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**Residential  
Property**  
TRIBUNAL SERVICE

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**

**DECISION BY THE LEASEHOLD VALUATION TRIBUNAL for the  
LONDON RENT ASSESSMENT PANEL**

*LANDLORD AND TENANT ACT 1985, as amended, Sections 27A and 20C*

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Ref :LON/00AG/LIS/2006/0142

**Property:** 91 Clarence Gardens, William Road, London NW1 3LP

**Hearing date:** 23 February 2007

**Applicant:** Mrs Anastasia Perkins

**Represented by:** Appeared in person and was represented by the Misses Townsley,  
Hancock, and Khalid from the College of Law.

**Respondent:** The London Borough of Camden

**Represented by:** Mr Karl Schooling

**Members of the Tribunal:** Mr C Leonard (Chairman)  
Mr T N Johnson FRICS

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1. This Application concerns service charges payable under a Lease (“the Lease”) dated 30 January 1989. The Lease is of 91 Clarence Gardens, London NW1 3LP (“the Property”), for a term of 125 years from 30 January 1989. The Property is a ground floor flat in a block comprising 88-105 Clarence Gardens. It has its own front door; flats on other floors are reached by a communal entrance and stairwell. Mrs Anastasia Perkins is the current Lessee. The Lessor is the London Borough of Camden. This is the Lessee’s Application and it concerns service charges for the years ending 31 March 2004 and 31 March 2006.

### **Statutory Regulation of Service Charges**

2. Section 18 (1) of the Landlord and Tenant Act 1985 defines a service charge as “...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, improvements 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...”
3. Section 18 (2) provides that “The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord...in connection with the matters for which the service charge is payable”.
4. Section 19 provides that
  - “(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 provisions 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...”

5. Section 27A (1) of the Act provides that

“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—

- (c) the person by whom it is payable,
- (d) the person to whom it is payable,
- (e) the amount which is payable,
- (f) the date at or by which it is payable, and
- (g) the manner in which it is payable... ”

### **The Service Charge Provisions in the Lease**

6. The Lessee’s covenants under the Lease include an obligation under Clause 2(2) “to pay to the (*Lessor*) without any deduction by way of further and additional rent a proportionate part of the reasonable expenses and outgoings including all VAT (hereinafter called the “expenses and outgoings”) incurred by the (*Lessor*) in the repair and maintenance renewal decoration and insurance and management of the building and the provision of services therein and the other heads of expenditure as the same are set out in the Third Schedule hereto such further and additional rent (hereinafter called the “Service Charge”) being subject to the following terms and provisions...”.
7. Clauses 2(2)(a)-(d) provide for the amount of the Service Charge to be certified as soon as practicable after the end of each financial year 1<sup>st</sup> April to 31<sup>st</sup> March, a copy of the Certificate containing a summary of the expenses and outgoings incurred to be provided to the Tenant on written request.
8. Clause 2(2)(e) provides for the Lessee’s contribution to the Service Charge to be determined by reference to the rateable value of the Property as a proportion of the rateable value of all the flats in 88-105 Clarence Gardens.
9. Clause 2(2)(f) provides that “the expression “the expenses and outgoings incurred by the (*Lessor*)” as hereinbefore used shall be deemed to include not only those expenses outgoings and other expenditure hereinbefore described which have been actually

disbursed incurred or made by the (*Lessor*) during the year in question but also such reasonable part of all such expenses outgoings and other expenditure hereinbefore described which are of a periodically recurring nature (whether recurring by regular or irregular periods) whenever disbursed incurred or made and whether prior to the commencement of the said term or otherwise including a sum or sums of money by way of a reasonable provision for anticipated expenditure in respect thereof as the (*Lessor*) may in its discretion allocate to the year in question as being fair and reasonable in the circumstances”.

10. Clause 2(2)(g) states that “the (*Lessee*) shall if required by the (*Lessor*) with every quarterly payment of rent reserved hereunder pay to the (*Lessor*) such sum in advance on account of the Service Charge as the (*Lessor*) shall specify at its discretion to be a fair and reasonable interim payment”.
11. The Third Schedule to the Lease identifies the expenses, outgoings and other head of expenditure in respect of which the Lessee is to pay to the Lessor a proportionate part by way of a service charge. It includes at paragraph 1, “the expenses of maintaining repairing redecorating and renewing amending cleaning re-pointing painting graining varnishing whitening or colouring the building and all parts thereof including the glass in the common parts of the building in all the windows and all the appurtenances apparatus and other things thereto belonging and more particularly described in Clause 3(2) hereof”.
12. It includes at paragraph 6 “The cost of carpeting re-carpeting or providing other floor covering cleaning decorating and lighting the passages landings staircases and other parts of the building enjoyed or used by the (*Lessee*) in common with others and of keeping the other parts of the building used by the (*Lessee*) in common as aforesaid and not otherwise specifically referred to in the Schedule in good repair and condition”.
13. It includes at paragraph 9 “The cost of the expense of making repairing maintaining, rebuilding cleansing and lighting all ways roads pavements sewers drains pipes watercourses party walls party structures party fence walls or other conveniences

which may belong to or be used for the building in common with other premises near or adjoining thereto”.

