2. The Tribunal finds that in the service charge year ending the 30th June 2006 the sum for repairs and maintenance of £156.86 is excessive and this should be reduced to £125.53. Otherwise the charges that were in dispute are reasonable

3. The Tribunal finds that the sums required on account in the service charge year ending the 30th June 2007 with regard to the management fee of £176.25 and repairs and maintenance of £150.00 are reasonable and should be paid immediately.

4. The Tribunal makes no order pursuant to Section 20C of the Act but does limit the amount of fees to be added to the service charge of the Applicant to a sum of £97.92.

REASONS

Introduction

5. In her application the Applicant asked the Tribunal to consider the reasonableness of service charges as follows:-

   (a) In the service charge year ending the 30th June 2005 the management fee of £146.87, repairs and maintenance of £87.42 and refuse collection of £35.25

   (b) In the service charge year ending the 30th June 2006 the management fee of £176.25 and repairs and maintenance of £156.86.

   (c) In the service charge year ending the 30th June 2007 the estimated on account payments of a management fee of £176.25 and repairs and maintenance of £150.00

The Inspection

6. The Tribunal inspected the Property in the presence of the Applicant. It is a one bedroomed first floor flat in a converted terraced house

originally built either early in the last century or in the late 1800's. There is a block of six flats in the same terrace three on the ground floor and three on the first floor. The block appears to have been brick built and then rendered with a later tiled roof to the main structure and some flat roof areas. The inside of the flat is in good order but the outside repair and decoration is only fair. The Tribunal inspected communal areas. At the rear there is a concrete area that provides car parking spaces and clothes drying facilities. This is surrounded by three fences two of which have been recently erected by the tenants in the block. The third fence was erected sometime ago by the Respondent and is not in such good condition. There do not appear to be any communal areas at the front of the block. When looking at the main roof the Tribunal observed a multitude of aerials which indicate that each tenant of the block has their own aerial and there is no communal facility. The Tribunal were also able to inspect the flat roof referred to in the application which could be viewed easily from the balcony leading to the first floor flats. Mr Marshall a chartered surveyor and a member of the Tribunal considered that there was evidence of a leaking downpipe onto the flat roof and also there was evidence of ponding in the middle of the roof indicative that it had been laid and then repaired without providing for the appropriate levels.

The Lease

7. The Applicant provided the Tribunal with a photocopy of the Lease of the 12th February 1988 which is for a term of 99 years as from the 1st January 1987. The Tribunal were not able to fully interpret the Lease because a full copy of the plan with all of its colourings could not be provided.

8. The Lease is fairly normal for this type of development and includes standard clauses amongst whch is the normal lessor's covenant to provide facilities by way of a service charge and the lessee then contributing. The Tribunal in particular noted the provisions of the Sixth

Schedule concerning the purposes for or towards which the maintenance fund is to be applied and the obligations of the lessor. Clause 7 provides for the paying of the fees of any managing agents employed by the lessor.

9. The Tribunal noted clause 6 of the Sixth Schedule which covers all costs and expenses in the running and the management of the building and the collection of rents and maintenance contributions. Because of these provisions the Tribunal considered that the Respondent could under the terms of the lease recover costs incurred in connection with the proceedings before this Tribunal as part of the service charge. The Tribunal therefore considered the application under Section 20C in this context.

The Law

10. In the Chairman's opening remarks the provisions of Section 19 of the Act were highlighted. The Tribunal made reference to the service charges being reasonably incurred. Were the jobs necessary and was the cost reasonable. The Tribunal would also consider whether the work and services were to a reasonable standard.

11. Ms Lorraine Scott submitted for consideration a case heard by the Lands Tribunal involving Dr and Mrs Shilling and others against Canary Riverside Developments PDT Limited and others which concerned the test of reasonableness under Section 19 of the Act. She highlights a statement made by his honour Judge Michael Rich QC that if the landlord is seeking a declaration that a service charge is payable he must show not only that the cost was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard, and if the tenant seeks a declaration to the opposite effect he must show that either the cost or the standard was unreasonable. He said in discharging that burden the observations of Wood J in the case of **Rook Investments Limited v Batton** make clear the necessity for

the Leasehold Valuation Tribunal to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable costs or standard.

12. Ms Lorraine Scott also referred the Tribunal to the Lands Tribunal Case of the tenants of **Langford Court v Dorren Limited** on the issue of Section 20C of the Act. The Tribunal in particular noted the section of the judgement of his Honour Judge Michael Rich QC where it refers to the discretion under Section 20C being exercised having regard to what is just and equitable in the circumstances. The circumstances include the conduct and the circumstances of all parties as well as the outcome of the proceedings in which they arise.

13. Ms Lorraine Scott then referred to paragraph 20C(1) which reads as follows:-

".. 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 Lands 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".

She contends that this precludes any order involving the other tenants of the block because they are not persons specified in the application.

The Hearing

14. Before the Hearing substantial written representations were made in particular by Ms Lorraine Scott the legal support manager for BLR property Management. These reasons must be read in conjunction

with these written representations and are only intended to highlight issues that were discussed at the Hearing.

15. On the issue of management fees Ms Lorraine Scott highlights the fact that what the tenants of the block are paying for is a flat rate for a very basic level of service. Miss Sharon Smith's main complaint is that she did not know what the Respondent's agents were doing for their money but now it has been explained there does not appear to be any real dispute on this issue.

16. Mr Rehahn raised a concern with regard to the asbestos survey charged for in the year ending 30th June 2005. The justification for this survey was not pursued at this hearing because it is not an item that the Applicant is at this stage disputing.

