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LON/00AG/LIS/2005/0127

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL OF THE
RESIDENTIAL PROPERTY TRIBUNAL SERVICE
ON APPLICATIONS UNDER SECTIONS 27A AND 20C
OF THE LANDLORD AND TENANT ACT 1985, AS AMENDED**

Applicant: 61 Eton Avenue Limited

Respondent: Mr D Tamir

Re: 61 Eton Avenue, London, NW3 3ET

Application received: 29 December 2005

Hearing dates: 19 and 20 April 2006

Appearances: Mr B Lapping

Ms T Van Rooyen

For the Applicant

Mr D Tamir

For the Respondent

Members of the Leasehold Valuation Tribunal:

Mrs J S L Goulden JP

Mr F L Coffey FRICS

Mr A Ring

LON/00AG/LIS/2005/0127

PROPERTY: 61 ETON AVENUE, LONDON, NW3 3ET

BACKGROUND

1. The Tribunal was dealing with:-

- (a) an application dated 9 December 2005 under Section 27A of the Landlord and Tenant Act 1985, as amended (hereinafter referred to as "the Act") 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
 - (e) the manner in which it is payable
- (b) a cross application by the Respondent made at the Pre-Trial Review on 1 February 2006 to limit landlord's costs of proceedings under Section 20C of the Act.

INSPECTION

- 2. 61 Eton Avenue (hereinafter referred to as "the subject property") was inspected on the morning of 19 April 2006 in the company of Ms T Van Rooyen, Mr B Lapping and Mr D Tamir. The subject property was a substantial detached converted house circa 1900 of five storeys (including lower ground floor) of brick and tile construction, comprising four residential units. The units comprised a basement flat with a separate entrance to the front, a basement and ground floor maisonette to the rear, a first floor flat and a second and third floor maisonette all of which were reached via the main entrance door which had an entryphone. The common parts were large and spacious with marble flooring and good natural light. The stairs to the upper floors and landings were carpeted.
- 3. The elevation of the subject property was generally faced with red rubber brickwork, with the third floor being tile hung. The windows were, in the main, of traditional casement section containing much leaded light work. The accommodation at uppermost level was formed within the roof void, with natural lighting being provided by a series of dormer windows. The rear of the property opened on to a conservatory of recent construction at basement level and there was another conservatory, broadly contemporaneous with the main structure, at ground floor level.
- 4. The Tribunal was invited to inspect the interiors of all flats/maisonettes, save for the front basement flat. In the fanlight over the front door to the Respondent's first floor flat there was a large handwritten sign which referred, inter alia, to "*lies ... cover ups ... substantial harmful sinister and deceptive breaches ... intrigues.*"

HEARING

5. The hearing took place on 19 and 20 April 2006.
6. The Applicant, 61 Eton Avenue Limited, was represented by Mr B Lapping and Ms T Van Rooyen, both of whom are Directors of the Applicant company. Both Mr Lapping and Ms Van Rooyen gave oral evidence.
7. The Respondent, Mr D Tamir, the tenant of the first floor flat, appeared in person, but did not give oral evidence.
8. Mr Tamir said that he wished to make an oral request for an adjournment of the hearing.

Respondent's application for adjournment

9. Mr Tamir said that he had been given insufficient time to prepare any part of his case. The Applicant's bundle contained 420 pages which he had to read through before he could prepare a defence. He had not had the time to do so. He wanted a holiday and felt harassed and terrorised. Mr Tamir wished to produce an up to date medical certificate. He complained that the Applicant's case had been prepared with expert advice. When questioned by the Tribunal, he said that he had spent the time since the Pre-Trial Review on the case and resting. He said it would take "at least" two months to prepare a defence and "hoped" that the hearing could take place in six months time.
10. The Applicant company resisted Mr Tamir's application for an adjournment. Ms Van Rooyen said that "*it has been like this for the last 10 years – a never ending flow of writing*". In her view, the position would be the same in six months time. Mr Lapping said that at leaseholder meetings in the past Mr Tamir would invariably adopt delaying tactics. For example, when a meeting had been arranged with the surveyor in order to discuss and decide on the major works to be carried out, Mr Tamir had simply not attended. In his view Mr Tamir had an "*insurmountable need to avoid meetings*". Ms Van Rooyen said that she had flown in for the hearing from Italy, and Mr Lapping said that he had cut short a holiday in France to be at the hearing. He said "*we've done a lot of work and on time. He (Mr Tamir) has used the time to write letters to (the Panel) staff*".

