Eastern Rent Assessment Panel
Great Eastern House Tenison Road Cambridge CB1 2TR
Telephone: 0845 1002616 Facsimile: 01223 505116

Residential Property
TRIBUNAL SERVICE

REASONS FOR DECISION OF LEASEHOLD VALUATION TRIBUNAL

Landlord & Tenant Act 1985 Sections 27A and 20C

Premises:	Flat 2, 91 Fennycroft Road, Hemel Hempstead, Herts HP1 3PD
Our ref:	CAM/26UC/LSC/2006/0050
Hearing:	18 December 2006
Applicants:	Mr G J Alexander (landlord)
Respondent:	Mr & Mrs D Hogan (tenants)
Members of Tribunal:	Mr G M Jones - Chairman Mr J R Humphrys FRICS Miss Marina Krisko BSc (Est Man) FRICS

ORDER

1. It is hereby declared that the balance due and payable to the Applicant by the Respondents as at 18 December 2006 in respect of service and administration charges for Flat 2, 91 Fennycroft Road, Hemel Hempstead, Hertfordshire was £819.15 as shown in the Schedule hereto.

2. The Tribunal further declares that the charges set out in the Schedule hereto were reasonably incurred by the Applicant and that insofar as due contribution towards the same has not been recovered from the Respondents such contribution as shown in the Schedule hereto will be payable to the Applicant by the Respondents by way of service and administration charges as and when lawfully demanded.

3. The parties have permission to apply as regards costs within 14 days from the date of service of this Order. Unless such application is made within that period there shall be no order as regards costs.

Geraint M Jones MA LLM (Cantab)
Chairman

0. BACKGROUND

The Property

0.1 The property is a one-bedroom self contained ground floor flat in a semi-detached former police house built in the 1960's and extended and converted into four small flats in 1990 -1. The building is of brick and tile construction, part rendered, with a hardwood front door and (mostly) replacement UPVC double glazed windows and patio doors. The front door leads to Flats 2 to 4. Flat 1 has its own entrance on the side elevation. At the front are a small garden area and two car parking spaces. At the rear is a small garden area with bin store, two further car parking spaces and a garage occupied by the landlord. The landlord also retains Flat 3 which he lets out on assured shorthold terms. The structure of the building and the grounds and common parts are generally in good order, though the small section of garden wall adjoining the building at the rear is in need of minor attention.

The Lease

0.2 The respondents' lease is for a term of 99 years from 1 August 1991 at a ground rent. The windows and window frames were included in the demise. Under the terms of the lease the landlord is required to insure and to maintain, repair and renew the structure, common service media, footpaths and hard surface external areas, gardens, walls and fences. The leaseholder is required to contribute through service charge provisions 26.5% of insurance costs (not as set out in the sample lease provided, but as assessed by internal area); one quarter of the costs of maintaining the structure and grounds (Schedule 7) and one third of the costs of maintaining internal common parts (Schedule 8). The lease expressly authorises the landlord to charge a management fee at the rate of 15% of expenditure incurred save that, in respect of repairs, he may charge only a reasonable management fee. The terms of payment are set out in Schedule 9, which includes a provision for half-yearly interim payments plus a final balancing payment and a facility for the landlord to collect additional sums for a reserve account and carry forward any surpluses. Each leaseholder contributed an initial deposit of £400.00. Payment of interest at 4% above Barclays Bank base rate is specified for the purposes of clause 5 and Schedule 4, so that the landlord is expressly authorised to charge interest on arrears of service charges.

1. THE DISPUTE

1.1 Mr & Mrs Hogan purchased the lease of Flat 2 in about 2002 on a "buy-to-let" basis. From then until April 2004, there were no charges of maintenance or repair because no works were carried out. The only charges were for insurance, to which the landlord added an administration charge of 10%. Then it became necessary to renew the original part of the roof, which the landlord (who is a builder) mostly did himself (under his trading name "Beautiful Kitchens"), after giving notice to leaseholders that it would cost about £1,600.00. The actual cost was £1,296.75, which included £528.75 for scaffolding. No leaseholder objected to the work being carried out or complained about the quality of work or the price. At the same time the landlord started to render modest charges for mowing the grass, cutting the hedge and sweeping the surfaced areas, all of which he did himself at a rate of £7.00 per hour. The total cost for 2004-5 was £88.00.

1.2 In 2005-6 the landlord decorated the remaining original metal-framed windows (Flat 4); the surround of the patio doors to Flat 2; the two external doors; and the rendered areas. He also washed the plastic fascias and soffits and applied a coat of emulsion to the walls of the internal common parts. The total charge he rendered for this work was £420.00, including materials.

