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Case Reference	:	MAN/00BN/LSC/2012/0094
Property	:	407, Red Building, Ludgate Hill, Manchester M4 4BW
Applicant	:	Freehold Portfolios GB Limited
Representative	:	Mr Ben Jordan (managing Director of Premier Estates Limited), Mr David Arthan and Mr Patrick Ward
Respondent	:	Miss Amanda Breakell
Representative	:	Miss Susan Mansfield of Counsel
Type of Application	:	Under Section 27A of the Landlord and Tenant Act 1985
Tribunal Members	:	Mr P. W. J. Millward LLB (Chairman) Mrs A Franks FRICS
Date and venue of Hearing	:	19th April and 2nd May 2013 at 5 New York Street, Manchester M1 4JB
Date of Decision	:	2nd May 2013

DECISION

The Application

1. By the Application the Applicant seeks to recover unpaid service charges from the Respondent relating to the Property. An Order for Directions (the Directions) was made by a Chairman of the Leasehold Valuation Tribunal on 20 December 2012 and sent to the parties on that date.

2. Pursuant to the Directions both parties provided Statements of Case with supporting documentation to enable the Tribunal to proceed to a determination under section 27A of the Landlord and Tenant Act 1985 (the Act), as to the payability of the service charge in respect of the Property.

3. The Application relates to demands for service charges in respect of the years commencing 1 January 2007, 2008, 2009, 2010 and 2011 and ending on 31 December 2007, 2008, 2009, 2010 and 2011 respectively. The total service charge outstanding is in the sum of £5,819.66 including administration fees but excluding any interest which may be deemed payable.

The Lease

4. The Respondent is the lessee of the Property under a lease dated 23 December 2005. The Lease is made between Ludgate Hill Developments Limited (1) Dylan Harvey Limited (2) and the Respondent (3) for a term of 250 years from the date thereof (the Lease).

5. Under the Lease management of the Property (together with all other flats in the same development) is to be undertaken by the Lessor.

6. The lessor assigned its interest in the Property and the present freeholder is the Applicant. The Applicant has appointed Premier Estates Limited (PE) to manage the Property on its behalf, as did all previous freeholders.

7. By clause 2 in part 1 of the 8th schedule of the Lease the Respondent covenant to contribute and pay "the lessee's proportion".

8. "The lessee's proportion" is defined in the Particulars on page 2 of the Lease as "a due proportion of the Maintenance Expenses payable by the Lessee in accordance with the provisions of schedule 7".

9. Schedule 7 sets out the manner in which "the Lessee's Proportion" is to be calculated and paid. In particular clause 5.1 thereof states that the Lessee shall pay to the Lessor the Lessee's Proportion in advance on the 1st January and 1st July in each year and clause 5.2 states that within 21 days of service of a "certificate" in accordance with clause 4 of that schedule for the period in question the Lessee shall pay the balance by which the Lessee's Proportion paid pursuant to clause 5.1 thereof.

10. The "certificate" is to be prepared by the Lessor's Accountants pursuant to preparation of the Maintenance Expenses Accounts at the end of each financial year.

The Law

11. Section 18 of the Landlord and Tenant Act 1985 (the 1985 Act) provides:

(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 provides that

(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 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.

Section 27A provides that

(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 date at or by which it is payable, and

(d) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) ....

(4) No application under subsection (1)...may be made in respect of a

matter which –

(a) has been agreed by the tenant.....

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

The Inspection

12. The Leasehold Valuation Tribunal (the Tribunal) inspect the Property externally and the common areas of the block in which the Property is situated on the 19 April 2013 in the presence of the Applicant's representatives Mr David Arthan and Mr Patrick Ward and of the Respondent and her Counsel, Miss Susan Mansfield.

