

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE****LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL**

LANDLORD AND TENANT ACT 1985 SECTION 27A and  
SECTION 20C

**LON/00BJ/LSC/2010/0296**

**Premises:** Flat 5 33-27 St John's Hill, London, SW11 1TT  
**Applicant:** Manica Properties Limited

**Respondent:** Ms Katherine Prosser  
Mr Steven Prosser

**Date of paper  
Determination** 12 August 2010

**Tribunal:** Ms M Daley LLB (hons)  
Mr B Collins FRICS  
Mrs J Hawkins BSc MSc

**Background**

- (a) The property, which is the subject of this application, is a mixed commercial and Residential block built at the turn of the century, which was converted from a former office block in 2007. The building is approximately 9000 square feet, with 6000 square feet of residential accommodation and 3000 feet ("3") commercial units. The premises comprise of 10 flats, two of these being studio flats. and comprises of a

ground floor and three further floors. There is no lift between floors and there are no gardens. The Commercial units are all of similar usage, comprising of a dental surgery, a beautician and a barber shop. The Respondent occupies one of the studio flats. Five of the Residential flats are let on long leases. The remaining flats are let by the Applicant on short term tenancies.

- (b) The Applicant is the freehold owner of the premises.

### **Matters in dispute**

An oral pre-trial review was held on the 25 May 2010, which was not attended by either of the parties.

At the pre-trial hearing the following issue was identified “ *...liability to pay and reasonableness of service charges for the years 2008/9 in the sum of £361.96 and for 2009/10 in the sum of £787.90.*” The directions further stated “*The nature of the dispute is not entirely clear although there are complaints about the state of repair of the property and there also appears to be a dispute as to the system of accounting and the amounts allegedly due.*”

### **The Law**

Section 27A (1) of the Act provides that 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

Section 18(1) of the Landlord and Tenant Act 1985 (“the Act”) provides that, for the purposes of the relevant parts of the 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.

Section 19(1) provides that 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 provision 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.

**Evidence**

1. At the hearing the Applicant was represented by Mr Latif of Wide way (WideWay) Management Limited. The first Respondent Katherine Prosser represented herself with assistance from her father.
2. The Applicant provided the Tribunal with a bundle, which included the Application and supporting documents. The Tribunal also had the benefit of a copy of the Respondent's Reply (an email dated 21 June 2010) which set out her concerns regarding the reasonableness of the charges. The Tribunal were also provided with copies of the certified schedule of expenditure.

*The Service charges for 2008/09 and 2009/10*

3. The audited service charge accounts for the period 2008/09 and the budget sums for 2009/10 are set out as follows

<i>Service charges</i>	<i>2008/09</i>	<i>2009/10</i>
Management fees	£2499.99	£2500
Cleaning	£2132.00	£1920

General repairs & Maintenance	£398.98	£750
External Maintenance	£323	£500
Electricity	£243.57	£250
Fire alarm system	£676.95	£750
Door entry system		£250
Insurance	£789.70	£838.01
Accountancy	£316.25	£300
Provision for sinking fund	£1000	£1000

4. The Respondent's percentage contribution on her demand was stated to be 6.68%. Although there was correspondence between the vendor and Ms Prosser's solicitor which stated 7.1 % to be the correct percentage.
5. Mr Latif explained that when the Respondent purchased the property she paid £500 on completion on account of the service charges. Once the insurance cost had been deducted this meant that the Respondent had a credit balance of £275.94. This sum was applied to discharge her service charge obligation for 2007/08, leaving a deficit of £361.96.

#### *The Cleaning*

6. The Applicant's representative explained that the Applicant had a cleaning contract with PFM who were responsible for cleaning the common parts on a weekly basis. The common parts comprised two staircases two entrance doors together with handrails, carpeting and a window on one side with a small glass pane and a small entrance lobby.
7. Mr Latif did not have a copy of the cleaning contract. However he was able to state from his recollection that the Applicant paid £160 per month (pcm) and that the cleaning took approximately two hours. (a copy of the cleaning contract was handed in with the additional papers on the morning of the hearing)
8. Mr Latif was satisfied with the standard of cleaning, although in his observation, this was partially due to the fact that the leaseholders took pride in their building and there was good cooperation in keeping the premises clean and tidy.
9. In reply Ms Prosser noted that on one occasion she had witnessed a cleaner sweeping, rather than vacuuming the carpet outside her flat. Ms Prosser agreed that everyone cooperated in keeping the premises clean and tidy. Ms Prosser

attributed this factor to the level of cleanliness at the building, rather than the efforts of the cleaners.

