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HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

LONDON RENT ASSESSMENT PANEL

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

Case Reference:	LON/00AH/LSC/2011/0454 & 0660
Premises:	143 – 145 Portland Road, London SE25 4UX

Applicant(s):	See attached schedule
Representative:	In person
Respondent(s):	Ellenwell Properties Limited
Representative:	Salter Rex Managing Agents
Date of hearing:	29th September 2011 26th January 2012
Date of determination:	14th February 2012 following inspection
Appearance for Applicant(s):	Miss T J Riley accompanied by the other applicants
Appearance for Respondent(s):	Mr Philip Brown Counsel Mr Anthony George of Salter Rex
Leasehold Valuation Tribunal:	Mr A A Dutton – chair Mr C P Gowman MCIEH, MCMI, BSc Mr J E Francis
Date of decision:	8th March 2012

Decisions of the Tribunal

(1) The Tribunal makes the determinations as set out under the various headings and as shown on the Schedule attached.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees.

(3) The Tribunal determines that the Respondent shall pay the Applicant £250 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant Mr Davids. The Tribunal also determines that there should be no order for costs under the Commonhold and Leasehold Reform Act 2002

(4) Since the Tribunal has no jurisdiction over county court costs and fees and the matter referred to us was limited to the service charges, the counter claim is, as stated in the Directions Order made by the Tribunal on 29th September 2011, transferred back to the Croydon County Court.

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years .

2. Proceedings under the case ending 0454 were originally issued in the Croydon County Court under claim no 0UH03489 between Ellenwell Properties Limited (Ellenwell) and Miss Tyica Joan Riley who is the Leaseholder of Flat 2. The claim was transferred to the Tribunal by Deputy District Judge Jones on 29th June 2011. The order made was that judgment entered be set aside, that a draft defence and counter claim should stand in those proceedings and that the *"proceedings stayed and the issues in respect of the service charge to be referred by the Court to the Leasehold Valuation Tribunal for determination under section 81 Housing Act 1996."* The costs of the application to set aside judgement were reserved to the final hearing.

3. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

4. The Applicants appeared in person but Miss Riley was their advocate at the Hearing. She was also joined by Miss Tatayova and was also accompanied by a Mr Ewetuga a friend of Miss Riley. A number of other Applicants also attended and provided commentary as the proceedings continued.

5. The Respondent was represented by Mr Brown of Counsel and by Mr George the Managing Agent from Salter Rex.

6. The Directions Order issued by us on 29th September 2011 was intended to ensure that the Hearing in January ran smoothly and that only those issues that we could deal with were ventilated. We made clear the reasons why the matter had been adjourned in September and also that we would not be able to deal with the County Court counter claim. Miss Riley who was the subject of the Court claim with Ellenwell was added as an Applicant to the claim under case no 0660. We set out in the Directions the issues as we saw them and gave time limits for the production of documentation.

7. We regret to say that it seems that neither side adhered to the terms of the Directions and this resulted in difficulties for the Tribunal at the Hearing. It appears that there was confusion on the part of the Applicants as to who was to receive their papers on behalf of Ellenwell. Ellenwell had originally instructed Altermans Solicitors but they excused themselves from the proceedings some time ago. Nonetheless it seems that the Applicants attempted to serve those solicitors just before the Hearing. Accordingly on the morning of the Hearing Mr Brown on behalf of Ellenwell was presented with a substantial bundle of documentation. The matter did not stop there. Ellenwell had also failed to comply with the Directions and they also presented the Applicants with a substantial bundle of documents on the morning of the Hearing. This was not quite such a problem as those documents were relatively straightforward and in part the Applicants had already received those at the Hearing which was adjourned in September. Nonetheless this late delivery of documentation caused Miss Riley to make objections to the evidence being relied upon. Matters were compounded by the fact that Mr George, the representative from Salter Rex sought to put forward a witness statement on the morning of the Hearing.