The Tribunal's determination on the Respondent's application for adjournment

11. Mr Tamir had made several earlier written requests for an adjournment of the hearing with medical certificates in support, the last (which included an updated medical certificate) dated the day before the hearing. All of his requests had been refused by the Tribunal.

12. Under the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003, Regulation 15(2) states:-

“Where a postponement or adjournment has been requested the tribunal shall not postpone or adjourn the hearing except where it considers it is reasonable to do so having regard to –

- (a) the grounds for the request;**
- (b) the time at which the request is made: and**
- (c) the convenience of the parties”**

13. In this case, the Tribunal was of the view that:-

- (a) The grounds supplied by Mr Tamir were insufficient. No new factors had been raised by Mr Tamir at the hearing. They had all been raised by him earlier and considered by the Tribunal following his several earlier written unsuccessful applications for an adjournment;
- (b) At the inspection, which had taken place that morning, Mr Tamir said that he wished to make an oral application for an adjournment at the hearing, since he had been advised by the Tribunal that this was the correct course of action, his previous written requests having been refused. Mr Tamir also said at the inspection that after he had made his oral application for an adjournment, he intended to leave the hearing even if his application was refused by the Tribunal;
- (c) The Respondent was resisting the application and Mr Lapping and Ms Van Rooyen had travelled some distance and at some inconvenience to them both in order to attend the hearing.

14. Mr Tamir was requesting a substantial period of additional time for preparation of his case. He said that he *“hoped”* to be in a position to proceed with a Hearing in a further six months time. To hold a hearing in October 2006 (or perhaps even later) where an application had been lodged on 9 December 2005 and the Pre-Trial Review had been held on 1 February 2006 is considered unacceptable, unreasonable and against the interests of justice.

15. Accordingly, the Tribunal dismissed the Respondent's application to adjourn the hearing. Mr Tamir said he was unable to deal with the *“stress”* of continuing the hearing and intended to leave. The Tribunal advised Mr Tamir that it was entirely his choice, but it would be preferable if he stayed. Mr Tamir was advised that if he left the hearing, and since his application for an adjournment had been refused, the hearing would proceed in his absence. Mr Tamir said that he would submit further papers to be considered by the Tribunal, but was advised that any papers received after the hearing had concluded could not be considered and would be returned to him unread. Mr Tamir left the hearing room at this point and took no further part in proceedings.

16. The matters which required the determination by the Tribunal related to the following:-
- (a) **Major works**
 - (b) **General service charges**
 - (c) **Section 20C application**
 - (d) **Application for reimbursement fees**
17. Since there had been no specific challenge by Mr Tamir as to cost and/or standard of works and since Mr Tamir did not attend the substantive hearing or supply any documentation, the Tribunal went through the Applicant's bundle at great length.

