

**LON/00AY/LSC/2007/0312****DECISION OF THE LEASEHOLD VALUATION  
TRIBUNAL ON APPLICATIONS UNDER SCHEDULE 11  
OF THE COMMONHOLD & LEASEHOLD REFORM ACT  
2002, AS AMENDED**

**Address:** Flat 2, 105 Babington Road, London, SW16 6AN

**Applicant:** Susan Fan

**Respondent:** Shah Muhammad

**Application:** 9 August 2007

**Inspection:** N/A

**Hearing:** 31 October 2007

**Appearances:**

<b>Tenant</b>		
Ms S Fan	Leaseholder	
		For the Applicant
<b>Landlord</b>		
Mr S Muhammad	Freeholder	
Mr M Salimullah		For the Respondent

**Members of the Tribunal:** Mr I Mohabir LLB (Hons)  
Mr E Goss



**IN THE LEASEHOLD VALUATION TRIBUNAL**

**LON/00AY/LSC/2007/0312**

**IN THE MATTER OF SCHEDULE 11 OF THE COMMONHOLD &  
LEASEHOLD REFORM ACT 2002**

**AND IN THE MATTER OF FLAT 2, 105 BABINGTON ROAD, LONDON,  
SW16 6AN**

**BETWEEN:**

**SUSAN FAN**

**Applicant**

**-and-**

**SHAH MUHAMMAD**

**Respondent**

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**THE TRIBUNAL'S DECISION**

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**Introduction**

1. This application is made by the Applicant pursuant to Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (as amended) ("the Act") for a determination of her liability to pay and/or the reasonableness of an administration charge.
2. The Applicant is the lessee of the premises known as Flat 2, 105 Babington Road, SW16, having taken an assignment of the lease in March 2006. The Respondent is the freeholder. It was a matter of common ground that the Applicant's predecessor in title had carried out internal alterations to the internal layout of the subject property. The extent of the alterations carried out is evident from the plans annexed to this Decision showing the original and

new layout. The new plan was prepared by the Applicant's surveyor and was agreed by the Respondent at the hearing as being correct.

3. It is not known whether, at the time the alterations were carried out, the Applicant's predecessor in title had sought the consent of the Respondent for the alterations or whether the latter was aware of this. The Tribunal heard no evidence about this matter and it made no findings in this regard. In any event, that consent does not appear to have been granted. By clause 3(8) of the Applicant's lease, the lessee covenanted:

*"Not to cut maim or injure any of the ceilings floors walls or partitions of the demised premises nor to make any alterations in the demised premises without the prior consent in writing of the lessor."*

4. In the *inter partes* correspondence preceding this application, it seems that the Respondent was prepared to retrospectively grant a licence for the alterations on a number of conditions, which also related to the ground rent and service charges payable under the lease. The Tribunal explained to the parties at the hearing that it did not have jurisdiction in this application to deal with these matters. The sum demanded by the Respondent on 24 July 2007 to grant a licence for the alterations was £22,500. The parties were unable to reach agreement on the amount payable and, subject to the threat of forfeiture, the Applicant made this application on 9 August 2007.

### **Hearing**

5. The hearing in this matter took place on 31 October 2007. Both the Applicant and Respondent appeared in person. The Respondent was assisted by Mr Salimullah as an interpreter. The Tribunal dealt with this matter entirely on the submissions made by the parties.
6. It was accepted by the Applicant that clause 3(14) expressly made it a contractual term for the lessee to pay the landlord's reasonable costs and expenses of granting any licence or consent. By this clause, the lessee covenanted to:

*“To pay all reasonable costs and expenses of the Lessor (including solicitors and surveyors costs and fees) incurred on any application by the Lessee or any licence or consent under this Lease and for preparing any licence or consent whether or not the same shall be taken by the Lessee.”*

7. It was the Applicant's case that the sum of £22,500 demanded by the Respondent was unreasonable. She submitted that the sum of £100 was reasonable and within her budget. Indeed, she said that the tenant upstairs had paid between £50-500 for a similar consent.
8. When asked by the Tribunal as to how the figure of £22,500 had been arrived at, the Respondent stated that it represented a share of the increased value of the subject premises as a result of the alterations carried out. The Respondent relied on a "valuation" carried out by United Estates, Estate Agents and Property Manager, in a letter dated 29 October 2007. Therein it stated that *"1 bedroom flats with garden range from £175,000 to £185,000 whilst studios range from £125,000 to £140,000"*.
9. It appeared that the Respondent's figure of £22,500 represented approximately half of the purported increase in the value of the subject property caused by the alterations. It was put to the Respondent by the Tribunal that clause 3(14) only gave him a contractual right to recover his reasonable costs and expenses and not a share of any increased value in the premises, if any. The Respondent accepted the Tribunal's construction of this clause and further conceded that the sum of £22,500 was not reasonable.
10. The Respondent was unable to tell the Tribunal what costs he would have incurred by his solicitors preparing a licence or consent to the alterations. The Applicant said she had been informed by the Respondent's former solicitors, McMillan Williams, by letter in December 2006 that the cost of preparing this document would be £500 plus VAT. The Respondent agreed this figure as being reasonable. Accordingly, the sum determined, by agreement, as being a reasonable administration charge payable to the Respondent by the Applicant

for the grant of a licence or consent to the alterations to the subject premises in accordance with the agreed plan annexed hereto is £500 plus VAT.