*The external repairs*

10. This was in the sum of £323, Mr Latif informed the Tribunal that the cost had been incurred as a result of drainage cost and remedying roof above flat 5 repairs had been needed to the asphalt. There would be an adjustment to the balance of £323, this was because the commercial leaseholders would be contributing to the external repairs cost.

*The Electricity*

11. This was for electricity for the common parts. The lighting was provided by a time delay switch which went off automatically. There was a meter for this lighting which was located in the hallway. The electricity was also for the door entry system, the fire alarm system (see below) and vacuuming of the common parts.

*The external and internal repairs*

12. The Respondent stated that she had experienced problems with a leak into the bedroom at her property which had damaged her bed. Ms Prosser was dissatisfied with the way in which the repairs had been dealt with, she stated that although she had been informed that someone would call and fix the leak, this had not happened, when Tomas (the operative responsible for the repair) had come he had merely patched things up.

13. There had been two further leaks which had affected flat 1, and also the common parts. Ms Prosser stated that the first leak had been to in 2008, and had resulted in the flat roof and guttering being repaired. Ms Prosser stated that a further leak had occurred in June 2009. This had resulted in a watermark appearing above the spotlight, this had only recently been remedied, and there was still an issue with the carpets and ceiling that had been damaged.

14. Mr Prosser stated that the leak into the common parts had been above the electrical/meter intake cupboard, and as a result he had been concerned about the health and safety of the occupants, and the risk of electrocution.
15. Ms Prosser saw the failure to deal adequately with the leak, as indicative of poor, and inactivity, management on behalf of the managing agents.
16. The Applicant's representative, explained that when they had taken over the management of the building, they were aware of the problems with the leaks, however their first thought had been that as it was a relatively new building, they ought to be able to have the remedial works carried out as a result of the guarantee, and they had taken sometime to investigate this. When they found out that the guarantee would not cover the cost of the work, they had arranged for some of the work to be carried out via the insurance. They did not recall receiving a claim form from the Respondent.
17. Mr Latif accepted that it had taken sometime to repair the roof, and cited the fact that this repair had not been remedied straight away as a result of bad weather when their operative attended. He stated that he had also, since the repair, arranged for a refund of part of the roofing cost to the leaseholders as the commercial units would be contributing to the cost of external repairs
18. Mr Latif stated that he was aware of need to redecorate the common parts, and would try to put in an insurance claim. Mr Latif stated that there were no electrical issues as a result of the water penetration, the in take cupboard was a waterproof type box. The Tribunal noted that much of the repairs mentioned, were outside the service charge period, and there had been as yet no demand for payment for these items.
19. Mr Latif stated that during the course of the current year, the managing agents had needed to organise a number of lock changes, and that in order to deal with this they intended in future to have a contract for the door entry system and this was the reason for this item in the budget.

*The Fire Alarm System £676.95*

20. The Applicant's representative stated that the fire alarm system for the residential part of the building was separate from the commercial units. There was a contract in place which provided for annual inspections of the system, they were also responsible for issuing the fire certificates. The Alarm was connected to two panels within each of the flats, and the contract involved replacing the sound detectors if there were problems and in this regard the company were available "anytime of the day".
21. Ms Prosser queried this and noted that she had not been aware of annual inspections. Ms Prosser stated that there was one occasion when she had been contacted whilst at work, and asked to provide access to the contractors because of a problem with the panel. Mr Latif explained that this had been as a result of an error. Another leaseholder, had reported a fault and Ms Prosser's contact details had been given to the contractor by mistake. Mr Latif explained that the managing agents had issued an apology at the time.

*The Accountant's fee*

22. Ms Prosser stated from the outset, that her difficulty with this item was that she had no idea what the normal cost of accountant fees were. Ms Prosser had asked for the most recent set of audited accounts which had not yet been supplied.
23. Mr Latif explained that Ms Prosser had been sent the accounts for the year ending 2008 and 2009, however as the accounting year ended 23 June; the accounts would not be available until later on in the year. The Tribunal were referred to the accountant's statement at page 51. The accounts were prepared by Girach & Company; Mr Latif stated that he considered their fees to be reasonable.

### *The Insurance*

24. Mr Latif acknowledged that there was an error in the accounts, in that the insurance for the whole building had been included rather than the pro-rata sum for the leaseholders. The insurance for the five leased flats was £789 for 2008/09, and although the budget stated £2950 for 2009/10 the leaseholders' contribution was £838.01 for the five flats.
25. Ms Prosser stated that she would be grateful for the Tribunal's decision, as she was not objecting to this charge, but did not know whether it was within the norm of what was charged.