8. We had had the opportunity of considering the documentation and believed a short adjournment for Miss Riley to consider same with her colleague should be sufficient. However, she persisted with her submission that prejudice had been caused by the late delivery of the documentation and that Ellenwell should be precluded from relying on same. We heard from Mr Brown. We made it clear to Miss Riley that we were not prepared to exclude the evidence as it would make it difficult for us to consider the matters in dispute and in any event she had already seen and commented upon a number of the invoices that were produced in the bundle. We gave her the opportunity of adjourning for her to consider the papers or alternatively to another date. She indicated she did not wish to adjourn to another date as she was pregnant and was not feeling very well. Eventually after an adjournment Miss Riley came back and withdrew her application to debar Ellenwell from relying on the documentation but asked that we should give little weight to the documentation before us.

9. We should at this point record the fact that Miss Riley throughout the Hearing acted in an aggressive and at times disrespectful manner. It did not help in

the conduct of the proceedings but thankfully she was joined by Miss Tatayova who was able to assist with some matters.

10. We should also record that the preparation of the documents in the various bundles left a lot to be desired. The Applicants had largely ignored our request to limit the documentation and instead included copies of each resident's lease, witness statements from each resident of which there were up to three, papers relating to matters which were not within our jurisdiction and which had been made clear in the Directions Order we would not deal with and the bundles were unnumbered. There were at least broken down into sections which gave some assistance in trying to find the relevant page.

11. The Respondents fared worse. Whilst one bundle was produced to the Tribunal that did have section markers the other bundles were lacking those as well as numbering. This made it time consuming to deal with the evidence during the course of the hearing. Neither party covered themselves in any glory.

The Background

12. The property which is the subject of this application is a pair of semi-detached four story properties built perhaps at the turn of the 20th Century. To the rear was a three story modern extension for which it seems there may be planning issues. There was garden to the front and rear and access to both sides.

13. The Tribunal inspected the property after the hearing in the presence of Mr George. Notice of our intention to carry out the inspection had been sent to Miss Riley but none of the Applicants attended. Externally the property was in good decorative order. The main entrance steps, of which there were ten, were covered with tiles some of which were cracked and we noted that there was a door entry buzzer system but we were not able to tell whether that was working satisfactorily at the time of our inspection. The front door opened and closed satisfactorily. The fire alarm appeared to be malfunctioning at the time of our inspection. In the entrance area there were no shelves or other furniture upon which correspondence could be placed for the Lessees and the common parts were somewhat basic, carpeted with brown stained carpet. We noted some rubbish under the stairs. The stair carpet on the risers was different to that in the hallways but was in reasonable order and we inspected the common parts throughout which were showing signs of tiredness and would benefit from an internal decoration.

14. On leaving the property we inspected the garden areas which we noted were reasonably well kept although there were some items of rubbish to the rear. The cupboard under the front entrance stairs had, it appears, been the subject of some recent works with the replacement of a door. The meter covers for the meters serving the flats owned by the Applicants appeared to be in reasonable order. It was however difficult to gain access to the meter cupboards in the very front of the property as there were no steps down and

we understand this may have been the area in which Miss Tatayova fell and injured herself. Nonetheless we were somewhat surprised as the state of the property given the representations made by the Applicants at the Hearing. It was certainly not as bad as portrayed.

15. The Applicants hold long leases of flats in the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

The Issues

16. The Directions order issued by us on 29th September 2011 set out the issues but as we have indicated above the Applicants did not see fit to limit their complaints to those matters. However, we will limit our findings to those matters as issues relating to the actions of the Landlord at the time of sale to the Applicants and matters relating to claims for damages and planning issues are not within the jurisdiction of this Tribunal and if the Applicants wish to pursue those matters further they will need to do so through another forum.

17. After the initial applications and adjournments for parties to consider their position the Hearing eventually got underway and we were told at the outset by Mr Brown on behalf of Ellenwell that the payments made on account by the various Applicants at the time of their purchase did need to be taken into account and that the service charge year 2007/2008 was not a period for which Ellenwell would seek to recover any sums of money. Accordingly it was agreed that any payments made by the Applicants (which are recorded on the Schedule annexed hereto) at the time of their purchase would be credited against later years. We have done this.