13. The Property is a fourth floor flat situated in a purpose built block of similar flats. The block of flats is 5 storeys high. There are a main entrance and a disable access leading from the roadway in to an enclosed atrium/courtyard. The main entrance has been problematical as it appears to give easy access to non-residents From the courtyard there are 4 doors into the block of flats. All doors are lockable, but there is no entry system. There are 2 lifts – one at each end of the block. There is also a car park under the block – this has 2 access doors, both of which have photocells on automatic doors. The photocells have been vandalised in the past but were both working at the time of the inspection. There is no lawn in the atrium, but there are potted plants. The internal corridors are carpeted and in good condition. There are number of wall heater in the corridors. There has been a condensation problem in the past which has been rectified, but the damaged area has not yet been replastered. At the top there is a "mezzanine" floor where vagrants have been found sheltering in the past.

The Submissions of the Parties

14. The Applicant's statement includes (inter alia) the following:-

14.1 PE was appointed Managing Agent of the development on 22 December 2005 by the then freeholder Ludgate Hill Developments Limited and subsequently by Freehold Portfolios GB Limited, the current freeholder, on 6 August 2008.

14.2 full details of the relevant clauses in the Lease

14.3 full details of the services carried out

14.4 full details of the management charges

14.5 details of correspondence and discussions between PE and the Respondent

14.6 copies of receipts and invoices for supplies and work done and

14.7 many other submissions which will be dealt with later under the heading "Hearing" as many were repeated at that time

14.8 the Applicant also filed a response to the Respondent's statement which will also be dealt with later

15. The Respondent's statement includes (inter alia) the following:-

15.1 Dylan Harvey were never freeholders of the development. They were merely the original buyers of the individual flats (off plan) and then sold them on to private investors

15.2 that there had been no contract between the Applicant and previous freeholders to acquire previous debts and accordingly they have no right to collect outstanding service charges which arose before August 2008. The said service charge accounts are unenforceable until the information required by sections 47 & 48 of the 1985 Act is included. Only invoices numbered 274570 or later are correctly drawn

15.3 PE failed to carry out remedial work to security systems at the appropriate time which led to unnecessary and high maintenance charges

15.4 PE have been taken to tribunals by owners of flats in other nearby developments as they provide a poor and inadequate service

15.5 expenditure on repairs and maintenance have increased exponentially between 2006 and 2011 and estimates of other anticipated expenditure was often very inaccurate. Window cleaning was excessive and has recently been reduced from every month to every two months

15.6 repairs to the front door to the development (problematical since 2007) have exceeded £29,000, the majority of which have been unreasonably incurred

15.7 lift repairs should be covered by warranty or the repair/maintenance contract referred to in the service charge accounts

15.8 management fees started as £165 per unit per annum, but have increased from a total of £11,327 in 2007 to £16,207 in 2012

15.9 the Respondent has a counter claim against the Applicant due to the failures of PE. Poor maintenance led to sub-tenants leaving and difficulty in reletting the Property. Full details of the alleged loss were set out by the Respondent and

15.10 many other submissions which will be dealt with later under the heading "Hearing" as many were repeated at that time

The Hearing

16. The hearing commenced on 19 April and concluded after an adjournment on 2 May 2013.

17. Both parties attended. The Applicant was represented by Mr Ben Jordan (managing Director of PE), Mr David Arthan and Mr Patrick Ward. The Respondent was represented by Miss Susan Mansfield of Counsel. The Tribunal was grateful for the information of all parties present.

18. The Applicants evidence was, in the main, provided by Mr Jordan. It may be summarised as follows:-

18.1 The Respondent bought her flat at the end of 2005 when the market was good.

18.2 There are 77 apartments all of which were sold to Dylan Harvey. All were

sub-let. The Respondent bought from Dylan Thomas and at that time says that she was advised that a rental of £900 per calendar month (pcm) could be achieved. She has achieved a lower income and has withheld the service charge throughout the period of her ownership.

18.3 Under clause 5.2 of the Lease the Respondent has waived her right to receive services as the lessor's obligation is dependant on receipt of the service charge.

18.4 These proceedings have been commenced as a last resort. There has been significant correspondence between PE and the Respondent and the proceeding were brought only when it became clear that the Respondent's breach of covenant would not be rectified and that she had no intention of paying the service charges.

