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HM COURTS AND TRIBUNALS SERVICE  
LEASEHOLD VALUATION TRIBUNAL

IN THE MATTER OF THE LANDLORD AND TENANT ACT 1985 SECTIONS 27A

Case No: CHI/00MS/LSC/2011/0117

BETWEEN:

LISA PROPERTY LIMITED

Applicant

- and -

HETTIE ROSE MAYLAM

Respondent

PREMISES: Flat 7, Trafalgar Lodge, 140 Hill Lane, Southampton SO15 5DD  
("the Premises")

TRIBUNAL: MR D Agnew BA LLB LLM (Chairman)  
Mr PD Turner-Powell FRICS  
Mr N. Jutton

HEARING: 19<sup>th</sup> December 2011

DETERMINATION AND REASONS

**Determination**

1. The service charges claimed by the Applicant which are the subject of the Portsmouth County Court proceedings under Claim number 0UC56183 are found to be reasonable and payable by the Respondent. The Administration charges claimed are found by the Tribunal not to be payable by the Respondent as there is no provision in her lease permitting such charges to be levied. This was accepted on behalf of the Applicant during the hearing.
2. The parties asked the Tribunal to determine also the reasonableness of the service charges levied after the date of the issue of the court proceedings. The Tribunal finds that those service charges are reasonable and payable by the Respondent save that the Managing Agents' fees shall be reduced from £192.75 per flat inclusive of vat to £180 per flat inclusive of vat.
3. The Applicant's Managing Agents have undertaken to investigate the reason why the water charges for June 2009 and December 2009 are considerably higher than normal. If they manage to obtain a refund then the lessees will each be credited with a proportionate amount.

4. The Tribunal makes no determination in respect of court costs or statutory interest as those are matters which are within the discretion of the court. No determination has been made in respect of ground rent claimed as the Tribunal has no jurisdiction to deal with ground rent.
5. In summary, the amount found by the Tribunal that is payable by the Respondent for service charges for the period covered by the court proceedings is as follows:-

Year end May 2007: £784.82

May 2008: £779.78

May 2009: £892.78

May 2010: £1140.00

Interim service charges of £561.25 were levied for the period 1<sup>st</sup> June to 30<sup>th</sup> November 2010 which were included in the County Court claim. The Tribunal finds that as an interim claim on account of service charges this was a reasonable sum and therefore the total amount of service charges covered by the County Court claim that the Tribunal finds reasonable is £3875.93 after a credit of £282.70 is taken into account to be set against the figure for May 2007 due to service charges previously billed. Furthermore, since the matter was transferred to the Tribunal the Respondent has paid a total of £1363.80 leaving an amount due for the period covered by the court proceedings of £2512.13.

6. In respect of the period from 1<sup>st</sup> June 2010 to 31<sup>st</sup> May 2011, the exact figures are now known and, having been asked by the parties to make a determination thereon outside the court proceedings, the Tribunal finds that a reasonable sum for service charges to be paid by the Respondent for this period is £1182.16 (£561.25 of which was claimed on account as an interim charge as referred to in paragraph 5 above) of which the Respondent has paid £534.07 making a further £648.09 payable.

## **Reasons**

7. On 30<sup>th</sup> June 2011 District Judge Cawood in Portsmouth County Court set aside a judgment obtained by the Applicant against the Respondent and ordered that if by the 21<sup>st</sup> July 2011 Respondent filed a defence to the claim for unpaid service charges between December 2006 and the date of issue of the claim in August 2010 that the Applicant said were owed by the Respondent the issue of service charges was to be transferred to the Tribunal. A defence was filed and so the matter was duly transferred to the Tribunal in August 2011. Directions were issued for the filing and service of statements of case which was duly done and the matter came before the Tribunal for determination at the offices of the Independent Tribunal Service, The Barrack Block, Western Range, London Road, Southampton on 19<sup>th</sup> December 2011.

