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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

Case Reference:	LON/00AW/LSC/2012/0430
Premises:	11D Fernshaw Road, London SW10 0TB

Applicant:	Faith Pozzy (Lessee)
Respondent:	Elizabeth Paris (Lessor)
Date of hearing:	08 October 2012
Appearance for Applicant(s):	Ms Pozzy (in person)
Appearance for Respondent(s):	Mr R Marchant – surveyor (Stapleton Long Managing Agents)
Leasehold Valuation Tribunal:	Mr J P Donegan - Chair Mr R Humphrys FRICS - Surveyor Member Mrs G Barrett JP – Lay Member
Date of Decision:	14 January 2013

Decisions of the Tribunal

(1) The Tribunal determines that the following sums are payable in respect of the disputed service charges:

Year Ended March 2007 – Excess Service Charge £329.99

Year ended March 2008 – Contribution to Redecoration £4,578.17

Year ended March 2008 – Contribution to Management Fee £998.63

17 September 2010 – Contribution to Buildings Insurance £428.09

26 January 2011 – Advance Contribution to Internal Repair and Decoration £2,000.00

14 September 2011 – Advance Contribution to Internal Repair and Redecoration £674.90

Year Ended March 2006 – Cleaning £586.09

Year Ended March 2007 – Cleaning £595.80

Year Ended March 2008 – Cleaning £631.55

Year Ended March 2009- Cleaning £668.00

(2) The Tribunal determines that the following sums are payable in respect of the disputed administration charges:

05 January 2006 –£344.93

10 May 2006 –£299.63

12 September 2008 – £0

27 May 2011 – £0

01 December 2011 – £0

(3) The Tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985("the 1985 Act").

(4) The Tribunal declines to make an order for a refund of fees pursuant to Regulation 9 of the Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003.

The application

(5) On 27 June 2012 the Tribunal received an application pursuant to section 27A of the 1985 Act.

(6) The Applicant also seeks an order for the limitation of the Respondent's costs in the proceedings under section 20C of the 1985 Act.

(7) An oral pre-trial review took place on 24 July 2012 and directions were issued.

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

The hearing

(9) The hearing took place on 08 October 2012. The Applicant appeared in person and was assisted by her solicitor, Mr Foreshew. The Respondent was represented by Mr Marchant, who is a surveyor working for the managing agents (Stapleton Long).

(10) The Tribunal was provided with a joint bundle of documents containing copies of the relevant correspondence, documents and the statements of case.

(11) At the start of the hearing, the Applicant provided the Tribunal with a summary of issues and a bundle photographs showing the common parts at 11 Fernshaw Road ("the Building").

(12) During the course of the hearing the Applicant also sought a determination of administration charges for the Premises pursuant to schedule 12 of the Commonhold and Leasehold Reform Act 2002. There was no separate, written application to

determine these administration charges but details of the disputed charges had been included in the original application and in the Applicant's witness statement and statements of case.

(13) Having heard representations from both parties the Tribunal decided that it was just and convenient to determine the administration charges as part of the overall application and heard evidence and representations from the parties regarding both the service charges and the administration charges.

(14) The Applicant relied on a witness statement dated 17 August 2012, a reply dated August 2012 and an amended statement of case dated 17 September 2012. She also gave oral evidence at the hearing. The Respondent relied on two undated statements of case and Mr Marchant also gave oral evidence at the hearing.

(15) On 09 October 2012, the day after the full hearing, the Tribunal members received a copy of an Advice from Counsel, Mr Justin Bates, dated 03 October 2012. That Advice had been submitted to the Tribunal office by the Applicant, by email, on 05 October 2012. The Advice deals with the ability of the Respondent to recover service charges and administration charges under the terms of the Applicant's lease.

(16) On 09 October 2012, Mr Marchant submitted further evidence to the Tribunal office on behalf of the Respondent, in the form of two emails. Those emails dealt with the manner in which cleaning charges for the Premises had been calculated.

