LON/00BJ/LSC/2004/0115

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON APPLICATIONS UNDER SECTIONS 27A & 20C OF THE LANDLORD & TENANT ACT 1985 (AS AMENDED)

Applicant:	Miss R Dudley
Respondent:	Mountview Estates PLC
Represented by:	Dawsons Solicitors
Re:	Flat 3, 90 Clapham Common Northside, London SW4 9SG
Hearing dates:	12 and 13 April 2005 (Reconvene 19 May 2005)
Appearances:	Miss R Dudley – Applicant in person Mr G Burg – Flat 2 Mr S Ilyas – Counsel Ms N Bernard – Wedlake Bell Solicitors Mr P Dalton – Expert Witnes

For the Applicant

Respondent did not attend and was not represented

For the Respondent

Members of the Residential Property Tribunal Service:

Miss S J Dowell BA (Hons)
Mr D N Huckle FRICS
Mr O N Miller BSC

REF: LON/00BJ/LSC/2004/0115

FLAT 3, 90 CLAPHAM COMMON NORTHSIDE, LONDON SW4

The application

1. The Applicant is the lessee of Flat 3, 90 Clapham Common Northside, London SW4. The application is undated and is under section 27A of the Landlord and Tenant Act 1985 ("the Act") for a determination of liability for and reasonableness of service charges for the years 2002/3 and 2003/4. The Applicant also made an application under section 20C of the Act and for an order that the Respondents reimburse the fees paid in respect of the application to the Tribunal.

Summary of statutory provisions relevant to this application

2. Section 18 – meaning of "service charge" and "relevant costs"

(1) "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 – Limitation of service charges: reasonableness

(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.

(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 – Liability to pay service charges: jurisdiction

(1) An application may be made to a Leasehold Valuation Tribunal for a determination on 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) Sub section (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 of 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 sub section (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.

Directions

3. A pre trial review was held on 19th November 2004 and the Tribunal issued directions on 20th November 2004. At the pre trial review it was ordered that experts' reports and witness statements should be served on or before 29th March 2005. The directions did not provide for an inspection as neither the parties nor the Tribunal considered that an inspection was necessary.

The hearing

4. The hearing took place on 12th and 13th April 2005. The Tribunal reconvened to make our decision on 19th May 2005. The Applicant was represented by Shaiba Ilyas of Counsel who was instructed by Wedlake Bell, Solicitors. The Applicant, Ms Dudley, provided a written statement, was present throughout the hearing and gave evidence. Mr Peter Thomas Dalton, BSc Hons CEng, MRICS, MIStructE, MCIOB provided a written report, attended the hearing and gave oral evidence. Mr Gerald

Burg, tenant of Flat 2, provided a written witness statement, attended throughout the hearing, but did not give oral evidence. The Respondents through their solicitors, Dawsons, informed the Tribunal by a letter dated 1st April 2005 and 8th April 2005 that they did not intend to attend the hearing as they had made an open offer to settle this case which they considered to be a reasonable offer. However by a letter from Dawsons dated 8th April 2005 the Respondents objected to the admission of witness statements of Ms Ricky Dudley and Mr Gerald Burg and the expert's report of Mr Dalton which had been served on Dawsons on 7th April 2005. Dawsons also wrote a letter dated 12th April 2005 objecting to the admission of Mr Dalton's supplemental report dated 8th April 2005. The letter from Dawsons arrived at 12.30pm on 12th April 2005 after the hearing had commenced.

