RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL

Case number: CHI/40UB/LSC/2010/0014

In the matter of: 33 Coombe Lane, Shepton Mallet, Somerset, BA4 5XA

And in the matter of: an application under Section 27A of the Landlord and Tenant Act 1985 (as amended) for a determination of liability to pay service charges and under Section 20C of that Act.

Between:

1. Mr. Arnold Marks
2. Mrs. Irene Marks Applicants

and

Mrs. Ester Soares Respondent

Date of application: 27 January 2010
Date of hearing: 26 May 2010
Members of the Tribunal: Mr. J G Orme (lawyer chairman)
Mr. T E Dickinson BSc FRICS (valuer member)
Mr. M R Jenkinson (lay member)
Date of decision: 31 May 2010

Decision of the Leasehold Valuation Tribunal

For the reasons set out below, the Tribunal determines:

1. **that the following sums are payable by way of service charge by the Respondent, Mrs. Esther Soares to the Applicants, Mr. Arnold Marks and Mrs. Irene Marks in respect of 33 Coombe Lane, Shepton Mallet, Somerset, BA4 5XA:**
for the year ended 25 December 2008, the sum of £19.65;
for the year ended 25 December 2009, the sum of £42.50;
for the year ended 25 December 2010, the sum of £18.80.

2. **that, pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended) all costs incurred by the Applicants in connection with this application are not to be regarded as relevant costs to be taken**

into account in determining the amount of any service charge payable by the Respondent.

Reasons

The Application

1. On 27 January 2010, Mr. Arnold Marks and Mrs. Irene Marks ("the Applicants") applied to the Tribunal to determine the service charges payable by Mrs Esther Soares ("the Respondent") in respect of 33 Coombe Lane, Shepton Mallet ("the Flat") for the years ended 25 December 2008, 2009 and 2010.

2. The Flat is the first floor of a 2 storey building known as 32 and 33 Coombe Lane ("the Building"). It forms part of a development on the East side of Coombe Lane which was built in about 2001. The development includes a terrace of 3 houses which are attached to the North side of the Building. To the South of the Building there is a block of 3 garages and an area of access way and parking which is covered with tarmac.

3. The Applicants own the freehold of the Building and live in 32 Coombe Lane which is the ground floor of the Building. Since May 2008, the Respondent has been the leasehold owner of the Flat, which includes an area of garden to the rear and a parking space.

4. A pre-trial review was held on 15 March 2010 following which the Tribunal issued directions providing for the parties to exchange written statements of case and for the application to be heard on 26 May. The parties subsequently prepared written statements in accordance with those directions.

5. On 26 April 2010, the Respondent made an application to the Tribunal for an order to be made pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended) ("the Act"). The directions issued by the Tribunal provided for any such application to be determined at the same time as the application by the Applicants.

The Law

6. The statutory provisions primarily relevant to matters of this nature are to be found in Sections 18, 19 and 27A of the Act.

7. Section 18 provides:-

   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 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.

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 for 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 or later period.

8. Section 19 provides:-

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.

9. Section 27A provides:-

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.

Subsections 3 to 7 of Section 27A are not relevant in this application.

10. Section 20C of the Act provides:-

1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a ... leasehold valuation tribunal ... are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

2) ...

3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

The Lease

11. The Respondent holds the Flat by virtue of a lease dated 15 November 2001 made between Robert James Booth as lessor and Sarah Whitehead as lessee. The lease demised the Flat to the lessee for a term of 125 years from 25 December 2000 at a yearly rent of £150. The Respondent produced the original of her lease to the Tribunal at the hearing so that the Tribunal could check the colouring and marking of the plans attached to the lease. There were two plans.

12. The lease contains the following definitions which are relevant to this dispute. *"The Property - the same is shown edged blue on the plan".* That appears to be the whole development site including the garages, car parking areas and access ways.
"The Building - the two Flats comprising 32 and 33 Coombe Lane, Shepton Mallet, Somerset."
"The Flat - First Floor Flat 33 Coombe Lane aforesaid shown edged red on the plan annexed hereto with parking space edged red and the bin store at Ground Floor level numbered 2 and edged red." There appears to be a conflict between the 2 plans as to the area edged in red but the second plan shows the Building, one car parking space and an area of garden edged in red. The Tribunal noted that the ground floor entrance lobby to the Flat which joins the Building to the garage block is not included within the red edging.
"The Service Charge shall mean the proportion of annual expenditure (as defined by clause 3.9 hereof) specified in the particulars." The particulars specify 50%.
"The services shall mean the matters referred to in clause 5.1"
"the Retained Parts shall mean all parts of the Building not let or intended to be let to a tenant including (but not limited to) the Refuse Area the roof foundations the exterior surface of the external walls and exterior of the Building and the surface of the Access way forms part of the Property coloured brown on the plan number 1 of all pedestrian ways forecourts landscaped areas stairs halls entrance ways internal passages stairs and all Pipes on or serving the premises (except those which are within and solely serving premises let or intended to be let) and all other parts of the Property not within the Building let or intended to be let to a tenant and the boundary walls and fences of the Building." The path leading to the entrance lobby of the Flat, the path to the rear of the Flat and the access ways in front of and around the garages are coloured brown on the plan.