18. We therefore need to deal firstly with the year 2008/2009 but before we do that we will deal with the generic complaint relating to insurance. It was made clear to us that for the period from 3rd October 2008 to 12th March 2009 the insurance which should have been put in place by Ellenwell had lapsed. That, however, had been put right by Salter Rex when they began their management in 2009 although there was concern that the Schedule for Insurance appeared to be in the name of New Service a company which it seems may have gone into administration. This, however, was put right when the policy was renewed in June 2010. The issues raised by the Applicants was not so much that the insurance premiums on a per head basis were unreasonable but that the insurance had been effected in the name of New Service for some of the period and indeed for another part of the period the property had not even been insured. Miss Riley, as with so many of the issues in this case, alleged that the insurance information that had been provided to us in the bundle was false and that in fact that the property was not insured at all. Matters were not helped in that in the year 2009/2010 it appears that two years' insurance had been included because of accruals and prepayments. The end result, however, was that for the years 2009/2010 and 2010/2011 the insurance premium on an annual basis was £5,054.26. For the year

2011/2012 this had dropped to £4,436.10. Mr Ramos, one of the Applicants, also indicated that he had had problems with his mortgagees who had in fact affected their own insurance because he was not able to provide them with evidence that his flat was insured. However, Mr George undertook to provide either Mr Ramos or his mortgagees with the appropriate Insurance Schedule so that that issue could be resolved.

19. Continuing with the insurance the Applicants had obtained some alternative quotes and we noted the terms of same. It appears that the broker who had been contacted online had been provided with much of the information necessary to provide some form of comparable quotation but it is not clear that any claims history was provided although equally it is not clear that there is a claims history. Mr George confirmed that Salter Rex did not get commission and that they used brokers to obtain the appropriate insurance cover which for the first two years had been on a block policy but was now on a standalone policy which had resulted in the reduction in the premium.

20. Returning the service charge year 2008/2009 the only items of expenditure shown thereon were accountancy of £200, building repairs which related to it seems the provision of some keys of £14.88, building and terrorism insurance and management fees. Mr George on behalf of Ellenwell conceded that the £14.88 for the keys could be waived. He felt that the other charges were reasonable and that the accountancy charge was recoverable, the accounts having been prepared by an independent party as stated in the accounting documentation. He also confirmed that the Accountant Mr Miskin had no relationship with Ellenwell. We were also at the point informed that the demands served on the various Applicants contained the summary of tenants' rights on the reverse and in truth this was not an issue that was pursued to any degree by any of the Applicants. It seems that the first demand had been sent around 23rd March 2010 and had there not been an agreed waiver of the service charges in respect of the year 2007/2008 Mr Brown rightly in our view, conceded that they would not have been recoverable by reason of section 20B in any event.

21. After the adjournment for lunch we returned and were told by Mr George he had been threatened by the Applicants, in particular Miss Riley over the luncheon adjournment, and was reluctant to continue. However, an apology from the Applicants appeared to assuage his concerns and we were therefore able to continue with the matter in his presence.

22. The next year to be considered was that ending 28th September 2010. This included accountancy charges, building and electrical repairs, insurance, management fee and a service charge of £148.13 which Mr George agreed could be removed. The building repairs were supported by various invoices from contractors who it was said for Ellenwell had carried out work at the property. The Applicants, however, did not accept that these invoices were bona fide. They included an invoice from Ideal Properties in the sum of £600 for carpeting. It was said by Mr Davids that he had carried out some carpeting work and a till receipt was produced in the sum of £119.37 although it was

unclear as to whether this was supposed to represent the total carpeting costs of the common parts.. An invoice had been received for the easing of the front door in the sum of £58.75 which was disputed, although Mr George says that the door was closing satisfactorily when he visited the property in September of 2011 and had no knowledge of any difficulties prior to that. This made up the totality of the repairs to the property. The electrical repairs were in the sum of £1,548.03. This seemed to relate to a number of visits to the property, for example on 10th November 2009 Maximum Electrical attended to carry out electrical inspection, repair and test the lights and to report in a total sum of £229.98. There was a further attendance by the same company on 21st April 2010 to deal with the lights and the intercom which was not working and had not been connected to Flat 10. A further invoice from a Mr Will McKinley in the sum of £75 had been rendered in the June of 2010 for further investigative works to the communal lighting and in fact had been duplicated and a substantial invoice by Maximum Electrical on 16th June 2010 for £987.50 was to carry out works because there appeared to be no bonding to gas meters or water pipes and the fire alarm system had no power and was not working. The Applicants did not think they should be paying these costs.