Background to dispute

18. The Tribunal was advised that the Applicant company had been formed in 1995 for the specific purpose of managing 61 Eton Avenue and had no other assets or interests. Originally there were four directors – one from each leasehold unit, and Mr Tamir had been appointed as treasurer. It had been decided that there would be equal voting rights, but that three persons on the board would be able to make decisions. With regard to apportionment of costs, these had been based on percentages, with the tenant of the basement flat contributing 12.5%, the first floor flat (Mr Tamir) contributing 17.5%, and Mr Lapping and Ms Van Rooyen each contributing 35%.
19. Company meetings had been held on an ad hoc basis and Mr Tamir had always been invited to attend, both as a director and as treasurer, but both Ms Van Rooyen and Mr Lapping maintained that he obstructed the meetings and they referred the Tribunal to various company minutes in support.
20. There had been dissatisfaction as to the manner in which Mr Tamir had performed his duties as treasurer and at a company meeting held on 26 October 1999, when it was known that major works would have to be carried out, it had been agreed that financial control of the contract would fall outside Mr Tamir's responsibilities as treasurer. In the event the provision of cash flow and financial reports to the directors was undertaken by Ms Van Rooyen. Mr Lapping said that Mr Tamir had been an "erratic treasurer" and if he had been treasurer for the major works "it would have been an absolute mess". Subsequently there was concern that Mr Tamir was acting against the interests of the company and at an extraordinary general meeting on 27 October 2003, Mr Tamir was removed as a director (and treasurer). From around that time, Mr Tamir had ceased his contributions to the major works and had not responded to routine service charge demands. The Tribunal was advised that none of the financial information previously held by Mr Tamir as treasurer has been passed over to the Applicant, despite repeated requests.
21. Both Ms Van Rooyen and Mr Lapping said that Mr Tamir was very difficult to deal with. Ms Van Rooyen said she had found difficulty in letting her maisonette since potential tenants had to pass Mr Tamir's front door. Mr Tamir had put a large notice in the fanlight over the door at that time which

said "*Top Flat Buyer. Caution! Disputes ...*". A photograph of this sign was provided at the hearing.

Evidence

22. The salient parts of the evidence and the Tribunal's determination are given under each head.
 - (a) **Major Works**
23. The major works related to the renewal of the roof covering, external repairs and redecoration.
24. Ms Van Rooyen and Mr Lapping took the Tribunal through the chronology leading to the major works being undertaken, and referred to documentation in their bundle in support.
25. The Tribunal was advised that the subject property had suffered from "*significant*" leaks both from the roof and, apparently, through the walls. This had affected all the flats save for the basement front flat. The basement front flat had suffered from "*bulging walls*".
26. Mr Tamir had proposed that a surveyor should be engaged to advise on the scope of the works required. Three surveyors were approached and Mr Tamir had been given the opportunity to express a preference.
27. At a company meeting held on 11 November 1999 the first motion was that a Mr P Styles, FRICS of Paul Styles & Co Ltd, who had inspected the building with Mr Tamir and Ms Van Rooyen, should complete a full survey and advise on necessary works to be carried out. This motion was carried unanimously, although Mr Tamir subsequently withdrew his consent. Mr Tamir also voted against a motion that Mr Styles was to be asked to draw up a specification of works which would be put out to tender after the board had approved the same.
28. Mr Styles was formally appointed by a letter dated 7 February 2000. The Tribunal was informed that the delay between the meeting on 11 November 1999 and the letter of appointment was that time had been given to Mr Tamir to seek an alternative surveyor should he wish to do so.
29. Mr Styles was instructed to invite quotations of costs for the works described in his specification. Three contractors supplied quotations, and Mr Styles wrote to the Applicant company on 16 November 2000 with a report and recommendations on the quotations received. The inclination of the Applicant was to proceed with Decorative Specialists Ltd, as the contractor with the lowest quotation (£97,323 plus VAT), although a letter to Mr Styles from Ms Van Rooyen of 4 December 2000 stated "*I cannot call a meeting until David Tamir returns ...*". The hearing bundle included a reference on behalf of Decorative Specialists Ltd from the Institute of Directors.
30. On 25 January 2001, a further company meeting was held, the purpose of which was to introduce Mr Styles to the Board and to give the directors the

opportunity to question him. Mr Tamir did not attend. Minutes were produced to the Tribunal which indicated that Mr Lapping tried to persuade Mr Tamir to attend and his failure to do so was considered by the Board to be "*a serious failing on the part of a director of the company*".