(17) Given that the Tribunal members did not receive the Advice from Mr Bates, dated 03 October 2012, or the two emails from Mr Marchant, dated 09 October 2012, until after the full hearing they decided to issue the additional directions before deciding the application.

(18) In accordance with the additional directions, both parties filed supplemental statements of case. All of the further documents, received after the hearing on 08 October 2012, were considered by the Tribunal when making their decision, as well as the documents in the joint bundle.

The background

(19) The Applicant is the leaseholder of the Flat and the Respondent is the freeholder of the Building. The Applicant resides in the Flat.

(20) The Building is a Victorian converted house consisting of four flats. The Tribunal did not consider that an inspection of the Flat or Building was necessary having studied the documents contained in the joint bundle.

(21) There was a previous application to determine service and administration charges for the Flat that was dealt with under case reference LON/00AW/LSC/2011/0696. That application, which was determined on 09 March 2012, concerned service charges for the years ended March 2010, March 2011 and March 2012 and administration charges demanded on 28 July 2011. It follows that the Tribunal has no jurisdiction to determine these charges.

The Lease

(22) The Applicant's lease of the Flat was granted on 12 January 1984 and is for a term of 125 years from 29 September 1985. The lease requires the Respondent to provide certain services and the Applicant to contribute towards their costs by way of a variable service charge. The specific provisions of the leases are referred to below, where appropriate.

(23) By clause 1 of the lease the Applicant is liable to pay a rent of:

"..FIFTY POUNDS for the first twenty-five years of the said term ONE HUNDRED POUNDS for the second twenty-five years of the said term ONE HUNDRED AND FIFTY POUNDS for the third twenty-five years of the said term TWO HUNDRED POUNDS for the fourth twenty five years of the said term and TWO HUNDRED AND FIFTY POUNDS for the remainder of the said term PROVIDED ALWAYS that if the above-mentioned yearly rent shall equal or exceed two thirds of the rateable value of the flat the said yearly rent as aforesaid payable shall be reduced to two thirds of the said rateable value less £1.00 such rents to be equal half yearly payments in advance on the 24th day of June and the 25th day of December in every year free of all deductions whatsoever the first payment being an apportioned part of the said rent calculated from the date hereof to the 23rd day of June next to be made on the execution hereof AND ALSO PAYING by way of further and additional

rent a part of the maintenance charge costs expenses outgoings and matters incurred by or on behalf of the Lessor under or in respect of the covenants on the part of the Lessor more particularly hereinafter mentioned"

(24) By clause 3(e) of the lease the Applicant is liable:

"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"

(25) The detailed service charge provisions are contained in the third schedule to the lease and require the Applicant to pay:

"(1) One quarter of the annual costs and expenses incurred by or on behalf of the Lessor under or in respect of the covenants on the Lessor's part set out in Clause 4(C)(i)(ii) and (iv) hereof

(2) One quarter of the fees of the Lessor or the Lessor's surveyor agent solicitor accountant and auditor plus any Value Added Tax payable in respect thereof in respect of the management of the Building including in particular the above-mentioned matters and the preparation of the certificate referred to hereunder and the collection of the lessees' contributions referred to herein

(3) One third part of the costs and expenses incurred by or on behalf of the Lessor under or in respect of the covenants on the Lessor's part set out in Clause 4(C)(iii)(vi) and (vii) hereof

(4) Such sum or sums as may be estimated or re-estimated by the Lessor or her managing agent for the time being (whose decision shall be final) to provide provision for a sinking fund so as to meet part of all of any of the cost expenses or outgoings referred to in the previous paragraphs and which will or may arise and for which the Lessor determines that provision ought prudently to be made

(5) For the purpose of this Schedule:

(i) An accounting period shall mean a period commencing on the 1st April in each year and ending on the 31st March in the following year

