

**LEASEHOLD VALUATION TRIBUNAL  
OF THE  
MIDLAND RENT ASSESSMENT PANEL**

BIR/00FN/LSC/2005/0006

*DECISION OF THE LEASEHOLD VALUATION TRIBUNAL  
ON AN APPLICATION UNDER SECTION 27A  
OF THE LANDLORD AND TENANT ACT 1985*

<u>Applicant:</u>	Ms Ruth Edley (leaseholder)
<u>Respondent:</u>	Leicester City Council (landlord)
<u>Subject property:</u>	209 Glenhills Boulevard Eyres Monsell Leicester LE2 8UJ
<u>Application to LVT:</u>	22 April 2005
<u>Hearing date:</u>	25 October 2005
<u>Appearances:</u>	
<i>For the applicant:</i>	Ms R Edley Mr L Stevens
<i>For the respondent:</i>	Mr T J Tregaskiss Mr R Gotts
<u>Members of the Tribunal:</u>	Professor N P Gravells MA Mr J E Ravenhill FRICS Mr M H Ryder
<u>Date of determination:</u>	<b>22 NOV 2005</b>

## **Introduction**

- 1 This is a decision on an application made to the Leasehold Valuation Tribunal by Ms R Edley, leaseholder of the flat at 209 Glenhills Boulevard, Eyres Monsell, Leicester LE2 8UJ ("the subject property"), under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for the determination of the leaseholder's liability to pay service charges in the years 2004/5 and 2005/6.
- 2 The respondent landlord is Leicester City Council.

## **Subject property**

- 3 The subject property is a flat on the second (top) floor a block containing six similar flats. The block is part of a development of similar blocks set back from Glenhills Boulevard in the Eyres Monsell district of Leicester, approximately five kilometres from the city centre. The block has a security door and door entry system. The flat comprises an entrance hall (with small balcony off), kitchen, sitting room, inner hall, two bedrooms, bathroom and separate wc. Outside there are two stores.

## **Background to the application**

- 4 In August 2003, the applicant leaseholder, who was then a secure tenant of the subject property, served a notice on the respondent landlord under section 122 of the Housing Act 1985, claiming to exercise the right to be granted a 125-year lease of the property under the Right to Buy scheme. The respondent served a notice on the applicant under section 124 admitting the applicant's right.
- 5 Pursuant to its obligation under sections 125 and 125A to provide the applicant with estimates of future service charges and repair charges in respect of the subject property, the respondent carried out a dilapidations survey on the subject property and the block containing the subject property. That survey identified anticipated repair works (including the making good of structural defects) to be carried out (a) in the initial five years of the lease and (b) beyond that initial period. The amount (at current prices) of the cost of the identified works was then estimated in accordance with the respondent's contract prices system and the amount (at current prices) of the contribution of the applicant was calculated. In each case the respondent would recover from the applicant the whole cost of work carried out on the subject property but only one-sixth of the cost of work carried out on the block. In respect of work to be carried out in the initial five year period, the cost was to be recovered from the applicant through annual contributions in each of the five years. In respect of work to be carried out beyond the initial five year period, the cost was to be recovered through annual contributions (starting in the first year of the lease) until the year when it was anticipated that the work would be carried out.
- 6 The estimated annual service charge included in the respondent's offer notice to the applicant, dated 18 November 2003, was the sum of the annual charges for recurrent services (£311.72), the annual contribution for repair works to be carried out in the initial five year period (£936.15) and the annual contribution for repair works to be carried out beyond the initial five year period (£601.81) – a total of £1849.68.
- 7 On 9 August 2005 the respondent granted the applicant a 125-year lease of the subject property. The terms of the lease included standard service charge provisions.

- 8 The respondent subsequently issued notices to the applicant ("the service charge notices"), detailing the monthly service charge for the periods from 9 August 2004 (the date of the lease) to 31 March 2005 and from 1 April 2005 to 31 March 2006. In respect of 2004/5 the equivalent annual figure for recurrent services had increased from the offer notice figure of £311.72 to £328.92; but the global figure for repair works (covering both those to be carried out in the initial five year period and those to be carried out beyond the initial five year period) remained the same as the offer notice figure of £1537.96. In respect of 2005/6 the equivalent annual figure for recurrent services had increased to £336.24 and the equivalent annual figure for repair works had increased to £1607.16.
- 9 In the present application, the applicant seeks a determination as to whether the charges detailed in the service charge notices are reasonable and/or payable under the service charge provisions in the lease and the relevant provisions of the Landlord and Tenant Act 1985.