#### **Section 20C - Costs & Fees**

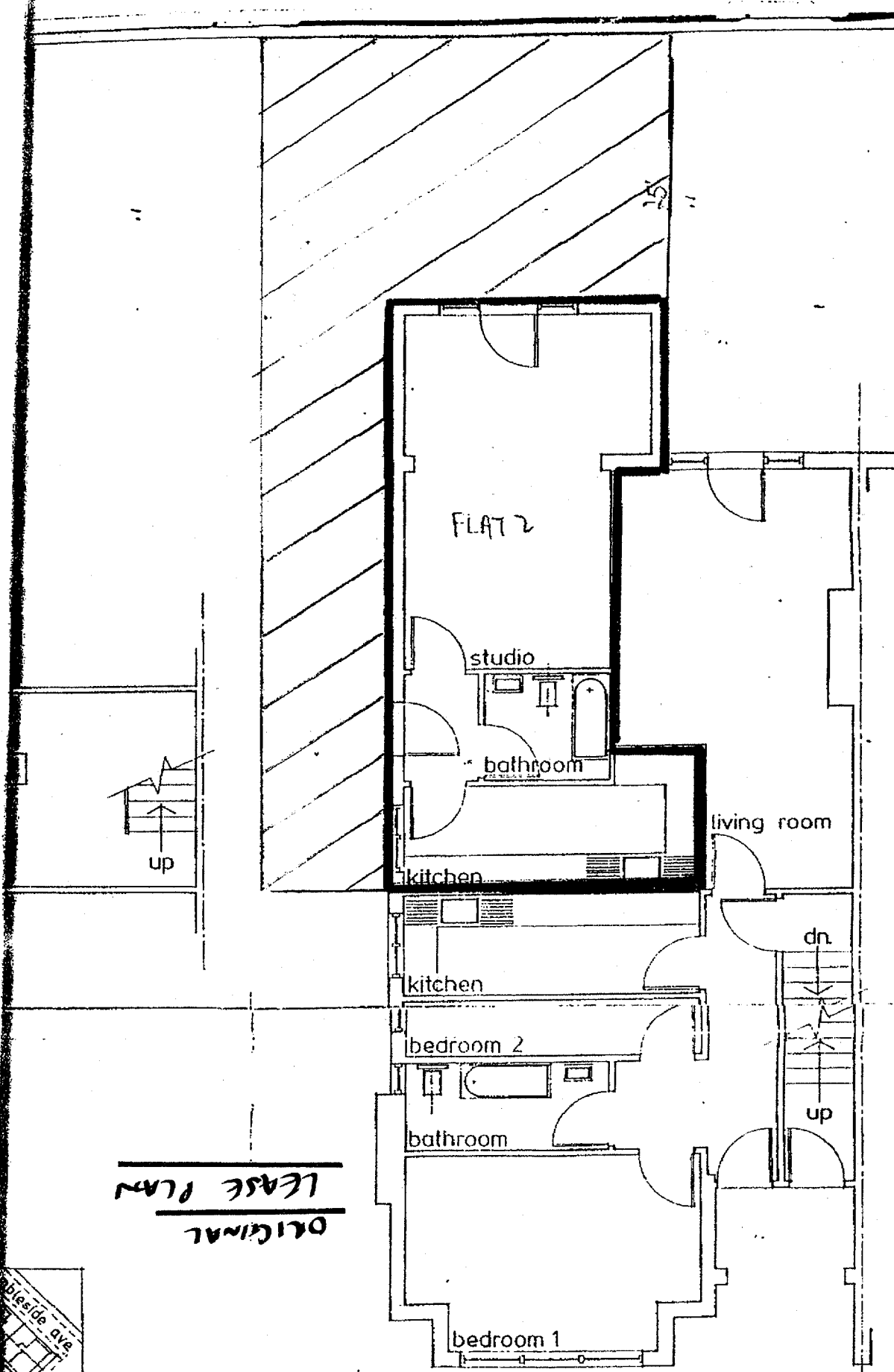
11. The Respondent told the Tribunal that he had not incurred any costs in these proceedings. It was, therefore, not necessary for the Tribunal to consider the s.20C application made by the Applicant in the originating application.
12. The total fees paid by the Applicant to the Tribunal to have the application issued and the matter heard was £500. The Applicant sought the reimbursement of this amount from the Respondent.
13. The Respondent stated that the entire matter was the Applicant's fault and she should have sorted the matter out with her vendor at the time she purchased her flat. She had taken a risk by buying her flat without his consent to the alterations having been given. The Applicant said that she had attempted to resolve this matter without having to issue this application but the Respondent was in Pakistan from January to July 2007 and neither she nor his solicitors were able to communicate with him during this period.
14. The Tribunal did not to enquire in the reasons why the consent to the alterations to the subject property had not been granted because it was not relevant. The issue of fees was limited to a consideration of the reasons why this application was made. Having regard to the *inter partes* correspondence, it is clear that the Respondent's stance in this matter was both wholly misconceived and, therefore, unreasonable. The Tribunal was satisfied, on balance, that the Respondent would not have agreed to a substantially lesser amount to grant the licence or consent for the alterations had the Applicant not issued the application. It was also clear that the Respondent had not altered his position in the interim and that a hearing was necessary. In the circumstances, it would be inequitable and unjust to deprive the Applicant of the fees paid by her to the Tribunal. Accordingly, the Tribunal directs pursuant to Regulation 9 of the Leasehold Valuation Tribunals (Fees)

(England) Regulations 2003 that the Respondent reimburses the Applicant the sum of £500.

Dated the 21 day of November 2007

CHAIRMAN..... J. Mohabir  
Mr I Mohabir LLB (Hons)

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proposed ground floor

M. Giffkins  
A. Parkin



Babington Road

NEW PLAN (AGREED)

Front Garden

105 Babington Road

Garden Flat

107 Babington Road

103 Babington Road

Shower Room

Bedroom

Living/Kitchen

Rear Garden

NEW  
ALTERNATIVE  
FLAT

Ground Floor Plan