(ii) The annual cost shall mean the expenditure incurred by the Lessor in any accounting period in carrying out her obligations under Clause 4(C) hereof

(iii) An interim sum shall be paid to the Lessor by equal instalments in advance on the days hereinbefore appointed for payment of rent in each year together with the rent hereinbefore reserved

(iv) If in any accounting period the maintenance charge exceeds the interim sum then the Lessee shall pay the difference to the Lessor within twenty-one (21) days of the service upon the Lessee of a certificate of the accountants of the Lessor or the managing agents of the annual cost and the amount of such difference shall be recoverable from the Lessee in case of default as if the same were rent in arrear

(v) If in any accounting period as aforesaid the maintenance charge is less than the interim sum the difference (being the unexpended surplus) shall be accumulated by the Lessor and shall be applied in or towards the annual cost in the next succeeding or future accounting period or periods as aforesaid

(vi) For the purpose of calculating the maintenance charge in any such accounting period as aforesaid any vacant flat in the Building (or any flat so let that the lessee thereof is not liable to pay maintenance charge) will be deemed to have contributed a maintenance charge to the Lessor of the amount which would have been paid to the Lessor in respect of a flat of similar type already demised and as if such flat had been demised upon the same terms (other than as to the amount of the rent and maintenance charges) as this Lease for such parts of such accounting periods as aforesaid in respect of which any such flat was so vacant (or not so liable) as aforesaid

(vii) The certificate of the accountants of the Lessor or the managing agents as to the amount of the annual cost shall be conclusive and binding but the Lessee shall be entitled to receive a summary of all payments made by the Lessor which form part of the annual cost"

The issues

(26) The issues to be determined by the Tribunal are the Applicant's liability to pay the following disputed items:

Service Charges

Year Ended March 2007 – Excess Service Charge £329.99

Year ended March 2008 – Contribution to Redecoration £4,578.17

Year ended March 2008 – Contribution to Management Fee £998.63

17 September 2010 – Contribution to Buildings Insurance £428.09

26 January 2011 – Advance Contribution to Internal Repair and Decoration £2,000.00

14 September 2011 – Advance Contribution to Internal Repair and Redecoration £674.90

Year Ended March 2006 – Cleaning £586.09

Year Ended March 2007 – Cleaning £595.80

Year Ended March 2008 – Cleaning £631.55

Year Ended March 2009- Cleaning £668.00

Administration Charges

05 January 2006 –£344.93

10 May 2006 –£299.63

13 September 2008 – £587.50

27 May 2011 – £300

01 December 2011 – £499.20

(27) The evidence and submissions we received on the various issues are set out in brief form below.

27.1 Service of Documents

(a) The Applicant's primary argument is that she has not received service charge accounts, demands, notices and statements from the managing agents. She is unable to say whether the service charge documents were sent to her but states that she did not receive them. The Applicant contends that the first time she saw any service charge documents was after she instructed solicitors to deal with the previous Tribunal application.

(b) The Applicant gave lengthy evidence regarding the difficulties she had encountered in receiving post at the Flat. This is delivered through the letterbox in the front door of the Building into the communal hall, where it can be collected. The Applicant is the only leaseholder resident at the Building and there are a number of short term occupants in the other flats, giving the Building a "hostel like" feel. She intimated that letters delivered to the Building could be destroyed or stolen by other residents. She referred the Tribunal to an email to the managing agents, dated 16 September 2009, asking that any recent service charge invoices be sent to her by email or at her business address.

(c) On being questioned by Mr Marchant, the Applicant accepted that she received other correspondence sent to the Flat including letters and statements from her mortgage lender, the Woolwich. The Applicant also stated that at the Flat she had "*50 envelopes not opened*" from the Woolwich. In response to a question from the Tribunal, the Applicant advised that she had not arranged for her post to be redirected to her business address, despite the apparent problems in receiving mail at the Flat.

