RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL &
LEASEHOLD VALUATION TRIBUNAL.

Case No. CH1/18UE/LSC/2005/0102.

Re: Flat D, Longstone House, Under Minnow Road, Barnstaple, Devon EX31 1QU.

Applicant: Mrs. S. Davies (Lessee/tenant)

Respondent: Mrs. E. Smith (Lessor/Landlord)

In the matter of the Tenant's Application for determination of liability to pay Service Charges, under Section 27A of the Landlord and Tenant Act 1985 (as amended), and of her Application for limitation of the landlord's costs under Section 20C of the said Act.

Tribunal: **Mrs. T. Clark, Barrister at Law, Chairman.**
Mr. M.J.Wright FRICS, FAAV
Mr. P.G. Groves.

REASONS FOR THE TRIBUNAL'S DECISION ON 30TH MARCH 2006

Applications.

This case arises as a result of the Tenant's Applications as aforesaid, which were dated 21st November 2005. The service charges in dispute are those claimed for the years 2000, 2001, 2002, 2003, 2004, and 2005.

Directions were issued following a Pre-Trial Review Hearing on 12th January 2006, and the Tribunal inspected the property and heard representations from both parties on 30th March 2006.

Background.

Mrs. Smith is the freeholder of Longstone House, and occupies Flat A of the same. She and her husband, Mr. Banks, have been responsible for the management of the building since they bought it in 1999. The other three flats in the house are occupied as set out in the Directions issued after the Pre-Trial Review, although (as stated previously) there are only written Leases for flats A, B, and C.

Mrs. Davies bought Flat D (which had been created by dividing the former Flat C into 2 units) in November 2000. It appears that completion was on about the 4th November, though Mrs. Davies did not actually move in until the 13th.

Surprisingly, no new Lease was drafted to cover Mrs. Davies' occupation of Flat D, and therefore there are no written terms, covenants or obligations to rely upon when determining liabilities for Service Charges. Mrs. Davies was supplied with a copy of the Lease for Flat C, and all parties seem to have effectively treated this Lease as though it applied to Flat D – despite some obvious anomalies.

The Property.

The property is a large handsome house in a residential area within easy reach of Barnstaple town centre. Mrs. Smith's accommodation, which covers the whole of the ground floor, has a separate access through its own gate and drive into the private garden. There is a shared, tarmacced driveway (through which other properties also have access) to the remaining three flats, and one parking-space each for flats C and D at the side of that driveway.

All four flats have front doors which are reached through an entrance arch and a small, pretty courtyard with a steep flight of steps to the first floor level.

There are no other outside facilities, although there is reference in Flat C's Lease (hereafter referred to as 'The Lease') to the Tenant's right to dry washing in the courtyard on certain days.

Relevant Lessor's Obligations.

It seems to have been generally accepted that the obligations set out in the Lease apply to the subject flat as they do to Flat C, in that the Lessor is liable to :-

"maintain, repair, redecorate and renew... the main structure of the building and in particular the foundations roof main drains chimney stacks ...gutters and rainwater pipes..." etc.(Clause 3 (1)(b))

" To maintain in a reasonable state of repair the driveway..." (Clause 3(2)(A))

" To keep the building insured..." (Clause 3(4))

" to keep any monies received...as trustee...in a separate designated building society account.." (Clause 3 (6))

Relevant Lessee's Obligations.

Likewise, it seems to have been largely accepted that the Lessee should comply with the obligations set out in the Lease for Flat C.

As for liability to pay service charges, there is provision for payment of £10 per annum 'ground rent' (Clause 1), plus monthly payments of a fixed sum by way of contribution to running costs.

The Lease actually states that the tenant of Flat C should pay **one third** of the costs and outgoings on the building (Clause 2(2)), but again it seems to have been suggested that, as Mrs.Smith's accommodation is as large as two units, each of the lessees should pay a **one fifth** share of the running costs incurred over and above the regular monthly payments.

As for the latter, a figure of £50 per flat per month was agreed as the regular amount, prior to Mrs. Davies' arrival in 2000, and this figure of £50 per month was stated as an existing obligation in the property 'particulars' which formed the basis upon which Mrs. Davies purchased her flat.

Applicable Law.

1. Under Section 19 of the 1985 Act as above, service charges are only payable by the tenant if the costs claimed are 'reasonably incurred', and if any works done were 'to a reasonable standard.'