18.5 The Respondent's reasons for non-payment have changed. Firstly she said that it was as a result of poor security. This no reason to withhold payment. Secondly she has raised a technicality in relation to the service charge demands in that they did not comply with section 47 of the 1985 Act. The errors in the demands have now been rectified but still the Respondent has failed to pay the outstanding sums. The technicality has been used only as an excuse. Thirdly she has said that she never signed the Lease.

18.6 At present the arrears are in the total sum of £5,819.66 plus interest of £990.87 making a total of £6,810.53. The Applicant assesses the Respondent's income from letting the Property to be in the region of £50,000. She bought the Property as an investment and owns it as a business.

18.7 In relation to the security issues it is admitted that these have existed, but the Applicant disputes who is responsible for them. PE is responsible for 6 buildings in M4, including next door. All 6 have security measures in place but all still suffer from undesirables. This must be expected in the area. The Applicant did not design the building or the security measures. Whatever damage is inflicted PE have rectified. Previous decisions in this regard have been questioned, but PE believes the actions were reasonable. Some access is by "tailgating" and remedial actions in relation to the door were not responsible. More expenditure is required but the Respondent has paid no service charges. The Respondent pays only 1% of the total service charge but in a smaller development PE would have had to withdraw services. Clauses 4.1, 5.1 and 5.2 and clause 2 in Schedule 8 of the Lease put an obligation upon the Respondent to pay the service charges. This obligation is absolute.

18.8 The Respondent has had legal training. She bought the Property as a business and has received a lower income due to unrealistic expectations. Meetings have taken place to discuss matters and all receipts have been produced.

18.9 To summarise, security was not of the Applicant's making, all information required is on the invoices. The Respondent's case is groundless. She has even extended the case and thereby caused further delay.

19. On cross-examination by Counsel, the Applicant stated as follows:-

19.1 Counsel asked how demands could be issued by the freeholder for a period before ownership in reply to which it was stated that the failure to comply with s.47 of the 1985 Act can be rectified and the money then becomes payable. The Applicant agreed that interest could only be claimed for a period after the monies became due and payable.

19.2 The Applicant also agreed that security and abatement of nuisance was the responsibility of the freeholder as these fall within the term "maintenance".

19.3 Counsel then referred to paragraph 16 of the Applicant's response relating to cleaning and caretaking. The Applicant stressed that the sum of £2,830 in 2006 related to only part of a year and that in 2012 cleaning changed. Before then caretaking and cleaning had been one item in the accounts. Cleaning is re-tendered every 2 years. The Applicant confirmed that cleaning had always been 3 hours per day, 5 days a week and that carpet cleaning in 2013 will be a separate item. PE had no history on which to base an estimate in 2006.

19.4 The Applicant confirmed that until the building was finalised in March 2006 some services were carried out by the developer, and therefore in the first year only half of the budgeted cost was actually spent.

19.5 In reply to questions about the window cleaning (para 19 of the Response), the Applicant confirmed that window cleaning had been reduced to every 2 months prior to the meeting. It could not be reduced earlier because other buildings being erected in the area which caused dust. The Applicant reassesses requirements on a regular basis. Reassessment takes place after every visit. This is an on-going process and there is no specific code. The Applicant had never said cleaning would be every quarter. It was and still is every 2 months. Realistically it should be every month using a reach and wash system and it will be reviewed again. There have been no other complaints. Counsel alleged that the cleaning could have been reduced earlier as there was no nearby construction after 2006/7.

19.6 In relation to Repairs and Maintenance, Counsel said there had been a big increase over the years to which the Applicant stated that there had been big improvements including the installation of CCTV and replacement of locks. The big increase in 2011 was as a result of cyclical repairs. Plant and machinery are serviced in accordance with statutory requirement and repairs carried out as necessary. Some gate repairs may have been as a result of vandalism. This is unlikely in relation to the voice unit. It is untrue that repairs to the doors have amounted to £29,000 since 2007. Some of the figures quoted by the Respondent relate to other matters. The net figure is about £2,900 per annum which is normal. PE does not undertake work which is unnecessary and there are many areas of dispute as to the reasons why expenditure has become necessary.