(d) The Respondent relies on the service charge statements, applications for payment and consultation notices that were included in the joint bundle. Mr Marchant is adamant that these documents were all sent to the Applicant at the Flat and had not been returned in the post. His evidence is that the managing agents have no trace of receiving the Applicant's email of 16 September 2009. Mr Marchant also pointed out that the Applicant had argued that she had not received letters from the Managing Agents at the previous Tribunal hearing but had not pursued this argument. Mr Marchant also referred the Tribunal to documents in the joint bundle, relating to

separate County Court Proceedings that the Applicant had denied receiving. The Respondent's case is that it is inconceivable that the Applicant did not receive any of the demands, letters, notices, statements or Court papers. Mr Marchant also made the point that the Applicant had not responded to emails that have been sent to her by the managing agents.

27.2 31 March 2007 – Excess Service Charge (£329.99)

(a) The Applicant states she did not receive the service charge accounts for the year ended March 2007 or any demand for the end of year excess charge. She argues that she is not liable to pay the excess service charge, as this has not been demanded from her.

(b) The Applicant also relies upon a legal argument advanced in Mr Bates' Advice dated 03 October 2012, namely that the Respondent has not complied with the certificate provisions in the third schedule to her lease. Mr Bates makes two points, firstly the service charge statement is not signed by anyone and secondly that the statement has not been signed by a qualified accountant in accordance with section 21(6) of the 1985 Act.

(e) The Respondent relies on the service charge statement and accompanying application for payment, both of which were dated 23 April 2007. Mr Marchant is adamant that these documents along with all subsequent demands, statements and notices were correctly sent to the Applicant at the Flat.

(f) In relation to the legal argument raised by Mr Bates, the Respondent's case is that the service charge statements included in the joint bundle were not signed as they were file copies. The original statements sent to the Applicant would have been stamped and signed and an example of such a statement was exhibited to the supplemental response. Further the Respondent points out that there is no need for the statements to be signed by a qualified accountant, as there are only 4 flats at the Block. Accordingly section 21(6) of the 1985 Act does not apply.

(g) In her supplemental reply, the Applicant states that she has no personal knowledge of whether the original service charge statements were stamped or signed by the Respondent's managing agents. She also refers to apparent discrepancies between the example statement exhibited to the supplemental Response and the corresponding statement in the joint bundle.

27.3 Year ended March 2008 – Redecoration (£18,312.66) and Management Fee (£3,994.53)

(a) The Applicant denies receiving the section 20 Notices that were included in the bundle. Accordingly she maintains that she should only contribute £250 towards the cost of the redecoration work that was undertaken to the exterior of the Building.

(b) The Applicant also contended that she had been overcharged for the redecoration work and management fee that were included in the service charge accounts for the year ended March 2008. She believed that she had been charged £6,427.44.

(c) It was clear from the service charge accounts that the total sum charged for the redecoration work was £18,312.66 and that the Applicant's 25% contribution to this sum was £4,578.18. The total sum charged for the management fee was £3,994.53 and the Applicant's contribution was £998.63. The figure of £6,427.44 is the end of year balancing charge payable by the Applicant, rather than her contribution to the redecoration work and management fee. The Applicant abandoned this part of her case when the Tribunal pointed this out.

27.4 17 September 2010 – Buildings Insurance (£428.09)

(a) The Applicant's original case was that the insurance charge had been duplicated. She referred the Tribunal to an application for payment dated 28 July 2011 that included a sum of £428.09 for "*Buildings Insurance due 23 Jun 2010*" and £500 for "*Service charge contribution 25 December 2010 to 23 Jun 2011*". The Applicant's argument was that she was being asked to contribute to the insurance twice and that she should only have to pay the £500 charge. It was clear from the application for payment that this item relates to interim service charges rather than an insurance contribution and the Applicant abandoned this part of her case when the Tribunal pointed this out.