### **Inspection**

- 10 The members of the Tribunal inspected the subject property and the common parts of the block (entrance hall, staircases and landings) on 25 October 2005, in the presence of Ms Edley, her partner Mr Stevens, Mr Tregaskiss, the respondent's Housing Department Sales and Administration Officer and Mr Gotts, who, as a member of the respondent's Housing Department Technical Services Branch, was responsible for the dilapidations survey.

### **Hearing**

- 11 A hearing was held on 25 October 2005 at the offices of the Employment Tribunal in Leicester.
- 12 The hearing was attended by the applicant and Mr Stevens. The respondent was represented by Mr Tregaskiss and Mr Gotts.
- 13 By way of elaboration of the written representations previously submitted to the Tribunal, the Tribunal heard oral representations from the parties on the matters in dispute. Those representations are outlined below in the context of the determination on each matter.

### **Determination of the Tribunal**

- 14 In determining the issues in dispute between the parties the Tribunal took account of all relevant evidence and submissions presented by the parties.

#### Preliminary issues

##### **Right of the applicant to apply to the Tribunal**

- 15 Mr Tregaskiss stated that the estimates of the service charge had been produced in accordance with the procedural and substantive guidelines set out in "Local Authority Leasehold Flats – a guide to good practice on the administration of service charges and improvement contributions", a document produced by the Department of the Environment in June 1995. Moreover, he noted that the applicant had been provided with a detailed breakdown and explanation of the service charges in the respondent's offer notice.

- 16 Although Mr Tregaskiss did not expressly argue that the applicant was therefore legally bound to pay the service charges as detailed in the offer notice and precluded from challenging those service charges in an application to the Tribunal, for the avoidance of doubt, the Tribunal determines that any such argument would be without foundation. The only basis on which it could be argued that the applicant was precluded from making an application to the Tribunal would be that the service charges had been "agreed or admitted by the [applicant]" : see section 27A(4)(a) of the Landlord and Tenant Act 1985. However, the Tribunal is not persuaded that the applicant could be said to have agreed the estimated service charges in the offer notice. Indeed, the Department of the Environment guidance, to which Mr Tregaskiss referred, makes it clear that the service charge arrangements adopted by the respondent are subject to section 19(2) of the Landlord and Tenant Act 1985, which provides that "where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable". It follows that the service of the offer notice on the applicant and the subsequent grant of the lease cannot have the effect of precluding an application to the Tribunal under section 27A of the Landlord and Tenant Act 1985 to determine the reasonableness of the service charge based on the estimates in the offer notice.

#### Advance service charge payments and sinking funds

- 17 At various points in her written and oral submissions Ms Edley argued that she should not be required to make advance payments in respect of individual items of future expenditure or to contribute to a sinking fund that could be used for a range of identified items of future expenditure; and that she should be billed for her contribution only when the relevant work has been carried out and the costs have been incurred.
- 18 It is common practice for leases to provide for contributions to a sinking fund, especially for work which is infrequent or non-recurrent but which involves major expenditure. Such funds provide a considerable degree of certainty for both parties: the freeholder knows that the funds should be available to meet the expenditure when the work is carried out; and the leaseholder knows that he or she should not suddenly be faced with a large bill for some major work.
- 19 The lease between the applicant and the respondent expressly provides for advance payments and by clear implication provides for a sinking fund. In principle, therefore, and subject to the requirement of reasonableness contained in section 19(2) of the Landlord and Tenant Act 1985, the respondent is entitled to include such advance payments and sinking fund contributions in the annual service charge.

#### The relevant service charge figures

- 20 Although the application relates to the service charges for 2004/5 (part only) and 2005/6, the written and oral representations of both parties were largely made with reference to the figures in the respondent's November 2003 offer notice. However, it was clear that the parties regarded their representations as equally applicable to the figures in the service charge notices for 2004/5 and 2005/6; and the Tribunal was satisfied that the determination of the application could properly be made on the basis of those representations.