He allocated the costs equally between the four flats but let the leaseholder of Flat 1 off one monthly payment to compensate for the cost of the internal decorations. That year the Council introduced "wheelie" bins, which must be left by the roadside for collection. As a result, it was necessary to construct a pathway to the bin store. The landlord's charge of £642.50 included repositioning the back gate and creating a small area of ornamental planting. Grass cutting and garden maintenance for 2005-6 was charged at £289.00. For 2004-5 and 2005-6 the interim service charge payments for each leaseholder were set at £30.00 per month.

1.3 So far in 2006-7 the only building work has been repointing the roof valley between the original roof and the 1990 extension. This was done by the landlord himself with the use of a scaffolding tower at a cost of £310.00. He has also cut the grass and hedge, for which he has charged £252.00, and replaced a rotten fence post at a cost of £23.00. For 2006-7, as no major expenditure was contemplated, monthly contributions for each leaseholder were set at £15.00 per month.

2. THE ISSUES

2.1 Mr & Mrs Hogan paid interim service charges of £30.00 per month up to and including June 2004 and insurance charges (plus 10% commission) up to and including the sum of £154.86 claimed by letter dated 11 September 2004. At the same time, they paid one monthly interim payment of £30.00 (for July 2004). Thereafter they made only one payment of £60.00, which covered the interim charges for August and September 2004. Since then, they have paid only the insurance charge (plus commission) of £165.52 due September 2005. They have not paid the insurance contribution of £154.43 due in September 2006. There have on occasions been modest surpluses (or would have been, had Mr & Mrs Hogan made due payment) but the Applicant made no refunds; he elected, as was his right under the terms of the lease, to carry forward surpluses by way of reserve against future expenditure. He claims the unpaid balances up to the date of the hearing and modest sums by way of administration charges.

2.2 The Respondents did not reply to the landlord's correspondence (sent to their home address) and, although duly served with notice of the application, have played no part in proceedings. Nevertheless, the Tribunal has taken care to consider whether the sums claimed were authorised by the lease; whether the charges were actually incurred; and whether the charges were reasonable. The Tribunal has also checked the landlord's calculations of sums due and owing. Before making any order, the Tribunal must be satisfied that the sums claimed are payable by the Respondents and have not been paid. To this end, the Tribunal has also considered the consultation requirements under section 20 of the 1985 Act.

3. THE EVIDENCE

3.1 The landlord explained the above matters to the Tribunal. He said he had not, in fact, made any charge for management, apart from the insurance "commission". In 2005-6, he forgot to render an invoice for the commission, an omission which he had since rectified. Otherwise, he rendered invoices for all his services, as charged. He did the roofing work at cost, charging only for disbursements and his own labour. His charges for garden maintenance included the provision of his own equipment, which he transported to and from site by van.

4. THE LAW

Service Charges

4.1 Under **section 18 of the 1985 Act** (as amended) service charges are amounts payable by the tenant of a dwelling, directly or indirectly, for services, repairs, maintenance, improvement, insurance or the landlord's costs of management. Under section 19 relevant costs are to be taken into account only to the extent that they are reasonably incurred and, 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. Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.

4.2 Under **section 27A** the Tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also 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 so, the amount which would be payable.

Consultation

4.3 Under **section 20 of the 1985 Act** (as substituted by **section 151 of the Commonhold & Leasehold Reform Act 2002** with effect from 31 October 2003) and the **Service Charges (Consultation Requirements) (England) Regulations 2003** landlords must carry out due consultation with tenants before undertaking works likely to result in a charge of more than £250.00 to any tenant or entering into long term agreements costing any tenant more than £100.00 p.a. This process is designed to ensure that tenants are kept informed and have a fair opportunity to express their views on proposals for substantial works or on substantial long term contracts. The consultation requirements vary depending upon the circumstances of the case and, in particular, whether the landlord is a designated public body for the purposes of statutory regulations dealing with public works, services and supplies.

4.4 In this case the relevant requirements are those set out in Part 2 of Schedule 4 to the 2003 Regulations. The landlord must first provide to the tenants (and, if applicable, to the tenants' association) prescribed information about the proposed works and invite them to put forward a contractor. The consultation period is 30 days. The landlord must have regard to the tenants' observations, which might result in a change in the specification of works. After that, the landlord may be obliged to seek an estimate from a contractor or contractors nominated by the tenants. That is likely to occupy a further period of at least 14 days. The landlord must then inform each tenant of the amounts of at least two estimates and the effect of any observations received and the landlord's responses and invite observations on the estimates. All estimates must be made available for inspection. The second consultation period is also 30 days. The landlord must have regard to any observations made. There are other requirements to provide information; but these should not delay the works.

