

7297



HM Courts  
& Tribunals  
Service



Residential  
Property  
TRIBUNAL SERVICE

Case reference: LON/00BA/LSC/2011/0500 and  
LON/00BA/LIS/2011/0007

**DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON  
CLAIMS REFERRED TO THE TRIBUNAL UNDER PARAGRAPH 3 OF  
SCHEDULE 12 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT  
2002  
(LANDLORD AND TENANT ACT 1985, SECTION 27A)**

**Property: 106 and 106a Sydney Road, London SW20 8EF**

Applicant: Claire Djali

Respondents: Cindy Wheeler and Jennifer Earley

Date heard: 21 September 2011

Appearances: The applicant and Nathaniel Djali-Greenaway  
for the applicant

The respondents in person

Tribunal: Margaret Wilson  
Jenna Davies FRICS

Date of the tribunal's decision:

12 March 2010

## Introduction and background

1. These are claims to recover service charges from the leaseholders of the two flats in 106 Sydney Road, London SW20. The claims were made by the landlord's son, Nathaniel Djali-Greenaway, on behalf of the landlord, Claire Djali, who employs Mr Djali-Greenaway as her managing agent. The claims were transferred to the tribunal by an order of the county court dated 20 June 2011. The respondents are the leaseholder of the Ground Floor Flat, Cindy Wheeler, and of the first floor flat, known as 106A, Jennifer Earley. We refer to them as "the tenants" in this decision. The claim against Ms Wheeler is for £435.21 said to be due at the date of claim and the claim against Ms Earley is for £473.58. In each case the date of the claim is 26 April 2011.

2. 106 Sydney Road is a terraced house divided into two flats. Adjacent to it is 108 Sydney Road, beyond which is a driveway which is included in the freehold title of 108, but on which the leaseholder of each of the flats in 106 has a demised parking space, marked on the plans attached to their leases. The leases give each of the tenants *the right ... to use ... with or without vehicles the driveway leading to the car parking space*. The boundary between the driveway and the public highway is marked by a fence.

3. Mrs Djali owns and lives in 108, and in or about March 2010 she bought the freehold of 106. Relations between the tenants and Mrs Djali are strained, and there have been a number of disputes between them, relating largely to parking.

4. The form of transfer of 108 to Mrs Djali, which was put before us, provides that the freeholder of 108 is required to pay one third of the costs of repairing and maintaining the driveway.

5. The tenants' leases, which are in similar form, require, by paragraph 2 of the fifth schedule, that the tenants pay to the landlord a *maintenance charge being that proportion of the costs and expenses which the Lessor shall in relation to [106 Sidney Road] reasonably and properly incur in each*

*Maintenance Year and which are authorised by the Eighth Schedule ... which the net annual value of the Demised Premises for rating purposes bears to the aggregate of the net annual values for rating purposes of all the flats ... in [106 Sidney Road] the amount of such Maintenance Charge to be certified by the Lessor or its Managing Agent or Accountant ... as soon as conveniently possible after the expiry of the Maintenance Year and FURTHER on the Twenty Fourth day of June and the Twenty Fifth day of December in each Maintenance Year or within twenty one days of the Lessor requiring payment of the same to pay on account of the Lessee's liability under this Clause the Interim Maintenance Charge ... PROVIDED THAT upon the Lessor's or the Lessor's Managing Agents' or Accountants' certificates being given as aforesaid there shall forthwith be paid by the Lessee to the Lessor any amount by which the Interim Maintenance Charge is less than the Maintenance Charge as certified. The interim maintenance charge is fixed at £100 per half year.*

### **The hearing**

6. The hearing took place on 21 September 2011. Mrs Djali and Mr Djali-Greenaway and the tenants appeared. We were provided with plans and photographs and did not find it necessary to inspect the premises.

### **The law**

7. The tribunal's jurisdiction in this case is derived from section 27A of the Landlord and Tenant Act 1985 ("the Act"). A "service charge" is defined by section 18(1) of the Act as *"an amount payable by the 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"*. Relevant costs are defined by section 18(2) and (3). By section 19(1) of the Act, *"Relevant costs shall be taken into*

*account in determining the amount of a service charge payable for a period (a) only to the extent that they are reasonably incurred, and (b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard, and the amount payable shall be limited accordingly". By section 19(2), "Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred, any necessary adjustment shall be made by repayment, reduction of subsequent charges or otherwise".*

### **The dispute**

8. The disputed charges, which appear to form the entire subject of the claims, relate to three categories of charges: a charge of £90 a year which Mrs Djali has made for the upkeep of the parking areas and boundary fences, of which each tenant has been asked to pay a third; a charge of £350 for applying a protective coating to the boundary fence, of which each tenant has been asked to pay a third; and a fee of £200 per flat which Mrs Djali has paid to Mr Djali-Greenaway for acting as her managing agent.