## Recurrent services

### Service charge year 2004/5

- 21 The service charge notice for the period from 9 August 2004 to 31 March 2005 included an amount for recurrent services equivalent to an annual figure of £328.92. Those services included buildings insurance (£48.60), repairs to the door entry system (£91.32), television receiving system (£19.80), lighting to the common parts (£44.76) and administration/management (£124.44).

### *Buildings insurance*

- 22 The applicant did not dispute the charge for buildings insurance.

### *Repairs to door entry system*

- 23 Although the applicant asserted in her written representations that the door entry system "invariably does not work", in response to questions from the Tribunal she accepted that that to some extent overstated the position. In any event, she argued that she should only be required to pay for repair work when it is carried out. The respondent stated that the service charge reflected the cost of the contract (which covers repairs but not regular maintenance).
- 24 The Tribunal determines that it is reasonable for the respondent to contract out the repair of the door entry system and to recover that recurrent expenditure through the regular service charge payments. The Tribunal also determines that the annual charge to the applicant of £91.32 is reasonable.

### *Television receiving system*

- 25 The applicant argued that she should not be charged for this facility since she did not ask for it to be installed in her flat. The respondent stated that the facility was installed in all flats and maisonettes in its ownership; and that the applicant had raised no objection at the time of installation.
- 26 The Tribunal notes that the lease includes the provision of such facilities within the service charge "whether or not the lessee shall elect to choose to make any use of [such facilities]". The Tribunal determines that the charge for the television receiving system is payable and that the annual charge of £19.80 is reasonable.

### *Lighting to the common parts*

- 27 The applicant asserted that the internal lighting in the block containing the subject property was frequently not working; that the charge of £44.76 was extortionate; and that a reasonable charge would be £20.00. The respondent stated that the same figure had been charged to all secure tenants in the block (including the applicant) and that the applicant had raised no objection before the present application.
- 28 The Tribunal finds that the repair and replacement service in relation to the internal lighting has been less than satisfactory; and it determines that a reasonable annual charge would be £30.00.

### *Administration/management*

- 29 The applicant challenged this service charge item in its entirety on the basis that the respondent provided no service. She stated that the respondent had admitted that

its administration was less than fully satisfactory but that a new computer system would enable it to provide improved administration. The respondent stated that the charge of £124.44 represented 15% of the costs of administering the right to buy regime.

- 30 The Tribunal notes that it is easy to underestimate the extent of the management and administration on the part of freeholders that continues unseen by the leaseholders; and that no management company would assume responsibility for a block of flats such as that containing the subject property for less than £125 per unit. The Tribunal finds that a management charge of that level would be appropriate in the present case but determines that there should be a deduction to reflect the admitted shortcomings in the service provided by the respondent. The Tribunal determines that a reasonable annual charge would be £110.

*Recurrent services for 2004/5: summary*

- 31 The Tribunal determines that the reasonable equivalent annual charges for the service charge year 2004/5 are:

Buildings insurance:	£48.60
Repairs to the door entry system:	£91.32
Television receiving system:	£19.80
Lighting to the common parts:	£30.00
Administration/management:	<u>£110.00</u>
	£299.72

- 32 The corresponding monthly figure is £24.98.

- 33 The Tribunal determines that the reasonable charge in respect of recurrent services payable by the applicant for the service charge year 2004/5 is the proportionate amount for the period 9 August 2004 to 31 March 2005.

*Service charge year 2005/6*

- 34 The service charge notice for the period from 1 April 2005 to 31 March 2006 included an amount for recurrent services equivalent to an annual figure of £336.24. Those services included buildings insurance (£50.52), repairs to the door entry system (£94.44), television receiving system (£20.52), lighting to the common parts (£46.32) and administration/management (£124.44).

