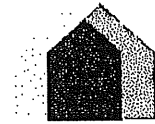


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**HM Courts
& Tribunals
Service**



**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 &
SCHEDULE 11 TO THE COMMONHOLD AND LEASEHOLD REFORM ACT 2002**

Case Reference: LON/00BJ/LSC/2012/0619

Premises: FLAT 8, STRICKLAND ROW, LONDON SW18
3JD

Applicant(s): STRICKLAND ROW (LONDON SW18)
MANAGEMENT LTD

Representative: BRETHERTONS LLP

Respondent(s): TIMOTHY RICHARD GARRETT

Representative: IN PERSON

Date of hearing: 7 JANUARY 2013

Appearance for Applicant(s): (1) MS T SOLEMANI, WILLMOTTS
(2) MR J CHITTY, COMPANY SECRETARY
(3) MR T MOORE, DIRECTOR

Appearance for Respondent(s): NO ATTENDANCE

Leasehold Valuation Tribunal: MS L SMITH (LEGAL CHAIR)
MR R POTTER, FRICS
MRS L HART

Date of decision: 24 JANUARY 2013

Decisions of the Tribunal

- (1) The Tribunal determines that the sum of £2483.60 is payable by the Respondent in respect of the period from 1 April 2010 to 31 March 2012.
- (2) The Tribunal makes the determinations as set out under the various headings in this Decision
- (3) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so that the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge
- (4) The Tribunal determines that the Respondent shall pay the Applicant £150 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant
- (5) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Wandsworth County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act"), and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"), as to the amount of service charges, and (where applicable) administration charges, payable by the Applicant in respect of the service charge demanded in the period 1 April 2010 to 31 March 2012.
2. Proceedings were originally issued in the Northampton County Court under claim no. 2YJ15479. The claim was transferred to the Wandsworth County Court and then in turn transferred to this Tribunal, by order of District Judge Guinan on 23 July 2012.
3. At a directions hearing on 30 October 2012, it was indicated to the Applicant that, if it wished to add to the transferred claim in order to allow the Tribunal to consider the final charges for the service charge year 2011/12 and on account payments for 2012/13 then it should make a further application. This was not done and accordingly this decision deals only with the claim as transferred by the County Court.
4. The relevant legal provisions are set out in Appendix 1 to this decision.

The hearing

5. The Applicant was represented at the hearing by Ms Solemani (managing agent), Mr Chitty and Mr Moore (the company secretary and director of the Applicant respectively). The Respondent did not attend. The hearing date was fixed at the directions hearing and notified after that hearing in writing. Ms Solemani also indicated to the Tribunal that she had supplied the Respondent with a copy of the bundle for the hearing. Accordingly, the Tribunal was satisfied that the Respondent was aware of the date of the hearing. He had not sought a postponement of that hearing. The hearing therefore proceeded in the absence of the Respondent.

The background

6. The property which is the subject of this application is a ground floor flat in a 2 storey block in a development of 32 ex Prison Service flats. The flats are more akin to maisonettes, each having their own entrances and with no internal common parts ("the Property").
7. Photographs of relevant parts of the Property were provided in the hearing bundle. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
8. The Respondent is the successor in title to the leasehold interest in the Property by virtue of a lease dated 26th February 1993 for a period expiring on 31 December 2115 ("the Lease"). The Lease 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 are set out in Appendix 2 and are referred to below, where appropriate.

The issues

9. At the start of the hearing the relevant issues for determination were set out as follows:
- (i) The payability and/or reasonableness of service charges in the total sum of £2483.60 relating to a period from 1 April 2010 to 31 March 2012 made up as follows:-
- | | |
|------------------------------|---|
| <u>Demand 1 April 2010</u> | £256.72 made up of excess service charges from 2008/9 of £131.72 together with an arrears fee of £50 and Court fee of £75 |
| <u>Demand 11 August 2010</u> | £315.83 being the excess service charge for 2009/10 |
| <u>Demand 1 October 2010</u> | £600 being the second on account payment for 2010/11 |
| <u>Demand 1 April 2011</u> | £600 being the first on account payment for 2011/12 |
| <u>Demand 17 June 2011</u> | £111.05 being the excess service charge for 2010/11 |
| <u>Demand 1 October 2011</u> | £600 being the second on account payment for 2011/12 |
- (ii) Whether and in what amount the Respondent is entitled to claim set off against those amounts for a claimed failure by the Applicant to maintain the exterior of the Property and to investigate or remedy the resurfacing of part of the yard of the Property.
- (iii) Whether legal costs in the sum of £884 as claimed in the County Court claim are payable and/or reasonable whether claimed as service charges or administration charges.

