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**HM Courts
& Tribunals
Service**

LEASEHOLD VALUATION TRIBUNAL
Case No.: CAM/34UH/LSC/2012/0012

Subject Property: Apartment 3, 4A Grant Road, Wellingborough, Northamptonshire NN8 1ED

Applicant: Fran Solez, 21 St Peter's Court, Jacobs Close, Potton, Sandy SG19 2SG

Respondent & Freeholder: Lifestyle Conversions, Brookhill Farm, Main Road, Wilby, Northamptonshire NN8 2UF

Respondent's Agent: Grant Road Management Limited, Brookhill Farm, Main Road, Wilby, Northamptonshire NN8 2UF

Application: Application for a determination of the reasonableness and liability to pay service charges (Section 27A Landlord and Tenant Act 1985)

Date of Application: 30th January 2012

Date of Hearing: 16th May 2012

Tribunal: Dr JR Morris (Lawyer Chair)
Mr GRC Petty FRICS
Mr DS Reeve

Attendance:

Applicant: Ms Fran Solez, Applicant

Respondent: Mr Simon Marriott, Respondent's Representative

Observers: Ms C Solez, Mr P Solez, Mr F Coutinho

DECISION & STATEMENT OF REASONS

Decision:

- The Tribunal determined that the Service Charges for the costs incurred that were reasonable and payable in respect of the Subject Property for the year ending 31st December 2009 were £366.08 and for the year ending 31st December 2010 were £734.48.
- The Tribunal determined that the Service Charges for the costs to be incurred that were reasonable and payable in respect of the Subject Property for the year ending 31st December 2011 were £898.40.

Reasons

Application

1. This Application was made on 30th January 2012 for a Leasehold Valuation Tribunal to make a determination pursuant to section 27A of the Landlord and Tenant Act 1985 of the reasonableness and liability to pay service charges.

Issues

2. The issue identified in the Application is the reasonableness and payability of the service charges incurred for the period March 2009 to 31st December 2009 and for the financial years ending 31st December 2010 and 2011.

The Law

3. The law that applies is in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
4. Section 18 Meaning of "service charge" and "relevant costs"
 - (1) *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-*
 - (a) *which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and*
 - (b) *the whole or part of which varies or may vary according to the relevant costs*
 - (2) *The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.*
 - (3) *for this purpose*
 - (a) *costs includes overheads and*
 - (b) *costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period*
5. Section 19 Limitation of service charges: reasonableness
 - (1) *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.*
 - (2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.*
6. Section 20B Limitation of Service Charges: time limit on making demands

- (1) *If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before the demand for payment of the service charge served on the tenant, then (subject to subsection (2)) the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.*
- (2) *Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.*

7. Section 21B Notice to accompany demands for service charges

- (1) *A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.*
- (2) *The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.*
- (3) *A tenant may withhold payment of a service charge that has been demanded from him if subsection (1) is not complied with in relation to the demand.*
- (4) *Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.*
- (5) *Regulations under subsection (2) may make different provision for different purposes.*
- (6) *Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]*

8. Section 27A Liability to pay service charges: jurisdiction

- (1) *An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-*
 - (a) *the person by whom it is payable,*
 - (b) *the person to whom it is payable,*
 - (c) *the amount which is payable,*
 - (d) *the date at or by which it is payable, and*
 - (e) *the manner in which it is payable.*
- (2) *Subsection (1) applies whether or not any payment has been made.*
- (3) *An application may also be made to a leasehold valuation tribunal for a determination 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 it would, as to-*
 - (a) *the person by whom it would be payable,*

- (b) the person to whom it would be payable,*
- (c) the amount which would be payable,*
- (d) the date at or by which it would be payable, and*
- (e) the manner in which it would be payable.*

Description and Inspection of the Subject Property

9. The Tribunal inspected the Common Parts and Building of the development in which the Subject Property is situated in the presence of the Respondent's Representative. The Building was originally a shoe factory, which has been converted into 14 flats. The main Building is a three-storey brick structure with pitched tile roof. The windows are metal alloy. The sills are painted stone. The guttering is plastic and the down pipes cast iron. There are three entrances each with a door entry system. One entrance is at the rear of the Building from the car park and comprises a lobby and stairs and landings giving access to two flats on the ground floor, four on the first floor and two on the second floor. The other two entrances are on Grant Street each giving access to three flats, one on each floor. There is an extension at first floor level from the main Building over the car park. There is a garden on the roof of the extension. The car park is at the rear of the Building and is gated. The gates are not automated.
10. Externally the Building together with its extension and roof garden are in fair to good condition with the exception of the sills, which are showing signs of cracking and spalling. Internally the lobbies, stairs and landings are generally well maintained. It was noted that there had been some damp in one of the lobbies. There are some marks on the walls and whereas some internal sills have been cleaned a couple had not. The carpets were in fair condition and generally clean. The fire equipment appeared to be in good order. Motion sensors operated the lights. There were electric heaters on some landings and lobbies