31. On 14 February 2001, Section 20 Notices were served on all the tenants by hand by means of leaving them on the communal hall table. Minutes of a company meeting on 19 March 2001 indicate that Mr Tamir denied receipt of the Section 20 Notice and its enclosures, but Ms Van Rooyen said that following a telephone call from Mr Tamir she had pushed the Section 20 Notice and relating documentation through his door. The envelope had been returned to the communal hall table the following day. At the March 2001 meeting, Mr Lapping personally handed the documentation to Mr Tamir.
32. The directors met again on 10 April 2001 to consider the proposals, and the possibility of reducing the costs of the works by omitting "non-essential works" (which the surveyor had been asked to identify and cost). Mr Tamir wished to delay a decision while his own surveyor completed his enquiries, but the Board voted by a 3-1 majority to proceed with the full specification, using Decorative Specialists under the supervision of Mr Styles, subject to confirmation of the payment schedule.
33. Subsequently Ms Van Rooyen produced a schedule phasing the cost of the works over three instalments, together with a detailed cash flow analysis. This showed a total project cost of £127,505.30, including fees and VAT. After deducting £5,000 held by the company on deposit, Mr Tamir's share was shown to be £21,438.43 (i.e. 17½ %).
34. Mr Tamir expressed further reservations but the works commenced in May 2001. Although in the agreement dated 11 May 2001, the works were to have been completed by 10 August 2001, they were not completed until May 2003.
35. In the main, Ms Van Rooyen and Mr Lapping considered themselves satisfied with the final standard of the works, although they conceded that the contractors had to be called back on several occasions to deal with snagging. They said that Mr Tamir did not produce a snagging list even though invited to do so by Ms Van Rooyen by letter dated 2 July 2003. Mr Tamir later complained about the quality of works, particularly his windows sticking.
36. The final cost of the works was £118,299 plus VAT and supervision fees of £13,604.39 plus VAT. Ms Van Rooyen provided a detailed analysis of the final contract sum and, after taking account of costs which were solely attributable to individual tenants, sent Mr Tamir a final statement on 1 October 2003. This showed that his contribution to the works was £31,668.13. Taking account of payments already made by Mr Tamir up to 22 July 2002, this left an outstanding balance of £17,150. The Tribunal is unable to reconcile these calculations with its own analysis of the figures (see paragraph 37(f) below). However, included in that cost is £4,300.75 in respect of repairs and decoration of the collapsed ceiling in the communal hall following a dispute as to the origins of a water leak which had caused the eventual collapse of the ceiling. The Respondent said that the leak was external and the Applicant

said that it was as a direct result of a leaking WC system within the Respondent's flat. No evidence has been produced to the Tribunal that the leak was external and it is noted that when Mr Styles inspected the Respondent's flat on 29 November 2002, in his view the damage to the communal hall ceiling was caused by a leaking overflow pipe and "neglect" of the WC cistern.

37. In relation to the major works the Tribunal determined:-

- (a) That the tenants were correctly consulted in compliance with the requirements of Section 20 of the Act. Mr Tamir made no challenge to the validity of the Section 20 Notice, either at the time or in response to the application;
- (b) That the works were carried out at a reasonable cost, were reasonably incurred and to a reasonable standard;
- (c) Save for the sum of £4,300.75 referred to in (e) below, that the costs are relevant and properly chargeable to the service charge account;
- (d) That under Clause 2(b)(i) and (ii) and Part 1 of the Fourth Schedule of Mr Tamir's lease, 17.5% of the cost is properly chargeable to the service charge account are recoverable from Mr Tamir;
- (e) That the sum of £4,300.75 in respect of damage caused by a water leak is not recoverable as a service charge item as the cost is not to be borne by all the tenants, and therefore the Tribunal has no jurisdiction.
- (f) That Mr Tamir's share of the cost is £25,099.42, calculated as follows:-

Final Account for Works	£118,299.00
Omit: Deductions for sums due from individual leaseholders	<u>8,824.50</u>
Net Sum Chargeable to Service Charge account	109,474.50
Professional Fees (10% of £109,474.50)	10,947.45
Planning Supervisor (1.5% of £109,474.50)	<u>1,642.11</u>
	122,064.06
Value Added Tax @ 17.5%	<u>21,361.21</u>
Total	£ 143,425.27

Mr Tamir's contribution, assessed at 17.5% of this figure, amounts to £25,099.42. Taking into account the sums Mr Tamir has already paid, his outstanding balance for the major works is therefore £10,581.29.