27.5 26 January 2011 - Contribution to Internal Repair and Decoration (£2,000.00)

14 September 2011 - Balancing Contribution to Internal Repair and Redecoration (£674.90)

(a) An application for payment dated 28 July 2011 included a sum of £2,000.00 for "*Cont to internal maint & decoration*" dated 26 January 2011. A subsequent application for payment dated 23 May 2012 included a sum of £674.90 for "*Balance of cont-internal Dec & Maint*". Again the Applicant denies receiving the section 20 consultation notices for the proposed redecoration of the internal common parts but in the previous Tribunal case the Applicant withdrew her challenge to the section 20 process (paragraph 22(i) of the decision dated 09 March 2012). Further the works in question have not been undertaken and the sums demanded are advance contributions to the anticipated cost of the proposed work.

(b) The Applicant contends that her advance contribution to the cost of the proposed work should be £1,788, based on a letter from the managing agents dated 27 May 2008. That letter stated that the anticipated cost of the work would be £5,364 including supervision fees. The Applicant is liable to pay 1/3rd (rather than 25%) of the cost of this work, as it falls within clause 4(c) (iii) of the lease.

(c) The Respondent's case is that the agents' letter of 27 May 2008 had been superseded by a quotation received from Plumb U dated 13 September 2011 for a total sum of £5,815 plus VAT (total £6,978). In addition there would be supervision fees of 15% (total £1,046.70), giving a grand total of £8,024.70. The total sum demanded from the Applicant is £2,674.90, which equates to 1/3rd of £8,024.70.

27.6 Cleaning of Common Parts for Years 2005/6, 2006/7, 2007/8, 2008/9, 2009/10, 2010/11 and 2011/12.

(a) The Tribunal explained to the parties that it had no jurisdiction to determine the cleaning charges for the years 2009/10, 2010/11 and 2011/12 as these had been determined in the previous Tribunal case. In relation to the earlier cleaning charges, the Applicant contends that the contract with the cleaner is a qualifying long term agreement for the purposes of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") and that the Respondent had not consulted with the leaseholders before entering into the agreement.

(b) The cleaning is arranged by Mr Gibbs, who is the leaseholder of Flat B at the Building. He has arranged for his cleaner to clean the common-ways and invoices the managing agents for her charges. The Applicant is liable to pay one third of the cleaning charges (rather than 25%), as they fall within clause 4(c) (vi) of the lease. She contends that the cleaning charges are excessive and unreasonable having regard to the limited areas to be cleaned. She referred the Tribunal to the photographs of the internal common-ways produced at the start of the hearing. The cleaning charges levied in each of the relevant years were:

2005/06 - £586.09

2006/07 - £595.80

2007/08 - £631.55

2008/09 - £668.00

The Applicant estimated that the cleaning of the common-ways took 26 hours each year (30 minutes each week) and had calculated that the hourly rate charged is £34.37 (2005/06), £36.44 (2006/07), £38.54 (2007/08) and £38.29 (2008/09). She also points out that the cleaning charges have come down since she first challenged the charges in December 2011.

(c) The Applicant also points out that the invoice for cleaning charges dated May 2011 appears to have been paid on 01 April 2011 and raises concerns over the manner in which the cleaning invoices were generated. On studying the Property Account Summary that was exhibited to the Respondent's statement of case, the Tribunal noticed that sum paid for cleaning expenses on 01 April 2008 was less than the sum invoiced (£543/668).

(d) The Respondent's case is that there is no fixed term agreement with Mr Gibbs, rather there is an ad hoc arrangement and no consultation with the leaseholders was required. Further Mr Marchant's evidence is that the cleaning charges are more than reasonable, having regard to quality of the work and the cost of appointing an alternative cleaner. Mr Marchant could not explain the apparent discrepancy between the date of the May 2011 invoice and the date of payment but pointed out that the cleaning charge for 2011/12 had already been determined in the previous Tribunal case. In relation to the apparent discrepancy between the sum paid and the amount invoiced in April 2008,

this arose because Mr Gibbs had given credit for the rent due to the Respondent (£125).