The Lease

11. A copy of the Lease was provided which was between the Respondent and the Applicant and was dated 12th March 2009. It was for a term of 125 years from the 1st January 2008. The Tenant is to pay ground rent and "additional rent" which is defined in clause 2.2 as the "Insurance Rent" and the "Service Charge" which is to be paid quarterly in accordance with the Sixth Schedule.
12. The relevant definitions in clause 1 are as follows:
 - The "Insurance Rent" is defined in clause 1.10 as the premium for insuring the building
 - The percentage apportioned to the Subject Property under clause 1.9 is 7.15%.
 - The "Service Charge" is defined in clause 1.15 as the percentage payable of the "Annual Expenditure"
 - The percentage apportioned to the Subject Property under clause 1.14 is 7.15%
 - The "Annual Expenditure" is defined in clause 1.13 as "all costs expenses and outgoings whatever incurred by the Landlord during a Financial Year in or incidental to providing all or any of the "Services"".
 - The "Services" are defined in clause 1.11 as the services facilities and amenities specified in the Fifth Schedule.
13. The Fifth Schedule sets out the Services, which include:

- "1. To maintain and keep in good and substantial repair and condition and renew or replace when required the main structure of the Building ...the Common Parts and any Pipes used in common by the Tenant and other tenants of the Building and which are not expressly made the responsibility of the Tenant or any other tenant in the Building...
 2. As and when necessary to decorate in a good and workmanlike manner all the external parts of the Building and the Common Parts
 3. To keep the Common Parts and Open Areas clean and where appropriate lit
 4. ... (not relevant to matters in issue)
 5. To pay and discharge the cost of any refuse disposal arrangement
 6. To employ at the Landlord's discretion a firm of managing agents ...including the cost of retaining accountants for computing and certifying
 7. To keep proper books of accounts...
 8. To set aside sums as the Landlord requires to meet such future costs as the Landlord reasonably expects to incur in replacing maintaining and renewing those items that the landlord has covenanted to replace, maintain and renew"
14. The Sixth Schedule sets out the manner in which the Service Charge is to be paid which shows it to be variable. The relevant provisions are as follows:
- "1. ...the Landlord shall not be liable to the Tenant in respect of:
 - 1.1 any failure or interruption in any of the Services by reason of necessary repair replacement or maintenance of any installations or apparatus of any damage or by reasons of mechanical or other defect or breakdown or frost or other inclement conditions or shortage of fuel materials water or labour or any other clause beyond the Landlord's control
 2. The Landlord shall as soon as convenient after the end of the Financial Year prepare an account showing the Annual Expenditure for the Financial Year...
 4. The Tenant shall pay for ...in each subsequent Financial Year a provisional sum equal to the Service Charge payable for the previous Financial Year calculated upon an estimate by the Surveyor of what the Annual Expenditure is likely to be for that Financial Year by four equal quarterly payments on the usual quarter days
 5. If the Service Charge for any Financial year exceeds the provisional sum for that Financial Year the excess shall be due to the Landlord on demand and if the Service Charge for any Financial Year is less than such provisional sum the overpayment shall be credited to the Tenant against the next quarterly payment of the Rent and Service Charge"

Evidence

15. The Respondent provided a set of accounts for the years ending 31st December 2009 and 2010 for which the costs had been incurred. However, no accountant's certification was provided for these accounts. The accounts in respect of the actual costs for the year ending 31st December 2011 were not available and therefore the Tribunal was only able to consider the estimated costs for that year. The Applicant stated that she had never seen these accounts until they were produced for these proceedings. The following accounts were provided:

Actual Expenditure for 1st January 2009 to 31st December 2009	
Items	
Bank Charges	3.68
Cleaning	250.00
Electricity	84.00
Heating	2,757.00
Management	480.00
Accountancy	350.00
Insurance	280.27
Total	4,204.95

Actual Expenditure for 1st January 2010 to 31st December 1010	
Items	
Bank Charges	2.60
Cleaning	250.00
Electricity	484.05
Heating	6,651.29
Fire Equipment	475.00
Management	1,291.00
Accountancy	350.00
Sundry Expenses	300.32
Insurance	800.32
Building Repairs	200.00
Equipment Repairs	113.83
Other Repairs	312.72
Total	11, 231.13