23. We turn then to the accounts for the year ending 2011 where the same charges for previous years have been included but additional ones for cleaning, gardening and health and safety inspection. The first invoice for repairs was for £153.75 apparently for new keys to the refitted door to the utility cupboard under the main entrance. The Applicants deny that they had ever been given any keys. Mr George could not comment. There then followed an invoice from Ideal Properties Limited in the sum of £528 for carrying out cleaning works to the communal area and the garden which was disputed particularly by Miss Tatayova who asserted that together with the help of Mr Davids they carried out the gardening and the removal of rubbish. There was she said still rubbish in the common parts. An invoice from Charter House Home Care in the sum of £424.58 was produced which again referred to the clearing of rubbish, installing a plaque next to the buzzer and refixing a side gate and some gas meter covers. A further invoice from the same company on 18th March 2011 in the sum of £264 was to supply and fit a fire check door to the electrical room under the main front steps. It was denied that this had been done but it seems to coincide with the provision of keys referred to earlier. The largest invoice in respect of works related to the guttering and down pipes undertaken by L Harrison in sum of £1,250. It was denied that these works had been done. It appears that there had been some guttering difficulties to the side of the property and it was said by Mr George that a down pipe, a hopper and new guttering had also been installed. Although according to the accounts a claim for £279 was made in respect of electrical repairs, the invoice itself from D&G Inspections Limited was in the sum of £354. It appears that there may have been some credit given in respect of the double counting of the McKinley invoice from the previous year hence the reduced sum appearing the accounts. We were then shown invoices relating to gardening in the sum of £204, cleaning the corridors which included deep cleaning to remove excreta and blood from the foyer at a price of £960 inclusive of VAT, a further invoice from Alclinise Services Limited for the removal of rubbish at a sum of £390 including VAT and a further invoice in

the sum of £504 it appeared to be on the basis of one weekly clean of the corridors. None of these invoices were accepted as being either payable or indeed truthful by the Applicants.

24. Mr George had indicated that the property was "a tip". He said that no services had been provided because people had not paid the service charges. However, he had met with Miss Tatayova who was one Applicant who had paid the service charges and he decided to instruct cleaners to attend to carry out a deep cleaning exercise and to remove rubbish.

25. On the general matter of management charges the submissions made by Miss Riley was that the management's charge was too high for the limited management provided, that there was no relationship with the managing agents and that the property was in poor repair and that Salter Rex were hostile to the Applicants and had not notified the Applicants of their appointment. Mr George told us that he had not been involved in the building prior to June of 2011 and had only had contact with Miss Tatayova and Mr Davis. He thought that his predecessor had sent a letter of introduction and that the rates were charged at £250 per flat, their services being in accordance with the RICS Code including quarterly visits and ad hoc attendance although whether that was actually happening given the lack of service charge monies was unclear.

26. Both Miss Riley and Mr Brown made some closing submissions which we noted. Miss Riley was disappointed in the manner in which the building was managed and repeated the Applicants' complaints about the manner in which Ellenwell had sold the properties to the Applicants. Mr Brown believed that there was a paper-chain showing that the costs had been incurred and that accordingly they were due and owing. There was he said a need for us to have a balancing exercise between the allegations made by the Applicants which included matters of fraud and the documentation that was before us. Miss Riley sought to argue that provisions of section 20C should apply and that no costs would be recovered by Ellenwell and that she had herself incurred costs with solicitors and out of pocket expenses in preparing the documentation. She sought costs therefore under the Commonhold and Leasehold Reform Act 2002 and reimbursement of the Application and Hearing fee.