19.7 In relation to questions about lift repairs and maintenance, the Applicant was asked what was covered by the service contracts and stated in reply that they provided an inspection/ service every 2 months, but that it did not cover repairs. Such contracts are standard practice and the average

cost of £1,600 per annum per lift was low. The Applicant did not know who had called the contractor.

19.8 In reply to questions about management charges the Applicant stated that current charges were in the sum of £181.26 plus vat per apartment and that the additional 10% was levied only on large expenditure, not on current expenditure. The retail unit is included and pays a share of the expenditure.

19.9 In relation to the Respondent's alleged counterclaim and right of set-off, the Applicant stated that the Respondent could not pursue a counterclaim until she had paid the service charges. The Applicant referred to section 5.2 and paragraph 6 of schedule 9 of the Lease and said the Applicant had never attempted to withhold services as only the Respondent has failed to pay.

20. The Respondent's evidence was as follows:-

20.1 The Respondent withdrew her suggestion that she had not signed the Lease and that as a result the Lease was not binding upon her.

20.2 There were 4 points to put forward:-

20.2.1 The current freeholder has not said why it can reclaim the service charges due to the previous freeholder. The Applicant had provided no evidence of the present freeholder buying the book debts of the previous freeholder. Any purported evidence was insufficient.

20.2.2 The Applicant has addressed the question of interest by reducing the claim to the period after amended invoices had been served. In relation to the schedule of arrears provided invoices 0118, 6527 and 30157 are not payable. The purchase of the freehold by the Applicant was completed on 10 January 2008 and these invoices are all relating to the period prior to that date.

20.2.3 The Respondent will suggest that the service charges are not reasonable and

20.2.4 The Respondent has an equitable set-off. The Applicant's position that the Respondent has no right of set-off unless she has paid the service charges is incorrect and the Tribunal was referred to the case of Yorkbrook Investments Ltd -v- Batten (1985) 2 EGLR 100, the decision supporting the Respondent. Furthermore the Applicant has obligations under paragraphs 8 and 22 of schedule 6 of the Lease. There was significant evidence of vagrants accessing the building and CCTV shoul have been installed earlier than it was. The Applicant also has responsibilities to manage and maintain the building under paragraphs 16 and 18 of the same schedule.

20.3 The Respondent is not legally qualified as alleged by the Applicant. Nor is she a professional landlord. She has merely dipped her feet into the water.

20.4 The Tribunal was also referred to the case of Forcelux Ltd -v- Sweetman and another (2001 2 EGLR 173 which also supports the Respondent's position – expenses must be reasonably incurred.

21. The Tribunal then adjourned until 10.00am on 2 May 2013

22. When the Tribunal reconvened the Respondent confirmed that she had completed her evidence.

23. The Applicant asked the Tribunal for permission to enter an additional document. This was a Deed of Assignment of Arrears of the service charges dated 29 April 2013 and made between Cook Properties Ltd (1) and the Applicant (2). The Respondent said that the document was not sufficient to enable the Applicant to claim arrears due to the previous freeholder as the cause of action must have arisen prior to commencement of proceedings. The Applicant was seeking to take advantage of the adjournment to acquire the right by entering into a new deed. As such the Applicant ought not to be allowed to introduce the document. The Respondent asked the Tribunal to ignore the deed. Alternatively the Tribunal was asked to allow the deed to be admitted as evidence but accept that it is an unreasonable way of dealing with litigation and to award the Respondent costs to the maximum permitted of £500.00. The Respondent stated that she preferred the second option as if the first was accepted then the Applicant would merely start the proceedings again. The Applicant then stated that under the Landlord and Tenants Covenants Act it could apply for forfeiture of the Lease and that whether or not the deed exists merely affects the way the Applicant will pursue the Respondent for the arrears. The Respondent replied that under section 47 of the 1985 Act the monies had not fallen due and therefore there was no breach at this time.

24. The Applicant then commenced cross-examination of the Respondent. No new evidence emerged as a result of cross-examination although the following points were clarified:-

24.1 The Forcelux case says expenses must be reasonably incurred. The Respondent suggested that the freeholder's actions must be appropriate and market normal. The Applicant must pass both tests to which the Applicant responded by suggesting that the actions do not have to be the most appropriate but must be reasonable at the time decisions are made.