16. The apportionment for the Subject Property was 7.15%, which equates to 1/14th. There was a disparity between the total for certain items recorded in the Accounts and the invoices provided. The Respondent explained that the total cost recorded in the Accounts for Insurance was the amount attributed to the flats then occupied. The amount attributed to the unsold flats had not been included. This was explained further when the items were considered in detail.
17. The Applicant submitted a written Statement of Case confirmed at the Hearing. She said that she was the first person to purchase a Lease in March 2009. She said that there are 14 flats, 8 of which are Leasehold and the Respondent rents out 6. The Applicant said that she was disputing the costs as there were little or no services provided for the two years during which she lived in the Subject property. In addition no accounts were provided notwithstanding frequent requests until the current proceedings.

18. The Tribunal considered each of the items of the Service Charge and noted the statements and evidence submitted by the parties as follows.

Bank Charges

19. The Bank Charges were not in issue for the period March 2009 to 31st December 2009 nor for the financial years ending 31st December 2010 and 2011.

Cleaning

20. The Applicant said that the Common Parts were barely cleaned and the stair carpet was rarely vacuumed and provided a number of photographs, which she said showed a poor standard of cleanliness. She said that she vacuumed the carpet and wiped the window ledge outside her own flat. She said that she regularly cleaned the 11 windows that she could access of her flat. However, there were 5 large metal framed windows, which had been sealed shut, which she could not clean. She had asked Mr Marriott to have these cleaned and he assured her that they would be but in 2012 she said that they were so filthy she felt she had no option but to employ Prestige, a window cleaning company, to clean them at a cost of £235.00 between May 2010 and November 2011. She produced a letter from Mr Marriott dated 28th February 2011 to her in which he stated that he had consulted Leaseholders who had told him that they would rather clean the windows themselves than employ a window cleaner. She questioned the veracity of this as she said that none of the Leaseholders she had asked had been consulted.
21. In oral evidence the Respondent's Representative stated that for the year ending 31st December 2009 Mr Gaze cleaned the common parts monthly. There were very few people in the Building and the contractors were still working there and it was part of their responsibility to clean up after them. In response to the Applicant's view that the cleaning was more random than once a month and that the contractors had rarely cleaned up, the Respondent's Representative said that the Applicant might have been away or at work when this cleaning was undertaken.
22. The Respondent's Representative stated that for the year ending 31st December 2010 Mr Gaze attended the common parts daily and spent on average an hour a month on each entrance. It was noted that there were invoices for the year ending 31st December 2010 from Mr Gaze of £125.00 dated 31st July 2010 and of £325.00 dated 31st December 2010. However, it was explained that only £125.00 of this last invoice was for cleaning. Mr Gaze had included a sum of £200.00, which was for some other work, which came under the item of Building Repairs in the accounts.
23. The Tribunal noted the invoices for the year ending 31st December 2009 from Mr Gaze for £250.00 and the two invoices for the year ending 2010, which also came to £250.00. In reply to the Tribunal's questions the Respondent's Representative stated that Mr Gaze cleaned the hallways by vacuuming the stairs, mopping the entrance, which was tiled, and wiping the sills. The invoice was calculated on the basis of about £8.75 an hour.
24. The Respondent's Representative agreed that no window cleaning had taken place. The windows for the flats were designed so that the Tenants could clean them inside and out. However it was recognised that the exterior of the 'Crittall' windows to the Subject Property, which were in the elevation on Stanley Road, could only be cleaned from the outside.

