LON/00BE/LIS/2007/0034
DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985, AS AMENDED.

Address:	Flats A,B,C,D, 102 Peckham Hill Street, London SE15 5JT
Applicant:	Newservice Ltd
Respondent:	Mr L T Morgan, Ms C Rowntree, Mr S Bright, Mr S A Mascoll
Hearing Date:	12 June 2007
Date of Decision:	16 July 2007

Appearances	Mr L Gunning Mr R Kalunga	For Applicants
	Mr L T Morgan Ms C Rowntree Mr S Bright	For Respondents

Members of the Tribunal: Mr A Jack (Chairman)
Mr J Power FRICS
Mrs S Justice

London Leasehold Valuation Tribunal File Ref No.	LON/00BE/LIS/2007/0034

Leasehold Valuation Tribunal: reasons

Landlord and Tenant Act 1985 section 27A

Address of Premises	The Committee members were
Flats A, B, C and D, 102 Peckham Hill Street, London SE15 5JT	Mr Adrian Jack Mr John Power FRICS Mrs Susan Justice

The Landlord: **Chatfield Property Ltd**

The Tenants: **(Flat A) Mr L T Morgan, (Flat B) Ms C Rowntree, (Flat C), Mr S Bright and (Flat D) Mr S A Mascoll**

Introduction

1. In this matter the landlord-applicant seeks determination of the service charges due in respect of the period 24th June 2005 to 23rd June 2006 and 24th June 2006 to 30th April 2007, as well as the tenants' liability for payments on account in the year 1st May 2007 to 30th April 2008. The respondents are the tenants of the four flats in the building.

Hearing

2. The Tribunal heard this matter on 12th June 2007. Neither party requested an inspection and none was held. Mr Leon Gunning, a legal executive and Mr Raymond Kalunga, a manager, appeared on behalf of the landlord. Mr Morgan, Ms Rowntree and Mr Bright appeared on their own behalves and on that of Mr Mascoll, the other tenant.

The law

3. Section 27A(1) of the Landlord and Tenant Act 1985 provides that an application may be made to the Tribunal "for a determination whether a service charge is payable and, if it is" by whom, to whom, when, how and in what sum.

4. Section 19(1) of that Act provides that "[r]elevant 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 provison of services or the carrying out of works, only if the services or works are of a reasonable standard.."

The leases

5. The leases in question are all in the same form. There were standard provisions for the landlord to carry out repairs, for the tenants to pay service charges including payments on account. Each tenant is obliged to pay a quarter of the relevant charges.

6. The one issue which arose on the terms of the lease concerned Mr Morgan. He occupies the basement flat and has a separate entrance way. The other three flats share a common entrance which leads onto an internal staircase. Mr Morgan said that he has no access to the stairway or the other common parts in the building.

7. Clause 1.9 of the lease defines "common parts" as meaning:

> "the pathways entrance areas dustbin areas staircases passageways lifts and landings... and used by the Lessee in common with the owners lessees or occupiers of the other residential units in the Building."

8. By clause 6.2.1.3 the landlord was obliged to maintain and keep in repair the "common parts" and by the Fifth Schedule Mr Morgan was obliged to reimburse the landlord for expenditure in carrying out its obligations, inter alia, under clause 6.2.1.3.

9. The issue between the parties was whether Mr Morgan was obliged to pay his share of the expenditure on the staircase and entrance way. Mr Morgan's argument was that since he did not use these parts of the building, he was not obliged to pay. The landlord argued that it was entitled to split all costs among the four tenants. Otherwise it would be out of pocket.

10. In our judgment, Mr Morgan is right. The definition of "common parts" requires the part to be "used by the Lessee in common with" the others. Since the entrance way and staircase was not used in common, it is not part of the common parts, so far as Mr Morgan is concerned. The landlord is right that the leases are defective in that they leave the landlord with irrecoverable expenses, but the Tribunal cannot change the clear words of Mr Morgan's lease to avoid this result. In particular, it is only after examination of all four leases that the problem becomes apparent.