- 35 In the view of the Tribunal its reasoning and conclusions in relation to the service charge year 2004/5 apply equally to the service charge year 2005/6. The Tribunal therefore determines that the reasonable annual charges payable by the applicant for the service charge year 2005/6 are:

Buildings insurance:	£50.52
Repairs to the door entry system:	£94.44
Television receiving system:	£20.52
Lighting to the common parts:	£30.00
Administration/management:	<u>£110.00</u>
	£305.48

- 36 The corresponding monthly figure is £25.46.

### Repair works

- 37 As indicated above the November 2003 offer notice indicated an annual charge of £936.15 for repair works to be carried out in the initial five year period and an annual charge of £601.81 for repair works to be carried out beyond the initial five year period – a total of £1537.92. The global monthly charge for repair works included in the 2004/5 service charge notice equates to an annual charge of £1537.92, indicating that the itemised breakdown in the offer notice has been carried forward to the 2004/5 service charge year. The global monthly charge for repair works included in the 2005/6 service charge notice equates to an annual charge of £1607.16. The respondent provided no itemised breakdown of that figure but the global figure represents an increase of 4.5% over the corresponding figure in the offer notice and in the service charge notice for 2004/5 and it would appear to reflect the addition of an inflation allowance provided for in paragraph 16B(3) of Schedule 6 to the Housing Act 1985.

### Service charge year 2004/5

#### Repair works in the initial five years of the lease

- 38 The offer notice of November 2003 (and by inference the 2004/5 service charge notice) included annual contributions (at current prices) for the following repair works: tiling to the internal common parts (£10.06); external and internal doors (£232.53); external and internal lights (£14.69); pipework (£5.73); external and internal painting (£180.13); paths/accesses (£12.19); soil/service stacks (£15.11); windows of the common parts (£18.66); and windows of the subject property (£447.05).

- 39 The applicant did not dispute the charges in relation to:

- Repairs to external and internal lights
- Repairs to pipework
- Repairs to paths/accesses
- Repairs to soil/service stacks
- Repairs to windows of the common parts.

The charges in relation to the remaining repair works were disputed.

#### Tiling to the internal common parts

- 40 The tiling in question is located on the landings of the block. The applicant questioned the need for its replacement; but the respondent simply relied on its dilapidations survey.
- 41 The Tribunal is not persuaded that the tiling requires repair or that it would be reasonable to replace it. The Tribunal therefore determines that it is not reasonable to include any amount in respect of this item in the service charge.

#### External and internal doors

- 42 The offer notice estimated annual contributions for the replacement of the entrance door to the subject property (£88.00), the door to the balcony of the subject property (£88.00), the doors to the two external stores included in the subject property (£52.24) and the door to the meter cupboard (serving all six flats) on the ground floor of the block (£4.29).

- 43 The applicant argued that all those figures indicated that the respondent was proposing to spend an excessive amount. The respondent confirmed that the doors were manufactured in-house and that the costs included were determined in accordance with its contract rates system.
- 44 The Tribunal is persuaded by the argument of the applicant and determines that the reasonable cost of replacement doors would be reflected in annual charges of £60.00, £50.00, £40.00 and £4.00 respectively, making a total annual charge of £154.00.

*External and internal painting*

- 45 In her written representations, the applicant did not expressly challenge the amounts included in the service charge for external painting of the block (£124.39) or for internal painting of the common parts (£15.10). Rather she argued that she should be billed for her contribution only when the relevant work had been carried out and the costs have been incurred.
- 46 However, as already indicated, the Tribunal is of the view that, subject to the requirement of reasonableness, the respondent is entitled to require advance payments by way of contributions to future repair works. Subject to the issue of the reasonableness of the amount of such contributions, the Tribunal determines that it is reasonable for the respondent to require advance payments in respect of works to be carried out in the initial five years of the lease.
- 47 On the issue of the amount of those payments, the respondent accepted that, since the windows, doors and guttering had been replaced and no longer required painting, the amount of the payments for external and internal painting of the block should be reduced. However, the Tribunal accepted the submission of the respondent that the reduction in the work involved would not affect the need to erect full scaffolding.
- 48 The Tribunal determines the cost of external painting of the block at £3000; and that a reasonable annual charge payable by the applicant would be £100. The Tribunal determines the cost of internal painting of the common parts at £350; and that a reasonable annual charge payable by the applicant would be £11.67.
- 49 The applicant questioned the charge for external and internal painting of the subject property on the ground that it was not clear what was included under these items of expenditure. The respondent explained that, since the windows and external door of the subject property had been replaced and no longer required painting, the former item was limited to the repair and painting of the rendering; and that the latter item should be deleted. The Tribunal determines the cost of painting the rendering at £600; and that a reasonable annual charge payable by the applicant would be £20.
- 50 In summary, the Tribunal determines that a reasonable charge payable by the applicant in respect of external and internal painting would be £131.67.