14. It includes at paragraph 10 “The cost of installing maintaining repairing and renewing any television and radio receiving aerials answer entry-phone fire alarm systems telephone relay systems and used or capable of being used by the (*Lessee*) in common as aforesaid”.

#### **15. The Service Charge for 2004**

16. The amount in dispute for this year is £4,701.19. This sum represents, the Lessor says, the Lessee’s proportion of a total of £64,384.07, together with a supervision fee and management fee. The underlying cost of £64,384.07 relates exclusively to the installation of a security door entry system to the block comprising 88-105 Clarence Gardens.

17. The Lessee’s case is that the installation of this door entry system falls outside the scope of the works described in clause 2 (2) and the Third Schedule to the Lease, so that under the terms of the Lease itself, the Lessor - despite having incurred the relevant expenditure - is not entitled to render a service charge to the Lessee in relation to it. In the alternative, she has argued that the amount charged for the security doors is unreasonable given that the Property does not benefit from the security doors which control access only to the stairwells which lead to other flats in the block. Before the Tribunal, the Lessee (without conceding the point) chose not to pursue this second argument, but it is mentioned because it has some bearing on arguments put to the Tribunal by the Lessor, which are referred to below.

18. The Lessor’s position is that the work undertaken was necessary to maintain the security of the block and to make appropriate provision for the safety of the residents in it. Had the Lessor not installed the system, it might have failed in its duty to the residents and been vulnerable both to proper criticism and to the possibility of legal action should anyone have been injured as a result. The work performed, says the Lessor, clearly falls within the “management” function referred to in clause 2 (2).

Proper feasibility studies and procedures were undertaken before installation, as part of that function. Alternatively the Lessor argues that the cost of installing the security door falls within the provisions of Paragraphs 9 and 10 of the Third Schedule to the Lease. Paragraph 9, as noted above, includes the cost of “making... other conveniences which may belong to or be used for the building in common with other premises near or adjoining thereto”. Paragraph 10 includes the cost of “installing” among other items “any... entry-phone ...used or being capable of being used by the (*Lessee*) in common as aforesaid”.

19. Bearing in mind in particular the Lessee’s complaint to the effect that the Property did not benefit from the installation of the security doors, the Lessor referred the Tribunal to the case of *Billson -v- Tristrem* [2000] L.&T.R. 220, CA. That case concerned a service charge provision which (the tenant argued) imposed no obligation on the landlord to carry out any work to most of the common parts of the property of which the tenant’s flat formed a part, or for the tenant to pay any contribution by way of service charge to the cost of doing so. That was because such obligations extended only to the parts of the building that the tenant enjoyed and used in common with other tenants. In fact the tenant occupied a basement flat with its own separate entrance and she did not use or have the right to use any other part of the building.
  
20. The Court rejected that argument on the basis that the result argued for by the tenant would be an extraordinary one, inconsistent with other key provisions of the lease and inconsistent with what would appear to have been the intention of the parties under the lease. The effect on individual tenants’ contributions in the building would have been bizarre. Rattee J said; “...in my judgment the function of the Court in trying to construe the provision of the lease is to ascertain from the terms of the lease as a whole the intentions of the parties evinced by the terms of the lease, regardless of whether or not the parties have used inept words in which to describe their intentions”. The Court took the view that the clear intention of the parties to the lease was that each of the five tenants in the building of which the tenant’s property was part was to pay a 20% contribution towards the costs of doing all the work which landlords would ordinarily do in maintaining a building of that nature.

21. The Lessee relies upon *Gilje -v- Charlgrove Securities Limited* [2001] E.W.C.A. Civ 1777. In that case, a landlord sought to recover from a tenant by way of service charge a contribution towards a notional rent foregone by the landlord in providing accommodation for a resident caretaker. The Court of Appeal held that he was not entitled to do so in the absence of clear and plain words in the lease. Laws L.J. said; “The landlord seeks to recover money from the tenant. On ordinary principles, there must be clear terms in the contractual provisions said to entitle him to do so. The lease, moreover, was drafted or proffered by the landlord. It falls to be construed *contra proferentem*... I do not consider that a reasonable tenant or prospective tenant, reading the underlease which was proffered to him, would perceive that Clause 4(2)(1) obliged him to contribute... Such a construction has to emerge clearly and plainly from the words that are used. It does not do so”.
22. The Lessee argues that the Lease is perfectly capable of a workable interpretation which does not permit the Lessor to recover the cost of installing the security doors under the service charge. The principles enunciated in *Gilje -v- Charlgrove Securities Limited* are the relevant ones, rather than those referred to in *Billson -v- Tristrem*.
23. The Tribunal’s conclusion is that the Lessee is correct in this submission. The Tribunal’s approach to interpretation must be that employed in *Gilje -v- Charlgrove Securities Limited*. Taking such an approach leaves the Lease perfectly sensible and workable and reflects the evident intention of the parties when the Lease was made. If it was their intention that an improvement such as the installation of security doors was to fall within the service charge provisions, there would have been clear provision in the Lease to that effect.
24. In the Tribunal’s opinion no such provision is to be found. It would be wrong to stretch the meaning of the reference to “management” in clause 2 (2) of the Lease to cover the installation of security doors. Paragraph 9 of the Third Schedule to the Lease refers to roads, structures etc. which “may belong to or be used for the building “in common with other premises near or adjoining thereto”. The security door system does not meet that definition. Paragraph 10 mentions the installation of an entry-phone system but it must be used or capable of being used by the Lessee in common with other tenants. The Lessee’s evidence is that she has no use for the security doors

