RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

SECTION 27A APPLICATION

Case No. CH1/15UB/LIS/2008/0028

IN THE MATTER OF an Application under Section 27A of the Landlord and Tenant Act 1985 (as amended) and in the matter of 32, 33 and 47 Harris Close, Callington, Cornwall

BETWEEN:

JOHN GOSS
MS SANDRA DINELEY-JONES — APPLICANTS

AND

THE HARRIS CLOSE MANAGEMENT COMPANY LIMITED
LISA HAROLD — RESPONDENTS

PREMISES: 32, 33 and 47 HARRIS CLOSE, CALLINGTON, CORNWALL

ATTENDEES: MR. J. GOSS
MR. D. NORRIS for Harris Close Management Ltd.

TRIBUNAL:

MR. I. ARROW BA	Lawyer Chairman
MR. A.J. LUMBY BSc FRICS	Valuer Member
DR. C.W. GRONOW	Lay Member

HEARING: 13th October 2008

APPLICATION AND DETERMINATION

1. The Applicant John Goss applied to the Tribunal on the 11th June 2008 under Section 27A of the Landlord & Tenant Act 1985 (as amended) (The Act) to determine the liability to pay a service charge in respect of Flat 47 Harris Close, Callington, Cornwall for the years 2005, 2006, 2007 and 2008 up to 1st May 2008.

   Directions were issued on the 20th June 2008. On 1st July 2008 Ms Sandra Dineley-Jones was joined as an application. Further directions were given on the 15th August 2008. On the 30th June 2008 Lisa Harold was joined as a Respondent to the Application.

   Following the hearing the Management Company Respondent sent to the Tribunal written details of costs incurred in taking part in the hearing.

2. The Tribunal's decision in respect of these matters which were before it are confirmed in this determination for the reasons in the following paragraphs 3 – 11.

   The Tribunal having heard verbal evidence from the witnesses in attendance and having considered the documentation produced to it is satisfied that a reasonable management service provider would have dealt with the decoration defects raised by the Applicant in a more timely fashion. The Management service fell short of that which might reasonably be expected.

   Accordingly relying on the Tribunals knowledge and experience the Tribunal determines the management service charge for the whole of the period at issue namely 2005, 2006, 2007, 2008 up to 1st May 2008 be reduced by the sum of £50 in total. Accordingly the Tribunal directs that the service accounts for Flat 47 and Flat 32 be adjusted by way of a reduction of £50. In all other respects the accounts remain payable.

   The Tribunal determines no adjustment in respect of Flat 33 for the joined Respondent.

   The Tribunal directs each party bear their own costs of the application and hearing

THE LAW

3. The statutory provisions primarily relevant to applications of this nature are to be found in Sections 18, 19 and 27A of The Landlord and Tenant Act 1985. The Tribunal has regard in making its decision to the whole of the relevant Sections as they are set out in the Act but here sets out what it intends shall be a sufficient extract (or a summary as the case may be) from each to assist the parties in reading this decision. Section 18 provides that the expression "service charge" for these purposes 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, improvements or insurance or the landlord's costs of management, and

b. the whole or part of which varies or may vary according to relevant costs"

"Relevant costs" are the costs incurred or to be incurred by the landlord in connection with the matters for which the service charge is payable, and the expression "costs" includes overheads.

4. Section 19 provides that:

"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 were incurred on the provision of services or carrying out of works only if the services or works are of a reasonable standard

and the amount payable shall be limited accordingly".

5. Subsections (1) and (2) of Section 27A of the Act provide that:

"(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 persons to whom it is payable
b. the person by 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."

6. To such an extent (if at all) that the point is not implicit in the wording of the Act, the Court of Appeal has laid down in Finchbourne v. Rodrigues (1976) 3 AER 581 CA that it could not have been intended for the landlord to have an unfettered discretion to adopt the highest possible standard of maintenance for the property in question and to charge the tenant accordingly. Therefore to give business efficiency to the Lease there should be an implied term that the costs recoverable as service charges should be fair and reasonable.

THE LEASE

7. The Applicant holds the property for the residue of a term of nine hundred and ninety nine years from the 1st April 2002 granted by a Lease made the 30th January 2004 between Downderry Group Ltd. of the First Part, Harris Close Management Company Limited of the Second Part subject to a payment of a

yearly ground rent of a peppercorn if demanded. The Applicant by clause 6 of the Lease covenants with the Lessor and with the Management Company that the Applicant will perform and observe the covenants set out in Part 1 of the Second Schedule. The covenants in: Part 1 of the Second Schedule in particular clause 6 provides that the Applicant will pay 1/28th of the expenses or other such proportion as may be determined by the Management Company incurred by the Lessor in performing his obligations and of the discretionary expenses and other matters as set out in Part 1 of the Fourth Schedule and of discretionary expenses and other matters set out in Part 2 of the Fourth Schedule which inter alia, includes "the cost of the following: providing and where necessary replacing such floor covering as the Lessor reasonably elects to provide for (a) the entrance lobby and hall of the property (b) the stairs and landing of the property). The Fourth Schedule Part 2 clause 8 reasonably incurring other expenses ..... in or about the maintenance and the proper and convenient administration management and running of the property and in considering or fulfilling the Lessors obligations or discretionary powers under this Lease or under Leases of other flats to the extent that such expenses are not exclusively paid by a Lessee of one flat. Clause 9 Maintaining and repairing or contributing to the maintenance and repair of the bin stores and of all other accesses walls services or other things used in common by the property with the other premises.