## **Inspection.**

8. The Tribunal inspected the exterior and the common parts of the Premises immediately prior to the hearing on 19<sup>th</sup> December 2011. Trafalgar Lodge is a large three storey semi-detached Victorian house which has been converted into eight flats. It is of brick construction with a

pitched tiled roof. There is a more recent extension to the rear of the building. The flat in the extension has its own entrance. The building is in reasonable condition although some external decoration is overdue with some peeling paintwork to windows and cills. A gravel driveway leads to a rear parking area. The driveway was potholed and puddled. The car park is bounded by shrubs and hedges. Whilst this was generally tidy the rear boundary was somewhat overgrown. A refrigerator had been discarded and left in the communal area. Inside, the hallway and stairs serving seven of the flats was in a reasonable state of cleanliness although the carpet was of poor quality and tired. A bicycle had been left in the ground floor hallway. The whole of this communal area was in a reasonable decorative state but would benefit from redecoration. The inspection was attended by Mr N. Adnan, Accounts Manager for Urbanpoint Property Management Limited ("Urbanpoint"), the Applicant's Managing Agents, his Assistant Manager, Mr A. Sardar and Mr I. Capjon, Urbanpoint's current Property Manager for the Premises. The Respondent and her father were also in attendance.

9. The Law

9.1 Section 27A of the Landlord & Tenant Act 1985 ("the 1985 Act") states as follows:-

The Leasehold Valuation Tribunal may determine whether a service charge is payable and, if it is, determine:

- (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
- (e) the manner in which it is payable

9.2 By Section 19 of the 1985 Act service charges are only claimable to the extent that they are reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

9.3 By paragraph Schedule 11 to the Commonhold and Leasehold Reform Act 2002 a leasehold valuation tribunal has a similar jurisdiction with regard to Administration Charges which include amounts "payable in respect of a failure by a tenant to make a payment by the due date to the landlord..... or in connection with a breach (or alleged breach) of covenant or condition in his lease."

The lease.

10. There was no dispute that the lease entitled the Applicant to charge the lessees a service charge to include the service charge items claimed and so it is unnecessary to set out the

lease terms in full in this determination. There was a dispute as to whether Administration Charges could be levied in the form of charges for letters issued by the Managing Agents chasing payment of outstanding service charges. It was agreed by the Applicant's Managing Agents on behalf of the Landlord during the hearing that the lease does not specifically authorise such Administration charges and that they would not therefore be pursued.

The Applicant's case.

11. The Applicant's agents, Urbanpoint, had filed and served copies of all service charge demands, service charge statements and copy invoices for the period 2006/7 to date. Their evidence was that the demands had been properly served but they had received no payment from the Respondent whatsoever since she bought her flat in November 2006. In response to the defence filed by the Respondent that she had not received invoices Mr Adnan stated that the demands had been sent to the flat itself. He noticed that in the defence the Respondent had given a different address but had not notified Urbanpoint of this address previously. Mr Adnan suspected that the Respondent had sublet the property (without having notified the agents for the landlord as required by the lease) and his suspicions were confirmed when he visited the Premises in November 2011 and spoke to a person who admitted that he was renting the flat from the Respondent. The Respondent, it was said, has always evaded answering the query as to whether or not she was subletting the property but it may be that the subtenants had failed to pass on the service charge demands to the Respondent. He maintained that all the service charge items had been reasonably incurred and were reasonable in amount. It was agreed that the best way of proceeding was to take each item that the Respondent challenges in each of the years in question and deal with them one by one.

The Respondent's case.

12. The Respondent was at pains to stress that she was not dishonest or attempting to evade her liabilities to pay service charges. She said that she had been trying to obtain information persistently from Urbanpoint since June 2007 following a letter from them to her requesting payment of an outstanding invoice for service charges. She maintained that she had not received any invoices and she challenged Urbanpoint's right to seek to make charges for chasing letters when the lease does not provide for this. In her letter of 4<sup>th</sup> June 2007, the Respondent went on to query the various individual items comprising the service charge. She says that although this letter, which had been sent by recorded delivery, was signed for she received no reply to it and subsequently Urbanpoint denied having received it. A letter was received from Urbanpoint dated 6<sup>th</sup> October 2008 to which she replied by email on 23<sup>rd</sup> October 2008. There was then a gap in communications until August 2010 at about the time that court proceedings were commenced. She maintains that she was concerned that basic health and safety measures such as maintenance of fire safety equipment and lighting of

communal areas was not being attended to and that costs of services such as gardening and cleaning were very high for the poor services provided. Since receiving the details contained in the Applicant's statement of case she had made a payment of £1897.87 for items she was satisfied were reasonable but still disputed the balance of the claim.

