also have to be recalculated. The upshot is that:
- a. The Tribunal makes no change to the service charge for the 2006/7 (charge £298.50) and 2007/8 (charge £411.66) years.
  - b. the service charge amounts for 2008/9, 2009/10 and 2010/11 are as follows (figures in bold are those that have changed because of this decision):

| Year    | Undisputed charges | Cleaning cost | Day to day cost | Management charge | Total         |
|---------|--------------------|---------------|-----------------|-------------------|---------------|
| 2008/9  | 99.08              | <b>100.00</b> | 31.45           | <b>23.00</b>      | <b>253.53</b> |
| 2009/10 | 102.21             | <b>100.00</b> | 302.56          | <b>50.50</b>      | <b>555.27</b> |
| 2010/11 | 95.60              | 72.74         | <b>57.23</b>    | <b>22.56</b>      | <b>248.13</b> |

Signed: .....  
 Christopher Goodall  
 Chairman  
 Midland Leasehold Valuation Tribunal

Date: 24 May 2012