9. We deal first with the charge of £90 for the upkeep of the parking areas and boundary fences.

10. Mrs Djali said that she had paid for the erection of the boundary fence, which is formed of wooden panels, about three years ago, before she acquired the freehold of either property. She said that £90 was her own estimate of the value of her own time spent in spraying the drive with weedkiller and sweeping it. She said that in the summer she sprayed the drive "regularly" with weedkiller and swept it "occasionally", and, asked how she arrived at £90 a year, she said that was "a figure out of the air." She said that if she paid someone else to do it that person would be likely to charge more than £90 a year.

11. The tenants, while they agreed that £30 a year was not a large sum, were concerned at what they regarded as "make-believe figures", and said that they would prefer to have a paid employee to do the work. They did not know and had been given no evidence to support the time which Mrs Djali said she had taken, and they did not accept that they were liable to pay for it.

12. In relation to the charge of £350 for applying a protective coating to the boundary fence, Mrs Djali said that this work, too, she had carried out herself. She said she had applied four coats of Cuprinol to protect the fence, which had not been properly protected from weathering when it was erected. She said that she had bought the Cuprinol and a sprayer, "probably" from B & Q, at a cost of about £50. She said that she had invoices for the materials she had bought, but had not brought them with her. She said that she had applied four coats of Cuprinol to both sides of the fence and applying it took about three days. Again, £300 was her own estimate of the value of her time.

13. The tenants said that they did not dispute that the work was done, but they did not accept that they were necessarily liable to pay for it. Ms Wheeler suggested that the boundary fence was on Mrs Djali's property and considered that the fence was of no real benefit to the tenants. She said that the fence had been made necessary, if it was necessary, only because Mrs Djali had chosen to remove the fence which surrounded the private rear garden to 108, and the fence was for Mrs Djali's own benefit. Nor did Ms Wheeler agree that it needed to be treated. Neither tenant considered that they were liable to pay Mrs Djali for her own time. They said that they would not have objected to paying one third of the cost of a contractor, but, once again, they were not happy to pay charges which Mrs Djali had, as they considered, dreamt up.

14. In respect of both these charges, we are not satisfied that the value of Mrs Djali's own time is a cost "incurred", either within the meaning of paragraph 2 of the fifth schedule to the lease or of section 19(1) of the Act. Mrs Djali agreed that the amounts she decided to charge for her own labour were notional figures, not based on cost, or even on loss of earnings. We

accept that the paved driveway requires some, though minimal, upkeep, and that the fence required a protective coating. We are prepared to accept that Mrs Djali paid £50 for Cuprinol and a sprayer, and we accept that that cost was "incurred" and the tenants are liable each to pay one third, or £16.67. We also accept that it was necessary and therefore reasonable to protect the fence with Cuprinol. We do not, however, accept either that the £90 maintenance charge or the £300 labour charge was incurred. Those charges are therefore not recoverable from the tenants.

15. In relation to the charge of £200 per flat for employing Mrs Djali's son as managing agent, Mrs Djali said that when she first acquired the freehold of 106 Sidney Road she intended to manage it herself, but she soon discovered that the task was time-consuming. She said that she researched the costs of professional managing agents and discovered that none charged less than £200 per unit. She then decided that her son could do the job because, she said, he was intelligent.

16. Mr Djali-Greenaway said that he was an engineering student. He said that he had been paid £200 by his mother for managing each of the tenant's flats with effect from June 2010. He said that the task had become very onerous since the present proceedings began.

17. The tenants said that they would have been content to pay a proper fee for a professional managing agent, but that Mr Djali-Greenaway was not a good managing agent and did not deserve to be paid. They said that he "made things worse" by his confrontational attitude. For example, either he or his mother had decided to lock the gates to the communal drive which made parking very difficult.

18. We accept the tenants' case on this issue. Mr Djali-Greenaway, although no doubt intelligent, has neither relevant experience nor knowledge of the duties of a managing agent, let alone relevant qualifications, and we have seen no evidence that he actually incurred any costs at all. We are not satisfied that his efforts have justified any fee. On the contrary we are

satisfied that he has, by his manner in dealing with the tenants, succeeded in exacerbating an already difficult situation between them and Mrs Djali. This has arisen mainly from parking and similar disputes which, as all parties agree, need urgently to be resolved by mediation or negotiation. Insofar as Mr Djali-Greenaway has spent time preparing for these proceedings, such costs are in any event not recoverable in this tribunal.

20. In these circumstances we determine that the only sum payable by each tenant is £16.67.

CHAIRMAN.....  
DATE..... 12 March 2011