The Tribunal's Decision

27. We will deal with the various items shown on the service charge accounts for each year in question. Dealing firstly with the year ending 2007/2008. No accounts were produced and Ellenwell through Mr Brown conceded that any monies paid by the Applicants when they purchased their properties should be offset against later service charge years. On the attached Schedule we have done just that and that records the amounts which we calculate are due and owing but does not reflect any further payments which may have been made by any of the Applicants since their purchase. We know that Miss Tatayova has paid her service charges and accordingly there will need to be a reckoning

insofar as she is concerned and indeed any other Applicant who paid service charges when demanded for the years 2008/2009 onwards.

28. For the year 2008/2009 we conclude that the accountancy charge of £200 is perfectly reasonable. The accounts are adequate and contain the statutory wording and confirm that they are a fair summary in accordance with section 21(5) of the Act. The building repairs (the keys at £14.88) have been conceded. Insofar as the insurance is concerned we heard all that was said by the parties. The alternative quotations obtained by Miss Riley were of some assistance to us. We noted also that once the policy had been removed from the block arrangement the premium dropped significantly. In an invoice from Alder Insurance Brokers for the premium ending the year 23rd June 2012, the policy premium is £4,185 to which should be added tax. This includes terrorism cover. It seems to us that the figure of £4,185 sits reasonably comfortably with the alternative quotations obtained by Miss Riley which were not perfect as we are not wholly clear what information was given to the brokers In those circumstances therefore we conclude, doing the best we can on the information before us, that the level of insurance premium throughout the period of dispute should be £4,185 per annum based upon the current level of cover which was achieved merely by switching from a block policy. This gives a premium for each leaseholder of £209.25 which seems to us to be reasonable. We have therefore allowed that sum throughout and have apportioned it on a quarter's basis for the year 2009 where the insurance was allowed to lapse and not renewed until March, the premium year being in June.

29. Insofar as the management changes are concerned we find that there has been little in the way of management although we do understand Mr George's reluctance to spend money when there are no funds. However, the management for the building has been limited and for the years 2008/9 and 2009/10 we allow the sum of £100 plus VAT per unit. In the year 2008/2009 the management by Salter Rex was from March to September a six month period and accordingly we allow half the sum for an annual basis which would be £1,092.50. We have set out the figures for each year in dispute on the attached schedules.

30. Turning then to the year 2009/2010 again we find that the accountancy charge of £250 is perfectly reasonable and the building repairs of £600 for carpets and for the door are also recoverable. It is quite clear from our inspection that Mr Davids could not have carpeted the whole of the property for just over £100. We suspect that he may have paid for the carpeting in a small lobby by his flat to which we were not able to gain access on inspection but certainly that sum would not have covered the carpeting of the landings and the common entrance. The sum is therefore allowed as is the small invoice for easing the front door. We should say at this stage that we do not accept the Applicants' general challenge to the invoices that they are somehow fraudulent. They adduced no compelling evidence that that was the case and our inspection of the property indicated that there had been some maintenance work carried out and it appeared to be in reasonable order.

31. Insofar as the electrical works are concerned we find that the bulk of these should be disallowed. The invoice from Maximum Electrical of 10th November includes the repairing of lights and testing of electrical systems. This is only a short period after the flats were first put on the market for sale. Of an invoice for £229.98 we allow £90.98 in respect of the bulbs which appear to have been replaced. The remainder of the invoice is disallowed. A further invoice from Maximum Electrical of 21st April 2010 appears to be for the checking of an intercom which has not been properly connected and the fitting of nine bulbs. This is only some five months after a number of bulbs were replaced previously and we cannot help but feel that this may be as a result of some problems with the wiring and should not therefore be the responsibility of the Applicants to pay. We therefore disallow the totality of that invoice of £180.55. There has been duplication of Mr McKinley's invoice but that appears to have been corrected in the following year. We have corrected that error in the attached schedules. The invoice for £987.50 from Maximum Electrical seems to us to not be recoverable at all. It relates to the bonding to gas meters and the connection of the fire alarm system which had no power and was not working. Again these are matters which should have been dealt with by the Landlord prior to sale and the sum of £987.50 is disallowed.