13. The particular items challenged were as follows:-

Year ended 31<sup>st</sup> May 2007.

a) Audit and Accountancy Charges £329. The Respondent claimed that there was no requirement to have the accounts audited. Urbanpoint could certify the accounts themselves. Urbanpoint's response was that it was good practice to have the accounts audited. It provided transparency to the accounts and often purchasers' solicitors wanted to see audited accounts when acting for prospective purchasers of leases. This was a reasonable item of expenditure.

b) Cleaning of internal parts £352.50. The Respondent claimed that the communal parts have never been maintained in a clean state and she had never seen any evidence of cleaning having taken place. When asked by the Tribunal if the common parts had always during her ownership been in the state that they had witnessed during the inspection, she had replied that they had. The Respondent said that no other tenant had complained about the cleaning. The property manager will inspect the property about twice a year and matters such as this could be expected to be picked up by him if there is a problem. There has been no such problem in this case.

c) Gardening and outside maintenance £987.

The Respondent claimed that the hedge at the front of the property had been allowed to encroach upon the entrance, ivy was growing in the porch and trees and shrubs had encroached the car park. There were potholes in the driveway which filled with water when it rained. She thought £94 plus vat was excessive for the small amount of work carried out particularly when there would be not much to do during the winter months. Again when asked by the Tribunal if the state of the grounds has been much the same as the Tribunal saw at the inspection the Respondent said that it has but that the trees at the rear have recently been trimmed back. Trimmings have been left in situ and not cleared away. Urbanpoint's response was that until these proceedings there had been no complaint from any other lessee concerning the gardening.

d) Legal and professional fees.

The Respondent initially thought there had been two surveys carried out in successive years but was satisfied that the survey was carried out in one year and the invoice for that survey received in the next service charge year. She said that the leaseholders had not seen a copy of the survey and a copy of the asbestos survey was not kept on the premises as required by law. Urbanpoint's response was that it is not a legal requirement to keep a copy of the asbestos survey on site and that copies had been sent to the lessees.

e) Management fees.

The Respondent said that these were too high for the service provided. No repairs had been undertaken and no fire extinguisher testing had been done. Urbanpoint's response was to list

the duties they carry out at the premises and to say that the charge was in fact too low to be economic. Gradually, over the years, the fees have been raised so that they are now in line with most other agents' fees.

f) Reserve fund £1000.

The Respondent said that she had no issue as to the amount paid into the reserve fund but her complaint was that it was not being used to effect repairs and maintenance. The Tribunal explained that this was not a matter that could be dealt with under this particular application although it might have an impact on the level of Managing Agents' fees.

14. There were similar challenges to the same items of service charge for the years 2008, 2009, 2010 and 2011. Additional challenges were as follows:-
- (i) Had alternative quotes been obtained for the work carried out to barge boards in 2009? Urbanpoint's answer was that alternative quotes were not obtained. As the amount charged was less than £250 per lessee the Section 20 consultation process was not required. The quotation came from one of the lessees who is a surveyor and who had an interest in keeping the cost down in any event.
  - (ii) Why was the charge for professional fees in 2010 so high at £747.50 when the budget figure was £265? Urbanpoint stated that this covered fees for two reports, a fire risk assessment and a health and safety report. Copies of the reports were produced.
  - (iii) Why were works done to repair a water leak in 2011 charged to the service charge account when the pipe was under one of the flats? Urbanpoint's response was that the leak was in the mains pipe serving the whole building and was beneath the extent of the demise of the individual flat. It was therefore properly a service charge item.
  - (iv) There is a charge in 2011 of £240 for repairing potholes but they are just as bad today. Urbanpoint's comment was that the type of surface on the driveway will always be susceptible to movement and the formation of potholes. Tarmac could be laid but this would be expensive.
  - (v) The Respondent also queried where work to a damp proof course had been carried out. Urbanpoint explained that this was to a main structural wall. An alternative quote had been obtained but there was no consultation requirement because the cost was less than £250 per flat.