10. Having heard evidence and submissions from the Applicant and considered the Respondent's written submissions and all of the documents provided, the Tribunal has made determinations on the various issues as follows.

Service charge item and amount claimed

11. Service charges demanded and included in the County Court claim as set out at paragraph 9(i) above.

The Tribunal's decision

12. The Tribunal determines that the amount payable in respect of service charges as demanded and included in the County Court claim is £2483.60

Reasons for the Tribunal's decision

13. The Respondent indicated at the directions hearing and in his letter of 16 November 2012 in the Tribunal proceedings that he did not dispute the reasonableness of the service charges claimed. However, in light of his absence from the hearing, the Tribunal asked the Applicant to set out the basis for the service charge claimed and to set out what those service charges covered in order to ensure that they were reasonable and payable.
14. The Applicant indicated that the service charges were claimed in accordance with the definitions clause, clauses 2.10 and 4.1 of and the Fourth Schedule to the Lease. Those provisions require the Respondent to pay service charges as calculated in accordance with the Fourth Schedule by way of additional rent.
15. The Applicant explained that since the development of which the Property formed part was run by a management company with 7 directors, all of whom were resident, there was a keen interest by the residents in the upkeep of the properties and to keep service charge expenditure to a minimum. Service charges were therefore demanded currently at the rate of £600 per half year and any excesses tended to be low. The service charge covered buildings insurance (obtained commercially through brokers), water and sewerage charges, management and other fees. Having been shown the accounts for the years in issue in the County Court proceedings, the Tribunal was satisfied that the amounts were payable and reasonable in relation to those items.
16. In addition to the set off claimed by the Respondent, he also took issue in his letter of 16 November, with the legal fees which were included within certain of the service charge demands (Brethertons' legal costs are dealt with at paragraph 28 and following below). The disputed amounts consist of 5 items of £50 described variously as arrears fees/professional fees or legal costs, 1 item of £25 described as further arrears fee and 1 item of £75 described as Court costs.
17. It was explained by Mr Chitty who is the Company Secretary of the Applicant that these fees covered work done by him to write letters to those who failed to pay their ground rent or service charge and to take any arrears up to County Court stage. Those fees had been approved by the Applicant's AGMs. These

fees were charged wholly against the tenant whose arrears generated the work. In this regard, Mr Chitty pointed the Tribunal to paragraph 2 of the Fourth Schedule to the Lease which allowed the Landlord to recover a proper proportion from professional advisers engaged in the management of the development including costs of legal proceedings. Paragraph 5 of the Fourth Schedule allowed the auditor to determine what should be a proper proportion of costs and expenses under paragraph 2 based on the reasonableness of the allocation of those costs and expenses. Mr Chitty, as auditor, had determined that it was reasonable, given the size and nature of the development, to allocate any such costs and expenses as were payable in relation to legal proceedings caused by arrears to the tenant who was responsible for those arrears. Whilst this is a very unusual clause, the Tribunal agrees that the sums are payable and that it is not unreasonable to apportion those sums in that way. The amounts claimed are not unreasonable.