24.2 Security cameras were installed in 2008 but patrols were only recently introduced. Patrols have not stopped vandalism, and the front entrance door was off its hinges in March 2013, although the Respondent suggested that vandalism had substantially reduced following the installation of cameras. The Applicant confirmed that patrols cost £6,000 per annum and the CCTV cost £3,000. The Applicant is probably spending more now than before security was improved.

24.3 The Respondent confirmed that the Property was first let in March 2006 at a rental of £675 per month. Her counterclaim is based on that figure. She is now getting £750 per month. Her mortgage repayment is £673 per month. The Applicant suggested that a Judge should quantify the Respondent's claim as the figures are unproven. The Respondent confirmed that the Tribunal would decide the value of the claim.

25. The parties then made closing statements.

26. The Respondent confirmed:-
    26.1 The claim has been reduced to £5,890.43 including £70.77 interest.
    26.2 The first 4 heads of claim should not be allowed as they are not due to the Applicant, but to previous freeholders. By omitting these heads the claim would be further reduced to £4,532.87 plus interest of £62.03 – a total of £4,594.90.
    26.3 Some expenses have not been reasonably incurred. These are window cleaning, repairs and maintenance and management fees. Window cleaning has been halved. There is no evidence that expenditure was looked at before Mr Arthan was appointed in February 2012.
    26.4 In relation to repairs and maintenance the test under the Forcelux case is whether the most appropriate steps taken. Expenditure has dropped substantially since additional security measures were introduced. The overspend as a result of delayed action is £26,760.24. The Respondent wanted new keypads on doors in March 2007. A tramp was living on level 5 in October 2007. There was no response and new keypads were not introduced until September 2009. The Applicants take too long to respond to complaints.
    26.5 in relation to management fees, the services have not been of a reasonable standard. The communal areas were in poor condition. Cleaning was not adequately managed. The Respondent referred the Tribunal to a number of estimates and invoices in that regard and stated that the courtyard is important but no money spent on it until September 2009. Furthermore glass in doors which had been smashed was not replaced even after 4 months.
    26.6 In relation to the Respondent's counterclaim/set-off she confirmed that she had lost a tenant who had left because of the condition of the building and the fact that the lift broke down. She had pursued the tenant for the outstanding rent and had obtained judgment and a charging order, but had been unable to enforce the same. No explanation was given as to why not. The Tribunal was referred to the schedule of the Respondent's alleged losses. Although the Respondent takes a month's rent as a bond she only retained the bond in relation to the first tenant as all others had left as a direct result of the condition of the building and the tenants did not receive what they had contracted to receive. Asking rents had to be reduced. This was recommended by the letting agents.
    26.7 The Respondent has only been able to give a flavour of what has been going on. She has had a stressful experience.

27. In summing up the Applicant confirmed evidence given previously given and also stated that:-
    27.1 Caretaking expenses included the care of the courtyard. There had been no invoices prior to 2009 as there were only potted plants and hard standing.
    27.2 Emergency cover for the lift was always in place. It was originally provided by PE but after 2009 it was passed to an external service. There had been

problems with the emergency line in that BT sometimes disconnected it due to non-use.

27.3 The Applicant has made reasonable decisions at reasonable times. The building has had problems – there is no indemnity against problems, but they have been put right when they arose. Tramps were ejected only last night. The area is not the most salubrious and damage will occure.

27.4 The Respondent has made no payments whatsoever. Pre-payment is a requirement if services are to be provided. The Respondent's investment has gone wrong. All business transactions carry risk. In proceedings against the first tenant the Judge found for the Respondent and so must have decided that the tenant had no right to leave.

The Tribunal's Determination

28. The Tribunal considered very carefully the written submissions of the parties, the evidence given at the hearing and the documents provided.

29. The issues to be determined by the Tribunal are:-

29.1.1. is the demand for the service charge valid and if so

29.1.2. to what extent is the demand reasonable and if so

29.1.3. to what extent (if any) the Respondent should pay towards the same

29.2 has the Respondent have a counterclaim against the Applicant and if so the value thereof

29.3. whether the Respondent must pay interest as a result of late payment in accordance with the terms of the Lease.