Preliminary matter – service of statements

5. The Applicant's solicitors served the witness statements of Ricky Dudley and Gerald Burg on the Respondents' solicitors on 4th April 2005 and Mr Dalton's first report on 7th April 2005 and his second report by fax at 4.47pm on 10th April 2005. The Respondents did not serve any witness statements or expert evidence by the date in the directions or at all. The Tribunal saw no correspondence from the Respondents' solicitors in respect of service of witness statements and experts' reports. No request was made for these even after the date for service had passed, and the correspondence between solicitors and from Dawsons to the Tribunal shows that by 1st April 2005 the Respondents had decided to make an open offer and not attend the Tribunal. Dawsons objected by letters dated 8th April 2005 and 12th April 2005 to the Applicant being permitted to rely on either of Mr Dalton's reports or the two witness statements of fact. The Tribunal made it clear to the Applicant's representatives that we were very concerned about the failure to comply with the directions but concluded that on balance and in the interests of justice that the Applicant should be permitted to rely on these statements and reports. In reaching our decision we took into account the fact that the Respondents had chosen not to attend the Tribunal hearing and we concluded that as they had taken their position on 1st April 2005 which they had not varied having seen the evidence of the Applicant, that the Respondents would not be prejudiced by the Tribunal permitting the Applicant to rely on this evidence at the hearing. The Tribunal did have the benefit of an unsigned and undated Reply of the Respondents.

The lease

6. The Tribunal was provided with a copy of the lease in respect of Flat 3. The lease is dated 25th April 1983 and made between H and K Properties Limited (1) and Ricky Dudley (2) for a term of 99 years from 25th March 1981. The Applicant also had the benefit of a supplemental lease dated 24th July 1986 made between Coldmix Aviation Limited (1) and Ricky Dudley (2) in respect of the roof space for the remainder of the same term as the lease.

7. Clause 1(2) of the lease provides that Ms Dudley covenants "*To pay to the lessor without any deduction by way of further and addition rent of one-third of the expenses and outgoings incurred by the lessor in the repair maintenance renewal and insurance of the building and the provision of services therein and other heads of expenditure as the same are set out in the Fourth Schedule hereto or as made from time to time in the*

reasonable opinion of the lessor may be necessary to be provided or expended for the mutual benefit of the lessor and the lessee such further and additional rent (hereinafter called "the maintenance") being subject to the terms and conditions contained or referred to in Part One of the said Fourth Schedule.".

8. Paragraph 1 of Part One of the Fourth Schedule states "*all costs and expenses whatsoever incurred by the lessor in and about the discharge of the obligations on the part of the lessor set out specifically in sub-clause (3) of clause 4 hereto (hereinafter called "the sub clause").*".

9. The lessor's repairing covenant is set out in clause 4(3) of the lease:

> "*(a) Once in every four years and also in the last year of the said term to paint with two coats of good quality oil and white lead paint or wood cement stucco or other ironwork material usually painted on the exterior of the building.*
>
> *(b) To maintain repair redecorate and renew the common parts of the exterior and structural parts of the Building of which the demised premises forms part including those parts contained in clause b(i)(ii)(iii) of the First Schedule hereto together with the roof structure foundation walls fences the main structure chimney stacks gutters and rainwater pipes gas and water pipes sewers drains water courses systems refuse disposal shafts meters electric cables and other media in or under or upon the Building and also the main entrance staircase corridors pathways garden refusal disposal areas and other parts of the Building now or to be enjoyed or used by the lessee in common with the lessees and occupiers of the other flats of the Building.*"

10. The Fourth Schedule Part II shows "the lessor's financial year" to be the period from 25th December to 24th December. However the Tribunal was told that the financial year had been varied by agreement and that the service charge year for the purposes of this application was to be deemed to be 1st April to 31st March.

Liability for and reasonableness of costs of major works

11. The Applicant challenged the service charges for external works to the property which commenced 23rd April 2003 and ceased about May 2003. These are to be found in the service charge demand dated 24th July 2003 and the challenge is in respect of the item "March 2003: major works £2,493.70" (phase 1 works). The Applicant also challenged service charges for major external works which were commenced in October 2003 and completed on 23rd December 2003. The service charge demand is dated 8th June 2004 and the item challenged on this demand is the charge for "major works 2003/4 external repairs £29,790.53" (phase 2 works). The Tribunal found it very difficult to identify the service charges in this case because we were not provided with any service charge accounts, only demands. We have throughout this decision based our calculations on total costs for the property rather than amounts charged to individual lessees.

12. The property is a three-storey end of terrace Victorian house divided into three flats. The freehold interest is subject to a lease of the ground floor/basement flat in favour of Miss P. Wilson, a protected tenancy in favour of Mr G. Burg of the first floor flat and

a lease in favour of the Applicant Ms Ricky Dudley in respect of the second floor flat. The Applicant purchased her flat under a long lease in 1983 and the current freeholders, Mountview Estates Plc purchased the freehold of the building in November 1991.

