IN THE SOUTHERN LEASEHOLD VALUATION TRIBUNAL

CHI/43UG/LIS/2006/0023

IN THE MATTER OF 39 ESCOTT PLACE, OTTERSHAW, SURREY, KT16 0HA

AND IN THE MATTER OF SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

BETWEEN:

NASREEM DHARAMSI

Applicant

-and-

THE BRAMBLES (OTTERSHAW)
No.3 RESIDENTS COMPANY LIMITED

Respondent

THE TRIBUNAL'S DECISION

Background

1. This is an application made by the Applicant pursuant to s.27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for a determination of her liability to pay and/or the reasonableness of a rubbish levy of £30 charged as a service charge for each of the years 2003/04, 2004/05 and 2005/06. The total sum in issue is £90.

2. The Applicant occupies the subject property by virtue of a lease granted by Laing Land Limited to her dated 23 December 1986 for a term of 125 years from 1 July 1986 ("the lease"). The parties to the lease are the Applicant, Laing Land Limited and the Respondent company. The latter is the residents' management company.

3. By clause 3(4) the Applicant covenanted to:

> *"...pay the proportion for which the Lessee is responsible of the costs... ...payable under clause 6."*

The specified proportion for which the Lessee is contractually liable under the terms of the lease for the costs set out in clause 6 is 3.19%.

4. By clause 6(A)(1) of the lease, both the Applicant and Respondent mutually covenant with the other that:

> *(1) That the Company (Respondent) shall as soon as practicable after the first day of July in each year prepare an estimate of the sums to be spent or incurred by it in such year on the matters specified in clause 6B...."*

Clause 6(B)(1) provides that the Respondent can recover any sums incurred or to be incurred by it both directly or indirectly in the observance and performance of the covenants imposed by clauses 5 and 6A. Clause 6(B)(9) provides that the Respondent can recover the cost of providing any other service, which it may from time to time deem desirable for the benefit or amenity of the Managed Area.

Essentially, the Managed Area is those areas for which the Respondent has an obligation under the terms of the lease to manage.

5. By clause 5(4), the Respondent covenanted to:

> *"...keep in a reasonable state of repair condition and cleanliness.....the refuse bin store or stores.....and to arrange for the removal of refuse from the same at appropriate intervals...."*

6. At an AGM held in October 2000, the Respondent decided to impose a rubbish levy of £30 per annum to be imposed upon the occupants of all one bedroom flats. This was imposed because of problems arising with rats due to large non-household items being disposed of in the bin store area. In the event, this levy was not implemented until the commencement of the service charge year on 1 July 2003 and was maintained in the years 2004 and 2005. The levy was only applied to the leaseholders of one bedroom flats as they were determined to be the cause of the problem.

7. The Applicant disputes her liability to pay the rubbish levy and maintains that even in the event, the amount charged is unreasonably high. She further maintains that the Council informed her that they would collect any three large household items for £26. During 2002-2006 the Council only charged sums of between £25-27 per annum to remove such items. She further maintains that the Respondent should use money from the reserve fund for this purpose.

Decision

8. The determination of this application was made by the Tribunal on 17 November 2006. There was no hearing in this matter. The Tribunal's determination was based solely on the respective statements of case and other documentary evidence before it.

9. The Tribunal found that by virtue of clause 5(4) of the lease, the Respondent covenanted to keep the refuse bin store in a clean condition and to arrange for the removal of refuse. The Tribunal, therefore, finds that this obligation included the removal of the large household items left in the bin store area by various residents. By virtue of clause 6(B)(1), the Respondent is entitled to charge by way of a service charge for the cost of removing these items. By clause 3(4) of the lease the Applicant covenanted to pay those costs as a contractual liability.

10. However, there is no provision in the lease that allows the Respondent to impose the rubbish levy only on the leaseholders of one bedroom flats. The total cost of removing the household items left in the bin store area has to be apportioned as between all of the lessees who are then liable for those costs in accordance with the specified contractual proportion as set out in their respective leases. In this instance, the Applicant's liability is 3.19% of the total costs, which appears to be £450. It follows from this finding that the Applicant's liability for those costs

should have been £14.36 per annum and not £30 demanded by the Respondent. Accordingly, the Tribunal allows the sum of £14.36 as being reasonable.

11. In the event that the Tribunal is incorrect in it construction of clause 5(4), it finds that the Respondent is also entitled to rely on the provisions of clause 6(B)(4), which provides that the Respondent can recover as a service charge any costs incurred to be incurred cleaning of the common area, of which the bin store forms part. The Tribunal construed 'cleaning' to be sufficiently generic to include such matter are the removal of household items from the bin store areas. Furthermore, the Tribunal also found that the Respondent can also rely on the provisions of clause 6(B)(9) of the lease, which gives it a discretion to provide other services deemed desirable for the benefit or amenity of the managed area, again, of which the bin stores form part.

Section 20C & Reimbursement of Fees

12. The Applicant also made an application under s.20C of the Act to disentitle the Respondent from recovering any legal costs it had incurred in responding to these proceedings. The Applicant also sought to be reimbursed for the fees paid to the Tribunal in bringing this application.

13. The Tribunal considered both of these matters together as they were largely determined by the same facts. The Applicant has succeeded on the substantive issues in this application. At the pre-trial review the Respondent conceded that

the service charge demands made to the Applicant for the service charge years between 1999 to 2007 had been incorrectly calculated. The Tribunal has also found for the Applicant on the issue of the rubbish levy. On balance, the Tribunal was of the view that the Respondent would not have conceded either of these matters without the Applicant having to bring this application. Indeed, the Respondent had gone as far as preparing and serving a s.146 Law of Property Act 1925 notice on the Applicant for the alleged service charge arrears. The Tribunal also had regard to the fact that the Applicant, in extensive correspondence with the Respondent, had attempted without success to settle these matters without the necessity of having to issue this application. Accordingly, for the reasons stated, the Tribunal makes an order under s.20C that any costs incurred by the Respondent in these proceedings are not recoverable as service charge costs against the Applicant. For the same reasons, the Tribunal also directs that the Respondent reimburses the Applicant the fees of £350 paid to the Tribunal pursuant to Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003. The Tribunal further directs that the sum of £350 is set off against the Applicant's existing service charge arrears.

Dated the 17 day of November 2006

CHAIRMAN..... I. Mohabir .....

Mr I Mohabir LLB (Hons)