

THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON
RENT ASSESSMENT PANEL

THE LANDLORD AND TENANT ACT 1985 (AS AMENDED)
SECTIONS 27A and 20C

REF: LON/00BG/LSC/2006/291

PROPERTY: 240 WILMOT STREET, BETHNAL GREEN,
LONDON E2 0BY

APPLICANT: ALISON CHAN

RESPONDENT: WILMOT STREET (MANAGEMENT) COMPANY
LIMITED

APPEARANCES: WILL FORD AND ANDREW KENNING
Trainee Solicitors from the BPP Legal
Advice Clinic

For the Applicant

MARK TAMUTA AND JO O'CONNOR
From Wood Management Limited, the
Respondent's managing agents

For the Respondent

DATE OF HEARING: 11th December 2006

DATE OF DECISION: 7th February 2007

MEMBERS OF THE LEASEHOLD VALUATION TRIBUNAL:

Miss A Seifert FCI Arb
Mr I Holdsworth BSc MSc FRICS
Mr R Eschle

**THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL**

REF: LON/00BG/LSC/2006/291

RE: 240 WILMOT STREET, BETHNAL GREEN, LONDON E2 0BY

THE TRIBUNAL'S DECISION

1. On 26th July 2006, Wilmot Street Management Company Limited, the Respondent in this Application, issued proceedings in the Central London County Court (Claim No. 6CL05648). The Defendant to that claim is Ms Alison Chan, the lessee of the basement flat, 240 Wilmot Street, Bethnal Green, London E2 0BY ("the flat"). The claim was later transferred to the Clerkenwell and Shoreditch County Court. The sums claimed in that action are £5,483.21 in respect of ground rent and service charges, indemnity costs and statutory interest. By a letter dated 14th August 2006 to the Central London County Court, The Legal Advice Department of the College of Law, acting pro bono for Ms Chan, requested that the claim be stayed, pending the determination by the Leasehold Valuation Tribunal of the reasonableness of the service charges which were the subject of the claim.
2. Ms Chan then applied to the Leasehold Valuation Tribunal for a determination of the liability to pay service charges under Section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act"). The Respondent to the Application is Wilmot Street (Management) Company Limited. The flat forms part of a block of 48 flats, 216 to 263 Wilmot Street, built in the late 19th century ("the block").
3. The service charge years in issue were identified in the Applicant's statement of case as 2002/2003, 2003/2004, 2004/2005, 2005/2006. The service charge year ends on the 31st March in each year. Ms Chan applied for an order under section 20C of the Act preventing the Respondent from recovering the costs incurred in connection with the proceedings.
4. The flat is subject to two leases. Firstly, a lease dated 30th October 1985 ("the Lease") between The Mayor and Burgesses of the London Borough of Tower Hamlets as "the Landlord", Lenister Construction Limited of the second part and David Michael Hartley and Patricia Mary Hartley as "the Tenant". The term of the flat lease was 125 years from 25th December 1984. The Tenant's interest under the flat lease was assigned to Ms Chan in 1998, Ms Chan having previously occupied the flat from 1997 as a tenant. It was anticipated in the flat leases that the leases of the 48 flats in the block would be on substantially the same terms. In order to facilitate the maintenance and management of the block, the Landlord had transferred all the parts of the block not disposed of as residential units ("the common parts") to the

Respondent. The Tribunal was told that Wood Management Limited had managed the block on behalf of the Respondent for approximately the last fifteen years.

5. The premises demised under the Lease were:
“ALL THAT residential unit number 240 on the basement floor of the Block up to and including the ceiling plaster and including the floors (but not the main load bearing joists thereof) and including the internal plaster of the external walls and further the internal walls dividing the rooms and parts of the Demised Premises and including the windows window frames glass and fastenings and the front door of the Demised Premises and all pipes tanks cables wires drains conduits flues and chimneys in the Demised Premises which exclusively serve the Demised Premises”
6. The second lease relating to the flat was a lease also dated 30th October 1985 (“the Amenity Lease”) made between the Respondent (“the Management Company” in the Amenity Lease) and Mr and Mrs Harley. The Tenant’s interest under the Amenity Lease was also assigned to Ms Chan.
7. The rent payable under the Amenity Lease was the yearly Service Rent. This was payable by equal quarterly payments on the usual quarter days in every year. The Service Rent was set out as follows.