Electricity & Heating

25. It was noted that the cost of heating and lighting in the Common Parts came under the item of 'Electricity' in the Accounts and the cost of heating and hot water in the Subject Property under the item of 'Heating' in the accounts. The Applicant said in written representations that she could not distinguish between the two costs from the invoices, which were very confusing especially with the annotations added by Mr Marriott. She said that it appeared from the invoices from the electricity company that the cost of the lighting and heating in the communal areas was included in the cost for the heating and hot water for the flats. She could not see how Mr Marriott on behalf of the Respondent could distinguish between the two. The amount of electricity used by a flat occupied by two people would be greater than that occupied by one. Therefore she could not see how the heating and hot water relating to the flats could be distinguished from the electricity for the lighting and heating of the Common Parts.
26. In addition from the accounts it could not be seen how much of the cost, if any had been attributed to the Respondent for unsold flats or those let by the Respondent or for usage by the builders.
27. The Applicant expressed particular dissatisfaction with the electrical heating system and its operational cost. She said in written representations that the system had not been installed correctly and that as a result the Respondent had replaced it with a gas fired system. The Applicant provided a number of photographs of the boiler room, which she said showed that the system had not been installed properly.
28. In written representations the Applicant said that the space heating system had never worked effectively. She provided a number of photographs from 2009 to 2011 of the temperature controls within the flat and the dials from the boiler room showing the readings coming into the flat. She also provided the content of 18 text messages sent to Mr Marriott complaining of the lack of heat dated variously from the 27th September 2010 to 10th February 2011. In addition she provided a diary intermittently cataloguing the degree of heat in the flat from 2nd October 2009 to 21st December 2009 and from 21st September 2010 to the 29th January 2011. The entries recall that, in the opinion of the Applicant, the Subject Property was cold or very cold during these periods and that her contact with Mr Marriott had not led to an improvement. She said in written representations that the system broke down on an almost daily basis.
29. She further provided letters addressed to the Tribunal from Hannah Crofts dated 2nd April 2012 and Mr F Coutinho, visitors to the Subject Property, confirming the Applicant's statement that the hot water and heating system were inadequate. Mr Coutinho commenting that he had installed heating systems and found this one to be of a poor standard.
30. In oral evidence the Applicant said that the space heating never worked properly. She said that most days there was a problem, and referred to her diary. She said she had expected the heating to give an ambient temperature of 21 to 22 degrees. She said that the temperature had been as low as 13 to 14 degrees and the highest she had recorded was 21 degrees. Most commonly the temperature had been 18 degrees. The Tribunal commented that the Applicant's view that the ambient temperature should have been 21 to 22 degrees was a subjective assessment and that another Leaseholder might consider this too warm.
31. In written representations confirmed at the Hearing the Applicant said that the Respondent had provided her with electric fires and was paid £120.00 in 2010 for the extra units of electricity incurred as a result. However, she was not paid the requested

sum of £100.00 in 2011 for the extra units she had used on the same basis notwithstanding that Mr Marriott had said that she would be and that Mr Charles Gaze, an employee of the Respondent had been monitoring the use of electricity in the flat with a view to such payment.

32. The Applicant said that there had also been problems with the provision of hot water. The shower that was operated from the central system was always luke warm and she had to use the electric shower in the second bathroom that was attached to the mains supply. The water in the boiler room was recorded as being 65 to 70 degrees but the Applicant said that it had never been at that temperature when it had come from the taps in her flat. She added that the proof of the inadequacy of the system was that the Respondent had replaced it with a gas boiler.
33. The Respondent's Representative stated in oral evidence that it was possible for the Respondent to distinguish between the amount of electricity used for the lighting and heaters in the Common Parts and that used for the heating and hot water because there were two meters. One meter recorded the total use for the electricity company. The other meter was an internal meter and just recorded the electricity units used for the lighting and heating in the Common Parts. Therefore the Respondent was able to deduct the amount used for the Common Parts from the total and then identify it in the accounts as a separate charge. The Tribunal noted that it had seen this separate meter on its inspection.
34. The Respondent's Representative conceded in oral evidence that there had been problems with the space and hot water heating. As an innovative system, which was operated by solar power, there had been difficulty in obtaining parts to maintain it. It was agreed that the space heating should have been in the region of 21 degrees and this had been achieved in other flats. It was noted from the plan of the flats that the Applicant's flat was of a duplex design and unlike the other flats the living area is the height of both floors. The Respondent's Representative agreed that he had provided the Applicant with electric heaters and had paid her £120.00 in the winter of 2009 to 2010 because of the problems with the heating and the exceptionally cold winter. He said that the payment of £100.00 had not been justified for the year 2010 to 2011.
35. The Respondent's Representative commented that the Applicant had at one stage placed a mattress on the floor and that this would have affected the efficiency of the heating system. In response the Applicant stated that this had only been for a short period while she was awaiting the delivery of her bedstead. The Respondent's Representative also stated in written representations that the charge for electricity had not been made until 14th September 2009 even though the Applicant had taken up residence on 12th March 2009. Two additional radiators had been installed in the Subject Property and secondary double-glazing fitted in the in the bedroom ensuite and stairwell in response to the Applicant's complaints about the heating. He added that the present Leaseholder of the Subject property whom the Applicant had assigned to had found the services satisfactory.
36. With regard to the hot water supply the Respondent's Representative said that other flats had consistently obtained water over 65 degrees. However it was conceded that as the system had been unreliable and that since gas was now cheaper than electricity a gas boiler had been installed in December 2011 to provide hot water.
37. The Tribunal questioned the Respondent's Representative with regard to the electricity company's invoices. He said that there had been difficulties in obtaining accurate bills for electricity. He said that the invoices headed "Amended readings and charges" were correct.

