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/00AW/LSC/2011/0696
Premises	:	Top Floor Flat, 11 Fenshaw Road, London SW10 OTB
Applicant	:	Ms Faith Pozzy
Represented by	:	Mr M Modha, Counsel, instructed by Woodfords Solicitors
Respondent	:	Ms Elizabeth Francis Paris
Represented by	:	Mr R Marchant Surveyor, Stapleton Long (Managing Agents)
Date of Application:		5 October 2011
Date of Hearing	:	14 February 2012
Date of Decision	:	9 March 2012
Tribunal	:	Mr Robert Latham MA Mr Stephen Mason BSc FRICS FCIArb Mr Peter Leighton LLB (Hons)

Decisions of the tribunal

(1) The legal fees of £108, £117 and £160 demanded by the Respondent's managing agent in an invoice dated 28 July 2011 are not payable by the Applicant.

(2) The cleaning costs of £663.72 (2009/10); £743.50 (2010/11) and £892 (2011/12) in respect of which the Applicant is liable for a 33% share, are fair and reasonable.

(3) The management fees of £121.81 (2009/10; £180 (2010/11) and £143.90 (to date for 2011/12) are fair and reasonable.

(4) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

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 administration charges payable by the Applicant in respect of the service charge years 2010; 2011 and the estimated expenditure for 2012. The financial year runs for the period 1 April to 31 March. The Tribunal is therefore concerned with the relevant charges for 2009/10; 2010/11 and 2011/12.

2. This application was issued on 5 October 2011. A Pre-Trial Review was held on 1 November 2011, before Mr Mohabir. The Applicant was represented by Mr Wells, a Solicitor. The Respondent was represented by Mr Marchant, a Surveyor from Stapleton Long, the managing agents. Mr Mohabir gave Directions, the purpose of which were to identify the issues which this Tribunal would be required to determine.

3. At the Pre-Trial Review, Mr Marchant was unable to identify what expenditure was being claimed in respect of any of the relevant years. He confirmed that service charge accounts for 2010 and 2011 had been prepared and were available. Neither was the Applicant in a position to explain which service charge items of expenditure were being challenged in any of the years concerned. Mr Mohabir hoped that his Directions would identify the issues and costs which were being challenged.

4. Pursuant to these Directions, The Respondent has produced their Statement of Case which is at Tab 2 of the Application Bundle. This sets out the relevant clauses of the lease. These are agreed (see [1] of the Reply at p.28 of the Bundle). The Respondent has not produced a set of audited service charge accounts. However, the relevant statement of services charges for 2009/10 is at p.76 and that for 2010/11 at p.16. An invoice dated 28 July 2011 (at p.15) relates to service charges for the year 2011/12. These statements do not provide the degree of transparency which is recommended in the "Service Charge Residential Management Code". The Respondent would also be well advised to have regard to "Residential Service Charge Accounts: Guidance of Accounting and Reporting in Relation to Service Charge Accounts for Residential Properties on which Variable Service Charges are Paid in Accordance with a Lease of a Tenancy Agreement" published by the ICAEW (2011).

5. In its Statement of Case, the Respondent has sought to explain how the costs in issue have been incurred and the basis upon which it is contended that they

are reasonable. For the purposes of this application, the Tribunal have focused on (i) the consultation relating to the 2011 proposed internal decorations (and p.23); (ii) the cleaning costs (at p.24) and (iii) the management and administration fees (at p.26). The Statement of Case does not address the legal fees which have been charged to the Applicant's account for 2011/2, even though this was raised as an issue in dispute in the Applicant's application form (at p.11).

6. The Directions required the Applicant to file a Reply setting out her case. This is at Tab 3 of the Bundle. Unfortunately, the Applicant does not identify the items in dispute with any particularity. Where complaint is made, alternative figures for the costs in dispute are not provided. The relevant averments are those relating to (i) the legal fees ([4(b)] at p.29; (ii) consultation ([10] at p.30; (iii) cleaning costs ([9] at p.30); and (iv) management fees ([11] at p.30).

7. The Directions required witness statements to be served by 17 January and for the Applicant to file a paginated Bundle of Documents by 7 February. The Applicant filed a Bundle on 10 February, the Friday before the Tribunal hearing. It included an unsigned witness statement from the Applicant which had not been served on the Respondent. The Applicant signed a copy of her statement at the hearing (retained by her lawyer). She confirmed that the contents were true, subject to a minor amendment to line 1 at page 3 ("several weeks" rather than "3 months"). Little of her statement relates to the issues which the Tribunal are now asked to determine. The documents at Tab 6 were not paginated. After the lunch adjournment, a paginated section was provided which has been added to the Bundle. The Respondent did not serve any witness statement. However, the Tribunal took the Respondent's Statement of Case as Mr Marchant's evidence in chief.

8. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

9. The Applicant was represented by Mr Modha, Counsel. Mr Marchant, a surveyor with Stapleton Long, the managing agents, appeared for the Respondent. The Tribunal heard evidence from both Ms Pozzy and Mr Marchant. Mr Marchant has recently taken over the management of the property from a colleague, Mr Schendel.

10. During the course of the hearing, both parties produced a number of documents which had not been included in the Bundle. Both parties were able to deal with this new material.

11. On 15 February, Mr Marchant e-mailed a number of additional documents relating to the legal charges raised in the invoice of 28 July 2011 (at p.15). At the hearing, Mr Marchant stated that he was unaware that these sums were in dispute. Strictly they are not a service charge, but rather an administration charge. On 20 February, these additional documents were e-mailed to the

Applicant who was invited to comment. On 20 February, Mr Hemmingway, of Woodfords Solicitors, responded.

12. At the commencement of the hearing, Mr Mohta applied to amend his application to challenge service charges prior to April 2009. It is apparent that the Applicant has been in arrears for a number of years. Mr Mohta wanted to challenge the reasonableness of two items which appeared in the statement of services charges for 2007/8 (dated 10 April 2008), namely £13,312.66 in respect of "redecorations (small projects)" and £3,994.53 for management fees. The Applicant was charged 25% of each of these sums, a total of £4,326.80. Despite the Applicant's assertions in her evidence that these were her major items of concern, there was nothing in either her Application Form or her Reply to indicate that these sums were in dispute. At the Pre-Trial Review, Mr Mohabir did his utmost to clarify the issues that this Tribunal would be required to determine. The Applicant was legally represented. Mr Mohabir specifically recorded that the dispute related to the years 2010, 2011 and 2012. Mr Marchant opposed the application and stated that he was not in a position to deal with new claim at the hearing and that relevant papers were not available. In these circumstances, the Tribunal was satisfied that it had no option but to refuse the application.

The Background

13. The property which is the subject of this application is 11 Fernshaw Road, London, SW10 OTB. This is a terraced property which has been divided into four flats. The Applicant occupies the "Top Flat" or "Flat D" on the second floor pursuant to a lease dated 12 January 1987. She acquired her leasehold interest in February 1990.

14. Ms Paris, the freeholder and lessor, did occupy the basement flat. She sold her leasehold interest in this flat to Dr Helen Bright in 1997. Dr Bright now lives in Ipswich and sub-lets her flat. Ms Paris appointed Stapleton Long as managing agents shortly after she sold her flat.

15. Ms Veronica Walford is the lessee of the first floor flat. She has held her lease for some 20 years. Mr Julian Gibbs is the lessee of the ground floor flat. On occasions, he has sub-let his flat. He currently has an arrangement with the Respondent whereby his cleaner also cleans the common parts. This arrangement gives rise to one of the disputes which we are asked to determine.

16. The Applicant has been in arrears with her service charges and other liabilities towards her landlord over many years. The service charge invoice (28.7.11 at p.15) specifies arrears of £4,905.45.

17. On 25 November 2005, the Respondent obtained a default judgment at West London County Court (5WL03793) in the sum of £3,061.54.

18. On 28 April 2006, the Respondent served a s.146 notice in respect of rent and service charges in the sum of £2,535.03.

19. On 28 August 2008, the Respondent obtained a further default judgment at the West London County Court (8WL02273) in the sum of £9,277.29. This included costs of £360. The Applicant contends that she was not served with these proceedings. On 9 September 2008, Cook and Partners, the Respondent's Solicitor, invoiced the landlord for £749.80 in respect of professional charges relating to the "10D Fernshaw Road", the Applicant's flat. Upon receipt of the default judgment, the Applicant took advice from the Legal Advice Centre at the College of Law. On 17 September 2008, she sent Cook and Partners a cheque for £10,943.54. She also applied to set aside the default judgment. This application was not opposed. On 18 February 2009, DJ Ryan set aside the judgment. He made no order as to the costs of the application. He directed that the Applicant file a counterclaim by 16.00 on 18 February 2009. The Applicant failed to do this. On 8 March 2009, the Court wrote to Cook & Partners stating that an "unless order" had been made: unless a counterclaim had been filed by 16.00 on 22 March 2009, "the counterclaim stands struck out without any further order". It would thus seem that the counterclaim has now been struck out.