(b) General service charges

38. The Applicant, in its statement accompanying its application (and in reference to Mr Tamir), stated *"since July 2002 he has not paid for any of the repairs made and does not pay for any other "regular" annual expenses like payment to the freeholder, insurance, upkeep of the common parts etc. When asked about outstanding payments, his voiced attitude is "sue me"."*
39. Ms Van Rooyen explained that demands for routine service charge expenditure were issued quarterly. She said that to date, she and Mr Lapping had been subsidising Mr Tamir's contribution to general service charges (as well as to the major works charge) because he had refused to pay. Initially the service charge was fixed at £350 per quarter because this was the sum demanded by Mr Tamir when he was treasurer and she had merely continued this custom. She had little choice in the matter since Mr Tamir had refused to hand over any of the documentation relating to the finances of the subject property, which made things extremely difficult. She said that she had had to start from scratch, and had been given no breakdown of how the figure of £350 was arrived at.
40. Mr Lapping said that the company had been forced to seek outside assistance in connection with the work relating to the company due to the attitude of Mr Tamir and the difficulties which he had caused. Mr Lapping said *"none of us could bear to deal with him"*.
41. The Tribunal went through the invoices. Those for 2001 and 2002 related to major works which the Tribunal has already dealt with above. With regard to 2003, and in relation to the four invoices sent to Mr Tamir, there were two requests for *"service charge"* both in the sum of £350, one request for *"service charge"* in the sum of £369 and another for £642.44 being *"underpayment of service charge for period 2001 to end 2003"*. With regard to 2004, and in relation to the four invoices sent to Mr Tamir, there was a request for £628.17 being £350 for the service charge and £266.67 *"contribution towards repair of windows and woodwork to common parts (£800/3)"* and three requests for the service charge of £361.50 each. With regard to 2005, there were four requests for the service charge of £361.50 each. As to the estimate for 2006, the sum to be allocated as Mr Tamir's share is £480.29 per quarter and was made up of insurance costs, ground rent, company fees and licences, accounting and audit fees, company administration, gardening costs and legal fees.
42. The Tribunal accepts that for a considerable length of time since Mr Tamir was relieved of his duties as treasurer, the Applicant was unable to obtain any financial information whatsoever. All such information was retained by Mr Tamir and has, apparently, never been handed over.

43. Although a statement merely requesting a sum for service charge would normally not suffice, since it gives no breakdown, evidence was produced that Ms Van Rooyen was simply following Mr Tamir's own method of request and she used the same figure as he did. In such difficult circumstances, the Tribunal accepts that she had no option.
44. However, by the time the quarterly invoice for October 2003 was to be issued, Ms Van Rooyen had managed to construct the routine elements included within the service charge demands. These were:-
- (a) ground rent;
 - (b) company administration;
 - (c) annual audits;
 - (d) insurance;
 - (e) gardening;
 - (f) communal electricity;
 - (g) common parts cleaning.

Ground rent

45. Payment of ground rent is the amount set out in the lease between the parties. Mr Tamir's ground rent is £140 per annum. It is not a service charge item within the jurisdiction of the Tribunal and non payment is a matter for the county court only.

Company administration

46. The fees in relation to the company find appear in the 2003 accounts. They would not normally be considered as service charge items, but a generous construction is being given by this Tribunal since the tenants were managing the subject property themselves, had no other source of income, and were to some extent obliged to request outside assistance due to the obstructive nature of Mr Tamir. Accordingly, the Tribunal determines that the company fees for the service charge years 2003, 2004 and 2005 are relevant and reasonably incurred and properly chargeable to the service charge account and, with regard to the estimate in respect of 2006, if incurred, would be reasonable.