18. The Respondent raised 2 matters by way of claimed set off against the service charges claimed:-
- (1) Landlord's failure to redecorate the exterior of the Property in accordance with clause 5.4 of the Lease. The Applicant had arranged for the redecoration of the windows of the Property but was continuing to refuse to redecorate other external parts namely the front and rear doors, the outside cupboard door, the 2 gates to the Property's rear yard and the porches to the front and rear doors as well as the concrete roof to the old larder.
 - (2) Unauthorised alterations to the communal drainage beneath the small yard which formed part of the Property's demise and in particular the resurfacing of a small area of concrete in that yard, caused (the Respondent asserts) in the course of those alterations. The Respondent claimed a set off in the amount of £1050 to reinstate his paving and provided a quotation for this sum in the bundle.
19. No doubt due to the nature of the development, the Landlord's repairing obligations are limited to the Retained Parts, the Common Parts, the floor, walls and roof of the Garage (if any) and the forecourt and access to the Garage (clause 5.3). There are no Common Parts relevant to the issues in these proceedings. The Retained Parts are defined in the definitions clause of the Lease and include the structural parts of the Property, roofs, drains and sewers as well as the frames of the exterior windows and any boundary walls or fences of the Development.
20. The Applicant had recognised earlier that this definition required it to redecorate the window frames (in accordance with clause 5.4) but denied any responsibility to paint any other parts of the Property. The Property is defined as the Flat in the Lease and does not include Retained Parts but includes the yard. It is true that the Lease does not include in the Tenant's covenant an express obligation to paint the outside doors of the Property (clause 4.5) but does include an obligation to maintain the Property which includes the whole of the Property except the Retained Parts. The external doors in particular are specified in the First Schedule to be part of the Respondent's demise.

21. The Tribunal did explore with the Applicant whether any other external parts fell within the Retained Parts by reference to the plan in the Lease. It did appear from this that the gates to which the Respondent refers are within the Retained Parts as part of the boundary walls and fences of the development. However, there is no obligation on the Landlord in the Lease to paint or otherwise repair any other external part of the Property such as the external doors etc.
22. The Applicant agreed that if the Tribunal determined that the external gates were indeed contained in the definition of Retained Parts, it would paint those. The Tribunal determines that, insofar as those are part of the boundary walls and fences they are so included and it is the Landlord's obligation to paint those. This may in the event be something of a pyrrhic victory for the Respondent given that if the Landlord has an obligation to paint the 2 gates at either end of his property it has the same obligation in relation to the other 31 properties and service charges may have to increase to cover this work.
23. In relation to the claimed set off though, in any event, the Respondent does not claim to have had any of the external redecoration work done himself and has not therefore incurred any cost in relation to any failure to repair those parts which are the Landlord's obligation (namely the gates). He does not claim to have suffered any damage, quantifiable or otherwise. Accordingly, there is nothing to set off against the claim.
24. In relation to the alterations to the drains, Ms Solemani explained that she had been the managing agent of the development for some 10 years. She had not commissioned any work to the drains below the yard of the Property nor any paving work following such alterations. Ms Solemani indicated that the management company had been asked whether it had commissioned any such works and it said that it had not.
25. The tenants of the adjoining properties whose drains run under the yard of the Property had been asked if they had carried out any works. It was possible that adjoining property owners might have wished to carry out such works as the drains below the yard are shared drains. However, the owner of 5 Strickland Row who the Respondent had indicated may have been responsible denied that he had carried out the works.
26. The owner of 5 Strickland Row had admitted being in the yard of the Property on the day when the Respondent says that these works may have been carried out (in July/August 2009) but says that this was for a wholly different purpose and that he had not carried out or paid to have carried out any alterations or resurfacing. True it is that clause 4.9 would require another tenant to obtain the Landlord's consent for any alterations of this nature and that the Landlord has an obligation to pursue other tenants for breaches but without any clear evidence of when this work was carried out or by whom, it is difficult to see what more the Applicant or its agents could have done. The yard of course forms part of the Respondent's demise and it would be open to him to take action against a third party if there were evidence of who had damaged his paving. The Tribunal notes also that the area of alleged

resurfacing is extremely small and doubts that it would cost the amount claimed to reinstate it.

27. For the above reasons, the Tribunal decides that there is no set off due to the Respondent against the amounts claimed by way of service charges in the County Court proceedings.

Service charge item and amount claimed

28. Legal costs as included in the County Court claim in the sum of £884.

The Tribunal's decision

29. The Tribunal determines that these legal costs are not payable as either service charges or administration charges. Had they been payable, the Tribunal would have determined that a reasonable amount in respect of those costs would be £584.