20. At the hearing, the Applicant was anxious to ascertain what had happened to the sum of £10,943.54 which she had paid on 17 September 2008. Although this was not subject to any dispute which is live before the Tribunal, Mr Marchant agreed to provide this information. The Tribunal have subsequently been provided with a letter from Stapleton Long dated 21 February 2012. It is apparent that Cook and Partners deducted their fees of £749.80 from this sum and then forwarded the balance to Stapleton Long. This balance of £10,203.74 was then credited to the Applicant's service charge account on 8 October 2008 as two separate payments, £8,789.65 and £1,414.09. This put the account into credit by some £826.59. Stapleton Long note that the proposed internal decorations upon which the landlord consulted in February 2006 did not proceed because of the delay in recovering the arrears. The contribution was therefore credited to her account.

21. The most recent "Statement of Service Charges" is dated 28 July 2011 and is at p.16. It is apparent that the Applicant should have contributed £7,527.43 to a sinking fund. Because of her arrears of £4,439.95, she has only £3,087.48 in her portion of this reserve fund.

The issues

22. The first hour of the hearing were spent in clarifying the issues in dispute. It became apparent that the Applicant did not dispute the majority of the service charges set out in the Respondent's Statement of Case (at pp.24-27). The outstanding issues in dispute were relatively small. After a short adjournment, Mr Modha opened his case on behalf of the Applicant. He helpfully summarised the four issues which the Tribunal are now asked to determine:

(i) The legal fees specified in the service charge invoice, dated 28 July 2011 (at p.15). The sums charged are (a) £108 (19.1.11); (b) £117 (26.1.11); and (c) £160 (6.6.11), a total of £385.

(ii) The failure to consult on proposed internal decorative works in 2011. These works have not be executed. It is common ground that no internal decorations have been carried out for 17 years and that there is an urgent need for such works. Had the Applicant succeeded on this aspect of the claim, the consultation process would have had to recommence. It is doubtful whether the estimates which had been obtained in 2011 would still have stood. It would therefore have been a pyrrhic victory for the Applicant and would have resulted in further delay and potentially higher cost. We invited the Applicant whether she wanted to pursue this aspect of her claim. After the hearing had finished, Mr Modha informed the Tribunal that this is no longer an issue that the Applicant wishes to pursue.

(iii) Cleaning costs (for which the Applicant is liable for a 33.3% share): a total of £663.72 is charged for 2008/9 (invoiced in May 2009 at p.186); £743.50 for 2009/10 (invoiced in May 2010 at p.187) and £892.00 for 20010/11(invoiced in May 2011 at p.185).

(iv) Management Fees (for which the Applicant is liable for 25%): £461.34 for 2009/10 (see p.76); £720 for 2010/11 (see p.16).

The Lease

23. It is not necessary for the Tribunal to set out the relevant clauses of the lease as the Respondent has set these out at Section 1 of his Statement of Case. These are agreed by the Applicant in her Reply. The Tribunal highlight the following:

(i) Clause 3(e) requires the lessee "to pay all costs charges and expenses (including solicitors' costs and surveyors' fees and any Value Added Tax payable in respect thereof) incurred by the Lessor for the purpose of and incidental to the preparation and service of any notice under the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court and whether or not notice is served before or after the determination of the said term".

(ii) The lessor is permitted to establish a sinking fund (Third Schedule, paragraph 4)

(iii) The Applicant's contribution to the overall expenses is either 25% or 33% depending upon the nature of the service as the basement flat is self-contained and does not have access to the common parts enjoyed by the other flats (Third Schedule, paragraphs 1, 2 and 3).

(v) The lessor is entitled to be paid an interim sum in advance on the normal rent days. At the end of the accounting period, there is to be a reconciliation between the interim sum paid and the sum due. The lessor's accountant or managing agent is required to serve a certificate of the annual cost (Third Schedule, paragraph 5).

The Tribunal's Decision

24. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Issue 1: Legal Fees

25. The legal fees in dispute are to be found in the service charge account dated 28 July 2011 (at p.15). The sums charged total £385 and are:

    (i) £108 (19.1.11) described as "Recharge court fees re current arrears";

    (ii) £117 (26.1.11) described as "Recharge court fees – Cook and Partners"; and

    (iii) £160 (6.6.11) described as "Professional charges – Balance to Cook".