Annual audit

47. From the documents supplied, the annual audit and/or certification fees first appear in the accounts for the year 2004/2005. The lease entitles audit fees to be charged to the service charge account.
48. The Tribunal has not been provided with full details but in view of the global amount, the Tribunal determines the annual audit fees are relevant and reasonably incurred and properly chargeable to the service charge account and with regard to the estimate in respect of accounting and audit fees for 2006, if incurred, would be reasonable. The Tribunal's comments as set out in paragraph 46 above are repeated.

Insurance, gardening, communal electricity, common parts cleaning

49. The Tribunal has inspected invoices in respect of insurance, gardening, communal electricity and common parts cleaning and determines that all are relevant and reasonably incurred and properly chargeable to the service charge account for the service charge years 2003, 2004 and 2005 and, with regard to the estimate in respect of 2006, if incurred, would be reasonable.
50. The Tribunal's jurisdiction includes recoverability, and the Tribunal has therefore considered the relevant clauses in Mr Tamir's lease, which appear at Clauses 2(b)(i) and (ii) and the Fourth Schedule. These are as follows:-

"2. The Lessee for himself and his executors administrators assigns and successors in title hereby covenants with the Lessors as follows:

- (a) To pay the said rent reserved hereby at the times and in manner herein provided
- (b) To pay the Lessor on demand the following sums (hereinafter together referred to as "the Service Charge")
- (i) the amount or amounts estimated by the Lessor's Surveyors or agents (being members of the Royal Institution of Chartered Surveyors acting as experts and not as Arbitrators) representing seventeen point five percent of the proper costs expenses outgoings and other matters expended or incurred by the Lessor or reasonably expected to be incurred in the succeeding period in respect of the matters referred to in Part 1 of the Fourth Schedule hereto and twenty percent of such proper costs expenses outgoings and other matters expended or incurred by the Lessor or reasonably expected to be incurred in the succeeding period in respect of the matters referred to in Part 11 of the Fourth Schedule hereto such sums to be payable by four equal instalments in advance on the Twenty fifth day of March the Twenty fourth day of June the Twenty ninth day of September and the Twenty fifth day of December in each and every year the first of such payments in respect of the period from the date hereof to the quarter day immediately following to be made on the signing hereof
- (ii) the sum representing the balance between the amounts paid in accordance with the immediately preceding sub-clause and the amounts certified by the Surveyors or agents of the Lessor (acting as aforesaid) as being seventeen point five percent or (as appropriate) twenty percent of the actual proper costs expenses and outgoings as aforesaid such balance to be paid on the Twenty fifth day of March in each and every year or as soon thereafter as certified accounts can conveniently be prepared credit

being given for all payments on account as aforesaid and if such certified amount shall be less than the amounts paid by the Lessee in the preceding four quarters then the amount of such excess shall be retained by the Lessor and brought into account in the next succeeding year **PROVIDING ALWAYS** that any omission by the Lessor of any such sum expended or any liability incurred in any year shall not preclude the Lessor from including such sum or the amount of such liability in any subsequent year or years as the Lessors shall deem fit"

THE FOURTH SCHEDULE above referred to

Part 1

ALL costs and expenses incurred by the Lessor in complying with their obligations hereunder (save insofar as mentioned in Part 11 below) and without prejudice to the generality thereof:-