2. Section 27A of the Act, as amended by the Commonhold and Leasehold Reform Act 2002, enables any party to apply to an LVT for a determination as to payability of service charges.

3. Section 20C of the Act gives power to limit the extent to which a landlord can recover costs of proceedings from the tenants by way of service charges.

Applicant's Case.

1. Mrs. Davies objected to the service charges claimed for a number of reasons, both general and specific.
2. In general, it was said that no invoices or receipts were ever produced in support for the amounts claimed, despite repeated verbal requests, and that Mrs. Davies felt that she had little or no information as to what the £50 per month was being spent on.
3. Mrs. Davies also got the impression that service charge arrears accrued by previous occupants had been added to her account.
4. Specifically, it was said that 'cleaning' charges were not justified because cleaning was not done; that 'Management' at £500 per annum was too high; that 'architectural drawings' and 'surveyors fees' were not explained; that money for 'hanging baskets' was not justified; that 'fencing' should have been paid for by the landlord; and that some monies had been reasonably with-held pending the installation of an external light for the entrance steps.
5. It was also said that Mrs. Smith had agreed – by a verbal arrangement dated August 2002 – that Mrs. Davies could pay a reduced monthly figure (of £25) for an indefinite period in exchange for her taking on the cleaning of the common parts.

In summary, Mrs. Davies felt that she should pay £50 pm *or* 1/5th of costs, but not both.

Respondent's Case.

1. It was said that the property was in a very poor state when purchased in 1999. The £50 per month had been agreed by all parties at the end of 2000, on the basis of that year's expenditure; (see 'Accounts', Respondent's Bundle page Cor. 25).This liability was also referred to in correspondence with the lessee's solicitor at the time of purchase.

2. Mrs. Smith regretted that this income alone was insufficient, and that additional sums had to be raised for major works, following a survey in 2000 by J.Stromski Associates. However, three independent estimates had been obtained for such works in the proper manner (this was accepted by the tenant),and the cost had been split 5 ways as agreed, with Mrs. Smith paying a 2/5ths share.

3. It was accepted that neither service charge 'accounts/statements' nor receipts and invoices were produced each year, but it was denied that these had ever been requsted.

4. Arrears from previous tenants were referred to in accounts but had never been billed to current occupiers.

Cleaning.

It appeared that the word 'cleaning' was used in this context to mean two different things:

i) The cleaning of carpets etc. in the communal hall/staircase,
ii) Clearing of leaves and debris on the communal driveway.

Mrs. Smith stated that initially Mrs. Carter (of Flat C) used to do it, but when she gave up due to ill-health there was an agreement for Mrs. Davies to take over. It was accepted that this arrangement was made in about August 2002, in exchange for a £25 per month reduction in service charges, but it was said that Mrs Davies was only able to do the job for 2 months due to shoulder problems, and that she was credited for 4 months (i.e. £100) even though she actually only did the work for 2 months.

Receipts for cleaning works were produced for payments to Mrs. Carter and Mr.Golo during the relevant period.

In conclusion, it was said that roughly £80- £175 per annum for cleaning the driveway was very little, and only paid for about one and a half hours per week.

Bank Accounts.

It was accepted that service charge monies were not kept in a separate account, but it was submitted that this had been to the advantage of the tenants because the landlord had in fact had to subsidise payments for works out of her own funds when there was a shortfall.

Management.

Mrs. Smith argued that, for all the administration, management, dealing with tradesmen, correspondence, insurance etc., the figure of £ 10 roughly per week (£500 pa) was not excessive. Indeed, we were shown a quotation from John Smale & Co. (property managers) for £750 pa plus a £100 set-up fee. (Cor. Page 3).

Surveyors fees and Architectural drawings.

These latter were included in the bundle, and were said to be for the benefit of all occupants of the building; to delineate the various flats and to be used if required upon sale of the same. The survey had been undertaken to establish what works needed to be done.

Hanging baskets.

There were apparently three of these, purchased at a reduced rate to enhance the external wall for the benefit of all. It was agreed that there had been no consultation with tenants about the purchase, but it was a small sum.

External lights.

Mrs. Smith stated that she had paid privately for the light on the corner of the building which illuminated the driveway, but accepted that until June 2002 there was no light on the steps for various reasons. It was said that there had never been any discussion about this, nor any suggestion that Mrs. Davies would be withholding payment of service charges because of any unreasonable failure on the part of the landlord.