13. The two sets of major works took place in the service charge year 2003/4. In this decision the two sets of works will be referred to as phase 1 works and phase 2 works. The Applicant did not challenge her liability to pay the costs of the major works under the terms of her lease. The Tribunal was satisfied that valid notices had been served under section 20 of the Act in respect of both sets of work and no challenge was made in that respect by the Applicant.

14. However the Applicant submitted that the landlord company had been in breach of its covenant to repair and/or negligent because it had not carried out repair and maintenance works in accordance with the terms of the lease over a period of at least ten years. She challenged the service charges for both the phase 1 and phase 2 works on the basis that these costs were not reasonably incurred (section 19(1)(a) of the Act). The Applicant's initial case was that none of the phase 1 works were reasonably incurred because they were negated by the need to carry out more extensive works in the phase 2. The Applicant did not challenge the standard of either the phase 1 or phase 2 works. The Applicant admitted in oral evidence that she had not received any demands for service charges for repair/maintenance since 1991 until the phase 1 works were carried out i.e. a period of some twelve years.

Phase 1 works

15. The scope of the proposed work comprised mainly the repair, repointing and redecoration of the exterior of the front, rear and side elevations of the building requiring scaffolding access. The cost of this work is shown on a statement from the Respondents dated 24th July 2003 as "TLD Building Services £6,801" and a management charge in addition of 10% being a total of £7,481.10. The Tribunal was provided with a copy of the invoice of TLD Building Services dated 20th April 2003 which gave a breakdown of the work actually carried out (pages 222 to 224 of the bundle). However the Respondents agreed to reduce the demand for the cost of these works to £6,046 by a letter to the Applicant dated 16th October 2003. The Tribunal assumes that this figure would have been subject to the same 10% management fee.

Phase 2 works

16. These were substantial works which were described in a bill of quantities provided by TLD Building Services which showed the cost of scaffolding, replacement of the supporting bressumer beam at the front of the property, works to chimney stacks, main roof and back addition roof, external brickwork, external decorations and interior decorations. In addition there was a contingency sum of £3,000. The bill of quantities amounted to £42,720 plus VAT (pages 246 to 249 of the bundle).

17. By a letter dated 15th August 2003 TLD Building Services provided a revised estimate which included the original estimate, an increased contingency of £3,000, additional scaffolding cost of £4,800, increased costs of concrete products £9,800 and increased cost of Spanish slates £2,500. The revised estimate was £62,820 plus VAT

(page 255 of the bundle). TLD Building Services' final account was dated 10th October 2004. The Tribunal found this invoice very difficult to understand but concluded that the contract total was £66,996 so that the total including VAT was £78,720.30. This included a retention of £3,000. In addition the surveyor's fees (Mr Tant) were charged at 10% of the cost of the work plus VAT. To this was added the London Borough of Wandsworth's Building Regulations fee of £599.45 and to this total sum was added the lessor's management fee of 2.5% making a total of £89,371.57.

Evidence and submissions of the Applicant

18. The Applicant's case, in summary, was that it was unreasonable for her to pay for work which had arisen as a result of the Respondents' earlier neglect and/or mismanagement and/or breach of repairing covenant. She described a long history of disrepair in the property since the time the Respondents had purchased the property. She said that her flat had been subjected to recurring water ingress through the roof and through the walls below the window sills in the main lounge from 1991 to 1993. In October 1993 there was a record of an inspection by the Respondents and emergency roof repairs were carried out. In October 1993 Mr Maunder-Taylor a director of the freeholder company and a Fellow of the Royal Institution of Chartered Surveyors, wrote to the Applicant and acknowledged problems with water penetration and stated that works would be scheduled for 1994. The Applicant made further complaints and in September 1994 the Respondents carried out another inspection. In 1995 the Respondents stated that works would be carried out. In August 1996 the Respondents' builders told the Respondents that there was water penetrating into the front room at high level through the brickwork and the window. The builders sent an estimate and report as a consequence of which the Respondents conclude that the Applicant had placed plant pots on the bay roof and that she was responsible for the water penetration into Flat 2. The Applicant denies this allegation. The tenant in Flat 2 contacted the Respondents in June 1997 to inform them that the front bay roof was leaking and the Respondents obtained a quotation from Advanced Roofing Systems. It appears from the documentation that in 1999 some works were carried out by Advanced Roofing Systems, a new rainwater gulley and outlet to bay roof. The Applicant continued to make complaints about water leaking into her lounge.