"Pipes shall mean all pipes sewers drains ... gutters ... which are in on or under or which serve the Property (whether within or outside the Premises)."

"The Premises shall mean the Flat and the expression the Premises shall include:- ..." There is then a long list of items including the windows, the front entrance door of the Flat and all interior doors.

13. Clause 4 of the lease contains a covenant by the landlord to insure the Property. The lessee has to pay an insurance rent which is defined as 50% *"of the sums which the Landlord shall from time to time pay by way of premiums for insuring the Property in accordance with its obligations..."*

14. Clause 5.1 contains covenants by the landlord including:

"(a) to maintain repair amend alter rebuild renew and reinstate the Retained Parts".

"(b) to treat wash down paint and decorate with two coats of good quality paint in a proper and workmanlike manner all wood and iron and stucco or cement parts of the exterior of the Property which are usually painted within the year 2005 and thereafter in every third year of the term and whenever the landlord shall in its discretion think fit."

"(j) to clean as frequently as the landlord shall in its absolute discretion consider adequate the exterior of all glass screens windows and window frames on the Property."

"(k) any other services relating to the Property or part of it provided by the landlord from time to time during the term and not expressly mentioned which may at any time during the term be reasonably calculated to be for the benefit of the tenant and other tenants of the Property or be reasonably necessary for the maintenance upkeep and cleanliness of the Property or in keeping with the principles of good property management."

15. Clause 3 contains the service charge provisions. Clause 3.9 defines *"annual expenditure"* as *"all costs expenses and outgoings whatever incurred by the Landlord in or incidental to providing all or any of the Services ..."*. Clause 3.3 provides for the landlord to prepare an account showing the annual expenditure for each financial year (which starts on 25 December in each year) as soon as convenient after the end of each year. That account is to be certified by the landlord's accountant. Clause 3.5 provides for the landlord to prepare an estimate of the expenditure for the next year and for the lessee to pay her share of that estimate in advance by two half yearly payments on 25 December and 25 June. Clause 3.6 provides for a balancing calculation to be carried out at the end of each financial year once the account has been prepared.

The inspection

16. The Tribunal carried out an inspection of the property on 26 May 2010 in the presence of the parties.

17. The Building appeared to be maintained in a reasonable condition. The paths and access ways appeared to be clean and tidy. The Tribunal inspected the various items which were to be the subject of the hearing.

The hearing and the issues

18. The hearing took place at the Town Hall, Wells on 26 May 2010. All parties appeared in person.

19. The application listed a number of items on which a determination was sought by the Applicants for 2008, 2009 and 2010. They are as follows:

Gutter cleaning	2008		2010
Downpipe	2008		
External light	2008		
Cleaning paving stones	2008	2009	2010
Buildings insurance	2008	2009	2010
Window cleaning		2009	2010
Repair front gate		2009	
External painting			2010

20. A further issue was introduced by the Applicant's statement of case which was a claim for provisional service charge in 2009. There was also a claim for interest under the terms of the lease. Finally, there was the Respondent's application for an order under Section 20C.

The Evidence

21. Both the Applicants and the Respondent filed written statements of case with supporting documents which were read by the Tribunal. In addition, the parties gave oral evidence at the hearing. The relevant evidence on each issue will be summarised in turn.

22. **Gutter cleaning and downpipe**: the Applicants arranged for the gutters on the Building to be cleaned in July 2008. The work was carried out by Mendip Care and Repair Ltd. When carrying out work, the contractor found that the downpipe at the rear of Building was blocked and it was instructed to carry out further work to clear the blockage. The Applicants produced copies of invoices for the work in the total sum of £52.80. The Applicants said that the work included cleaning the gutter on the rear of the garage block which hangs over the path to the entrance lobby to the Flat. The Applicants said they cleaned all

gutters again in May 2009. The work was done by Mr. Marks and no charge was raised. They instructed Mendip Care and Repair Limited to clean the gutters again in March 2010. They produced an invoice for that work in the sum of £17.60.