“Clause 3.1 In respect of the year ending on the 31st day of March 1986 the sum of £100

3.2 In respect of each subsequent year such a sum as the Management Company or its duly authorised agent shall in respect of any given year by Notice in writing served upon the Tenant in that behalf during the first quarter of such year specify as the amount of the Service Rent for that year PROVIDED THAT for the purposes hereof the Management Company shall arrive at the amount to be so specified in accordance in all respects with the provisions in that behalf hereinafter contained

3.3 On 31st day of June in every year the management Company shall cause its auditors or accountants to prepare an account showing therein the amount of the costs and expenses incurred by the Management Company since the date of the first Lease of Amenity Rights or since the date of the end of the last preceding account period as the case may be in respect of or incidental to the performance by the Management Company of its obligations under the covenants contained in the Lease or Transfer to the Management Company of the Common Parts and its obligations under this or any other Lease of the Amenity Rights granted to the Tenant of a Residential Unit and containing an estimate as to the likely amount of such costs charges and expenses in the next ensuing year and the said auditors or accountants shall on the basis of the said account and after taking into

consideration all other factors considered relevant by such auditors or accountants certify the amount which in the opinion of the said auditors or accountants the Management Company should charge in respect of such ensuing year as the amount of the Service Rent in respect of the Tenant's Premises and also in respect of the premises of the other tenants of Residential Units and the amount of the Service Rent payable by the Tenant shall be such a fraction of the total sum so certified as required by the Management Company as the rateable value of the Residential Unit bears to the aggregate rateable values of the Residential Units..."

There was no provision in the Amenity Lease for any adjustment at the end of the service charge year should the actual expenditure of the Management Company exceed or be less than the estimated charge. Ms Chan's proportion was 2.4140%.

8. Clause 4 of the Amenity Lease contained covenants by the Tenant including the following:

"4.4" To permit the Management Company with the Management Company's agents and other persons authorised by the Management Company with all necessary workmen and appliances at reasonable times to enter upon the Tenant's Premises for the purpose of enabling the Management Company to perform all or any of its obligations contained in the Lease or Transfer of the Common parts to the Management Company or in this or any other Lease of Amenity Rights"

9. Clause 5 of the Amenity Lease contained covenants by the Management Company including the following:

"5.3 To repair and maintain in good repair condition and order and serviceability all parts of the Common Parts"

"5.4 Once in every four years to paint such parts of the exterior of the Residential Units as ought properly to be painted in good and workmanlike manner and with paint of a good quality in such colour or according to such colour scheme as shall be determined by the Management Company"

"5.5 To keep insured in a reputable insurance Office all buildings fixtures and equipment forming part of the Common Parts against loss or damage....."

"5.6 To keep or cause to be kept proper books of account showing therein:

"5.6.1 All sums of money expended and costs incurred by the Management Company of and incidental to the performance by the Management Company of its obligations under the covenants contained in the Lease or Transfer to the Management Company of the

Common Parts or of or incidental to the performance of its obligations or the exercise of its powers under this Lease or under any other lease or Amenity Rights granted to the Tenants or any of the other Residential Units”

“5.6.3 All such other expenditure and receipts (if any) including the expenses of collecting the Service Rents or incurred generally in the general management of the Common Parts for the benefit of the Tenants of the Residential Units”.

10. A hearing was held on 11th December 2006. Ms Chan was represented by Mr Will Ford and Mr Andrew Kenning, trainee Solicitors from the BPP Legal Advice Clinic. The Respondent was represented by Mr Mark Tamuta and Ms Jo O'Connor of Wood Management Limited (“Wood Management”).
11. The service charges disputed by Ms Chan are:

<u>2002/2003</u>	£
Insurance	11,313
Reserve Fund contribution	25,000
General repairs and maintenance	11,397
Management fees	7,710
 <u>2003/2004</u>	
Insurance	14,048
Reserve Fund contribution	25,000
General repairs and maintenance	15,198
Management fees	7,990
 <u>2004/2005</u>	
Insurance	15,276
Reserve Fund contribution	25,000
General repairs and maintenance	8,181
Management fees	8,250
 <u>2005/2006</u>	
Insurance	16,827.79
Reserve Fund contribution – undetermined /approximately	50,000
Management fees	9,250

In her statement of case Ms Chan had also challenged accountancy, legal and professional fees for 2002/2003, 2003/2004 and 2004/2005, and the secretarial fees for 2005/2006, but did not pursue this challenge at the hearing. Further, shortly before the hearing Ms Chan contended that the Respondent had failed to comply with consultation requirements under section 20 of the Act for the service charge years 2001/2002, 2002/2003, 2003/2004 and 2004/2005. This challenge was withdrawn on the production of the relevant notices by the Respondent.