4.5 Landlords who ignore these requirements do so at their peril. Unless the requirements of the regulations are met the landlord is restricted in his right to recover costs from tenants; he can recover only £250.00 or £100.00 p.a. per tenant (as the case may be). However, it is recognised that there may be cases in which it would be fair and reasonable to dispense with strict compliance.

4.6 Accordingly, **under section 20ZA (inserted by section 151 of the Commonhold & Leasehold Reform Act 2002)** the Leasehold Valuation Tribunal may dispense with all or any of the consultation requirements if satisfied that it is reasonable to do so. This may be done prospectively or retrospectively. Typically, prospective dispensation will be sought in case of urgency or, perhaps where a tenant is refusing to co-operate in the consultation process. Retrospective dispensation will be sought where there has been an oversight or a technical breach or where the works have been too urgent to wait even for prospective dispensation. These examples are not meant to be exhaustive; there may be other circumstances in which section 20ZA might be invoked.

Administration charges

4.7 Under section 158 and Schedule 11 to the Commonhold & Leasehold Reform Act 2002 the Tribunal has jurisdiction to consider whether an administration charge made to a tenant is payable. Such charges, if variable, are generally payable only to the extent that they are reasonable. The Tribunal may vary any unreasonable administration charge specified in a lease or any unreasonable formula in the lease in accordance with which an administration charge is calculated.

Costs

4.8 The Tribunal has no general power to award inter-party costs, though a limited power now exists to make wasted costs orders. In general, if the terms of the lease so permit, the landlord is able to recover legal and other costs (eg the fees of expert witnesses) associated with an application to the Tribunal as part of the service charge. In general, the landlord may be entitled to recover through the service charge provisions a contribution to such costs not only from the defaulting tenant but from all tenants.

4.9 However, under **section 20C** of the Act of 1985 the Tribunal has power, if it would be just and equitable so to do in the circumstances of the case, to prevent the landlord from adding to the service charge any costs of the application. In the Lands Tribunal case *Tenants of Langford Court –v- Doren Ltd* in 2001 HH Judge Rich QC said that the LVT should use section 20C to avoid injustice.

4.10 In addition, under regulation 9 of the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 the Tribunal may order a party to reimburse the Applicant in respect of application and hearing fees.

5. CONCLUSIONS

5.1 The Tribunal is satisfied that the landlord has incurred the costs by way of disbursements listed in his annual statements of account and that, in each and every case, those costs were reasonably incurred. As regards the invoices rendered by the landlord under his trading name "Beautiful Kitchens", the Tribunal is satisfied that the work was done and to a reasonable standard. In the view of the Tribunal, the charges for building and decorating were very reasonable. As regards garden maintenance, it is notoriously difficult to find contractors willing to undertake small contracts at a reasonable price. The landlord has carried out this work for less than £6.00 per week, which the Tribunal considers reasonable.

5.2 It seems clear that the landlord did not fully comply with the consultation requirements in respect of the roofing work in 2004-5. The leaseholders were entitled to be consulted so that they could express views as to whether the work was necessary; the timing of the work; the cost of the work and the choice of contractor. The respondents have not raised this issue. On the unchallenged evidence, the landlord did inform the leaseholders, who neither objected to the work nor complained about the proposed price. In the end, as the Tribunal finds, the work was done to a good standard and at a very competitive price. The total sum claimed is less than £300 above the amount (£1,000) the landlord could claim in any event. If necessary, the Tribunal considers it reasonable to exercise its power under section 20ZA to dispense with further consultation.

5.3 There is no provision in the lease entitling the landlord to charge commission or any fee upon the insurance premiums. Accordingly, the Tribunal finds that these charges are not payable by the leaseholders. Nor is the landlord entitled to charge any management fee for managing contracts performed by himself. He would be entitled in future to include in his invoices for building and decorating works a reasonable allowance for profit and/or reasonable sums for managing subcontractors. The lease expressly permits the landlord to render reasonable charges for costs incurred in the recovery or attempted recovery of rent or service charges. The charges listed by the landlord for sending reminder letters etc. are also, in the view of the Tribunal, reasonable.

5.4 Further, in the view of the Tribunal, the interim service charges rendered have been reasonable and it was reasonable for the landlord to carry forward surpluses (or notional surpluses) by way of reserve for future expenditure. The Tribunal can make findings only in relation to charges payable up to the date of the hearing. But the Tribunal can think of no reason why the landlord should not be entitled to collect interim payments of £15.00 per month per flat up to April 2007 and, if there is a surplus at the end of the accounting year, to carry it forward.

5.5 The Tribunal has rewritten the service charge account in accordance with its findings. This is set out in the Schedule to the Order. For 2004-5, general expenditure per flat was £345.94, so that a notional credit of £14.06 was carried forward. As at 5 April 2005, the respondents were £180.00 behind with their monthly interim payments but had overpaid by £14.08 for insurance. Thus they were in arrears by £165.92 (including the £14.06 which was to be carried forward).