23. The Respondent says that she was present in July 2008 when Mr Marks asked the contractor not to clean the gutter on the back of the garage block. She says that that gutter was not cleaned and that she paid for it to be cleaned in December 2008 and, again, in December 2009. She paid £15 for that work. She was not able to say whether the other gutters had been cleaned. She agreed that the cost of £17.60 was reasonable. As far as the downpipe was concerned, she questioned whether that was part of the retained parts and did not see why she should have to pay for it to be cleared when the blockage probably occurred before she moved in.

24. **External light**: in October 2008 an external light fixed at low level to the rear of the Building was broken. The Applicants say that it was kicked by the Respondent's grandson. The Respondent says that her grandson pulled the light from the wall. The Applicants say that when they inspected the light they found that a bracket had been broken and the wires had been disconnected. Mr. Marks re-wired and re-fitted the light. The Applicants sent an invoice to the Respondent for £15.00 to cover the cost of Mr. Marks's time. Clause 3.9 of the lease was put to the Applicants and they were asked whether they considered that they were entitled to charge for their own time. It was their case that they were entitled to do so. The Respondent denied that the wires had become disconnected, thought that the charge of £15 was unreasonable and denied that the Applicants were entitled to charge for their time under clause 3.9.

25. **Cleaning paving stones**: the Applicants say that they cleaned the paving stones on the paths leading to the front and the rear of the Building on 5 November 2008, 24 December 2008, 28 May 2009 and 25 February 2010. The work was carried out by Mr. Marks using a pressure washer. They used their own water and electricity but were unable to say how much was used. They seek to charge the Respondent £7.50 for each occasion.

26. The Respondent was not satisfied that the paving stones had been cleaned. She questioned whether the work included cleaning the paving stones in the Applicants' backyard. She complained that the paths and access ways were kept in a filthy condition. She produced a number of photographs showing leaves in those areas.

27. **Buildings insurance**: the Applicants renew the insurance for the Building in November each year. Relying on an e-mail from their insurer, they initially said that the cost of renewing the insurance for November 2008/09 was

£188.84. They said that the Respondent had contributed £56.14 towards her share. The Applicants also produced a schedule showing how the premium was calculated. The insurance for their household contents and five-star cover was included on the schedule. The schedule showed that the total premium for the buildings insurance was £98.79 after taking into account various discounts. The Applicants said that the Respondent was not entitled to the benefit of some of those discounts. The Applicants eventually accepted that the amount that they had actually paid for buildings insurance was £98.79 which meant that the Respondent's 50% share would be £49.39. On that basis, they agreed that the Respondent had overpaid by £6.75. There was no claim in respect of the Buildings insurance for 2009/ 10 as the Respondent had already paid 50% of the total premium of £225.46. The insurance had not been renewed for 2010/11.

28. **Window cleaning:** the Applicants said that until 2008 they employed a window cleaner who charged £6 for each flat. That cleaner stopped trading and so they had to employ another window cleaner from 2009. He charged £25 on the initial visit and then £20 on each subsequent visit. For that, he cleaned all of the windows on the Building, the front doors and the outside cupboard doors. The Applicants produced receipts for payments showing that the windows had been cleaned on 24 February, 26 May, 24 August, 4 December 2009 and 1 March 2010. The Applicants were entirely satisfied with the standard of work carried out by the cleaner and the cost. They had not obtained any other quotations from other cleaners and explained that it was difficult to find window cleaners. They relied on clause 5.1(j) of the lease.

29. The Respondent initially said that she would arrange to have her own windows cleaned. She considered that the charge was excessive. She had met a window cleaner outside the Building who said that he would charge £6 to clean her windows. This was an oral quote in the summer of 2008 and she did not know the name of the cleaner. She had not obtained any other quotes. She challenged the authenticity of the receipts produced by the Applicants as they were not on proper letterheads. She agreed that the front windows had been cleaned on one occasion but she alleged that the windows at the back and side of the Building had never been cleaned. She agreed that the doors had been cleaned.

30. **Repairs to front gate:** on 26 September 2009 the Applicants found the Respondent attempting to remove the spring on the front gate. An altercation ensued. Mr Marks repaired the gate. He said that he had to refit the spring. An invoice was sent to the Respondent for £10. The Respondent says that she did not remove the spring but merely loosened a screw. She felt that the spring served no purpose and caused a nuisance to her.