*Windows of the subject property*

- 51 Again the applicant did not expressly challenge the amount included in the service charge for replacing the windows of the subject property; but she argued that she should be billed for this work only when the work had been carried out and the costs have been incurred. However, the Tribunal determines that, subject to the issue of the reasonableness of the cost, it is reasonable for the respondent to require advance payments in respect of such work.



52 The Tribunal determines that the annual charge of £447.05 is reasonable.  
*Repair works in the initial five years of the lease: summary*

53 The Tribunal determines that the reasonable equivalent annual charges for repair works for the service charge year 2004/5 are:

Tiling to the internal common parts:	£NIL
External and internal doors:	£154.00
External and internal lights:	£14.69
Pipework:	£5.73
External and internal painting:	£131.67
Paths/accesses	£12.19
Soil/service stacks:	£15.11
Windows of the common parts:	£18.66
Windows of the subject property:	<u>£447.05</u>
	£799.10

54 The corresponding monthly figure is £66.59.

55 The Tribunal determines that the reasonable charge payable by the applicant for the service charge year 2004/5 is the proportionate amount for the period 9 August 2004 to 1 March 2005.

Repair works beyond initial five years of the lease

56 Although the Comment of the Environment guidance contemplates, and provides for, the possibility that local authorities may wish to include as part of the service charge an amount in respect of repair works to be carried out beyond the initial five years of the lease, the view of the Tribunal the reasonableness of doing so must be very clearly stated.

57 As noted above, establishment of such sinking funds can have benefits for both freeholder and leaseholder in funding infrequent and major works of repair. However, the Tribunal is of the view that it is not reasonable to expect or require leaseholders to contribute to a sinking fund in respect of relatively minor and inexpensive work in respect of works that are not anticipated to be carried out for another fifteen years or more.

58 The Tribunal therefore determines that the applicant's contribution to the cost of repair works to be carried out beyond the initial five years of the lease should be limited to contribution in respect of the repair of the roofs and the walls.

59 The Tribunal determines that a reasonable annual charge in respect of such works would be £250.

60 The corresponding monthly figure is £20.83.

61 The Tribunal determines that the reasonable charge payable by the applicant for the service charge year 2004/5 is the proportionate amount for the period 9 August 2004 to 31 March 2005.

Service charge year 2005/6

- 62 In relation the service charge year 2005/6, the Tribunal adopts as its base figures for the reasonable charges for repair works the above figures for 2004/5. However, the Tribunal determines that it is reasonable for the respondent to charge an additional sum by way of an inflation allowance in accordance with paragraph 16B(3) of Schedule 6 to the Housing Act 1985.

Summary

- 63 The Tribunal determines that the reasonable annual service charge for the service charge year 2004/5 would be as follows:

Recurrent services	£299.72
Repair works (initial five years)	£799.10
Repair works (beyond initial five years)	<u>£250.00</u>
	£1348.82

- 64 The corresponding monthly figure is £112.40.

- 65 The Tribunal determines that the reasonable service charge payable by the applicant for the service charge year 2004/5 is the proportionate amount for the period 9 August 2004 to 31 March 2005.

- 66 The Tribunal determines that the reasonable annual service charge payable by the applicant for the service charge year 2005/6 would be as follows:

Recurrent services	£305.48
Repair works (initial five years)	£799.10
Repair works (beyond initial five years)	<u>£250.00</u>
	£1354.58

(equivalent to £112 per month) plus any inflation allowance in accordance with paragraph 16B(3) schedule 6 to the Housing Act 1985.

Signed .....  
(Professor Nigel P Gray Chairman)

22 NOV 2005

Dated .....