Reasons for the Tribunal's decision

30. The Tenant under the Lease is responsible for payment of legal costs associated with legal proceedings for arrears (see clause 4.20 and/or paragraphs 2.1.12 and 2.2.2 read with paragraph 5 of the Fourth Schedule). Whether those are claimed as service charges or administration charges, however, they must be properly demanded under the Landlord and Tenant Act 1987. The Applicant accepted that the costs incurred in relation to appointment of solicitors for the County Court proceedings (Brethertons) had not been properly demanded. They are not therefore payable.
31. In case, however, the Applicant makes proper demand in future for those amounts, though, the Tribunal has gone on to determine reasonableness. The breakdown of the amount of £884 is set out in an invoice from Brethertons dated 2 November 2012. It is noted that the amount included for VAT in that invoice should be £144 not £205 but the total is correct.
32. Following further enquiries made of Brethertons by Ms Solemani during the hearing, it was explained by Ms Solemani that the work done by Brethertons was done by a Grade D caseworker at £100 per hour + VAT but that much of the work was covered by fixed fees. The £40 claimed was for correspondence with the Land Registry and managing agent. The £85 claimed was for opening the file, carrying out conflict checks and going through the correspondence and statements. The £225 was a fixed fee for corresponding with the mortgagee consisting of a possible 3 letters and 3 phone calls. The £245 claimed was for issuing proceedings including the drafting of Particulars of Claim. The £125 claimed for contemplation of forfeiture and s146 was for the work as described.
33. The Tribunal was of the view that the amounts of £40, £85 and £245 were properly claimed as against the Respondent (if they had been payable). However, there seemed little point in sending 3 letters and making 3 phone calls to the mortgagee if indeed that work had been done and accordingly, the Tribunal would have reduced that fee to £100 (one hour's work). Since no

action had been taken to issue a s146 notice or to forfeit the Respondent's Lease, it was not reasonable to claim for that work at this stage; that could be done at a later stage if necessary. Accordingly, the amount of the invoice would be reduced to £584 plus VAT. However, as indicated above, none of this amount is currently payable unless properly demanded.

Application under s.20C and refund of fees

34. At the end of the hearing, the Applicant made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that it had paid in respect of the application/hearing. Having heard the submissions from the Applicant and taking into account the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision. The Tribunal understands that those fees amount to £150.
35. Although the Respondent was not present at the hearing, the Tribunal raised of its own volition the issue of whether it should make an order under section 20C of the 1985 Act. Having heard the submissions from the Applicant and taking into account the determinations above, the Tribunal determines that an order should not be made under section 20C of the 1985 Act, so that the Applicant may pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge. In light of the Applicant's submissions in relation to legal charges and the Tribunal's decision in relation to the way in which those are being claimed in the service charge, it is likely that any legal costs sought by way of service charges will be levied against the Respondent alone.

The next steps

36. The Tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the Wandsworth County Court. Interest on the sums which the Tribunal has determined to be payable will also be a matter for the County Court.

Chairman:



Ms L Smith

Date: 24 January 2013

Appendix 1: 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 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;
 - (b) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (c) 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;
 - (d) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (e) 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.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
 - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).

LANDLORD AND TENANT ACT 1987**PART VI****INFORMATION TO BE FURNISHED TO TENANTS****Section 46**

- (1) This Part applies to premises which consist of or include a dwelling and are not held under a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.
- (2) In this Part "service charge" has the meaning given by section 18(1) of the 1985 Act
- (3)...

Section 47

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely –

(a) The name and address of the landlord

(b)

(2) Where –

(a) A tenant of any such premises is given such a demand, but

(b) It does not contain any information required to be contained in it by virtue of subsection (1),

Then (subject to subsection (3)) any part of the amount demanded which consists of a service charge (or an administration charge) ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) The relevant amount shall not be so treated in relation to any time when, by virtue of an order of any court or tribunal there is in force an appointment of a receiver or manager whose functions include the receiving of service charges or as the case may be administration charges from the tenant.

(4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy.