Consideration.

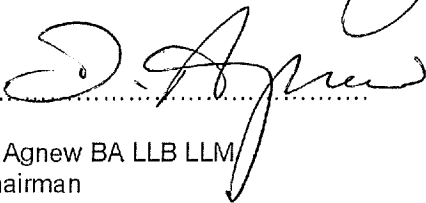
15. The Tribunal considered in some detail the points that had been raised by the Respondent in respect of each of the service charge items in dispute. In general, the Tribunal thought that the charges levied were reasonable for the work done and the standard achieved. Whilst the Tribunal thought that the cleaning and gardening could have been done more frequently and to a higher standard, what was achieved was acceptable for what was being charged. Also, if the Respondent has any issues with the cleaning or gardening she needs to complain there and then and not leave it for a considerable period and until she receives a bill. The Tribunal

has no way of knowing what the state of the cleaning and gardening was like some years ago in the absence of clear photographic evidence. However, the Respondent confirmed to the Tribunal that the cleaning and gardening had been much the same throughout her ownership as the Tribunal had witnessed at the inspection and so the Tribunal had a fair idea of what it had been like.

16. The Tribunal found that it was reasonable for the landlord to have had the accounts audited. If they had not done so then the scope for further argument over the accounts could be increased. The Tribunal considered it good practice to have the accounts audited and this provided an element of protection for lessees. The amounts charged were not unreasonable.
17. The Tribunal found the legal and professional fees charged to be reasonable, having seen the content of the reports.
18. The lease provides for a reserve fund and the Tribunal considered it prudent to set aside £1000 per annum for future costs such as internal and external decoration. The fact that this has not yet been expended was not something over which the Tribunal has any jurisdiction in this application but no doubt it will assist the Landlord in putting a redecoration programme in hand once the service charge accounts have been paid up to date.
19. With regard to Managing Agents' fees the Tribunal agrees that in 2007 these were if anything too low. Lessees only get the service from managing agents that they pay for. The Tribunal accepts that Urbanpoint were only doing the bare minimum in managing the property. They were only visiting twice per year. There were no meetings with lessees to discuss budgets and to find out what the lessees actually wanted with regard to the management of the property. The fees were reasonable for what they were doing until 2011. The fees now being charged are more than is reasonable for what they do, hence the Tribunal decided that a reasonable Managing Agent's fee for 2011 would be £180 per flat (i.e. £150 plus vat).
20. The Tribunal accepted the Urbanpoint's explanation as to the repairs and maintenance charge for 2011. If the leak was in the pipe supplying the building and under the demised flat then it is a service charge item, as is the damp proof work to the structural wall. The amounts charged are reasonable. The Tribunal also agrees that the driveway is going to need constant attention to keep potholes filled whilst the surface is as it is. Tarmac can be laid but not all lessees may wish to incur the cost that this would entail.
21. Finally, the Tribunal wishes to comment on the accusations that on the one hand the Respondent has been evasive in supplying an address for communications and on the other that Urbanpoint has failed to supply proper invoices and respond properly to requests for information. The Tribunal suspects that there are faults on both sides but the lesson to be

learned from this case is that there has to be better communication between the Managing Agents and the Respondent and vice versa if further excursions into litigation or applications to the Tribunal are to be avoided. That means the Respondent being clear and open about her address and Urbanpoint being prepared to be helpful in answering queries speedily and fully. The summary of the Tribunal's conclusions is set out under the heading "Determination" above. The Tribunal hopes that the parties can agree the amount to be paid including interest and costs so that further recourse to the County Court can be avoided and the parties can then start afresh with a clean slate for the future.

Dated this 12<sup>th</sup> day of January 2012

  
.....

D. Agnew BA LLB LLM  
Chairman