38. The electricity company's invoice for the period ending 31st December 2009 was for the sum of £2,841.04. The Respondent had divided this as being £84.00 for electricity (being lighting and heating of the common parts) as measured by the internal metre and £2,757.00 for the communal hot water and space heating. Both these amounts were to be apportioned as 7.15% for the Subject Property.
39. The electricity company's invoice for the period ending 31st December 2010 was for the sum of £7,135.25 comprising two periods:
- | | |
|---|-----------|
| 31 st December 2009 to 1 st June 2010 | £3,432.31 |
| 1 st June 2010 to 31 st December 2010 | £3,703.04 |
| Total | £7,135.35 |
- The total cost was divided as being £484.05 for electricity (being lighting and heating of the common parts) as measured by the internal metre and £6,651.29 for the communal hot water and space heating. Both these amounts were to be apportioned as 7.15% for the Subject Property. The Tribunal accepted the amounts as based on actual readings by the Respondent or by the electricity company.
40. The Applicant stated that whereas she had received demands for payment of insurance premiums, ground rent and service charges, as provided, she had not received any itemised service charge estimates or accounts itemising the actual costs with any balancing payments or credits identified. However, by a letter dated 15th December 2011 she had received an additional demand for heating costs. Three charges were identified £355.12, which were said to have accrued in 2009, £605.68, which was said to have accrued in 2010, and £470.32, which was said to have accrued in 2011. The Applicant submitted that this additional demand for 2009 fell outside the 18-month period under section 20B of the Landlord and Tenant Act 1985 and therefore she should not be liable for the cost.
45. The Respondent's Representative agreed that estimates had not been sent to Leaseholders for the periods ending 31st December 2009 or 2010. 2009 was the first year of the Development and therefore it was difficult to prepare realistic budgets. There had been problems with the invoices from the electricity company for both 2009 and 2010 as evidenced by the two sets of invoices, which had been provided in the bundle to the Tribunal. This problem had only been resolved towards the end of 2011 when the amended invoices were received. Reconciliation had then been done between the amount of the service charges demanded and the actual cost of the heating. It was conceded that the Applicant had not been notified earlier that a further demand of service charges might be made for heating because the electricity invoices were being questioned.
46. The Tribunal stated that it was of the opinion that the additional demand for £355.12, which were said to have accrued in 2009 was out of time under section 20B.

Fire Equipment

47. The charge for Fire equipment of £475.00 was not in issue for the period March 2009 to 31st December 2009.

Management

48. The Applicant had questioned the standard of management and its related cost. The Respondent's Representative stated that Grant Road Management Company Limited had been established specifically to manage the Development. The Tribunal noted from the invoice for accountancy costs that a charge had been incurred for the costs

of this company. The Tribunal observed that the Lease did not provide for the establishment and related cost of a Management Company. However, the Lease did provide for the Respondent to employ a managing agent. The Tribunal deduced from what the Respondent's Representative said that the Respondent had established a separate company i.e. Grant Road Management Company Limited to act as its agent. Whereas the costs incurred by that company in managing the Building could be charged to the service charge under the Lease it could not charge the costs of running the company itself. These would have to be met from the management fees. Therefore the charge under the item of Accountancy relating to the company accounts could not be charged to the service charge.

49. The Respondent's Representative submitted that the management costs were reasonable. Management involved arranging insurance, cleaning repairs and the keeping of accounts.

Accountancy

50. The invoice submitted under the item of Accountancy for the year ending 31st December 2009 was for a total of £350.00 including VAT. The breakdown of the cost was £87.87 for the preparation and submission of abbreviated Accounts to Companies House £210.00 for 12 hours bookkeeping services at £17.50 an hour.
51. The invoice submitted under the item of Accountancy for the year ending 31st December 2010 was for a total of £350.00 including VAT. The breakdown of the cost was £105.25 for the preparation and submission of abbreviated Accounts to Companies House £246.00 for bookkeeping services.
52. The Respondent's representative confirmed that the charge for abbreviated accounts related to Grant Road Management Company Limited.