The service charges in dispute

2005-2006

11. At the hearing it became apparent that there was no dispute between the tenants and the landlord about this service charge year. All monies (including the management fee) had been paid in full. The tenants did not seek to reopen this year.

2006-2007

12. In relation to the service charge year 2006-07 the landlord sought in its application to recover the following amounts:

Communal cleaning and windows	£817.02
Landlord's electricity supply	nil
Gardening	60.00
Entry phone system	1,128.00
Repairs and maintenance	1,415.92
Legal and professional	397.54
Asbestos report	251.45
Communal carpeting	559.84
Health and safety work	57.53

In addition the landlord sought to recover a management fee of £175.20 per flat.

13. At the hearing the landlord abandoned its claim for communal cleaning and windows. Nothing was claimed for the landlord's electricity supply.

14. The amount for gardening was disputed by the tenants. They said no gardener had attended. The landlord produced the invoice from Mark Hardwick and gave evidence that he did work at the property. The Tribunal considers that the amount claimed is modest for no doubt a modest amount of work. It would be readily understandable if the tenants had missed such gardening as had been done. The Tribunal accepts the landlord's evidence that the work was done. Accordingly we do not disallow this head.

15. So far as the entryphone is concerned, the landlord failed to carry out any consultation under section 20 of the Landlord and Tenant Act 1985. The amount recoverable against each tenant is accordingly limited to £250. Mr Morgan was not connected to the entryphone, because (as noted above) he had a separate entrance to his flat. There is no provision in the lease allowing the landlord to charge him for the entryphone, accordingly we

disallow this head completely against Mr Morgan. The other tenants chose not to take any point on the recoverability of the entryphone apart from the section 20 point. Accordingly recoverability against the other three tenants is limited to £250.

16. The amount claimed by the landlord for repairs and maintenance was £1,415.92. This comprised (with the bundle reference):

Electrical (V/9)	£117.50
Circuitbreaker (V/12)	705.00
Double socket (V/13)	132.78
Changing locks (V/15)	157.02
Sundries	82.25
Ditto	221.37
	£1,415.92.

17. The tenants challenged the first electrical figure. The landlord explained the electrics were substandard and that the figure of £117.50 represented the labour costs. It was common ground that there were problems with the electrics. In the Tribunal's judgment the sum claimed is reasonable and reasonably incurred.

18. The tenants accepted that the circuitbreaker and double socket had been installed but disputed the amount charged. The landlord said that this was what it had been charged. In the Tribunal's judgment the charge for the circuitbreaker is reasonable, the labour element of the double socket is, however, excessive. £100 for the socket would be reasonable. Accordingly the Tribunal allows the circuitbreaker in full but the socket only in the sum of £100.

19. The double socket is not payable by Mr Morgan for the reasons already outlined. The cost must therefore be shared one third each by the other tenants. The costs of the circuitbreaker stands to be shared one quarter between each of the four tenants.

20. The cost of the locks was not challenged but Mr Morgan originally challenged his liability. The locks were for the front door, which he did not use. When, however, he realised that the effect of his succeeding on this point might be that his fellow lessees would be left paying more, he abandoned this point and conceded this particular amount (but without prejudice to his right in the future to object).

21. The two figures for sundries were abandoned by the landlord.

22. The landlord is therefore entitled to recover (the double socket** being divided one third between three):

Electrical (V/9)	£117.50
Circuitbreaker (V/12)	705.00
Double socket (V/13)**	100.00
Changing locks (V/15)	157.02
Sundries	nil
Ditto	nil
	£1,079.52.

23. The figure for professional fees comprised £300 plus VAT for a schedule of works and £45.04 for the fees of Neeman Lees, the accountants who certified the figures. The tenants did not challenge the first figure, but challenged the second on the basis that the accountant had not produced an invoice. It is clear that the accountant did the work and the amount claimed is extremely modest. The Tribunal accordingly disallows nothing.