26. There is a further sum of £738.30 debited from the account described as "Professional charges to Cook – June 2009". However, this charge is re-credited on 6 June 2011. It may be that this sum should be £749.80 – see para 20 above.

27. The Applicant states that she does not know the basis upon which she is liable for these legal fees. The Respondent was unable to assist the Tribunal on this. Mr Marchant suggested that he was unaware that these items were in dispute. However, at p.11 of the application form, the applicant makes specific reference to "additional charges for legal fees and administration which have unjustifiably been added to the account".

28. A number of invoices from Cook & Partners were produced, but these provide little clarity:

    (i) Invoice N21064 (9.9.08): £749.80. This seems to relate to the sum deducted from the Applicant's payment of £10,943.54 in September 2008 (see para 20 above)

(ii) Invoice N23469 (1.6.11): £300. This is stated to relate "to professional charges in respect of (11D Fernshaw Road)". There is then reference to £140 having been paid, leaving a net balance of £160. This would seem to be the sum charged to the Applicant's account on 6 June 2011. However, no explanation has been provided as to the work to which this relates or the basis upon which it is contended that the Applicant is liable for just part of the sum charged.

(iii) Invoice N23799 (16.11.11): £499.20.

29. On 16 February, Mr Marchant provided the following further invoice:

(iv) Invoice L23188 (1.2.11): £225. This refers to "court or local authority fees incurred or about to be incurred relating to (11D Fernshaw Road)". Mr Marchant states that these are the court fees of £108 and £117 which were charged to the service charge invoice.

He also provided a further copy of invoice N21064 (9.9.08): £748.80.

30. Mr Marchant sought to argue that these sums have been properly and reasonably incurred by Cook & Partners for work in respect of the Applicant's arrears of service charges. Such arrears are readily admitted by the Applicant. However, there is no evidence of the legal work or court fees to which these invoices relate. The Claim Form in 8WL02273 refers to a court fee of £225. However, Cook & Partners have already deducted charges of £749.80 in respect of these proceedings (see para 20 above).

31. Mr Hemingway, the Applicant's Solicitor, in his e-mail of 22 February refers the Tribunal to s.168 of the Commonhold and Leasehold Reform Act 2002. An application to a Leasehold Valuation Tribunal is a pre-condition to the service of a s.146 notice. Despite past proceedings, there is no evidence of any legal proceedings or pre-action correspondence since the proceedings in 2008.

32. The Tribunal are satisfied that the legal fees claimed are administration charges for the purposes 2002 Act. We have had regard to *Freeholders of 69 Marina and Others v Oram and Ghoorun* [2011] EWCA Civ 1258. We have considered whether these costs could be said to be incidental to the preparation of the requisite notices. We have concluded that we cannot. There is no adequate evidence as to what these relevant sums relate. We therefore disallow these sums. We reach this decision with some reluctance given the Applicant's poor payment record over many years. We therefore determine that none of these legal fees are payable as administration charges.

Issue 2: Failure to Consult

33. In 2011, the Respondent consulted its lessees on proposed internal decoration and maintenance works. The Respondent contends that she complied with the

statutory procedures prescribed by s.20 of the 1985 Act. The Applicant denies that she received the relevant notifications. It is common ground that these works are urgently required since there have been no internal decorations for 17 years. Works were planned in 2008, but these were aborted because the Applicant failed to pay her contribution.

34. The Respondent relies upon the following correspondence:

(i) Letter of 1.3.11 at p.129;

(ii) Letter of 2.3.11 at p.130 (the notice of intention);

(iii) Letter of 6.4.11 at p.131;

(iv) Letter of 14.9.11 at p.133 (the statement of estimates);

(v) Letter of 19.9.11 at p.136.

35. The Applicant denies that she received any of these letters. Whilst she nominated a particular contractor on 12 April (at p.132), she stated that she only learnt of the proposed works from Mr Gibbs. The Applicant gave a number of different explanations relating to the letter sent by her Solicitor, dated 21 September (at p.137). This is clearly sent in response to the Respondent's letter of 19 September. Initially, she said she had only seen a copy of the letter sent to Mr Gibbs. She then added that this had only been a blue photocopy. However, Woodfords specifically refer to a letter written to their client. Their response was surprising. Rather than address the substance of the consultation, namely the appropriate contractor to be appointed to executed these works which had been outstanding for 17 years, they rather demanded that the landlord reserve a copy of the statement of estimates (apparently the document which we have at p.133-5) on the ground that it had not been signed. Woodfords suggest that this notice had been attached to the letter of 19 September. The Respondent contend that it was sent separately.