at all. She does not require access to the parts of the block protected by the security doors. She neither knows nor wants to know how to use them. In effect, she has no more use for the security doors than any other member of the public who does not live behind them. Nor does the fact that the security door system incorporates an entry-phone define it as an entry-phone system. It is more than, and more expensive than, a simple entry-phone system.

25. The Tribunal is not unsympathetic to the Lessor's desire to maintain security in the block and to protect the residents, and its conscientious pursuit of that aim. None of this changes the fact that had the Lessor wished to provide in the Lease that improvements of this nature should be covered by a service charge, it could have done so. It has not.
26. As a result the Tribunal has concluded that the charge of £4,701.19 for the security doors is not recoverable from the Lessee under the terms of the Lease.

#### **The Service Charge for 2006**

27. Here, the sum in issue is £1,347.82. This represents the Lessor's calculation of the Lessee's share of the estimated cost of future works needed for the maintenance of the block. The reasonableness of the estimate is not in issue. However, the Lessee argues that it is unreasonable for the Lessor to demand all of it in advance. She relies in particular upon the fact that Clause 2(2) (f) and (g) provide for the Lessee to pay on account of the Service Charge such sums as the Lessor shall specify at its discretion to be a fair and reasonable part provision or interim (as opposed to full) payment.
28. The Lessee's evidence is that it has been the Lessor's practice to require Lessees to pay in advance their proportion of the full estimated costs of major works. In reliance upon her argument that this is unreasonable, she relies upon the fact that in the past it has taken the Lessor up to five years to give credit for amounts overpaid as a result of that practice.
29. The Lessor does not dispute the fact that such full payments are sought in advance, nor that in the past it has taken a very long time to make appropriate refunds



(although the Lessor says that those delays have now been reduced, by improved efficiency, to about 2-3 years). In particular, the Lessor relies upon the fact that Service Charge Loans are available for payment of such advance Service Charges, as is an option to pay by instalments over 10 months. As a Housing Officer Mr Schooling, for the Lessor, was prepared to confirm to the Tribunal that when applications for instalment payments are made they are invariably accepted. The Lessee's evidence was that she had not been put on notice of the instalment option.

30. The Tribunal's conclusion is that the practice of requiring advance payment of a Tenant's proportion of the full estimated costs of future work is not consistent with a provision in the Lease for a "fair and reasonable" interim payment or part provision. Whilst the Lease provides for the Lessor to have a discretion in deciding what a "fair and reasonable" payment should be, if those words are to have any meaning the Lessor's discretion cannot be completely unfettered and must be exercised so as to achieve that outcome. An insistence upon full, advance payment every time does not seem to the Tribunal to constitute an exercise of that discretion.
31. The Lessor pointed out, rightly, that the 1985 Act does allow for advance payment of Service Charges. However it also limits such advance payments to what is reasonable. The Tribunal's conclusion is that the Lessor's unvarying requirement for full payment in advance, whether by instalments or otherwise, is not fair or reasonable given that it takes years for overpayments to be refunded.
32. What is reasonable will depend on the circumstances. In the particular circumstances of this case, and given in particular the very slow repayment of excess amounts previously paid, the Lessee has chosen to pay 50% of this charge in advance but has refused to pay more. The Lessor in the exercise of a proper discretion might be able to justify a higher interim payment but in the absence of any evidence of that discretion having been exercised, the Tribunal believes that the stance taken by the Lessee is reasonable and that she should not be obliged to pay more than 50% by way of interim charge against the estimate of £1,347.82. Having already paid that amount there is no more for her to pay until the works are complete.

33. The Lessee has in her application asked the Tribunal to set a proportion for future years. In the absence of any evidence as to the proper exercise of a discretion in relation to any particular works, the Tribunal is unable to do so but would observe that it is incumbent on the Lessor to exercise the discretion given by the Lease so as to achieve a fair and reasonable outcome, and insofar as practicable to let the Lessee know how that outcome has been achieved. Otherwise it may face further successful applications in the future.

#### **Section 20C of the Landlord and Tenant Act 1985**

34. The Lessee applied under section 20C of the 1985 Act for an order that the costs of these proceedings should not be taken into account in calculating the amount of any service charge, and for reimbursement of the fee paid by her on the application, under regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003. Given the outcome of the application, the Tribunal might well have made an order under section 20C but for the Lessor's confirmation on record that it does not intend to add any costs of these proceedings to the service charge.

35. The Tribunal does think it right in the circumstances that the Lessor should reimburse to the Lessee the £100 fee paid by her on this application. The Tribunal orders that the Lessor pay the Lessee that sum.

Dated the 30 March 2007



Colum Leonard

Chairman