Insurance

53. The insurance premium for 2009 was shown in the accounts as £280.27 although the invoice was for £1, 609.48. The Respondent's Representative explained that the invoice had been divided by the total number of flats i.e. 14 apportioning £114.96 per flat. However, this was for the whole year and yet the Building had only had occupants for just less than 10 months, which reduced the premium per occupied flat to £93.41. However, only 5 flats were occupied, 3 by Leaseholders (one of which was the Applicant), and 2 rented out by the Respondent. As the account was the Service Charge Account for the Leaseholders, only the total amount apportioned to the Leaseholders was shown i.e. 3 x £93.41 = £280.27. The Respondent paid the remainder of the total premium. The Applicant had actually been charged the rounded sum of £93.00.
54. Similarly, the insurance premium for 2010 was shown in the accounts as £800.32 although the invoice was for £1, 736.61, as for 2009, the amount of the invoice had been divided by 14 giving a sum of about £124.00 per flat for the whole year. The Respondent's Representative explained that the Leaseholders had only been charged for the period they had occupied the flat and during that time Leases had been purchased at different times. Those flats that had been occupied for the full 12 months had been charged a £124.16. Again as for 2009 the Service Charge Account for the Leaseholders only the total amount apportioned to the Leaseholders. The Applicant having occupied the flat for the full 12 months had been charged the sum of £124.16.

55. The Tribunal checked the calculations and accepted the explanation of the Respondent's Representative but commented that the method of calculating the premium for each Leaseholder was not apparent from the Service Charge Accounts. It was suggested that the total amount of the invoice should have been shown in the accounts with a note explaining that each Leaseholder's share (7.15%) would be apportioned according to when they took up occupancy.
56. In response to the Tribunal's questions the Respondent's Representative stated that the insurance was obtained through a broker who sought to obtain the best value. The Respondent's Representative said that the Respondent received no commission in relation to the placing of insurance.

Sundry Expenses

57. The item of sundry expenses only appeared on the accounts for the year ending 31st December 2010. The invoices totalled £302.94 but were rounded to £300.00 in the accounts and were:
£28.41 for bulbs from Denmans
£71.30 to purchase a ladder from Denmans to gain access to change the bulbs in the common parts
£39.98 for paint from Wickes
£83.66 for a vacuum cleaner from B & Q
£79.49 fees for the formation of Grant Road Management Company Limited and annual returns.
58. The Tribunal commented that the costs attributed to the formation and running of Grant Road Management Company were allowed for in the Lease.

Building Repairs

59. The Applicant stated that she did not know what the charge of £200.00 for Building Repairs was for as no building repairs had been undertaken. The Respondent's Representative stated that sum of £200.00 for Building repairs in the accounts for the year ending 31st December 2010 was paid to Mr Gaze for the repair of some of the sills which had cracked due to the harsh 2009/2010 winter and a length of guttering. In response to the Tribunal's question as to whether these should have been the subject of a claim under the Buildmark warranty the Respondent's Representative said that the work had not been carried out by an NHBC builder but been signed off by an Architect with a certificate from the Local Authority which was accepted by mortgagees. The Tribunal expressed the view that nevertheless as the work had only been completed during the twelve months prior to the failure of the sills it was reasonable to suppose that the work was covered by some form of warranty.

Equipment Repairs

60. The Applicant stated that she did not know what the charge of £113.83 for Equipment Repairs was for. The Respondent's Representative stated that this sum in the accounts for the year ending 31st December 2010 was for repair to an electrical heater in the common parts.

Other Repairs

61. The Applicant stated that she did not know what the charge of £312.72 was for and did not know why there was an invoice for a cherry picker charged to another building owned by the Respondent. The Respondent's Representative said that the cherry

picker was ordered for another property in the vicinity but was used to give access to the sills for their repair. A proportion of its cost (£113.72) was therefore attributed to the Service Charge for the Building. The remainder of the charge (£199.00) was for the repair to the entry intercom. This had broken down more than twelve months after its installation and was therefore outside its warranty period.

General Comments

62. In conclusion the Respondent's Representative referred the tribunal to a number of letters from Leaseholders who expressed satisfaction with the services.

Budget for 2011

63. Only the estimated costs were available since the actual accounts for the year 1st January to 31st December 2011 were not prepared. Therefore the Tribunal could only determine whether the costs *to be* incurred were reasonable. The Budget was provided as follows:

Budget for 1st January 2011 to 31st December 2011	
Items	Estimated Cost
Bank Charges	10.00
Cleaning	625.00
Electricity	420.00
Heating	6,200.00
Fire Equipment	65.00
Management	1,975.00
Accountancy	350.00
Sundry Expenses	200.00
Insurance	1,820.00
Building Repairs	250.00
Equipment Repairs	200.00
Other Repairs	450.00
Total	12,565.00
Amount Apportioned to Subject Property (7.15%)	898.40

64. Notes to the Budget showed that under the item of Sundries a fire risk assessment was to be carried out and under the item of Repairs work on a leak and solar panel flashing was to be undertaken.