### *The Management Fee*

26. Mr Latif stated that there was no formal management contract, the Applicant had known of the managing agents and had asked them to manage the building. Mr Latif stated that they had visited the property on several occasions, 4 or 5 times in the course of the year. The Tribunal were informed that the managing agents undertook the normal functions of dealing with contractors, leaseholders' queries and preparing the budget and serving the demands. The Charge for this was £250 (inclusive of VAT) per flat.
27. Ms Prosser did not consider this was good value for money, as a result of the issues with the repairs and the error that occurred when her number was given out inadvertently.

### *The Sinking Fund*

28. Mr Latif stated that the managing agents in preparing their budget for the building needed to look ahead. He stated that there was a plan for internal decoration in 2011, and the managing agents intended to commission a condition survey to facilitate planned maintenance. He stated that there was a separate account in which these funds were held.
29. Mr Prosser stated that there had been a problem with the windows at the property, in that there was a sizeable gap and they did not fit flush and on moving in Ms Prosser had experienced problems with her boiler. The Tribunal asked whether the issue with the windows had been put to the vendor pre-completion. Mr Prosser stated that they had been under pressure to complete or lose the flat. He reiterated the concerns with the lack of pro-activity of the managing agents, and expressed doubts about the number of times they had visited the premises. He stated that



although the common parts were not dirty, the building did not have the feel of premises that were cleaned on a weekly basis.

30. Mr Latif stated that the design for the windows had been approved by local authority Building Control. He noted that Ms Prosser was responsible for the replacement/repair of the boiler. In summary Mr Latif considered that the sums claimed were reasonable, he stated that no one else had complained about the cleaning.
31. Insofar as the other items were concerned, although the invoices were not presented to the Tribunal (they had not been requested by the Respondent). The expenses were supported by the audited accounts. He stated that Ms Prosser had paid £500 on completion however it appeared that she was unaware of the service charge year and had thought that the £500 was for the whole year up until November 2008. This was confirmed by Ms Prosser.
32. Mr Latif considered that the charges were reasonable and that Applicant had acted reasonably, on this basis he asked for reimbursement of the hearing fee (£150) and application fee (£100) in the total sum of £250.00

### **The Tribunal's decision**

33. The Tribunal having considered the evidence and the submissions by the parties find as follows:-
34. The Tribunal were impressed with the evidence given by the managing agents' representative and considered from the correspondence that there was evidence of fairness and transparency in the way in which the premises were managed. The Tribunal note that Ms Prosser was at the time of purchase was new to property ownership and what was entailed in owning leased property. Given this it appeared to the Tribunal that many of the issues such as her unhappiness with the design of the windows, and the timing of the service charge year and her belief that the £500 paid by her was up to 16/11/08 one year after her purchase, are issues that should have been the subject of discussion with her solicitor.

35. We also noted that the Applicant has not rushed into issuing proceedings and attempts were made to settle this matter. The managing agents were prepared to accept instalments; however Ms Prosser offered £30 per month (by email dated 6/11/2009) on the basis that this was all that she could afford. This offer was not acceptable to the managing agents. Ms Prosser's standpoint is evidence of her relative lack of experience of leases and the obligations that being a leaseholder entail.
36. No complaint was made prior to the issue of the proceedings concerning the level and standard of cleaning, and in her evidence, Ms Prosser noted that she witnessed cleaning, albeit that a vacuum was not being used.
37. We accept however that Ms Prosser was concerned about the way in which the leak was managed, and that there was a lack of communication with her. Of the management of the property, although we do not accept the bulk of Ms Prosser's criticisms, we note that there is no management agreement in place, and consider that this is unsatisfactory.
38. A written agreement provides necessary safeguards for both the Applicant landlord and the Leaseholder. We refer to the RICS *Service Charge Residential Management Code*, in particular Part 2.1 -2.5 of the code.
39. Given the lack of formality, the Tribunal are not satisfied on a balance of probabilities that this charge was reasonable, and have reduced it by 15% for each of the years in question. The reasonable charges are set out in the table below. Save for this reduction we find all of the sums claimed are reasonable and payable.
40. The Tribunal determine that the application fee and hearing fee in the total sum of £250 shall be reimbursed to the Applicant by the Respondent.
- 41.

<i>The Tribunal's determination</i>	<i>2008/09</i>	<i>2009/10</i>
Management fees	£2124.99	£2125
Cleaning	£2132.00	£1920
General repairs & Maintenance	£398.98	£750
External Maintenance	£323.00	£500
Electricity	£243.57	£250

Fire alarm system	£676.95	£750
Door entry system		£250
Insurance	£789.70	£838.01
Accountancy	£316.25	£300
Provision for sinking fund	£1000	£1000

Signed 

Dated 6-16-2010