- (a) The cost of complying with their obligations under Clause 3(b) and (c) hereof
- (b) The cost of all existing rates taxes assessments impositions whatsoever whether Parliamentary local or otherwise which are now or may hereafter become imposed or charged upon the Building and whether in the nature of capital or revenue and even though of a wholly novel character experts in so far as the same are payable by the tenants of individual flats (including the Flat) either their respective leases or otherwise
- (c) The reasonable cost of complying with (i) any valid requirements imposed upon the Lessor under any Act or Acts of Parliament or Local Bye-Laws health fire or safety regulations (ii) the valid requirements of any lessee
- (d) The reasonable cost of carrying out any work or providing any services of any kind whatsoever which the Lessor may from time to time reasonably consider desirable for the purpose of maintaining or improving the Building or services in the Building or in the interests of the lessees or occupiers thereof
- (e) The cost of providing portorage services provided that the Lessors shall be under no obligation to provide such services
- (f) The Employers National Health Insurance Graduated Pensions Selective Employment or similar Tax and Industrial Injuries contributions and employers liability insurance from time to time payable by the Lessor in respect of all agents servants and workmen employed by the Lessor in connection with the

performance and observance of any of the covenants or obligations on the part of the Lessor herein contained

- (g) All fees charged expenses and commissions payable to any Solicitor Accountant Surveyor Valuer Agent or Architect whom the Lessor may from time to time employ in connection with the management or maintenance of the Building including any fees for preparing and certifying the accounts prepared in connection with the Service Charge**
- (h) The cost to the Lessor of the performance and observance of the covenants conditions and stipulations in the Head Lease on the part of the Lessee to be performed and observed (other than as to the payment of rent therein reserved)**

Part 11

The costs and expenses relating to heating lighting decoration rates and repairs (of a non-structural nature) of the common internal staircase and halls in the Building."

- 51. In summary therefore, under the terms of Mr Tamir's lease, he is liable to pay 17.5% in respect of those service charge matters referred to in Part 1 of the Fourth Schedule and 20% in respect of those service charge matters referred to in Part 11 of the Fourth Schedule. Both Part 1 and Part 11 are set out above.
- 52. However, it would appear from the documents provided, for example the service charge calculation sheet for 2006, that the anticipated costs in respect of common parts electricity and cleaning have been divided by three (presumably since the tenant of the basement flat does not share the common parts). This is not in accordance with the terms of the lease, and it would appear that Mr Tamir is being asked to pay a greater percentage than that stated in the lease. From the lease terms, it would appear that Mr Tamir should be paying 20% in respect of common parts electricity under Part 11 of the Fourth Schedule and 17.5% of the common parts cleaning (an obligation of the landlord under Clause 3(c)(iii) which is covered in Part 1 of the Fourth Schedule).
- 53. Similarly, it would appear from the estimated service charge for 2004/5 that Mr Tamir was being invoiced for 25% of the cost of the company administration charge (although the 2006 estimates suggest that the correct proportion (17.5%) is now being invoiced).
- 54. The Tribunal appreciates that the situation here is that the tenants are trying to manage the building themselves and with goodwill on all sides. Where there are only a few units in a property (as in this case) then it is understandable that the tenants may wish to make their own arrangements. They did make their own arrangements in respect of the service charge year, when it was decided that this would run from 1 January to 31 December in

each year. It was agreed by both sides at the Pre-Trial Review held on 1 February 2005 that for the purposes of the Tribunal's determinations, the service charge year should be taken as the calendar year and not as the lease provides. Where matters are in dispute between the parties, then it is essential to revert to the lease terms.

55. The lease terms govern the relationship between the parties unless such lease terms are varied either by way of a Deed of Variation with the tenants' agreement or by the Leasehold Valuation Tribunal where the existing lease terms do not provide satisfactory provision. It is not for the Applicant to demand a proportion from any tenant for any service charge year which does not accord that that set out in the lease.
56. The Tribunal determines the service charge amounts payable by the Respondent are as follows:-

Year 2003 (actual)

Service Charge item	Annual amount	Respondent's percentage	Amount due from Respondent
Sundry expenses	£52 00	17.5%	£9 10
Accountancy	£482 00	17.5%	£84 35
Insurance	£3,677 00	17.5%	£643 48
Light and heat	£77 00	20.0%	£15 40
Gardening	£469 00	17.5%	£82 08
Bank charges	£342 00	17.5%	£59 85
Secretarial and expenses	£219 00	17.5%	£38 33
Legal	£1,500 00	17.5%	£262 50
			£1,195 09