19. In August 2000 the Applicant received estimates from the Respondents and a section 20 notice in respect of repairs. However no works are carried out. By August 2002 the situation was serious and water was penetrating below all the windows, through the brickwork, through the side of the front windows, through the top of the window frames and through the ceiling. In a letter to the Respondents dated 11th August 2002 the Applicant concluded that "what was originally a relatively minor problem has now escalated to the point that I think there is a serious problem brewing with the building façade and roof". Further inspections took place by the Respondents and revised estimates were obtained and a section 20 notice was served in October 2002 for repointing and patch repairs. The Applicant was not satisfied that these were sufficient works but the Respondents wrote a letter dated 29th October 2002 stating that once the scaffolding is up "all works required to make the envelope of the property watertight will be undertaken". Some six months later on 23rd April 2003 the Respondents commenced the repair works.

20. The Applicant was very concerned that these repairs would not remedy the very serious problems which had now developed at the property due to the landlord's neglect. As a result of her concerns she consulted her own structural engineer Mr Dalton on 28th April 2003 and Mr Dalton inspected on 1st May 2003. On 5th May 2003 the Applicant wrote to the Respondents informing them that Mr Dalton, a structural engineer, had inspected the building and he had alerted her to a serious defect involving the main beam between her flat and Flat 2, that it was Mr Dalton's view that the beam had rotted due to constant water ingress and that this was the root cause of all the other structural defects. Mr Dalton's report was sent to the Respondents by Ms Dudley by fax on 6th May 2003. The report records very serious disrepair in the property and Mr Dalton concludes that if no adequate remedial action is taken he will report the building as a dangerous structure. Mr Dalton's opinion was that the problem had been caused by poor maintenance resulting in the ingress of water into the fabric of the building on a regular basis over a number of years.

21. The Respondents having received the report instructed their builder to cease working, appointed a surveyor and arranged a site meeting on 15th May 2003. A section 20 notice was served in August 2003 and the major works which the building now required were carried out between October 2003 and December 2003.

22. In June 2004 the Applicant received the service charge demand referred to above. She made her application to the Tribunal in October 2004. Mr Dalton prepared an additional report in March 2005 which summarised events. Mr Dalton said in evidence that he had carried out his first inspection when the phase 1 works had been commenced but the scaffolding which had been erected was not necessary for his inspection. He said he could have made the inspection from the ground with binoculars. He said he had not seen the bressumer when it was taken out nor had he inspected the building since the works had been completed. His opinion was that much earlier action should have been taken to stop the water ingress into the building and that the roof should have been replaced in the 1990's and work carried out to the copings, to the gable, the brickwork and the guttering. This would have cost approximately £7,500 plus VAT together with the cost of a surveyor's report, a surveyor's supervision and external painting. In answer to a question from a member of the Tribunal Mr Dalton said that in his opinion it would have taken between seven and ten years for the unchecked water penetration to damage the bressumer to the point that it became dangerous and had to be removed.