30. Evidence has been provided to the Tribunal to suggest that the service charge demands are invalid. There is an argument that the demands issued on 23 November 2006, 1 January 2007, 1 July 2007 and 1 January 2008 are not payable as the Landlord's name and address on both the original demands and the re-issued demands is incorrect. Between the first hearing date and the adjourned hearing date the Applicant obtained and produced to the Tribunal a Deed of Assignment of Arrears dated 29 April 2013 and made between Cook Properties Limited (1) and Freehold Portfolios GB Limited (2) which would allow the Applicant to recover arrears on behalf of the former freeholder. The Respondent has suggested that this document is invalid in the present proceedings as the right to recover the arrears which arose before the transfer of the freehold must have arisen prior to commencement of the proceedings.

31. If the Tribunal agreed with the Respondent's submission, then the Applicant would have to recommence proceedings in relation to those arrears, thereby incurring additional expense on its own behalf and on behalf of the Respondent. As there is no doubt in the mind of the Tribunal that such proceedings would succeed, the Tribunal took the pragmatic and expedient approach and determined to admit the said invoices.

32. In relation to the reasonableness of the demands the Tribunal has been

referred by the Respondent to four elements of the service charge – the cost of window cleaning, the cost of repairs and maintenance, the condition of the internal courtyard and the management fees.

33. Dealing firstly with the cost of window cleaning, the Respondent pointed out that the Applicant had recently decided to reduce the cleaning of windows to once every two months instead of once every month, suggesting that this decision meant that the Applicant was in fact admitting that previously the cleaning had been excessive and therefore unreasonable. However the Tribunal did not agree with this submission, finding that it was reasonable to clean windows every month. This expenditure has therefore been reasonably incurred.

34. Dealing secondly with the repairs and maintenance element of the service charge, the Respondent is particularly concerned with repairs to external security doors arising as a result of vandalism which she says could have been reduced by installing the additional security measures at an earlier date. The additional security measures included installation of CCTV in September 2008 and new door keypads in September 2009. The service charge accounts show quite clearly that total expenditure on repairs and maintenance have continued to rise after the additional security was installed. The total figures for 2007,2008,2009, 2010 and 2011 are £9,268, £8,912, £9,997, £11,925 and £15,239 respectively, although the expenditure on "doors and security" according to the Respondent has reduced in 2010 (from £4,374 in 2009 to £2,101 in 2010 and then to only £272 in 2011). The Tribunal could not corroborate the Respondent's figure of £272 for 2011. Indeed the accounts seemed to show that the actual figure was substantially higher. Furthermore the Respondent had said that the "overspend" on doors and security prior to 2010 was over £26,000. This figure is clearly exaggerated and the Applicant confirmed that many of the invoices referred to by the Respondent related to other matters.

35. It is costly to manage or prevent access to buildings by third parties. The Applicant suggested that non-residents obtained access by either "tailgating" residents when they accessed the premises or by being admitted, albeit possibly inadvertently, by residents themselves. The only foolproof method is to employ a concierge and/or 24 hour patrols. This is labour intensive and very expensive. The Applicant's managing agents (PE) have clearly made substantial efforts to minimise access by the installation of CCTV and new locks and there is little evidence that if such work had been undertaken at an earlier date, expenditure would have been reduced. Security is a problem inherent to the area in which the building is situated. The Applicant had attempted to deal with the problem by choosing the cheaper alternative method. The Tribunal considered this to be a reasonable course of action.

36. Furthermore the Applicant has stated that the local police are involved from time to time in moving on homeless people from the area which may explain

the reduction in expenditure on door repairs in 2010 and 2011. The parties both agreed that a vagrant had had to be removed from the premises in the few days prior to the hearing, and that major repairs had been required to one of the doors only recently. The extra security has not therefore completely eradicated the problem, but may well have alleviated it.