12. General repairs and maintenance

- 12.1 Ms Chan contended that the charges for general repairs and maintenance were not reasonably incurred and that works carried out were not of a reasonable standard. It was contended that the Respondent had failed to comply with its obligation to “maintain in good repair condition and order” the Common Parts under clause 5.3 of the Amenity Lease.
- 12.2 Ms Chan told the Tribunal that there had been a history of disrepair and neglect to the block, and that the Respondent had failed to act reasonably when informed of problems with the common parts. She submitted that this had led to an increase in the need for further repair, and also an increase in insurance costs.
- 12.3 Ms Chan contended that the exterior decorations were generally of a low standard and had resulted in damage to her flat including:
- (a) One window cracked;
 - (b) Two window panes cracked and scuffed by sanding;
 - (c) No filling of deteriorated areas/previous paint loss;
 - (d) Inadequate painting of exterior wood with one coat of undercoat and one top coat;
 - (e) Very shoddy and unnecessary painting on a varnished wood door.

Ms Chan produced a photograph of the door. She told the Tribunal that she did not want the door painted. It was a varnished hardwood door and was quite new. The door had been painted while it was shut. An e-mail from Ms O'Connor to Mr Foweather dated 24th November 2005 instructed him to proceed with painting the rear doors with the doors closed should the lessees not co-operate.

Apart from the above items Ms Chan did not identify any particular works as being of an unreasonable standard or identify any particular costs as unreasonably incurred.

- 12.4 The Respondents produced a letter from Mr Anthony Foweather, who the Tribunal was told is a Surveyor, in respect of the above. He stated that:
- (a) The window was not identified as cracked at the time the redecoration work was undertaken. If it had been it would have been replaced free of charge by the contractor.
 - (b) Scratched window panes were not identified during the works and would have been replaced free of charge had Ms Chan raised this at the time.
 - (c) All areas of timber were filled where required utilising the Windowcare system.
 - (d) Normally one coat of undercoat and one coat of top coat would have been sufficient when using Dulux Weathershield external paint but it was felt at the time that due to the poor state of the windows an

additional gloss was required and one coat of undercoat and one coat of gloss top coat were used.

(e) The existing varnished door was in a poor decorative state. All other doors to the rear elevation were painted and the Respondent requested all doors match.

- 12.5 Ms Chan said that there had been several leaks from overflow pipes from other flats in the block. Such leaks had been an ongoing problem since she moved into her flat. Ms Chan said that she had rented the flat since July 1997 and brought it in September 1998. She informed Vincent Wood, the then property manager at Wood Management, about the problems by telephone. He came to her flat and had the leaks fixed. Ms Chan said she was satisfied with Mr Wood's responses whilst he was the person responsible for the block at Wood Management. However, the leaks were an ongoing problem. Water pooled on the balcony outside the bathroom of her flat. This caused damage to the bathroom. Ms Chan produced photographs to demonstrate the problem. She had her bathroom repaired three times.

In a letter dated 19th April 2004, Ms Chan wrote to Wood Management in the following terms:

"I am writing to complain about the recurring water leak above my flat, 240 Wilmot Street.

A faulty overflow pipe from one of the flats above means that there is constant damp and flaking of the plaster in the bathroom. I have no idea what damage this continual leak poses to the actual fabric of the building.

I have contacted you every few months about the same problem for the past four years. Admittedly you have sent people round to repaint but this has been a purely short-term solution and has not dealt with it at all.

Now at the other side of the flat I have the identical problem of damp patches with added complication of rust. Not being a surveyor I have no idea where the rust staining may have come from but it suggests quite serious impairment of the building."

Ms Chan had stated in her letter dated 19th April 2004 that she would not be paying the service charge until the issue was resolved. She had last paid service charges on 27th January 2004.