23. It was initially the Applicant's case that the entire service charge for the phase 1 works was challenged because these works were inadequate and were totally wasted in that they were wholly superseded by the phase 2 works. However during the hearing the Applicant conceded that some of the works were not wasted and were not superseded by the subsequent works. These works were as follows:

(a)	Overhaul and adjusting windows	:	£520 (of which Applicant's liability is £130 as confirmed by landlord in letter dated 16th October 2003.)
(b)	Painting windows, masonry and front porch	:	£404

(c)	Painting front door	:	£ 68
(d)	Painting windows – side elevation	:	£ 84
(e)	Painting windows – rear elevation	:	£ 72
(f)	Drainpipe – rear elevation	:	£ 42
(g)	Redecoration - common parts	:	£ 80
(h)	Replastering and repapering hallway	:	£235
(i)	PVC guttering at rear	:	£350
(j)	New sills on first and second floor	:	£173 (£173 agreed rather than £260 because no new sills on second floor.)
	TOTAL	:	£2,028

24. With regard to phase 2, the Applicant's case was that the works were required as a result of the Respondents' previous neglect of the building/breach of repairing covenant and therefore it was not reasonable for such expenditure to be charged by way of the service charge. The Applicant relied on *Loria -v- Hammer* (1989) 2 ELGR 249 as authority that where a landlord neglected to carry out repairs or maintenance for some time the eventual cost of repair may be increased because of some historical neglect. In such circumstances a landlord may not recover the additional costs caused by failure to repair, either by way of service charge or other means. During the hearing it was conceded on behalf of the Applicant that some of the service charge for the phase 2 works was reasonable and on 13th April 2005 Counsel for the Applicant handed up a document headed "Applicant's case on service charge demand (relying on Mr Dalton's evidence)" a copy of which is attached to this decision. This calculation showed that the Applicant considered the total sum reasonable for the whole property for the phase 2 works was £20,697.99.

Submissions of Respondents

25. The Tribunal considered the Reply by Mountview Estates Plc which was undated and unsigned together with the documentation attached to the Reply. The Tribunal also considered the letter dated 1st April 2005 from Dawsons, Solicitors to the Respondents. The Respondents' case was that every reported incident of water penetration in the vicinity of the bressumer was dealt with on receipt of the complaint over the four years from September 1993 to July 1999. The Respondents stated that then a schedule of work was prepared and builders' estimates were obtained. However the builder did not attend to carry out the works and a further report and estimate were obtained from alternative builders. As a consequence scaffolding was erected which enabled the Applicant's engineer to make an examination of the high level brickwork and to report to her. The Applicant's engineer's conclusions lead the Respondents to believe that their original proposals for repair works needed to be expanded and the Applicant's engineer was asked to produce a Method statement for the benefit of the surveyor whom the Respondents had appointed. The Respondents submitted that they then obtained a full specification, tenders from three firms of builders and carried out the consultation procedure necessary under section 20 of the Landlord and Tenant Act 1985. The Respondents denied that there was any neglect or failure on their part to carry out repairs. They submitted that in the course of carrying out repairs builders employed had reported red bricks which had become porous and

that in addition the Applicant had used the bay roof to store planters. This had resulted in detritus causing blockages to the rainwater outlet from the bay roof resulting in ponding and saturation of the structure in the immediate vicinity of the bressumer beam. In July 1999 the Respondents had arranged for a larger rainwater outlet to be created with a view to dealing with this problem.

26. The Respondents further submitted that Mr Dalton's report had only been possible after scaffolding had been erected in 2003. Their original schedule of work had been prepared without scaffolding and would in any event have been subject to variation once the full extent of the work required had become apparent. As a result of Mr Dalton's recommendations the phase 1 works was reduced and dealt only with those elements which were not included in the second phase contract with the effect that the two contracts were complementary and no duplication occurred.

27. The Respondents justified their management fees of 2.5% as reflecting the time and commitment required from the landlord.

28. The Respondents submission with regard to internal decorations was that the work was necessary as a consequence of the works required under the contract which had been placed and that it was reasonable that the consequential works should be included in the contract as a whole and charged through the service charge account.

29. The Respondents' submissions at the conclusion of the Reply were that the service charges challenged by the Applicant were reasonably incurred and that the Applicant was liable to pay the service charges in full. However subsequently, by a letter dated 1st April 2005 from Dawsons, Solicitors to the Respondents, the Respondents made an open offer to accept the sum of £18,726.39 in full and final settlement of the service charges in connection with the phase 1 and phase 2 works including surveyors fees and management fees. This offer was made on the basis of the Respondents being willing to "cut its loses" by ceasing to incur further legal and associated costs in this matter. The letter stated "the Respondent is willing to draw a line under the dispute in the hope of continuing the landlord and tenant relationship on a more co-operative basis in the future".