27.7 Administration Charges

(a) The Applicant disputes the following administration charges that have been added to her service charge account:

05 January 2006 – Payment to Cook & Partners - £344.93

10 May 2006 – Payment to Cook & Partners - £299.63

12 September 2008 – Services Rendered, liaise with sol, g/r - £587.50

27 May 2011 – Administration of service charge arrears - £300

01 December 2011 – Recharge balance of professional charges of Cook - £499.20

(b) The Applicant relies on the legal argument advanced in the Advice from Mr Bates, who points out that the issue was considered in the previous Tribunal case. The Respondent is seeking to recover professional fees charged by her solicitors and the managing agents, pursuant to clause 3(e) of the lease. Copies of the relevant invoices were included in the joint bundle. The issue is whether the fees were incurred for "*the purpose of and incidental to the preparation and service of any notice under the Law of Property Act*". Mr Bates states very forcefully that he cannot understand how these invoices are said to reflect such work. He queries how the Tribunal can be expected to decide if the costs fall within scope of clause 3(e) without sufficient explanation of what these costs relate to.

(c) Mr Bates refers to the apparently conflicting decisions of the Court of Appeal in ***Contracteal Ltd v Davies [2001] EWCA Civ 928*** and ***Freeholders of 69 Marina v Oram [2011] EWCA Civ 1258***. He contends that the ***69 Marina*** case was wrongly decided and is contrary to previous authority. In ***Contracteal*** the Court of Appeal upheld the Circuit Judge's decision that the forfeiture costs clause in the lease did not include costs incurred by the landlord in pursuing proceedings in the County Court. In ***69 Marina*** the Court of Appeal held that costs of proceedings before an LVT, to determine what service charges were payable, were recoverable under a forfeiture costs clause. Mr Bates also makes the point that costs "*of and incidental to*" the service of a notice were very limited and argues that clause 3(e) cannot give rise to a

right to recover legal costs except in the very narrow circumstances it expressly provides for.

(d) The Applicant analysed the administration charges in considerable detail in her supplemental reply and contends that she is not liable to pay any of these charges.

(e) The Respondent also dealt with the administration charges in her supplemental response. She contends that all of the fees charged by her solicitors and the managing agents were incurred in dealing with the Applicant's service charge arrears and were all incidental to the service of a notice under section 146 of the Law of Property Act 1925. In order to serve a section 146 notice it is first necessary for the Applicant to admit the arrears or obtain a determination that the arrears are due.

(f) The Respondent relies on the description of the work given on each of the invoices included in the joint bundle, as evidence that the professional fees are covered by clause 3(e). She also analysed each of the administration charges in her supplemental response. The Respondent was unable to produce any section 146 notices that had been served upon the Applicant but referred the Tribunal to a letter from her solicitors, Cook & Partners, to the managing agents dated 04 October 2011. That letter states that they only served one section 146 notice (on the Applicant) on 30 April 2006. The Respondent also relies on the Limitation Act 1980 and points out that "*the S.146 Notices were served on the Applicant over 6 years prior to the Application*".

(g) The supplemental response also refers to various Court fees paid by the Respondent in July 2005, May 2008 and January 2011. These did not form part of the application. The Tribunal has no jurisdiction to determine the Applicant's liability to pay these fees. It may be that Court has already made orders for costs that cover part or all of these fees.

(h) The Respondent relies on the decision in ***69 Marina*** in support of her claim for administration charges and points out that this should be "*considered the most relevant for the case in hand*". She points out that this appeal was decided more recently than ***Contracteal***.