5.6 For 2005-6 general expenses at £411.74 exceeded contributions at £360.00 by £51.74. The landlord did not levy a balancing charge. The respondents paid the insurance contribution demanded £165.52 (an overpayment of £15.05) but made no monthly payments at all. Thus they fell further behind by £344.95. To that must be added £33.85 for administration charges. Thus, as at 5 April 2006, the total due and owing was £544.72. The deficit of £51.74, less the surplus of £14.06 from the previous year, a net figure of £12.32, was carried forward. It appears there was £413.43 in the bank but it does not follow that any of that money belonged to the respondents. The landlord was, in any event, entitled to retain any accrued balances (within reason) by way of reserve against future expenditure.

5.7 So far in 2006-7 (i.e. up to 30 November 2006) the respondents' share of expenditure has amounted to £307.25. By the date of the hearing they should have paid the insurance contribution of £154.43 plus 8 monthly payments of £15.00, a total of £274.43. This sum is to be

added to the previous balance of £544.72, making a total of £819.15 due and owing at the date of the hearing.

5.8 In the light of the above findings, the Tribunal concludes that the net balance payable by the respondents to the applicant as at 18 December 2006 was £819.15. Monthly payments continue to become payable on the 28th of each month at the rate of £15.00 per month. If there is a net deficit as at 5 April 2007, the landlord will be entitled to levy a balancing charge.

5.9 The Tribunal can think of no reason why the applicant should not add interest at 4% above Barclays base rate (which appears, on the face of it, to be a reasonable commercial rate). However, that is not a matter for the Tribunal, which makes no finding on that point.

Costs

5.10 This Tribunal takes the view that it has a wide discretion to exercise its powers under section 20C in order to avoid injustice to tenants. An obvious injustice would occur if a successful tenant applicant (and indeed his fellow tenants) were obliged to contribute to the legal costs of the unsuccessful landlord or, irrespective of the outcome, if the tenant were obliged to contribute to costs incurred unnecessarily or wastefully. A wide variety of other circumstances may occur and the section permits the Tribunal to make appropriate orders on the facts of each case.

5.11 Overall, on the information available to date, the Tribunal concludes that it would not be just and equitable in the circumstances of the case to order that the landlord should be disentitled from treating his costs of and arising out of the application as relevant costs to be taken into account in determining any service charge relating to the property. This conclusion is subject to any "Calderbank" offers (offers made without prejudice save as to costs) or other relevant correspondence the parties may submit to the Tribunal within 14 days from publication of this Decision. The parties have permission within the same period to submit written arguments in relation to costs.

Geraint M Jones MA LLM (Cantab)
Chairman

SCHEDULE TO ORDER

Date	Item	Cost	Tenants' Contribution		
2004-5	**To 5 Apr 2005**		**Insurance**	**Other**	**Total**
Sep 1	Royal London Insurance	531.26	140.78		
Sep 20	Tully Scaffolding	528.75			
Oct 19	D Mason (roofing work)	160.00			
	Beautiful Kitchens – Roof	607.00			
	Maintenance	88.00		345.94	
	TOTAL	**1915.01**			**500.22**
	Balance carried forward			CR14.06	
2005-6	**To 5 Apr 2006**				
Aug 14	Royal London Insurance	567.82	150.47		
Dec 29	Bank charges	9.00			
Nov 12	Beautiful Kitchens – Decorating	420.00			
	Fence panels	274.00			
	Maintenance	289.00			
	Footpath	642.50			
Mar 28	Bank charges	12.44		411.74	
	TOTAL	**2214.76**			**562.21**
	Balance carried forward			DR51.18	
2006-7	**To 30 Nov 2006**				
Jun 27	Bank charges	11.85			
Sep 13	Royal London Insurance	582.76	154.43		
Sep 26	Bank charges	14.44			
Nov 15	Beautiful Kitchens – Roof valley	310.00			
	Grass cutting etc	275.00		152.82	
	TOTAL TO DATE	**1194.05**			**307.25**
2004-5	Interim service charges (28th of month)			360.00	
	Insurance charges		140.78		
	Less paid		CR154.86	CR180.00	DR165.92
2005-6	Interim service charges (28th of month)			360.00	
	Insurance charges		150.47		
	Administration charges			33.85	
	Less paid		CR165.52	0.00	DR378.80
2006-7	Interim service charges (8 months)			120.00	
	Insurance charges		154.43		
	Administration charges so far applied			0.00	
	Less paid		0.00	0.00	DR274.43

	TOTAL DUE AS AT 18 DEC 2006				**DR819.15**