Fencing.

The fence in question separates the driveway from Mrs. Smith's private garden, and was blown over by the wind. It was said to be dangerous unless repaired.

CONSIDERATIONS.

Unfortunately, this is a case where communications between the parties have broken down, and as a result it has been impossible to resolve difficulties and misunderstandings.

The landlords have not complied with all their obligations, in particular with regard to production of annual statements of account, separate bank accounts and production of invoices/receipts for outgoings; all of which could reasonably be expected by the tenant.

We do not accept that production of an annual statement of **outgoings** would have caused 'upset', as it could have been separated from the statement of **income** from the various tenants.

However; we do accept that this was a property being run by non-professional freeholders with their own personal commitments and difficulties, and that the tenants could not expect the kind of service that they might receive (and would have to pay considerably more for) from a professional agent.

We also find that, in the absence of documentary evidence to support the Applicant's claim that her reasonable demands for information were continually being unreasonably frustrated, the failures on the part of the landlord did not justify a refusal to pay the charges, which were by no means excessive for a property of this nature.

Allegations of conduct on both sides – other than conduct directly associated with liability for/ payment of service-charges – were disregarded, as not being relevant to the jurisdiction of the Tribunal.

Taking into account all the written and oral representations of the parties, and the written representations of Mrs. Carter and Mrs. O'Flynn, the following determinations were made.

DECISION.

1. The Tribunal found that it was both reasonable and, on the evidence available, agreed that Mrs. Davies should pay £50 per month by way of basic service charges. This amount is payable throughout the period of her Lease to date, including for the whole month of November 2000 during which she took up occupation.
However, Mrs. Davies should be allowed the credit of £100 for the nominal 4 months during which she was responsible for the cleaning. We accept that after this time others took over the task, as outlined by Mrs. Smith at the hearing and not contradicted by Mrs. Davies.

2. The Management charge, as outlined above, was quite reasonable, and it is accepted that an accurate breakdown or 'analysis' of the charge, if requested, would be difficult to supply. The tenant is thus liable to pay the Management charges for each year of the relevant period.

3. The Cleaning costs (with the one proviso in 1. above) are reasonable and payable, as is the relatively minor cost of the hanging baskets.

4. We take the view that the fencing in this case was half for the landlord's benefit (in enclosing her garden), and half for the tenants' benefit (in bordering their driveway). The cost should therefore have been apportioned one half to the landlord and the other half split three ways between Flats B,C and D. Mrs. Davies is only liable to pay one sixth share of this item.

5. Subject to the above, we find that it is reasonable for the tenant to pay one fifth of the additional costs for major works as carried out after estimates were obtained and discussions held. The Lease of Flat C refers to liability for 'one-third share' of outgoings, so arguably Flat D could be liable for

half of that or for one sixth. Equally, the 'one-third' provision was made at a time when there were only three units, so arguably Flat D (as one of 4 units) should be liable for a quarter. In all the circumstances, it seems reasonable and equitable for Mrs. Davies to pay **one fifth**.

We do not accept that Mrs. Davies paid an additional £300 cash to her brother,(the initial contractor in these works), unbeknown to Mrs. Smith. There was no documentary evidence or receipt to this effect. Mrs. Davies is therefore liable to pay her full one-fifth share for the total cost of the major works, less the £300 paid to date.

6. The Tribunal finds that the landlord is responsible for the roof(s) and structure of the building, and Mrs. Smith should therefore repair the structural disrepair which has left holes or gaps around some of Mrs. Davies' windows. The windows themselves would appear to be the responsibility of the tenant.

7. Whilst it was reasonable to expect there to be an external light for safety reasons, it was not reasonable to withhold payment without any evidence of attempts to resolve the problem.

8. The architectural drawings and survey costs were reasonably incurred, and the tenant is liable to pay her share.

Costs.

We are grateful to all parties for supplying a great deal of relevant documentation to assist the Tribunal, and we have considered whether or not it was reasonable to limit the extent to which the landlord can recover costs of these proceedings from the tenant.

We have come to the conclusion that, in all the circumstances of this case, given the lack of accountability and the lack of information supplied (until very recently), it was not unreasonable for the tenant to query the amounts claimed and to seek resolution by way of the Tribunal.

The landlord's costs of the proceedings are therefore not to be recovered by way of service charges in future demands/invoices.

T.C. Clark

TC Clark
Chairman.