The Tribunal's decision

28. The Tribunal's determination is set out below:

28.1 Service of Documents

The Tribunal accepts Mr Marchant's evidence that the various service charge accounts, demands, notices and statements had all been sent to the Applicant at the Flat and had not been returned through the post. Given the number of letters involved, it is inconceivable that these would all have been lost in the post or destroyed/stolen from the entrance hall at the Building. The Tribunal determines that all of these documents were validly served. It was clear from the Applicant's evidence that she does not open all of her post and it is entirely possible that she did not open some or all of the envelopes in question. It is also notable that she criticised the management agents for failing to send documents to her business address, yet she receives other important correspondence (including her mortgage statements) at the Flat and has not arranged for her mail to be redirected.

28.2 31 March 2007 – Excess Service Charge (£329.99)

The Tribunal determines that the Applicant is liable to pay the excess charge of £329.99 in full.

Reason – The Tribunal determines that the service charge statement and application for payment were validly served. The Tribunal accepts Mr Marchants evidence that the original service charge statements were stamped and signed. It follows that the statements comply with the requirements of paragraph (5) (iv) of third schedule to the lease. Section 21(6) of the 1985 Act does not apply to the service charge statements, as there are only four flats at the Building.

28.3 Year ended March 2008 – Redecoration (£18,312.66) and Management Fee (£3,994.53)

The Tribunal determines that the Applicant is liable to pay 25% of these expenses, in full, namely:

Redecoration - £4,578.17

Management Fees - £998.63

Reason – The Tribunal determines that the section 20 Notices were validly served. It follows that the statutory cap does not apply. Originally the Applicant also sought to argue that she had been overcharged for these expenses but she withdrew this argument during the course of the hearing. She did not put forward any other grounds for disputing these expenses.

28.4 17 September 2010 – Buildings Insurance (£428.09)

The Tribunal determines that the Applicant is liable the buildings insurance contribution of £428.09 in full.

Reason – Originally the Applicant contended that she had been double charged for this expense but she withdrew this argument during the course of the hearing. She did not put forward any other grounds for disputing this expense.

28.5 26 January 2011 - Contribution to Internal Repair and Decoration (£2,000.00)

14 September 2011 - Balancing Contribution to Internal Repair and Redecoration (£674.90)

The Tribunal determines that the Applicant is liable to pay these expenses in full.

Reason – The Tribunal determines that the section 20 Notices were validly served but this is academic, as the sums demanded are advance contributions to the anticipated cost of redecorating the internal common parts and this work has not yet been undertaken. Further section 20 Notices will need to be served before the Respondent embarks upon this work. The total sum demanded (£2,674.90) is reasonable, having regard to the quotation from Plumb U, dated 13 September 2011.

28.6 Cleaning of Common Parts for Years 2005/6, 2006/7, 2007/8 and 2008/9

The Tribunal determines that the Applicant is liable to pay the following contributions;

2005/06 - £195.36

2006/07 - £198.60

2007/08 - £210.52

2008/09 - £222.67

Reason – The Tribunal accepts Mr Marchant's evidence that the agreement between the Respondent and Mr Gibbs is an ad hoc arrangement and is not a qualifying long term agreement. In each year the cleaning charges equate to just over £10 per week. Based on its own knowledge and expertise, the Tribunal considers that these charges are more than reasonable. There was no explanation for the apparent discrepancy between the date of the May 2011 invoice and the date of payment but the Tribunal has no jurisdiction to determine the 2011/12 cleaning charges, as these were determined in the previous Tribunal application. The Tribunal accepts Mr Marchant's explanation of the apparent discrepancy between the sum paid to Mr Gibbs and the amount invoiced for cleaning charges in April 2008.

28.7 Administration Charges

The Tribunal determines that the Applicant is liable to pay the following administration charges that have been paid by the Respondent:

05 January 2006 –£344.93

10 May 2006 –£299.63

12 September 2008 – £0

27 May 2011 – £0

01 December 2011 – £0

Reason – The Tribunal readily accepts Mr Bates' point that they cannot decide if the costs claimed by the Respondent fall within scope of clause 3(e) of the lease, without sufficient explanation of what these costs relate to. It follows that the onus is on the Respondent to establish that in each case the fees are covered by clause 3(e).