Determination

65. The Tribunal considered the evidence submitted by both parties in relation to the matters in issue.

Cleaning

66. At the inspection the Tribunal had found that the Common Parts of the Building were generally well maintained. Since the carpets were laid in 2009 they must have been vacuumed regularly during the years in issue to be in relatively good condition on the date of inspection in 2012. Most of the windowsills had been wiped over although a couple had been missed. Notwithstanding a few marks the walls were clean. The Tribunal therefore found that regular cleaning had taken place and determined it to be

of a reasonable standard. The Tribunal determined that an annual charge of £250.00 was reasonable. Under the Lease the Applicant is only liable for 7.15% of these costs, which is £17.88 for each year.

Electricity

67. The Tribunal found that in the knowledge and experience of its members and in the absence of evidence to the contrary the cost of lighting and heating the Common Parts of the Building to be reasonable for both years being £84.00 for 2009 and £484.05 for 2010. Under the Lease the Applicant is only liable for 7.15% of these costs for each year, which is £6.00 for 2009 and £34.61 for 2010.

Heating

68. Firstly the Tribunal considered the standard of heating. It had been conceded that the system providing space heating had been problematical. The Tribunal was of the opinion that an ambient temperature of 18 degrees to 21 degrees Celsius provided by a central heating system was reasonable. However, it had been conceded that the temperature had fallen below this. To mitigate this, the Respondent had provided the Applicant with heaters and compensation of £120.00 in 2009 to offset the additional cost of the mains electricity. Therefore, the Tribunal determined that the standard of heating for the year ending 31st December 2009 was reasonable.
69. Secondly the Tribunal considered the standard of hot water. Again this was conceded by the Respondent to have been unreliable during both 2009 and 2010 and that a gas fired boiler had been installed at the end of 2011.
70. Thirdly the Tribunal considered the cost of the heating and hot water. The Tribunal accepted the cost of £2,757.00 for the year ending 31st December 2009 and the cost of £6,651.27 for the year ending 31st December 2010. Under the Lease the Applicant is only liable to pay 7.15% of these costs, which is £197.13 for 2009 and £475.57. The Tribunal determined that the cost of the heating and hot water was reasonable for the year 2009 taking into account that the Respondent had provided additional heater and had compensated the Applicant by a payment of £120 for the additional electricity consumption from the Subject Property. On a similar basis the Tribunal determined that the cost of the heating and hot water for the year 2010 should be reduced by £100.00 to a sum of £375.57 as submitted by the Applicant to compensate for the additional electricity consumption from the Subject Property.
71. The Tribunal found that the additional demand for £355.12, which were said to have accrued in 2009 was not payable for two reasons. First it was out of time under section 20B and secondly it was for more than the amount apportioned to the Subject Property under the Lease. The Respondent had suggested in the demand that the cost of the heating for each year should be apportioned between the occupied flats however this is contrary to the Lease which requires the total cost, which is clearly stated in the amended electricity bills, to be apportioned on the basis of 7.15% to the Subject Property. The Tribunal found that the additional demand for £605.68, which was said to have accrued in 2010 was not payable because it too is not calculated in accordance with the Lease.

Management

72. The Tribunal found that the management of the Building was reasonable in as much that it was maintained, insured and the bills paid and an account kept although the production of annual accounts was tardy. The total invoice of management was

£480.00 for 2009 and £1,291.00 for 2010, which gives a cost per flat of £34.32 and £92.31 respectively, which in the knowledge and experience of the members of the Tribunal was determined to be reasonable.

Accountancy

73. The Tribunal found that the Lease did not allow the costs of running the Grant Road Management Company Limited to be charged to the Service Charge. Therefore the sums of £105.44 including £17.57 VAT in 2009 and £103.25 including VAT in 2010 for the preparation and submission of abbreviated Accounts to Companies House on behalf of the Company were not reasonable. However, the charges of £244.56 including VAT for 2009 and £246.75 including VAT for 2010 for bookkeeping services were reasonable.

Insurance

74. The Tribunal noted that a broker had obtained the annual insurance premiums of £1,609.48 for 2009 and £1,736.61 for 2010 from the market place. In the knowledge and experience of the Tribunal members and in the absence of evidence to the contrary these were determined to be reasonable. It was further determined that the premium of £93.00 as demanded for the Subject Property for 2009 being 7.15% of the total apportioned to cover approximately 10 months was reasonable and payable as was the premium of £124.16 being 7.15% of the total (rounded down) for the Subject Property for 2010. In the accounts provided to the Tribunal the Respondent submitted a total figure, which related to the amount attributable to the Leaseholders only. The Tribunal considered this confusing and have based its calculations upon the annual premium for the whole Building.