36. The Tribunal note that the Applicant asserts that she has failed to receive a large number of letters from her landlord whether sent to her flat or her work address in Richmond. She also failed to receive court papers, even though these would normally have been served by the County Court. As the Tribunal observed at the hearing, if her account is accurate, she has been signally unfortunate.

37. It is not necessary for the tribunal to make a finding as to whether or not the Applicant did receive the requisite notices. As stated, after the hearing had been completed, Mr Modha returned to inform the Tribunal that the Applicant no longer wished to proceed with this element of her claim.

38. The works have not commenced. The Tribunal had pointed out that were the Applicant to succeed on this point, these works would be further delayed. The landlord would restart the consultation process. The Respondent selected the most competitive quote from Plumb4U. It is to be hoped that the contractor will still be willing to be held to this contract price.

Issue 3: Cleaning Costs

39. Mr Gibbs, the lessee of the Ground Floor Flat (Flat B) has arranged the relevant cleaning of behalf of the landlord. His cleaner also cleans the common parts. Mr Gibbs invoices the Respondent annually in arrears. The relevant service charges for cleaning are:

> (i) May 2009 for the period 1.4.08 – 31.3.09: £663.72 (at p.186). We were told that this sum is included in the Statement of Service Charges (2009/10) under "general expenditure: £938.72 (at p.76).
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> (ii) May 2010 for the period 1.4.09 – 31.3.10: £743.50 (at p.187). No charge for cleaning has been included in the Statement of Service Charges (2010/11 at p.16).
>
> (iii) May 2011 for the period 1.4.10 – 31.3.11: £892.00 (at p.185). No charge for cleaning has been included in the service charge invoice (28.7.11) at p.15. However, payments on account of £500 are collected on 25 December and 24 June. The appropriate reconciliation may be made when the Service Charge Account for 2011/12 is prepared.

40. Mr Marchant deals with the cleaning charges in the Respondent's Statement of Case (at p.24). His evidence is not entirely satisfactory. He states that the sum of £663.72 which was paid on 7.5.09 relates to the costs for the year 1009/10. However, Mr Gibb's invoice at p.186 refers to the year 2008/9. Somewhat surprisingly, Mr Gibbs only invoices the landlord once a year for the sums paid over the previous twelve months. The Applicants share of these costs is 33% (Schedule 3 of the Lease, paragraph 3 and clause 4(C)(vi)). Mr Marchant told us that this sum of £663.72 was included in the sum of £938.72 under "General Expenditure" in the Statement of Service Charges at p.76. However, the Applicant is only charged 25% of this sum.

41. Mr Modha sought to argue that this was a "qualifying long-term agreement" for the purposes of the Service Charge (Consultation Requirements) (England) Regulations 2003 and that the lessor was in breach of her requirement to consult with her lessees. In *Paddington Basin Developments Ltd v West End Quay Estate Management Ltd [2010] EWHC 833 (Ch),* the court held that there were three separate questions that needed to be considered: (i) whether there was an agreement; (ii) whether it was entered into by or on behalf the landlord; and (iii) whether it was for a term of more than 12 months. The Tribunal are satisfied that this was no more than an informal arrangement which could have been determined at any time upon reasonable notice. At no

time was the lessor contractually bound to continue the arrangement for a period in excess of 12 months.

42. The issue for the Tribunal is whether the sums ranging from £743.50 t£938.72 per annum are reasonable. The common parts are cleaned weekly at a cost to £15 to £20 per week. In her Reply ([9] at p.30), the Applicant sought to argue that the cleaner is paid £10ph, whilst the services are charged to the lessees at £18.50ph. The Applicant was unable to produce any evidence to support this assertion. In her evidence, the Applicant sought to complain about the quality of the cleaning. However, there is no evidence of written complaints. The internal parts have not been decorated for some 17 years. For a number of years, the Respondent has been anxious to redecorate. Mr Marchant accepted that the paint work was in a poor condition, making it difficult to wash down. He understood that the cleaner was paid £12 ph. The Applicant suggested that she could arrange her cleaner who she paid cash in hand to hoover the carpets and wash down the paintwork at a rate of £10 per week.

43. The Tribunal are satisfied that the lessor is entitled to decide how he wishes to provide the service. The current arrangement has worked well for a number of years. Were the lessor to arrange for an agency to send in a cleaner once a week, the costs would be likely to be a minimum of some £30 per visit. It may be that the lessees could arrange some alternative arrangement with the lessor. However, we are satisfied that the sums charged are reasonable.