Appendix 2: Relevant Provisions of the Lease

Clause 1: Interpretation

"APPROPRIATE FRACTION" in Paragraph 2 of the Fourth Schedule means 1/32nd

"FLAT" Flat 8 Strickland Row London SW18 which is edged red on Plan 1 as described in Part I of the First Schedule but not including any of the Retained Parts and which is coloured purple (ground floor flat) or blue (first floor flat) on Plan 2 together with the yard and staircase coloured green (ground floor flat) or orange (first floor flat)

"PROPERTY" the Flat together with the Garage (if any)

"RETAINED PARTS" all parts of the Development other than the Flats and Garages and the Common Parts and without prejudice to the generality thereof includes:

- the structural components of the Building including the floor ceiling joists and roof slabs load-bearing walls and walls between Flats whether or not load-bearing the infill panels of the bays the foundations the roof structures and roof coverings and the main drains and sewers of the Building
- the frames and opening and closing mechanisms of the exterior windows of the Flats
- any boundary walls or fences of the Development

"SERVICE CHARGE" the rent secondly reserved and made payable by this Lease (to be calculated and payable in accordance with the provisions of the Fourth Schedule)

Clause 2: Grant

2.1 IN CONSIDERATION of the Purchase Price... and of the rents and covenants hereinafter contained on the part of the Tenant to be paid and observed and performed the Landlord

2.2 HEREBY DEMISES to the Tenant

2.3 ALL THAT the Property

....

2.8 YIELDING AND PAYING therefor

....

2.10 AND SECONDLY by way of additional rent a sum to be calculated determined and payable in accordance with the Fourth Schedule

Clause 4: Tenant's Covenants

The Tenant hereby covenants with the Landlord as follows:-

4.1 Pay Rents

4.1.1 To pay the rents herein reserved at the times and in the manner provided...

4.4 Repair Property

To maintain renew repair and to keep the Property in good and tenantable repair at all times during the Term (and the generality of this Sub-Clause shall in no way be

restricted by anything elsewhere in this Lease) but excluding damage covered by any risks in respect of which the Landlord is to insure hereunder.....

4.5 Decorate Property

In 1995 and in every fifth year thereafter

4.5.1 to paint with two coats of best quality paint paper and distemper in a good and workmanlike manner all the inside parts of the Flat respectively heretofore or usually painted papered or distempered

4.5.2 to paint with two coats of best quality paint in a good and workmanlike manner the door and the door frame of the Garage (if any) heretofore or usually painted

4.20 Landlord's Costs of s146 Notices etc

4.20.1 To pay to the Landlord (notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court) all costs charges and expenses (including solicitor's and counsel's costs and fees and the charges of any surveyor) incurred by the Landlord in connection with or incidental to:-

4.20.1.1 the preparation and service of a notice under Sections 146 and 147 of the Law of Property Act 1925

...

4.20.1.4 the recovery of arrears of rent due from the Tenant under this Lease

Clause 5: LANDLORD'S COVENANTS

THE Landlord HEREBY COVENANTS with the Tenant as follows:-

5.3 To keep in good and tenantable repair and clean maintain and when necessary renew

5.3.1 the Retained Parts

5.3.2 the Common Parts

5.3.3 the floor walls and roof of the Garage (if any) and the forecourt and access to the Garage

5.4 To Paint

To paint all the wood metal and other work and surfaces of the Retained Parts and the Common Parts previously or usually painted or which ought to be so painted with two coats at least of best quality oil or synthetic paint in a proper and workmanlike manner and at the same time properly treat other surfaces of the Retained Parts and the Common Parts within the Building very five years and in respect of the remainder of the Retained Parts and Common Parts once in every three years

5.5 To Provide Fourth Schedule Services

To provide at such times as the Landlord shall think necessary the services referred to in the Fourth Schedule (insofar as the same are not covered by any earlier sub-clauses of this Clause 5).....

5.6 Tenant to pay all monies due under Lease

That the observance or the performance of each and every of the foregoing covenants on the part of the Landlord shall be conditional upon the Tenant paying the rents reserved by this Lease and performing and observing the obligations of the Tenant under this Lease

FIRST SCHEDULE

The Property

Part I: The Flat

1. the glass in all windows doors and sliding doors
2. the inside and outside of the doors and door frames (including all mechanisms hinges handles locks and any runners or doorstays) and the letterbox
- ...
6. water and soil pipes and drains and air ducts exclusively serving the Flat to their respective connection points to water and soil pipes and drains and air ducts common to the Flat and other flats within the Building

FOURTH SCHEDULE

The Service Charge

1. Definitions

1.1 "Financial year" means a period of one year commencing on 1 April and ending on 31 March or such other annual period as the Landlord may in its discretion from time to time determine as being that in which the accounts of the Landlord relating to the Development shall be made up

2. Principal Services

The Service Charge shall in respect of each Financial Year during the Term be:

2.1 Appropriate Fraction of Costs and Expenses

The Appropriate Fraction of all costs and expenses incurred by the Landlord in relation to the following:

2.1.1 the insurance....