- 12.6 Ms Chan sent a follow up letter dated 24th June 2004. In a further letter dated 5th July 2004 to Mr Tamuta of Wood Management, she stated that as well as the continual dripping and water damage to the building and paintwork, there was now the additional problem of mosquitoes outside her windows.
- 12.7 Ms Chan wrote to Ms O'Connor of Wood Management on 29th November 2004, enclosing photographs of the water damage to the bathroom and stating that the ceiling had been repainted three times since she moved in.

- 12.8 Ms Chan said that she had received no response to the complaints made in the above letters. In early 2005 she was away working for three months. When she returned the leaks were still continuing. The leaks stopped temporarily and Ms Chan decided to have work done to the bathroom herself. Wood Management wanted to send their builder/decorator, East London Maintenance Limited, to carry out repair works. However, Ms Chan preferred to instruct her own decorator as she wanted the whole bathroom redecorated and not have a patch repair. She expected the Respondent to pay for the works.
- 12.9 Ms Chan produced a quotation dated 20th August 2005 from Garth Carter Painting Services for the total sum of £800 inclusive of materials. The works quoted for were described as:
"To cut back and make good with render and plaster, water damaged areas on ceiling and three walls.
To seal and paint in oil based finish (undercoat and two coats eggshell), ceiling and all walls."
- 12.10 Ms Chan said that the work commenced but the leaks began again and that the decorator had to stop work because it was pointless continuing. She produced an invoice for £600 dated 15th September 2005 for the work that had been carried out by Garth Carter Painting Services. This stated "Work suspended as new areas of damp have appeared on and above skirting 2 metres into the room. Also damp has reappeared on outside wall. Additional costs for re-painting newly damaged wall and making good and painting skirting to be quoted for when damp problem is resolved".
- 12.11 In a letter dated 12th September to Ms O'Connor, Ms Chan referred to the recurring problem of damp caused by overflows from the flat above as one of the reasons why she was withholding service charges. In a letter dated 26th September 2005, Ms O'Connor stated that the leaking overflow to the block had been addressed and repairs carried out. Ms Chan told the Tribunal that this was incorrect and that it was not until spring 2006 that the leak from the overflow stopped.
- 12.12 Mr Tamuta said that this was an old building and there had always been problems with the overflows. It was difficult to find the source or sources of the leak. It was not necessarily from the flat above Ms Chan's flat as there were a lot of overflows in a vertical line.
- 12.13 In respect of the works to the bathroom, Mr Tamuta said that the Respondents had been prepared to carry out the work but access to their builder, East London Maintenance Limited had been refused by Ms Chan. An insurance claim form was produced dated 13th June 2005 in respect of the damage to Ms Chan's bathroom. Two quotations were attached. The first was dated 25th January 2005 from East London Maintenance Limited for £785 for "Repair water damage to ceiling and walls and patch repair the plasterwork to both area, and

then repaint both areas with colours to match existing". The other quotation was dated 1st February 2005 from K Grant Esq. for £987 for "Prepare the ceiling and walls due to water damage, plaster only where needed and paint both areas to match the current colour scheme". Mr Tamuta said Wood Management obtained approval from the insurers to proceed with the works quoted for by East London Maintenance in July 2005. However, Ms Chan refused access for the works because she wanted her own decorator and more extensive works. The Respondents produced statement from Steve Day of East London Maintenance Limited dated 30th October 2006 confirming that Ms Chan had refused to agree access times for the works.

12.14 The Tribunal's decision – General repairs and maintenance

The Tribunal accepts the explanations given by Mr Foweather in his statement of 30th October 2006 in respect of the items alleged as not of a reasonable standard in paragraph 12.3 above. Under Clause 5.4 of the Amenities Lease the Respondent was under an obligation to paint such parts of the exterior of the demised residential units as ought properly to be painted in such colour as it determined. There was no evidence that access was available at the time or later for the door to be painted or re-painted open.

In respect of the leaks to the outside of the property, it was not disputed by the Respondent that such leaks occurred and that the bathroom of the flat suffered damage as a result of the leaks. The leaks appear to have been an ongoing problem at the block. The problem of the leaks was addressed by the Respondent in its repair and maintenance of the building. This was an old building and the source of the leaks was not easy to establish.

The question for the Tribunal was whether the cost of maintenance and repairs carried out were reasonable and reasonably incurred. Whether Ms Chan can recover from the Respondent the cost of the works to the bathroom, as damages for breach of repairing obligations by the landlord, is not within the jurisdiction of the Tribunal and no finding is made in respect of this.