Decision – phase 1 works

30. The Tribunal is satisfied that the Applicant is liable to pay these service charges under the terms of her lease and that the section 20 consultation procedure had taken place. However these costs should be taken into account in determining the amount of the service charge payable only to the extent that the work was reasonably incurred and that the works were of a reasonable standard. The Applicant had already conceded that she was liable for the cost of a number of items as set out in paragraph 23 above. The task for the Tribunal was to consider whether the other items contained in the invoice of TLD Building Services dated 20th April 2003 were reasonably incurred and whether the works were of a reasonable standard. The Tribunal accepts the principle that if work was carried out which was then rendered wholly or partly redundant by the second contract, then the lessees should not be liable for the whole or part of the cost of such works.

31. In our view the following items of completed works on pages 222 to 224 of the bundle should be treated as follows:

(1) Front of property

Scaffolding - costing £600 – wholly redundant.

Overhauling, easing and adjusting windows – costing £520. Partly redundant - reasonable sum £260 as upper windows would have been affected by phase 2.

Prepare and paint windows, masonry and porch – costing £606 – not redundant - £606 a reasonable sum.

Prepare and paint front door – costing £68 – not redundant - £68 a reasonable sum.

(2) Side elevation

Scaffolding – costing £1,260. Wholly redundant as only ground and first floors painted.

Overhauling, easing and adjusting windows – Respondents conceded costing of £280 not payable.

Prepare and paint windows – costing £84 - a reasonable sum.

(3) Rear elevation

Scaffolding – costing £600 – wholly redundant.

Overhauling, easing and adjusting windows – costing £240 – Respondents conceded £240 was not payable.

Prepare and paint windows – costing £72 - a reasonable sum.

Overhaul rear roof – costing £300 – wholly redundant as the work done at phase 2.

Re-fit drainpipe – costing £42 - a reasonable sum.

(4) Common parts

Prepare and paint hall and stairs – costing £700 – accept Applicant's evidence that only one wall was painted - £80 a reasonable sum.

(5) Extra works

Remove and replaster blown area – costing £235 - a reasonable sum.

Repointing work – costing £490 – wholly redundant as in phase 2.

New pvc guttering – costing £350 – a reasonable sum.

New sills to first and second floor – costing £260 - £173 a reasonable sum as only first floor done.

The Tribunal determines that the total amount reasonable for phase 1 costs is £1,735 plus VAT plus 10% management fee. For the whole building this equates to £2,242.49. This is for the year 2003/3.

Decision – phase 2 works

32. The Tribunal considered very carefully the submissions of both parties. We concluded that the Respondents had produced no evidence to show that they had taken their responsibilities under the lease seriously from the time they purchased this property in 1991. Over a period of some ten years no condition survey had been carried out and consequently the Respondents could not gauge whether or not they had carried out their obligations under the lease. It was their case that they had responded to every complaint by the lessees and the tenant and although this may be the case the Respondents had clearly not carried out maintenance and repair work which was necessary to the building as became apparent in 2003 by which time the bressumer supporting the front elevation of the building had rotted to the point when the building was considered by a structural engineer to be "a dangerous structure". We accept the evidence of Mr Dalton that it would have taken some seven to ten years for this bressumer to rot to the point where it had become so dangerous that serious remedial work became necessary. In our view if the Respondents had behaved as responsible landlords they would have carried out investigative work in the early 1990's and established the cause of the water ingress and carried out what would then have been straightforward repairs to the property.

33. We were satisfied on the evidence of the Applicant that she had not placed planters on the front bay roof and did not accept the allegations made by the Respondents in this respect.

34. It was clear that the Respondents did not carry out satisfactory repairs to the property. Their case that each complaint was dealt with is not supported by the Applicant's evidence but in any event the lessor's obligation to repair is not conditional upon any notice of a defect. The Respondents had produced no professional evidence to support their claim that they had dealt with the problems of water ingress adequately. In principle the Tribunal accepts that the Respondents may not recover the costs of major works caused by their failure to carry out their repairing obligations under the lease. Our conclusion is that the costs of the phase 2 works had not been reasonably incurred as to the replacement of the bressumer and/or related works.