2.1.2 the maintenance repair renewal and replacement where necessary of the Retained Parts and the Common Parts

2.1.3 the painting and decorating of the Retained Parts and the Common Parts pursuant to Clause 5.4

2.1.12 the costs fees charges and expenses incurred by the Landlord in connection with the assessment collection and accounting of the Service Charge (and the corresponding service charges recoverable from other tenants in the Building)

2.2 Proper Proportion of Costs and Expenses

A proper proportion (as hereinafter defined) of all costs and expenses incurred by the Landlord in relation to the following:

....

2.2.3 the costs fees charges or commission and expenses of any solicitor counsel accountant surveyor valuer agent or architect or other professional adviser whom the Landlord may from time to time employ in connection with the management repair and decoration and security of the Development including costs and fees incurred in legal proceedings against any other tenant (but not including matters covered by paragraph 2.1.11 and 2.1.13 of this Fourth Schedule nor agents commission for any sale or letting

4. Costs and Expenses Incurred by Landlord

4.1 Costs and Expenses also includes

In this Fourth Schedule the expression "costs and expenses incurred by the Landlord" includes

4.1.1 in relation to any Financial Year not only those costs and expenses which have actually been incurred or disbursed by the Landlord during the Financial Year ... but also such sums as the Landlord shall determine to allocate to the Financial Year and the Auditor shall consider to be reasonable by way of provision for or towards costs and expenses which it is anticipated will be incurred or disbursed in any subsequent Financial Year....

5. Allocation and Apportionment of Costs and Expenses

Where any costs or expenses incurred by the Landlord

5.1 could as a whole be properly allocated to alternative Sub-Paragraphs of Paragraph 2 of this Fourth Schedule or

5.2 are only partly attributable to any such Sub-Paragraph or

5.3 are costs and expenses the proper proportion of which to be included in the Service Charge under Paragraph 2 of this Fourth Schedule is a proper proportion then the costs and expenses shall be allocated or apportioned in such manner as the Auditor shall determine to be reasonable and in Paragraph 2 of this Fourth Schedule "a proper proportion" shall be construed accordingly

6. Ascertainment and Payment of Service Charge

The Service Charge shall be ascertained and determined and shall be demanded and payable in accordance with the following provisions of this Paragraph:

6.1 The amount of the Service Charge shall be ascertained annually in respect of each Financial Year and the Landlord shall either direct or through an agent as soon as may be practicable after the end of each Financial Year supply the Tenant with a Statement...containing

6.1.1 the amount of the Service Charge for that Financial Year

6.1.2 a summary by reference to the Sub-Paragraphs set out in Paragraph 2 of this Fourth Schedule of the costs and expenses included in the Service Charge due from the Tenant in accordance with the provisions of this Schedule....

6.3 In each Financial Year the Tenant shall pay to the Landlord in advance and on account of the Service Charge a sum (hereinafter called "the Advance Payment") equal to the last ascertained Service Charge or such other sum as the Landlord shall specify in its discretion to be fair and reasonable

6.4 The Advance Payment shall be paid by two equal instalments on 1 April and 1 October in each Financial Year....

6.5 The Service Charge in respect of each Financial Year shall be due and payable 14 days after receipt by the Tenant of the Statement due credit being given for the Advance Payment made by the Tenant in respect of that Financial Year

6.6 In the event that the Advance Payment for any Financial Year shall exceed the Service Charge for that year as certified the excess shall be allowed ...to the Tenant and applied by the Landlord in such manner as the Landlord shall at his discretion decide towards the liabilities of the Tenant pursuant to this Schedule in ensuing Financial Years