24. The tenants disputed the need for an asbestos report on the basis that there was no asbestos in the building. In the Tribunal's judgment, however, it would be most unsafe to rely on any such assumption. Standard ceiling preparations, for example, used to contain asbestos. Obtaining a report is completely proper and the amount is reasonable. Nothing is disallowed on this head.

25. The tenants disputed the amount for the carpet and suggested it should be half the price. The landlord said the carpet was of reasonable quality. The tenants estimated the area of the common parts which were carpeted at 10 square metres (about 100 square feet). If that is right the amount charged for the carpet would have been more. In the Tribunal's judgment the amount charged was reasonable and reasonably incurred. Mr Morgan again conceded (for the purposes of the current application only) that he should contribute.

26. The landlord withdrew the claim for health and safety.

27. So far as the management fee is concerned, the tenants complained that the managing agents had done a poor job with extremely poor communications with the tenant. Relevant correspondence was produced They suggested that the managing agents should be given no fee. The landlord conceded that there had been some imperfections. In the

Tribunal's judgment the managing agents had done some work for which they deserved to be remunerated, but that there was clear evidence of a poor service. In the circumstances a fee of £100 per flat was reasonable.

28. Accordingly the landlord is entitled to recover:

Communal cleaning and windows	nil
Landlord's electricity supply	nil
Gardening	60.00
Entry phone system (split 3 ways)**	750.00
Repairs and maintenance	979.52
Socket (split 3 ways)**	100.00
Legal and professional	397.54
Asbestos report	251.45
Communal carpeting	559.84
Health and safety work	nil
	3,098.35

In addition the landlord is entitled to a management fee of £100 per flat in 2006-07.

29. In relation to three individual tenants there were some individual issues in this service charge year. Mr Rowntree originally raised an issue about the amount charged her for keys, but now accepts the figure of £14.10.

30. Against Mr Bright and Mr Mascoll administrative charges of £47 for letters were raised during the year, as was a fee of £6 for a Land Registry search. There is no provision in the leases allowing these fees. We accordingly disallow them.

31. The landlord sought to recover interest on outstanding sums. This matter is not within the jurisdiction of the Tribunal.

2007-08

32. The parties were able to agree a draft budget for the current year 2007-08 in the sum of £1,459.14. We accordingly allow interim service charge demands to be issued based on that sum.

Costs

33. The landlord indicated that it did not wish to ask for the costs of the application (including the hearing fee). It also indicated that it did not

intend to bring those costs or its own costs in as part of the service charge. Accordingly the Tribunal makes no order for those costs.

34. The tenants applied for an order for costs against the landlord under paragraph 10 of Schedule 12. In the Tribunal's judgment, the landlord was at fault in failing properly to prepare the case. Indeed Mr Gunning apologised for what he described as a really shoddy performance on his part.

35. Although the Tribunal has jurisdiction to award costs by virtue of the landlord's partially unreasonable behaviour, it is a jurisdiction which is intended to be used sparingly. The landlord acted properly in bringing the current proceedings and clarity has been brought on much which was previously unclear. The tenants claim their day of lost holiday time whilst attending the Tribunal, but in the Tribunal's judgment they would have incurred that inconvenience regardless of the landlord's behaviour. The landlord's behaviour has thus not been causative of any loss and the landlord has apologised for the deficiencies in its conduct of this matter.

36. In these circumstances the Tribunal makes no order for costs in favour of the tenants.

DETERMINATION

The Committee accordingly determines:

(a) that in the service charge year 25th June 2006 to 30th April 2007, the sums set out in paragraph 28 are recoverable, with those items marked as to be split three ways to be split between Ms Rowntree, Mr Bright and Mr Mascoll;

(b) that in the service charge year 1st May 2007 to 30th April 2008 the landlord is entitled to recover interim service charges based on a budget of £1,459.14;

(c) that there be no order for costs.

Adrian Jack, chairman 16th July 2007