35. Having concluded that the costs in connection with replacement of the bressumer were not reasonable, the Tribunal went on to decide whether the other costs of the phase 2 works were reasonable. We were satisfied that the work had been done to a reasonable standard and we took into account the fact that the Applicant had not paid any service charges for maintenance since 1991. Using our own knowledge and experience as an expert tribunal we concluded that the costs which were not connected

with the bressumer works had been reasonably incurred and should be taken into account in determining the amount of the service charge payable for the relevant period.

36. The costs which we consider have been reasonably incurred and may be taken into account in determining the amount of the service charge in respect of the phase 2 works are as follows:

Item	Claimed	Disputed by lessee	Allowed	Comments
1. Scaffolding	£11,800	Yes	£ 7,867	We have deducted one-third to reflect the extra time required for the bressumer associated works.
2. Replacement bressumer	£13,310	Yes	Nil	
3. Chimney stacks	£1,800	No	£1,800	
4. Main roof and back addition	£5,620	No	£5,620	
5. Ext. brickwork	£8,400	No	£8,400	
6. Replacement and decorations to window frame	£730	Yes	£730	This would have had to be done anyway.
7. Internal decorations - first floor	£1,430	Yes	Nil	No liability on Applicant to pay contribution to these works.
8. Internal decorations - second floor	£1,430	Yes	Nil	As above.
9. Contingencies	£6,000	Yes	Nil	Respondents credited only £3,000 of £6,000 in costings.
10. Increased concrete costs (incl. mullions)	£9,800	Yes	Nil	Bressumer associated works.
11. Increase cost tiles	£2,500	No	£2,500	

Item	Claimed	Disputed by lessee	Allowed	Comments
12. Extra works required by District Surveyor	£7,676	Yes	£4,950	Remainder bressumer associated works.
13. Tant (Building Management) Ltd fees	£6,699	Yes	10%	10% reasonable sum to charge.
14. District Surveyor's fee	£599.45	Yes	£599.45	No evidence of fee produced. But Building Reg. approval for roof works needed in any event.
15. Management fee	£726.60	Yes	2.5%	In accordance with RICS Management Code of Practice. Fourth Schedule of lease also provides.

Summary

37. The Tribunal therefore determines that the amount of reasonable costs for phase 2 work is £31,867 to which should be added:

- VAT
- Tant (Building Management) fees of 10% - £3,187 plus VAT
- District Surveyor's fees of £599.45
- Management fees of 2.5% = £797

which produces a total of £42,585 for the whole building. This is for the year 2003/4.

Application under section 20C of the Act

38. The Applicant sought an order that all or any of costs incurred or to be incurred by the landlord in connection with proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant. The Tribunal may make such order on the application as it considers just and equitable in all the circumstances.

39. However by a letter dated 12th May 2005 the Respondents' solicitors confirmed that the Respondents did not propose to seek to recover the costs associated with the application to the Tribunal through the service charge. In those circumstances no order is made in respect of the application under section 20C and the application is deemed dismissed.

Reimbursement of application and hearing and Tribunal fees

40. In addition the Applicant requested reimbursement of the fees totalling £500 which she had paid to the Tribunal (Leasehold Valuation Tribunals (Fees) (England) Regulations 2003, Regulation 9). The Respondents opposed this application on the basis that the Applicant chose to issue her application without notice to the Respondents and subsequently avoided communication with the Respondents. The Applicant's case was that there had been a long period of neglect of the building in which she lived, that when the repairs were carried out she was charged excessive service charges and she had no alternative but to make an application to the Tribunal.

Decision

41. Our decision is that the Respondents should reimburse the Applicant with half of her fees being the sum of £250. We have made the decision that only half of the fees should be reimbursed because in our view the case papers were poorly prepared and presented and the Applicant did not attempt to meet the Respondents to resolve this dispute and instead she appeared to be intent on correspondence and an application to the Tribunal and a full hearing.

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Jane Dowell
Chairman

Dated the 29 day of June 2005