Issue 4: Management Fees

44. The Management Charges are set out in the Respondent's Statement of case at p.26. A number of the charges relate to the management of the whole building and are split equally between the four lessees. The total charges (which include VAT) in respect of which the Applicant is liable for 25%, are :

(i) 2009/10: £480.76

(ii) 2010/11: £720.00

(iii) 2011/12: £515.61 (to date)

45. A separate charge (described as an administration fee) is levied at 15% of the expenditure on the common parts and is divided between the three lessees who enjoy the common part. These sums are relatively modest, namely £6.47 for 2009/10 and nil for 2010/11.

46. The Applicant's total contribution has been:

(i) 2009/10: £121.81

(ii) 2010/11: £180.00

(iii) 2011/12: £143.90 (to date)

The charges for 2009/10 and 2010/11 appear in the Statement of Service Charges at p.76 and p.16.

47. Mr Marchant told us that there was a Service Level Agreement. However, he did not have a copy. He was not entirely sure how the charges were computed, but suggested that they assessed at 17% of expenditure. The Tribunal note that Stapleton Long intend to charge a supervision fee of 15% in respect of the works of internal decorations (see p.135). In his e-mail of 16 February, Mr Marchant confirmed that the figure of £720 had been computed on the basis of a fixed fee of £150 per flat + VAT.

48. In her evidence to the Tribunal, the Applicant did not complain about the level of the charges, but rather to the quality of the management services. She complained that she had not been served with the 2008 County Court proceedings and had only been notified of the 2005 proceedings the night before the hearing. This may well have been the fault of the Court Service. She also complained of the delay of the managing agents in responding to a complaint of water penetration in September 2011. However, it seems that she may have e-mailed Ms Peart who was on maternity leave at the relevant time.

49. The Tribunal are satisfied that the management fees are reasonable. It is not unusual for managing agents to charge £150 to £250 per flat + VAT. The sums charged by Stapleton Long are at the lower end of this range.

Application under s.20C and refund of fees

50. In her application form, the Applicant applied for an order under section 20C of the 1985. In their letter of 12 December 2011, the Respondent has stated that Stapleton Long intend to charge a total of £1,000 + VAT, £500 in respect of the Pre-Trial Review and a further £500 in respect of the hearing. These are claimed pursuant to Clause 3(e) of the lease. Mr Modha referred us to *Forcelux Ltd v Binnie* [2009] EWCA Civ 1077; [2010] HR 20.

51. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it would not be just and equitable to make such an order. Where a lease provides that the lessor is entitled to recover such costs, the general principle is that the Tribunal should award costs in accordance with the terms of the lease (see *Forcelux* at [12]). The Tribunal retains power to override the lessor's rights under the lease. However, the Respondent has been largely successful in these proceedings. Many issues were raised in the Applicant's Reply and in her witness statement

which were not pursued before us. Whilst the Applicant has succeeded on the first issue, this was largely on the basis of the unsatisfactory nature of the evidence before us. The Applicant has a poor record in paying the sums which she has been obliged to pay under the terms of the lease.

52. The Applicant has not made an application under Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003 for a refund of the fees that she had paid in respect of the application. Had such an application been made, we would not have been minded to grant it for the above reasons.

Chair: Robert Latham

Date: 9 March 2012

Appendix of 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 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

The Consultation requirements for qualifying works for public notice is not required are set out in Schedule 4, Part 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003 No.1987). Inter alia,

(i) The landlord shall give notice in writing of his intention to carry out qualifying works to each tenant ; invite written observations and Invite nominations from whom the landlord should try to obtain an estimate (para 1)

(ii) The landlord shall supply to each tenant a statement giving details of at least two estimates and provide a summary of observations received and his response to them (para 2)

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

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;
- (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
- (b) 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;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) 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

Section 168

(1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture)

in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.

(2) This subsection is satisfied if—
(a) it has been finally determined on an application under subsection (4) that the breach has occurred,
(b) the tenant has admitted the breach, or
(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(4) A landlord under a long lease of a dwelling may make an application to a leasehold valuation tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

(5) But a landlord may not make an application under subsection (4) in respect of a matter which—
(a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(b) has been the subject of determination by a court, or
(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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).

Schedule 12, paragraph 10

(1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).

(2) The circumstances are where—
  (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
  (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.

(3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
  (a) £500, or
  (b) such other amount as may be specified in procedure regulations.

(4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.