The Tribunal finds that the charges for general repairs and maintenance in each of the service charge years in issue were reasonable and reasonably incurred.

13. Insurance

- 13.1 Ms Chan submitted that the charges for insurance were unreasonable because the high price was largely the result of the Respondent's failure to act reasonably in carrying out its obligations in Clause 5.3 of the Amenity Lease.

- 13.2 Ms Chan submitted it was unreasonable that the insurance did not cover the costs she had incurred carrying out repairs to her bathroom which were necessary because of damage caused by the leaking pipe. She stated that she had been told that the expenditure that she had incurred repairing the damage to her flat was not covered by insurance.
- 13.3 Ms Chan said that she had queried the charges for insurance with the Respondent and the only explanation given was that the cost of insurance had increased. She contended that the cost of the insurance would have been lower had the block been properly maintained.
- 13.4 Mr Ford and Mr Kenning submitted that the insurers had failed to deal with claims effectively. They submitted that there had been an increase in the number of claims on the insurance because the building had been poorly managed.
- 13.5 Ms Chan did not suggest reasonable alternative figures for the insurance.
- 13.6 Mr Tamuta produced a letter dated 2nd April 2003 addressed to all the lessees at the block. This enclosed the estimated service charge for 2003/2004. This stated a substantial increase in buildings insurance premiums was anticipated and continued "Generally insurance premiums have been increasing well above inflation rates for some time now due to world events and general uncertainty in the insurance markets."
- 13.7 Mr Tamuta also produced a letter dated 19th March 2004 also addressed to all lessees at the block, which enclosed the estimated service charge for 2004/2005. This read "Insurance Premium – we anticipate an increase of £1,000 per annum based on the current claims experience. We have, in the past year had a number of claims for water damage due to leaks from some of the properties. Please note that it is essential for each flat to ensure that the pipe work to their property is sound in order to reduce the number of insurance claims".
- 13.8 Pipe work in the common parts was however the responsibility of the Respondent and not the Applicant. Mr Tamuta confirmed that it was not disputed that the Respondent was responsible under the Amenities Lease for repair and maintenance of the common parts, which was all parts of the block not demised to lessees.
- 13.9 The Tribunal was referred to a document headed Wilmot Street (Management) Company Limited 31st March 2006 Current Years Expenditure. In this document the insurance claims for 2004/2005 were listed. These totalled £2,248.62.
- 13.10 Mr Tamuta told the Tribunal that the insurance goes out to tender annually. The Respondent obtained three quotes and the lowest was

approved by the Respondent's board. Prior to the current proceedings Ms Chan had not questioned the insurance charges.

13.11 The Tribunal's decision – Insurance

No evidence was produced by Ms Chan to support the contention that less expensive insurance could have been obtained if there had been fewer insurance claims. The Tribunal does not consider the amount of insurance claims for 2004/2005 to be excessive for this block.

The Tribunal finds that the charges for insurance in each of the service charge years 2002/2003, 2003/2004, 2004/2005, 2005/2006 to be reasonable and reasonably incurred.

14. Reserve Fund Contributions

14.1 Mr Ford and Mr Kenning submitted that there was no provision in the Amenity Lease for a reserve fund. Mr Ford and Mr Kenning also submitted that the reserve fund contributions were unreasonably high, increasing and not adequately justified or explained.

14.2 Mr Tamuta said that the Reserve Fund is in a separate bank account from the rest of the service charge funds. On a practical level the lessees prefer paying a large sum into the Reserve Fund rather than putting aside sums each year in anticipation of future liabilities. The Respondent is a Resident's management company, and the system of leaseholders making contributions to a Reserve Fund had been approved by the Board and was a practical solution to fund repairs when undertaken. The contributions to the Reserve Fund had increased for 2005/2006 because of the Major works at the block. It was stated in a covering letter to the 2005/2006 budget from Wood Management to Ms Chan that the Board had agreed to increase the Reserve Fund contribution to build up the reserves in order to move forward with plans for a significant amount of major external repairs and redecoration works.

14.3 The Tribunal's decision – Reserve Fund

The Tribunal accepts that the Reserve Fund was a practical solution adopted by the Respondent and in general accepted by the lessees to fund major works at the block, in the absence of provisions in the lease for adjustment at the end of the service charge year. The increase in the amount of the Reserve Fund for 2005 to 2006 was to fund the major works that were needed at the block. The Tribunal finds that the amounts payable were reasonable and reasonably incurred in each of the service charge years in issue.

15. Management fees

- 15.1 The estimate expenditure on management fees for the years in issue was:

	£
2002/2003	7,710
2003/2004	7,990
2004/2005	8,250
2005/2006	9,250

- 15.2 Mr Ford and Mr Kenning submitted that the management was not of a reasonable standard and the management fees were not reasonably incurred. Wood Management, had failed to take reasonable care in determining the amount of the service charge, and had not followed the procedure in the Amenity Lease.

- 15.3 The Amenity Lease set out the procedure for calculating and charging the Service Rent. The service charge year began 1st April. The Respondent or its agents should have served a notice in writing on Ms Chan during the first quarter of the service charge year specifying the amount of Service Rent (service charge) for that year. At the end of June in each year the Respondent should have instructed its accountants or auditors to prepare an account. This account should show the costs and expenses incurred by the Respondent since the end of the previous service charge year in respect of or incidental to the performance of its obligations, contain an estimate of likely costs, charges and expenses in the next service charge year, and be certified. The estimated charge should be based on the account and other relevant factors.

- 15.4 Mr Ford and Mr Kenning submitted that the amount of the Service Rent and the actual expenditure showed discrepancies. They submitted that this evidenced the unreasonable standard of management. For example, the estimate for 2003/2004 included a Management Fee of £6,000. The actual expenditure was £7,990.

- 15.5 Mr Ford and Mr Kenning also submitted that the Lease and the Amenity Lease did not authorise a profit to be made.

The Wilmot Street (Management) Company Limited's company accounts, prepared by Philip Hudson & Co, Chartered Accountants, showed a profit for each of the years ending 31st March 2002, 2003, 2004. The Profit and Loss Account for the year ended 31st March 2003 showed a profit on ordinary activities before taxation of £17,333 as compared with a profit before taxation of £8,043 in the previous year. The Accounts to the year ended 31st March 2004 showed a profit before taxation of £9,911. However the Profit and Loss Account for the year to 31st March 2005 showed a loss before taxation of £25,870.

- 15.6 Mr Ford and Mr Willing submitted that there was a general lack of transparency in respect of the service charges. They contended that the Respondent had failed to fully comply with its duties to provide financial information under section 21 of the Act. Mr Ford and Mr Kenning submitted that the information provided was too vague, inadequate and inconsistent.
- 15.7 In the letter enclosing the accounts to 31st March 2006, the Respondent's Solicitors had told Ms Chan that if she wished to inspect invoices for expenditure she could contact Paul Holton at the Respondent's head office. Ms Chan referred to a hand written note dated 4th October 2006 of a meeting she had attended showing the items and information required. This had been requested by Ms Chan prior to the meeting. The information supplied was inadequate. The only breakdown of service charges provided by Wood Management was that produced for the service charge year 2004/2005. A schedule of Reserve Fund expenditure was provided but covered the period 15th November 2004 to 23rd May 2005. Mr Ford submitted that the information provided was incredibly vague and that this illustrated the general lack of transparency.
- 15.8 In respect of the Reserve Fund Contribution for the year ending 31st March 2005, in the documents before the Tribunal there was a document headed "Estimate of Expenditure for the Year Ending 31st March 2005". This was signed by Vincent Wood for Wood Management and showed a "Reserve Fund Contribution" of £25,000. However, there was also a "Statement of Anticipated Service Charge Expenditure for the period ending 31st March 2005", which showed a "General Reserve Fund" contribution of £50,000 for "Sundries".
- 15.9 In respect of the discrepancies between estimated and actual expenditure, Mr Tamuta said that most of the costs are predictable. However, the block was an old building built at the end of the 19th century and suffered from typical problems relating to damp. It had been revamped in 1985, and required a high level of maintenance and it was hard to estimate for this. If some unexpected expenditure was incurred the Respondent would try to re-coup it by increasing the estimate in the following year. The works to bring the block up to a reasonable standard were greater than when the Reserve Fund was originally set. Phase 1 of the works began in September 2004 and ended at Christmas 2004. Phase 2 was in 2005. It was anticipated that Phase 3 would start in spring but the Respondent had encountered difficulty raising funds. Mr Tamuta said that two to three weeks before the end of each service charge year, the Board of the Respondent approved the budget for the following year. The Board's members are the leaseholders in the block. The Board are supplied within information and then make an informed decision. A balance has to be struck between the level of expenditure and the level of maintenance to the block. He said that Wood Management Limited is RICS compliant and a member of ARMA.

15.10 Ms Chan also raised a number other points relating to the standard of Management at the hearing. In respect of the problem with leaks at the block referred to in paragraph 12 above, Ms O'Connor said that Wood Management had taken steps to investigate problem. She produced copies of letters written in July, October and November 2005 to other residents of the block pointing out that the overflow pipes connected to their flats were leaking and requesting them to arrange a plumber to investigate to stop the leaks.

Ms Chan also complained of noise from the flat above hers. She stated that the lessees of that flat had removed the carpets. Ms O'Connor referred her letter to Ms Chan dated 26th September 2005 requesting access for East London Maintenance Ltd to carry out works to Ms Chan flat. This letter also stated that letters had been written the lessee above about the noise. Ms Chan said that the leaks had not stopped as stated in the letter and the letters written by Wood Management had not been effective in reducing the noise.

15.11 In respect of the painting of the front door to Ms Chan's flat, referred to in paragraph 12 above, the door had been painted when closed. Ms Chan submitted that the general attitude of Wood Management was demonstrated in e-mails between Ms O'Connor and Mr Foweather in November 2005. The contractors were instructed to paint the doors with the doors closed if Ms Chan did not co-operate.

15.12 Ms Chan contended that that there was rubbish to the front and back of the block. She produced photographs in support. Ms O'Connor said steps were taken to deal with this problem. A maintenance man came to the block monthly to check for fly tipping. He swept around the drain holes on the roof and removed rubbish.

15.13 Ms Chan had offered to make part payments of service charges at the rate of £300 per month. This was recorded in a note dated 28th July 2005. Ms O'Connor said that this arrangement had not been kept to. A note dated 5th September 2005 stated that Ms Chan had suggested a part payment plan over two years. The Respondent then required full payment of the arrears.

15.14 The Tribunal's decision – Management fees

The Tribunal finds that the management was not of a reasonable standard in the service charge years 2003/2004, 2004/2005, 2005/2006. At the hearing Ms Chan said that she was not dissatisfied with the standard of management and charges in 2002/2003.

The information supplied to Ms Chan was inadequate and inconsistent. There was general lack of transparency and lack of explanation as to how the service charges were made up. Wood Management has not strictly complied with the procedure for determining the estimated service charge (Service Rent) under the Amenity Lease.

Although some efforts were made by Wood Management to deal with the ongoing problem of leaks at the block and noise from the flat above Ms Chan's, these were not followed up. More consideration could have been given to Ms Chan's proposal to instruct her own decorator to carry out the repair/redecoration works to the bathroom.

The Tribunal finds that the management was not of a reasonable standard and that the figures for management charges were not reasonably incurred for 2003/2004, 2004/2005 and 2005/2006.

Ms Chan is responsible for 2.414% of the management charges under the lease terms. Applying this proportion to the management charges for the relevant years and then reducing the sum by 50% produces the following amounts. The Tribunal finds that the reasonable management charges due from Miss Chan are:

	£
2003/2004	94.44
2004/2005	99.58
2005/2006	111.65

16. Ms Chan's application under section 20C of the Act

16.1 Under section 20C of the Act a tenant may make an application for an order that all or any of the costs incurred by the landlord in connection with proceedings before the leasehold valuation tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the tenant. The Tribunal can make such order as it considers reasonable in the circumstances.

16.2 Mr Tamuta submitted that no order under section 20C should be made. He submitted that Ms Chan had failed to keep to arrangements she had made with Wood Management for paying her arrears.

16.3 The Tribunal's decision on the section 20C application

The information available to her in respect of the service charges was inadequate and she acted reasonably and was justified in making her application to the Tribunal. The Tribunal finds that it is reasonable in all the circumstances to make an order under section 20C. The Tribunal orders that the costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs in determining the amount of the service charge payable by Ms Chan.

CHAIRMAN.....*Anne Siefert*

DATE.....*7th February 2007*

Members of the Leasehold Valuation Tribunal

Miss A Seifert FCI Arb

Mr I Holdsworth BSc MSc FRICS

Mr R Eschle