8. It is understood the Lease is in common form that is to say substantially the same terms in respect of all the flats in Harris Close.

INSPECTION

9. The Tribunal inspected Harris Close prior to the hearing on the 13th October 2008 in the presence of Mr. John Goss, Mr. Dan Norris the Management Company Agent.

The Tribunal saw an estate that was divided into a number of flats. The buildings were of modern conventional construction not being more than ten years old

The flats in the blocks inspected appeared to be in residential occupation.

At inspection the following matters were particularly drawn to the Tribunal's attention

The flats had tiled entranceways, staircases and landings. The Tribunal's attention was drawn to the iron railings to the staircases and painted risers to the stairs. All were in reasonable condition for their age and were reasonably maintained and decorated.

HEARING

10. Several distinct issues for the Tribunal's decision arose at the hearing and it is convenient to describe the arguments advanced in respect of each. Each separate issue is identified by means of its own sub-heading.

(i) The Applicant Mr. Goss set out his personal circumstances and his reason for purchasing his flat. Mr. Goss identified three principal issues which were:

(ii) Cleaning of the building had not taken place when the builders had left the property. There appeared to be a problem of communication in the system and it has taken up until April 2008 for the common parts and in particular the stairways of the building to be reasonably cleaned and decorated.

(iii) Mr. Goss took the view that he should not pay service charges "a la carte". He was concerned that as the builders had not cleaned he could not be expected to make part payment if the Management Company did not fulfil the whole of its contract.

(iv) Mr. Goss took the view that he did not believe the Management Company were interested in dealing with the problem

(v) Mr. Goss referred the Tribunal to various documents in his bundle in particular document 15 setting out his position. Document 16 a letter from the Managing Company indicating that no further action would be taken until such time as outstanding monies were paid. Document 33a which summarised his position.

(vi) Mr. Dan Norris for the Management Company gave evidence that the properties had been built and completed in 2004. He explained the Management Company had a difficulty with absent landlords and that landlords were reluctant to pay a reasonable service charge. He explained there had been a modest cleaning charge and that the charge had not included any type of industrial cleaning. Mr. Norris indicated that Mr. Goss' account with the Management Company was substantially in arrears.

(vii) Mr. Goss had no settlement proposals and gave no evidence as to a reasonable charge. He relied on the Tribunal's expertise to determine a reasonable charge.

(viii) Mr. Norris gave no settlement proposals and had no evidence for a reasonable charge, maintaining that the whole of the sum due remained payable

(ix) Mr. Norris when asked to explain the photographs taken in January 2001 explained the builders had not done a clean–up and he gave candid and useful evidence as to the brown stains on the metal stairwork. That is to say the staircases had been left out in the open prior to installation and had progressively become pitted following painting and installation.

(x) Mr. Goss stressed the number of times he had raised the issue and in particular questioned why it had taken four years to deal with the

matter that was the responsibility of the original construction company. He pointed out the construction company had a yard immediately adjacent to the development. In other papers produced to the Tribunal, (Hunt 47.1) but not mentioned at the hearing, it was said in minutes that the original builders "response all along has been indifference and disinterest" in dealing with door problems – so this was not an isolated instance. Agents should have been aware that waiting for builders action might be fruitless.

(xi) The Tribunal heard evidence and was satisfied that redecoration had taken place to the satisfaction of the Applicant in April 2008

REASONS

11. The Tribunal was satisfied the Applicant had a reasonable grievance as to the state of decoration of the common parts following his purchase of the property. The Tribunal was satisfied the condition of the common parts were left in by the construction builders was unreasonable insofar as there were scuff marks on the stairs, risers and walls. Subsequently the paintwork on the iron stair balustrade had deteriorated as a result of rust pits developing over a period of time. The Tribunal was satisfied the Applicant had reasonable cause to raise the state of decoration as a grievance with the Management Company.

At the time of inspection all these matters had been resolved to the satisfaction of the Applicant in attendance at the hearing. The evidence the Tribunal heard and accepted was the building was in reasonable decorative state as at the 1st May 2008.

In the Tribunal's view there was unreasonable delay on the part of the Management Company in addressing the defects in decoration. The delay was unreasonable service from the Management Company and should be reflected in a reduction of management fees charged to the Applicants.

In the Tribunals view the Management Company should not recover the expense of the application and hearing from any tenant.

Dated this 24th day of October 2008

Signed .....

Lawyer Chairman

I.M. Arbon.