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LEASEHOLD VALUATION TRIBUNAL for the LONDON RENT ASSESSMENT PANEL

DETERMINATION BY LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985 Section 27A

LON/00AH/LSC/2006/0160

Address:	**Flat 1, 22 Avondale Road South Croydon Surrey CR2 6JA**
Applicant:	**Morgan & Hartland Ltd**
Represented by:	**Ms C Rosser, Juliet Bellis & Co**
Respondents:	**James Soner Bayram John Ibraham Bayram**
Tribunal Members:	**Mr NK Nicol (Chairman) Mr C Kane FRICS Mr ON Miller BSc**

1. The Applicant issued proceedings in the county court for service charges and legal costs totalling £4,010.23 allegedly unpaid by the Respondents under the lease of Flat 1, 22 Avondale Road, South Croydon, Surrey CR2 6JA. On 8th February 2006 the Applicant obtained default judgment but the First Respondent applied to have it set aside (the Second Respondent had left some years ago and was not involved). By an order made on 12th April 2006 the judgment was set aside and part judgment substituted in the sum of £1,284. The court then transferred the balance of the claim to the Tribunal.

2. The property at 22 Avondale Road consists of six flats arranged over three floors, Flat 1 being on the ground floor. The Respondents took their lease on 12th October 1988 for a term of 99 years from 29th September 1987. The Applicant acquired the reversion in October/November 2005 from David Morgan. The managing agents were Taskfine Management Ltd until April 2004 when Haywards took over. Ms Rosser, appearing for the Applicant, had to admit that she was short of evidence in respect of the years before Haywards took over because not all the paperwork had been retrieved.

3. The First Respondent, appearing on his own behalf, did not object to all parts of the claim. For example, he did not dispute the electricity charges and, during the hearing, he conceded that he did not dispute the insurance premiums. However, he asserted that the property had been poorly managed for many years, to the extent that all he had to do to object to the service charge was to point to the poor

condition of the property. He said the poor condition had scuppered his attempted sale of his flat some years previously. He said that money had been paid in service charges over many years when it was not apparent what it had been spent on, if anything. He had a number of particular objections to the service charge which are dealt with in turn below.

4. The First Respondent alleged that the Applicant and their predecessors had been in breach of their repairing and maintenance obligations. In particular, he stated:-
   (a) The fencing has been down in some areas and broken for some 17 years.
   (b) The common parts and landings have not been painted for 17 years.
   (c) The carpets have also not been changed for 17 years.
   (d) The front steps are crumbling and in a bad state.
   (e) The wooden handrail to the steps is rotten and broken, creating a danger for any user whose weight might not be borne by it.

5. There is clear evidence that the management of the property has not been proactive in the past and that there are things which need attending to. Ms Rosser said that a new property manager, Ms Eva Street, had been appointed three weeks ago by Haywards and suggested that she might take action to address the tenants' maintenance concerns. The Tribunal is concerned that lines of communication need to be opened and that there would appear to be a lack of trust, at least on the First Respondent's side. Therefore, the Tribunal does hope that Ms Street will be able to improve the relationship between the parties for the future. However, these concerns have little, if anything, to do with the payability of the service charges claimed in these proceedings.

6. The only one of the above maintenance problems for which there has been a service charge is the wooden handrail. The sum of £62.98 was charged in January 2004. The First Respondent said he had been told by his neighbour that workmen had attended for some other matter and the handrail was pointed out to them, at which point they took three pieces of wood from their van and put up the current handrail. In the Tribunal's opinion, this was a perfectly proper item of maintenance work for which the charge is reasonable. The First Respondent has not complained to anyone about the current state of the rail which, in any event, does not affect the payability of the charge from January 2004.

7. The only particular charge that the First Respondent picked out was a sum of £320 for a health and safety audit. Ms Rosser explained that this was an estimated sum for future expenditure which had been delayed due to lack of funds but would now soon go ahead. The First Respondent doubted whether the work would actually be carried out but there is no reason to doubt the Applicant's good faith in this matter. The lease entitles them to make interim or advance charges and this provision is reasonable.

8. The First Respondent objected to a charge for roofing works carried out in 2001. He said he did not see any work being carried out, having only seen the scaffolding which had been erected. However, he said his neighbour had told him that the workmen were only there for 1-1½ hours and the only apparent work was the replacement of six tiles. He contrasted this with the allegation that the scaffolding had been up for around three months, presumably at a charge. The problem was that he raised no objection or queries at the time. He only queried the works for

the first time in March 2006, by which time, as Ms Rosser had explained, the Applicant was not in a position to locate and produce the relevant evidence. In the circumstances, the Tribunal is not satisfied that the First Respondent had any evidence to question the charge and the Tribunal determines that it is payable.

9. The Applicant has included professional fees in the service charge. This relates to accountancy fees and legal fees. The accountancy fees of £120 per year for the preparation of accounts would seem reasonable and the First Respondent raised no objection to their payability. However, the legal fees are another question. They consist of a series of charges by Thackray Wood from 2002 relating to litigation for unpaid service charges and costs in preparation for the current proceedings in the county court. These costs were not put through the service charge accounts but levied directly on each lessor. It seems to the Tribunal that there is no power in the lease for the Applicant to do this. If they are not service charges, the costs are only recoverable from the courts in the usual way. This Tribunal does not have the power to make such costs orders and cannot order the costs to be payable if the lease does not provide for that. Therefore, the Tribunal determines that none of the legal costs charged to the Respondents are payable under any provision within its jurisdiction.

10. Ms Rosser conceded that the management fees had been charged at a flat rate rather than the 15% of the service charge expenditure specified in the Sixth Schedule to the lease. By her calculation, application of the correct amounts would result in a credit to the service charge account of £984.24, of which the Respondents' share would be £164.04. The Tribunal accepts that her calculation is correct so that the Respondents are entitled to this credit.

11. In summary, the Tribunal has determined that the balance of the sum claimed by the Applicant and transferred for the Tribunal's consideration is payable except for the legal costs (which may be determined by the court) and the management fees to the extent conceded by Ms Rosser.

Chairman N K Neal .....

Date: 5th September 2006