37. The Tribunal then considered the Respondent's allegation that little had been done to tidy up the internal courtyard in the earlier years. The Applicant has stated that the caretaker looks after the area, which comprises a hard surface and potted plants, which in turn explained the lack of specific expenditure in this regard. The Tribunal found this to be reasonable.

38. Finally with regard to expenditure, the Tribunal considered the management fees. Initially these were in the sum of £165 plus vat per apartment, and have since risen in line with inflation. The Tribunal considered these charges to be reasonable.

39. The Tribunal therefore determined that the service charges of £5,819.66 were payable in full by the Respondent.

40. Lastly, in relation to service charge expenditure, the Tribunal considered the question of interest and whether the Respondent should pay interest as a result of late payment. The Tribunal determined that the Respondent should not have to pay the interest claimed in the sum of £70.77 even though she has made no effort to pay even a small proportion of the outstanding charges. The Applicant had delayed in dealing with complaints and demands were incorrect and unenforceable until errors therein had been rectified, although interest may be charged in the future if monies remain outstanding for much longer.

41. The Tribunal then considered the Respondent's counterclaim. The Lease is silent as to set-off (ie the Respondent's ability to deduct from payments due to the Applicant any money which the Applicant owes to her). Accordingly the Respondent may deduct any such sums from the service charges due from her.

42. The Applicant made much of the clause in the Lease which states that its obligation to provide the services is dependent on first receiving payment of the service charge and has suggested that as a result the Respondent cannot make any deduction from the payments due. However this is probably irrelevant in this case as the services have been provided by the Applicant in any event. The Tribunal determined that the Respondent had a right of set-off and accordingly the Tribunal must determine the value of the Respondent's counterclaim (if any). The claim arises out of the Respondent's alleged inability to let the Property at market rent due to the condition of the common areas, the fact that the lift failed to work properly on a regular basis and lack of adequate security. The Respondent had received a valuation of the Property at the time of her purchase suggesting that a monthly rent of £900 was

achievable, but based her claim on a reduced rental value of £675 per month. The Respondent provided a schedule of her alleged claim which reads as follows:-

42.1 loss incurred in August and September 2006 amounting to £1,569.50. The Respondent obtained judgment against the tenant for this loss but if the tenant's complaints were correct then the management services were indeed unsatisfactory. The Tribunal determined that a realistic sum in relation to this part of the counterclaim would be £500.00

42.2 Part 2 of the counterclaim arises as the Respondent alleges that she was unable to let the Property as a result of the ongoing problems with the lifts and the communal areas being unkempt. It was not explained to the Tribunal whether one or both of the lifts were not working. Although it may have been difficult to re-let the Property in this period in any event, the building works were still going on and the managing agents would have had little control over the building. The Tribunal determined to allow £350.00 under this head.

42.3 The same arguments relate to part 3 of the counterclaim and the Tribunal again determined to allow the sum of £350.00.

42.4 In relation to items 4,5 and 6 the Tribunal did not consider that the Respondent had adequately proved her loss. Property to let is often unoccupied for a month or so after a tenant leaves and a lower rent is sometimes accepted merely to ensure that the property is occupied as soon as possible. The Tribunal determined to disallow these claims.

42.5 Similarly item 7 is disallowed.

42.6 In relation to item 8, the Respondent gave no evidence as to why the tenant left the Property before the end of the contractual tenancy. The Tribunal therefore determined to disallow this part of the Respondent's claim.

42.7 Accordingly the total set-off is allowed in the sum of £1,200.

43. The total payable by the Respondent is therefore in the sum of £4,619.66, calculated by deducting the said sum of £1,200 from the outstanding service charges of £5,819.66.

Costs

44. Both parties applied for costs in the maximum sum allowed. However both have been partially successful and accordingly the Tribunal determined to make no order as to costs in favour of either party.

45. The Respondent also requested that the Tribunal make an order under s.20(C) of the 1985 Act. As the Respondent has made no payments whatsoever in relation to the service charges the Tribunal felt that the Applicant had no option but to bring these proceedings and accordingly that it would be unfair to make the order requested by the Respondent. The Tribunal determined to make no order under s.20 (C).