Sundry Expenses

75. The Tribunal found that the items under the item of Sundry Expenses in the accounts for the year ending 31st December 2010 were reasonable except for the £79.49 fees for the formation of Grant Road Management Company Limited and annual returns. The Tribunal found that the Lease did not allow the costs of running the Grant Road Management Company Limited to be charged to the Service Charge. Therefore the costs attributed to Sundry Expenses of £300.32 were reduced to £220.83, 7.15% of which is £15.79 and is payable in respect of the Subject Property.

Building Repairs

76. The Tribunal found that a Leaseholder could expect a warranty, which is commensurate with that of the Buildmark warranty, which would ensure that defects appearing within two years of completion would be remedied. Therefore the as the work on the sills and guttering had required repair within two years of the completion of the Building when they had been refurbished or renewed it was reasonable to suppose that the work was covered by a warranty and was the developer's or builder's responsibility. Therefore the charge of £200 for repairing the sills and guttering were not reasonable.

Equipment Repairs

77. The Tribunal accepted that the charge of £113.83 under the item of Equipment Repairs in the accounts for the year ending 31st December 2010 was for the replacement of an electrical heater in the common parts and determined it to be

reasonable. The proportion payable in respect of the Subject Property was therefore £8.14.

Other Repairs

78. The Tribunal found that there were two invoices under the item of Other Repairs. These were for an apportioned cost of £113.72 for the cherry picker ordered for another property in the vicinity but used to give access to the sills for their repair and £199.00 for the repair of the entry intercom. The cost of the cherry picker was determined not to be reasonable and it was part of the repair under the head of Building Repairs, which was determined not to be reasonable, as it should have been covered by a warranty. The cost of the replacement intercom was determined to be reasonable, as these are generally not covered for more than 12 months. The proportion payable in respect of the Subject Property was therefore £14.23.

Estimated Costs for 2011

79. The Tribunal considered the estimated costs and found that items identified and the costs allowed for were in the knowledge and experience of the Tribunal members, reasonable.

Summary


80. The Summary of costs determined to be reasonable by the Tribunal for the years ending 31st December 2009 and 2010 is as follows:

1st January 2009 to 31st December 2009			
Items	Total costs from accounts	Total costs as determined by Tribunal	Amount Apportioned to Subject Property (7.15%)
Bank Charges	3.68	3.68	0.26
Cleaning	250.00	250.00	17.88
Electricity	84.00	84.00	6.00
Heating	2,757.00	2,757.00	197.13
Management	480.00	480.00	34.32
Accountancy	350.00	244.56	17.49
Insurance	(Leaseholders only) 280.27 (Annual) 1,609.48	(10 mths) 1,341.23	(Amount Demanded) 93.00
Total	4,204.95	5,160.47	366.08

1st January 2010 to 31st December 2010			
Items	Total costs from accounts	Total costs as determined by Tribunal	Amount Apportioned to Subject Property (7.15%)
Bank Charges	2.60	2.60	0.19
Cleaning	250.00	250.00	17.88
Electricity	484.05	484.05	34.61
Heating	6,651.29	6,651.29	475.57 - 100 = 375.57
Fire Equipment	475.00	475.00	33.96
Management	1,291.00	1,291.00	92.31
Accountancy	350.00	246.75	17.64
Sundry Expenses	300.32	220.83	15.79

Insurance	(Leaseholders only) 800.32	(annual) 1,736.61	(Amount Demanded) 124.16
Building Repairs	200.00	0	0
Equipment Repairs	113.83	113.83	8.14
Other Repairs	312.72	199.00	14.23
Total	11,231.13	11,670.96	734.48

81. The Tribunal noted that the sum of £366.08 was within the demand for £93.00 for insurance and £323.29 for the other services making a total of £416.29. Therefore these costs were not outside the 18 month period under section 20B and therefore were payable.
82. The Tribunal determined that the Service Charges for the costs incurred that were reasonable and payable in respect of the Subject Property for the year ending 31st December 2009 were £366.08 and for the year ending 31st December 2010 were £734.48.
82. The Tribunal determined that the Service Charges for the costs to be incurred that were reasonable and payable in respect of the Subject Property for the year ending 31st December 2011 were £898.40.


 J.R. Morris (Chair)

Date: