London Leasehold Valuation Tribunal File Ref No. **LON/00AF/LSC/2006/0205**

Leasehold Valuation Tribunal: Full reasons

Landlord and Tenant Act 1985 section 27A

Address of Premises

8 Ranmore Path,
Orpington,
Kent BR5 wHP

The Committee members were

Mr Adrian Jack
Mr Mel Cairns
Mr Owen Miller

The Landlord: **Broomleigh Housing Association**

The Tenant: **Mr and Mrs Norley**

Background

1. The tenants are holders of a 125 year lease of Flat 8, Ranmore Path. The lease was originally granted in 1988 by the London Borough of Bromley under the right-to-buy legislation contained in the Housing Act 1985. The lease contained standard provisions for the payment of service charge. The service charge year runs from 1st April to 31st March.
2. By an application dated 14th June 2006 the tenants sought a determination of their liability for service charges in the service charge years 2002/03, 2003/04, 2004/05 and 2005/06.
3. At a pretrial review held on 12th July 2006 the Tribunal ordered the tenants to serve a statement settling out in detail the reasons for their objections to the service charges in dispute. Pursuant to that order the tenants served a closely typed four page letter dated 18th July 2006.

The law

4. Section 19(1) of the Landlord and Tenant Act 1985 provides:
   "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."
5. Section 27A gives the Tribunal jurisdiction to determine by whom, to whom, when, in what matter and how much is to be paid.

Inspection

6. The Tribunal inspected the property on the morning of 3rd November 2006 in the presence of one tenant and the representatives of the landlord.

7. Ranmore Path is a block built in about 1950. The building is in an L-shape. On the ground floor there are shops. Of these all but about three are boarded up. At the back of the building each of the shops has an individual area fenced off with wire mesh. On the other side of these fenced-off areas there is a large yard used for car parking. The yard also has a number of lock-up garages.

8. The first and second floors of the building contain twenty flats, some at least of which are maisonettes. Access to the flats is gained through two security gates on the ground floor one at each end of the building. These lead to stairs which go up to a wide balcony at the back on the first floor level. In practice the balcony is partitioned so that each flat has its own little yard through which access to the front door is gained.

9. At the top of each of the stairs there is a small lobby. One large pane of glass at the bottom of the door and a length of beading around the top pane were missing. A number of the windows adjacent to the door at the top of one staircase were broken or missing. These windows and doors are the only communal windows in the block.

10. The building is dilapidated. We were shown into the roof void of one of the flats. The lining of the roof is failing. External viewing of the roof suggests that the tiles are reaching the end of their useful life. A number of tenants (but not either of the applicants) have left rubbish outside their flats in their individual "yards".

Hearing

11. After the inspection the Tribunal held a hearing. The tenants were represented by Miss Kim Scott and Mrs Harriet O'Sullivan, both law students. Neither tenant attended. The landlord was represented by Mr Eaton, the head of the leasehold team, and Miss Farrugia, the property manager.

12. The Tribunal went through the tenants' letter of 18th July 2006 in some detail with the tenants' representatives. The first page of the letter dealt with the history of the matter and the tenants' representatives agreed no issues for determination by the Tribunal arose on this.

13. The first four paragraphs of the second page of the letter dealt with the fact that the windows were of identical PVC design. This was mentioned because the landlord had at one stage proposed replacing the windows. In fact, however, this had never occurred. No service charge had been raised in connection with the replacement of the windows, so the tenants' representatives agreed that there was nothing for the Tribunal to determine in connection with this point.

14. So far as the windows at the top of the stairs from the security gates were concerned, the landlord said that it had carried out some works to repair these. The tenants in their letter, however, raised no issue in connection with these windows.

15. The remainder of that page, with the exception of the last paragraph, concerned an accounting error which the landlord had made and the efforts of the tenants to rectify the error. It was agreed that the error had now been rectified, so that there was nothing for the Tribunal to determine. The

penultimate paragraph claimed compensation for the inconvenience caused, but it was conceded that the Tribunal had no jurisdiction to award such damages.

16. The last paragraph on the second page and the first two paragraphs of the third page and the seventh paragraph on that page concerned a proposed charge for window cleaning. The landlord was initially seeking to recover £23.12 from the tenants in respect of the cleaning of the communal windows in the service charge year 2006/07. Subsequently the landlord reduced this figure to £10.00. It was proposed that the windows be cleaned twice a year.

17. The third fourth and fifth paragraphs on the third page concerned discussions the tenants held with the landlord complaining about the increase in service charges. No issue arose from these paragraphs.

18. The sixth paragraph made a complaint in relation to the front door of the flat. It appeared that the door had been damaged. A locksmith had had to be called out, but the landlord refused to reimburse the cost. Examination of the lease showed that the front door was part of the tenants' demise. The landlord was not responsible for keeping the door in repair. In these circumstances the tenants' representatives accepted that no claim lay against the landlord.

19. The seventh paragraph read: "Contractors employed by the Council, which is included in the L/Hrs Council Tax, collect the rubbish. Why does BHA charge the L/Hrs?"

20. The tenants' representatives explained that the service charges raised by the landlord included the sum of £79.43 in 2003/04 for rubbish collection, of which the tenants' share was £7.06; £176.21 in 2004/05 of which the tenants' share was £15.67; and £211.16 in 2005/06 of which the tenants' share was £18.77.

21. Mr Eaton explained that these sums were not charged for ordinary rubbish collection. Instead, he explained, it occasionally happened that rubbish or large items like sofas were dumped in the common parts of the block. The landlord attempted to trace those responsible, but sometimes this was not possible. The Council's bin men do not remove this sort of material. Instead the caretaker's team has to collect these items and take them to the dump. The dump charged a fee for waste based on weight. The caretaker made an estimate of the weight of such items. A log was kept, so that the appropriate fee could be charged back to the relevant block. Mr Eaton had not brought the logs and other documentation in connection with this issue with him, because he had not appreciated from the letter of 18th July that this was a major issue.

22. The tenants did not raise any other issue about charges for a caretaker or cleaner in the years in question. (The landlord in its letter of 19th October 2006 had explained that no charge had been made for the services of the clearer or caretaker.)

23. The remainder of the third page concerned the future of the block and in particular rumours that the landlord proposed to demolish the block with a view to rebuilding it. Quite how this could occur when there were long leaseholders in the block was unclear, but the tenants' representatives agreed that these matters were not for the Tribunal to determine.

24. The fourth page gave further history.

25. The tenants' representatives made a general point that the service charges had increased beyond inflation, but were unable to point to any particular elements of the service charge which they challenged beyond the points outlined above.

Determination

26. It followed from the above discussion that there were only two live issues which the tenants asked the Tribunal to determine.

27. The first is the reasonableness of the £23.12 for window cleaning, subsequently reduced to £10.00. The landlord is only seeking to recover this charge on account in the 2006/07 service charge year. The tenants' application is solely in relation to the service charge years 2002/03 to 2005/06. The Tribunal therefore has no application before it in relation to 2006/07 and can therefore make no binding decision on the reasonableness or otherwise of the amount charged.

28. We did, however, hear full argument on the point. We have no doubt that, if the matter was properly before us, we would have considered even £10 against these tenants excessive. (This equates to over £110 for the block as a whole.) There are very few communal windows indeed. Cleaning these twice a year should not cost anything like the amount claimed.

29. The second live issue is the amount charged for rubbish collection. We accept the evidence of Mr Eaton as to what this item represents. In general the Tribunal would expect a landlord to produce the underlying documentation to justify a particular item. In this case, however, the Tribunal considers that the brief paragraph in the tenants' letter which we have set out in paragraph 19 above did not put the landlord fully and fairly on notice of the challenge which was being made to the charge for rubbish collection. The Tribunal does not therefore hold it against the landlord that the underlying documentation has not been produced.

30. The sums claimed by the landlord under this head are modest. The Tribunal is well aware that in blocks of this type rubbish and other large items are periodically dumped. Fly-tipping is sadly endemic. The Tribunal accepts Mr Eaton's explanation of how the amounts are calculated and considers the amounts are reasonable.

31. The Tribunal considered the tenants' general point that the total amount of the service charges had increased. A global approach can provide a useful check to see whether the amounts claimed for individual items are justified. It is, however, always necessary to look at the individual items claimed as part of a service charge. Given the extremely limited attack made by the tenants on the individual items charged by the landlord, it is in the Tribunal's judgment impossible to say that the service charges, viewed globally, are unreasonable.

Costs

32. The landlord's representatives indicated that the landlord did not intend to charge under the service charge account any sum by way of costs in these proceedings. Accordingly there is no need for the Tribunal to consider

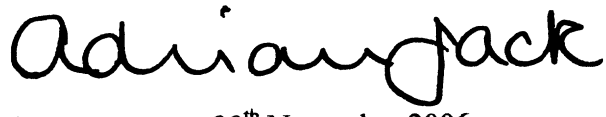
whether an order under section 20C of the Landlord and Tenant Act 1985 should be made.

33. Since the tenants have lost comprehensively, the Tribunal makes no order for costs. The effect is that the application fee and the hearing fee which the tenants have paid are not recoverable from the landlord.

DECISION

(a) **The Tribunal determines that the sums claimed by way of service charge by the landlord for the service charge years ending on 31st March 2003, 2004, 2005 and 2006 are reasonable and are properly payable by the tenants to the landlord.**

(b) **The Tribunal makes no order for costs.**



Adrian Jack, chairman 30th November 2006