Year 2004 (actual)

Service Charge item	Annual amount	Respondent's percentage	Amount due from Respondent
Sundry expenses	£15 00	17.5%	£2 63
Accountancy	£526 00	17.5%	£92 05
Insurance	£4,321 00	17.5%	£756 18
Light and heat	£70 00	20.0%	£14 00
Gardening	-	-	-
Bank charges	£16 00	17.5%	£2 80
Secretarial and expenses	-	-	-
Legal	-	-	-
			£867 66

Year 2005 (estimated)

Service Charge item	Annual amount	Respondent's percentage	Amount due from Respondent
Sundry expenses	-	-	-
Accountancy	£350 00	17.5%	£61 25
Insurance	£4,053 85	17.5%	£709 42
Light and heat	£80 00	20.0%	£16 00
Common parts cleaning	£676 00	20.0%	£135 20
Gardening	£476 10	17.5%	£83 32

Bank charges	-	-	-
Secretarial and expenses	-	-	-
Company administration	£800 00	17.5%	£140.00
			£1,145 19

Year 2006 (estimated)

Service Charge item	Annual amount	Respondent's percentage	Amount due from Respondent
Sundry expenses	-	-	-
Accountancy	£1,000 00	17.5%	£175.00
Insurance	£2,925 00	17.5%	£511 88
Light and heat	£80 00	20.0%	£16.00
Common parts cleaning	£780.00	20.0%	£156.00
Gardening	£500.00	17.5%	£87 50
Bank charges	-	-	-
Company administration	£700.00	17.5%	£122.50
			£1,068 88

57. The Tribunal has dealt with building works under a separate head, rent is not service charge matter and it has been assumed that the legal costs which have not been withdrawn relate to a dispute between the management company and the contractors, which is a service charge matter.

(c) Section 20C application (limitation of landlord's costs of proceedings)

58. Mr Tamir made an application for limitation of landlord's costs of proceedings before the Tribunal which was considered by the Tribunal.
59. The estimated service charge for 2006 included a figure of £3,000 for legal fees. The final amount is still in dispute but the solicitor's invoice clearly stated that it was entirely in relation to the service charge dispute with Mr Tamir (and with no other tenant). After some consideration, Ms Van Rooyen said that the Applicant wished to withdraw this item from the service charge account (as the Applicant wished to recover the amount from Mr Tamir).

(d) Application for reimbursement of fees

60. In accordance with paragraph 6 of Direction issued by the Leasehold Valuation Tribunal on 5 February 2006, the Tribunal considered whether to exercise its discretion under Regulation 9 of the Leasehold Tribunal (Fees) (England) Regulations 2003.
61. The fees amounted to £350 application fees and £150 Hearing fees.
62. The Applicant provided written submissions, in which it was stated that Mr Tamir was *"entirely responsible for the problems that have made it [the Hearing] necessary"*. The submissions ended *"finally, when eventually we launched this procedure, he unreasonably impeded efficient conduct of the hearing, by wilfully ignoring the dates when his responses were due,*

repeatedly and without good reason demanding postponements, and walking out when his case need to be heard".

63. Mr Tamir has, in the view of this Tribunal, been unnecessarily obstructive in connection with this matter, with constant requests for adjournments in order, it is thought, to delay the outcome of proceedings before the Tribunal. The Tribunal's Directions were not complied with in any manner by Mr Tamir. No documentation relating to the matters in issue have ever been provided by Mr Tamir.
64. The Tribunal intends to exercise its discretion under this head and makes and makes an Order for the Respondent to reimburse to the Applicant the application and hearing fees totalling £500.

The Tribunal's determination in respect of service charges is binding on the parties and can be enforced through the county courts if sums determined as payable within the service charge remain unpaid.

CHAIRMAN 

DATE 1 June 2006

JG