17. The repairs, maintenance and refuse collection charged in the year ending the 30th June 2005 are covered in the invoice of M & K Property Services Limited of the 17th October 2004 and the invoice of Bremark Properties Limited of the 16th January 2005. The Applicant contends that the new fencing should have been claimed on insurance and the Respondent says this would not have been practical because of the excess involved. There was a lot of argument concerning what rubbish was left and what was cleared. There was no conclusive evidence on this issue. The invoice of Bremark Properties Limited is not in dispute.

18. The repairs and maintenance for the year ending the 30th June 2006 are covered in two invoices from M & K Property Services Limited of the 24th September 2005 and the 1st April 2006 and also an invoice from Gamma Communications Limited dated the 19th January 2006. With regard to the invoice of the 24th September 2005 the Applicant is not satisfied that rubbish was dealt with satisfactorily. She was concerned that a bicycle, supermarket trolley and two doors had not been removed. Despite the observations that were made by the Tribunal concerning the flat roof she did insist that the invoice of the 1st

Tribunal concerning the flat roof she did insist that the invoice of the 1st April 2006 concerning that item was not disputed. Her main complaint was being charged for work to an aerial at 81 Clarence Road, Grays which did not appear to be a communal charge. Miss Lorraine Scott could only respond by saying that their firm would not have included it unless they considered it was a communal repair.

19. With regard to the advance payments to be made for the year ending the 30th June 2007 Miss Sharon Smith has no real objection other than her distrust of BLR's management. These items are now no longer in dispute.

20. The Applicant has made an application under Section 20C of the Act to stop the Landlord from recovering costs incurred in connection with the proceedings before this Tribunal as part of the service charge. She considers that this is fair and reasonable. The response of Lorraine Scott is dealt with largely in the section of this decison concerning The Law. She says that the costs recoverable under the terms of the leases are against all lessees. Her firm charge £1,000.00 plus VAT for each case before a Leasehold Valuation Tribunal and half of these fees relate to the cost of the Hearing. Ms Lorraine Scott contends that Miss Sharon Smith was wrong in continuing with the hearing when so few items were in dispute.

Conclusion

21. The Tribunal again considered the provisions of Section 19 of the Act and the case of the Lands Tribunal referred to by Ms Lorraine Scott. The tests suggested by his Honour Judge Michael Rich QC were applied.

22. The management fees charged by the Respondent are in this case reasonable and now do not appear to be in dispute.

23. With regard to repairs, maintenance and rubbish clearance in the year ending the 30th June 2005 it is only really the rubbish issue that is in dispute. Ms Lorraine Scott produced letters that showed that removal of rubbish from front gardens had wrongly been charged for as a communal expense. On the balance of evidence the Tribunal decided the deduction of £17.63 should be made in favour of the Applicant.

24. In the service charge year ending the 30th June 2006 the Tribunal did not accept the arguments of the Applicant concerning the bicycle, supermarket trolley and doors. The contractors were justified in thinking that these would belong to somebody and should not be disposed of as rubbish.

25. On the face of it the invoice of Gamma Communications Limited clearly relates to one flat 81 Clarence Road and there is therefore no justification in this sum of £188.00 being part of the service charges. In the service charge year ending the 30th June 2006 the Tribunal decided to reduce the sum for repairs and maintenance from £156.86 to £125.53 to reflect this factor.

26. The Tribunal decided that the estimates for advance payment of management fees of £176.25 and repairs and maintenance of £150.00 are reasonable and should be paid immediately if this has not already been done.

27. With regard to the Section 20C application the Tribunal noted the interpretation made by Ms Lorraine Scott with regard to Section (1). If this is correct then the Tribunal consider that of their own volition they can join in all the other tenants to the application so that an order can be made solely relating to Miss Sharon Smith. In particular the Tribunal remembers that it should make a decision in this respect which is just and equitable in all of the circumstances including the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise. Prior to the application the conduct of

the Respondent was not particularly good so far as communication with the Applicant is concerned. Although the outcome of the proceedings is largely against the Applicant she had behaved in a reasonable manner trying to put forward a case on behalf of all of the tenants. She could have disputed more items than she did. Both parties could have got together at many stages and settled this case. The Tribunal's award for costs is calculated on the basis of Miss Sharon Smith paying 1/6th of a fee of £500.00 plus VAT.

Duncan Robertson

D.T. ROBERTSON

Chairman

8th February 2007.

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL

Property	:	**79a Clarence Road, Grays, Essex RM17 6RA**
Applicant	:	**Sharon Smith**
Respondent	:	**Westleigh Properties Limited**
Case Number	:	**CAM/00KG/LSC.2006/0058**
Date of Application	:	**24th November 2006**
Type of Application	:	**To determine the reasonableness and payability of service charges Sections 19 and 27A of the Landlord and Tenant Act 1985 ("the Act")**
The Tribunal	:	**Mr Duncan T. Robertson (lawyer chairman)** **Mr R. Marshall FRICS FAAV** **Mr R. Rehahn**
Date of Hearing	:	**30th January 2007**
Venue	:	**Park Room, Lakeside, North Stifford Nr Grays, Essex**
Appearances	:	**The Applicant Miss Sharon Smith supported by a friend** **The Respondent Ms Lorraine Scott of BLR Property Management**

DECISION

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1. The Tribunal finds that in the service charge year ending the 30th June 2005 the charge to the Applicant for refuse collection of £35.25 is excessive and this should be reduced to £17.63. Otherwise the charges that were in dispute are reasonable.