The Tribunal is bound by the Court of Appeal's decision in ***69 Marina***, which is more recent than the decision in ***Contracteal***. The Respondent can recover professional fees that it has incurred in seeking to recover service charge arrears from the Applicant but only to the extent that these fees were incurred *"for the purpose of and incidental to the preparation and service of any notice under the Law of Property Act 1925"*. This extends to letters of claim and proceedings before the Courts or the Tribunal, where these proceedings were pursued by the Respondent with a view to subsequently preparing and serving a Law of Property Act Notice.

It would not cover the defence of Court/Tribunal Proceedings initiated by the Applicant. It is clear that the invoices raised by Cook & Partners on 19 December 2005 and 05 May 2006 relate to the section 146 Notice served on the Applicant on 30 April 2006, both from the face of the invoices and their letter of 04 October 2011. The billing guide that accompanied the invoice dated 05 May 2006, shows that the notice was personally served at the Flat. The December 2005 and May 2006 charges are allowed in full.

The £587.50 payment made on 12 September 2008 relates to the managing agents' invoice of the same date. This makes no mention of any Law of Property Act notice or intention to serve such a notice. It does refer to "*obtaining Judgement* (sic) *Order*" but the Court Proceedings were pursued by the Respondent's solicitors, rather than the managing agents. It appears that the invoice cover the agents fees for corresponding with the solicitors. The Judgment in question was obtained on 28 August 2008 and was subsequently set aside. The Claim Form and Particulars of Claim that gave rise to the Judgment make no mention of any intention to issue serve a notice or clause 3(e) of the lease. It follows that this charge is disallowed.

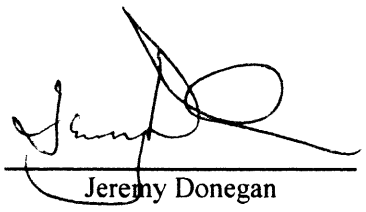
No invoice has been produced in respect of the £300 payment made on 27 May 2011. Included in the joint bundle was an invoice for £250 plus VAT (total £300) dated 01 June 2011 but no supporting billing guide. There is also an internal memorandum from the managing agents, dated 11 July 2012, requesting a payment of £300 payment for "*Cook & Partners re s146 proceedings*", which might relate to the invoice dated 01 June 2011. The Tribunal have not been supplied with any details of the work that gave rise to the invoice and note that the memorandum post-dates the payment by over 13 months. This charge is also disallowed.

The £499.20 payment made on 01 December 2011 relates to Cook & Partners' invoice dated 15 November 2011. The invoice and supporting billing guide make no mention of any Law of Property Act Notice or intention to serve such a Notice. Indeed the billing guide gives no indication of the nature of the work undertaken. This charge is also disallowed.

Section 20C/Refund of Fees

29. The Applicant applied for an order under section 20C of the 1985 Act. She also 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 to the Tribunal, totalling £350. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal declines both applications. It is not just and equitable to make a section

20C Order or to make an Order for the refund of the Tribunal fees, given that the Applicant has been largely unsuccessful in these proceedings. The disputed service charges have been allowed in full. The Tribunal has disallowed some of the administration charges but overall the Respondent has been far more successful than the Applicant. By this we mean that the number of and amount of disputed charges allowed were far greater than those disallowed. Further the bulk of the hearing was spent considering the service charges and there was no formal, written application to determine the administration charges. In coming to their decision, the Tribunal bear in mind that many of the points taken by the Applicant were misconceived and were abandoned at the hearing. Unfortunately it appears that she has misunderstood many of the service charge documents served upon her. The Applicant is urged to seek professional advice before embarking upon any further litigation concerning her service charges.

Chairman: 

Jeremy Donegan

Date: 14 January 2013

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 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.

Commonhold and Leasehold Reform Act 2002

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.