32. We then turn to the year ending September 2011. Again it seems to us that the accountancy charge of £262.50 is perfectly reasonable. The building repairs are some £2,920.33 but only invoices totalling £2,620.33 were produced. We disallow the charge of £153.75 in respect of the keys to the cupboard which we understand is below the main entrance steps. There is no evidence the keys were ever distributed to the Lessees and accordingly that sum is disallowed. The next invoice is for £528 allegedly for removing rubbish from the communal area and the gardens. It is wholly unclear as the extent of the works and we heard from Miss Tatayova that she and Mr Davids had dealt with rubbish and she had also done the gardening. We accordingly disallow that invoice. An invoice from Charter House Home Care in the sum of £424.58 was considered. We did see the plaque next to the buzzer and we have no reason to doubt that the other items of work shown on that invoice were undertaken. The same applies to an invoice in the sum of £264 by the same company that was dealing with the supply and fitting of a new door to the electrical room under the entrance steps, both are therefore allowed

33. The largest invoice for works related to that of L Harrison in the sum of £1,250 for works to the guttering. We understand from our inspection that access could be gained by going onto next-door's property and the use of a cherry picker it is said was incorporated into the costs. Our inspection revealed that a new gutter and hopper had been provided and we therefore allow the sum of £1,250. The invoice from D&G Inspections was in the sum of £354 which seems reasonable and we have allowed this in full as accounts had been amended to allow for the £75 that had been doubled charged in the previous year.

34. Insofar as the gardening by Alclinise Services Limited was concerned the sum of £204 for cutting back and pruning the front garden seems to us to be high.

We will allow half that amount. The front garden is not large and a rate of around £35 per hour for what we consider would be no more than three hours is appropriate which we have capped at half the sum claimed. The cleaning by the same company in the sum of £960 appears from the job description to be somewhat an unpleasant task and in those circumstances we will allow the £960. The invoice by that company for the removal of rubbish in the sum of £390 dated 5th September 2011 is allowed. It does appear that rubbish is dumped, whether by residents or passers by is unknown, certainly that was apparent from our inspection to the rear of the property and in those circumstances this invoice seems reasonable as we have no reason to doubt its truth. The invoice from Alclinise for a weekly clean of £504 seems to us excessive. We could see no cleaning schedule at the property and have no indication as to how this may have been monitored. We would allow some cleaning costs but as £800 had already been spent in September on a deep clean it is not wholly clear to use what this further charge of £504 could be. It seems to us that three hours would be more than sufficient and bearing in mind the large invoice for cleaning but a few days before we allow a sum of £50.

35. For this year in respect of the management we are satisfied that Mr George is taking a more proactive approach and we trust that once funds are recovered from the Lessees that will continue. Accordingly for the year 2010/2011 we are prepared to allow a management charge of £240 per flat inclusive of VAT.

36. Insofar as the year 2011/2012 is concerned an estimate of £740.70 was suggested for each flat which seems to us to be perfectly reasonable and is wholly in line with charges we have allowed for previous years.

37. For ease of understanding we have set out on schedules attached the service charges for each year and the amounts that will be payable by the Lessees. We have then on a final schedule set out the sums paid by the Lessees when they purchased their flats, the amounts which we calculate are due and owing based on the service charge figures that we have dealt with and the sums that are due subject to any final reckoning in respect of payments on account that may have been made.

38. We make an order under section 20C of the Act on the basis that we think it is just and equitable in all the circumstances based on our findings. Insofar as costs under the Commonhold and Leasehold Reform Act are concerned, we do believe that the Respondents have acted unreasonably in respect of these proceedings particularly in the late delivery of the bundles which were in poor order. However, this was matched by the behaviour of the Applicants, in particular Ms Riley who was responsible for the documentation, which did not accord with our directions and her behaviour during the hearing. Accordingly we are of the view that both sides are at fault and we make no award for costs under the 2002 Act. Insofar as the Application and Hearing fee are concerned we order that both should be refunded to Mr Davids and they total £250. It is quite clear that the Respondent, Ellenwell, had not dealt with the service charges properly. In the year 2007/2008 there were no details of any

expenses incurred and there appeared to have been no credit given in respect of the payments made by the various leaseholders when they purchased their flats. They allowed the insurance to lapse. It seems reasonable therefore in those circumstances to order the refund to Mr Davids of the fees he paid the Tribunal.

39. Finally, we confirm that Miss Riley's counter claim is remitted back to the County Court to be dealt with by them if she decides to pursue the matter further. The question of costs, interest and other fees relating to the County Court proceedings should also be referred back to the Court for them to deal with.

Chairman: **Andrew Dutton**

Date: 8th March 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
  (a) Which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
  (b) The whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  (a) Only to the extent that they are reasonably incurred, and
  (b) Where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

And the amount payable shall be limited accordingly.

(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 or subsequent charges or otherwise.

Section 27A

(1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,
  (c) the amount which is payable,
  (d) the date at or by which it is payable, and
  (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
   (a) the person by whom it would be payable,
   (b) the person to whom it would be payable,
   (c) the amount which would be payable,
   (d) the date at or by which it would be payable, and
   (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
   (a) has been agreed or admitted by the Tenant,
   (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
   (c) has been the subject of determination by a court, or
   (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
- (b) In the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
- (c) In the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) In the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

(1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.

(2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) For or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) For or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) In respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) In connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) Specified in his lease, nor
(b) Calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Leasehold Valuation Tribunal

143 – 145 Portland Road, London SE25 4XU
Case numbers LON/OOAH/LSC/2011/0454 and 0660

Schedule of service charges for the periods in dispute

Year ending September 2009

Item	Amount Claimed £	Amount allowed £
Accountancy	200	200
Building repairs	14.88	0.00
Insurance, including terror	1453.97	1046.25
Management	1293.75	1092.50
	2962.60	2338.75

Individual applicant liability at 5% = £116.93

Year ending September 2010

Item	Amount Claimed £	Amount allowed £
Accountancy	250	250
Building repairs	658.75	658.75
Electrical	1548.03	165.98
Insurance	10108.52	4185
Management	5581.25	2232.50
Service charge	148.13	0.00
	18,294.68	7492.23

Individual applicant liability at 5% = £374.61

Year ending September 2011

Item	Amount Claimed £	Amount allowed £
Accountancy	262.50	262.50
Building repairs	2920.33	1938.58
Electrical	279	354
Cleaning	1854	1400
Gardening	204	102
Health and safety	240.88	240.88
Insurance	4436.11	4185
Management	5814	4800
	16,010.82	13,282.96

Individual applicant liability at 5% = £664.15

Year ending September 2012

Allowed estimated demand of £740.70 per applicant for the year but only half payable as per Fifth Schedule of the lease paragraph 3

Reconciliation of individual applicants liability

Name and flat number And date of purchase	amount Paid on Purchase	amount owed £	amount due £
Tatayova (1) 26.3.08	855.63	1,529.54 [1]	673.91
Riley (2) 15.8.08	855.63	"	673.91
Oyiadjo (4) 29.5.08	855.63	"	673.91
Douglas (7) 11.8.08	705.63	"	823.91
Ramos (8) 23.1.08	855.63	"	673.91
Small (9) 1.10.08	705.63	"	823.91
Nembhard (10) 7.12.07	855.63	"	673.91
Longdon (12)5.5.09	855.63	1,459.38[2]	603.75
Davids (13)14.1.09	701.25	1,494.30[2]	793.05

Notes

[1] The figure of £1,529.54 is the total of the tenants' liability in respect of service charges for the years 2008-9 to 2011-12 as set out on the schedule numbered 1 above

[2] The liability has been apportioned for the year 2008-09 to reflect the purchase dates of Ms Longdon and Mr Davids. The tribunal has not apportioned for Mrs Small as the date is so close to the accounting year end.