31. **External painting:** the Applicants say that the windows of the Flat and fascia boards on the Building were last painted in 2008 and are due to be painted again. They have had the windows of their own flat painted recently. They have obtained estimates for repainting the windows of the Flat and the fascia boards but, as yet, they have not had the work carried out. They said that they are arranging for this to be done because the Respondent has complained that the windows need to be painted. Furthermore, the Respondent has arranged for one of her windows to the repainted when she was not entitled to do so and the work has been done badly. The Respondent said that she had had to have her windows painted as the wood had deteriorated. She did it at her own cost. She does not believe that the windows or the doors need painting again.

32. **Provisional service charge**: in 2009, the Applicants decided to ask the Respondent to pay a provisional sum by way of advance service charge as permitted by clause 3.5 of the lease. They opened a bank account into which service charge payments were to be paid. On 10 January 2009 they wrote to the Respondent saying that they estimated that their expenditure in 2009 would be £400 and they asked the Respondent to pay £50 immediately, and £75 on each of 25 June and 25 December 2009. They did not produce a breakdown showing how they had estimated the expenditure. The Respondent has not paid the provisional service charge. The Applicants accepted that they were now claiming their actual expenditure for 2009 and that any payment of a provisional service charge for that year would be duplication. The Applicants have not prepared an estimate of their expenditure for 2010. The Respondent challenged the right of the Applicants to ask for payments on account.

33. **Interest:** the Applicants said that they had started charging interest on the outstanding sums from the beginning of 2010 at the rate of 4% rather than 4% over base rate as permitted by the lease. The Respondent disputed the amounts charged and said that no interest was payable as the Applicants had not demanded payment of service charge and ground rent on the correct forms. She said that the appropriate summary of the tenant's rights and obligations prescribed by section 21B of the Act had not been used by the Applicants until March 2010. The Applicants say that they started using the form in September 2009 and they reissued all of their invoices at that time using the correct form.

34. **Section 20C**: the Respondent asked for an order to be made because she did not agree with the charges raised by the Applicants. She also complained of their behaviour towards her. The Applicants resisted the making of an order and asked for an order that the Respondent should pay the fees they had incurred in making the application. The Respondent resisted such an order.

Conclusions:

35. It is clear to the Tribunal that much of the dispute between the parties arises because the parties have failed to fully understand and follow the provisions of the lease. In particular, the Applicants have not followed the appropriate provisions for demanding payment of a service charge in that they have not prepared an estimate of their annual expenditure, demanded payment of reasonable sums on account of that expenditure and subsequently produced year end accounts to justify their actual expenditure so that a balancing payment may be made. The Tribunal went to considerable lengths at the hearing to explain the provisions of the lease to the parties and the Tribunal hopes that the parties will establish a better relationship by following the provisions of the lease.

36. Although the Applicants have not followed the correct procedure, the Tribunal has concluded that that does not prevent the Tribunal from determining that a service charge is payable where the Applicants are able to show that they have incurred actual expenditure in carrying out their functions under the lease.

37. Much of the work which has been charged to the Respondent has been carried out by the Applicants themselves. The Tribunal concludes that clause 3.9 of the lease does not entitle the Applicants to charge for their own time. The lease entitles the Applicants to recover from the Respondent a proportion of *"costs expenses and outgoings whatever incurred by the landlord".* Although the Applicants may have spent time in carrying out maintenance and repair work, that is not a cost, expense or outgoing. Although that may seem unfair to the Applicants, the fairness becomes apparent if the question is asked whether the Applicants have paid their own share of that time. There is no evidence that they have and, even if they had, the money that they would have paid could not be accounted for as an expense other than as a profit for the Applicants. This conclusion affects a number of the items claimed.

38. **Gutter cleaning and downpipe**: the Tribunal accepts the evidence of the Applicants that the gutters on the Building, including the gutter on the garage block, were cleaned and that the blockage in the downpipe was cleared. The Tribunal accepts that it is reasonable to have the gutters cleaned on an annual basis particularly given the wooded setting of the property. This was work that the Applicants were obliged to carry out under clause 5.1(a) and they were entitled to recover the cost through the service charge. The Tribunal is satisfied that the downpipe is part of the Retained Parts even though it is located in the Applicants' back yard because it carries water away from the guttering of the Building. The Tribunal is satisfied that the costs

incurred were reasonable. The Applicants paid a total of £52.80 in 2008 and £17.60 in 2010. 50% of those sums are payable by the Respondent.

39. **External light:** this was work done by Mr. Marks. For the reasons set out at paragraph 37, the Applicants are not entitled to charge for that work through the service charge.

40. **Cleaning paving stones**: this was work done by Mr. Marks. For the reasons set out at paragraph 37, the Applicants are not entitled to charge for that work through the service charge.

41. **Buildings insurance**: the Applicants accepted that for 2008/9 they paid a premium of £98.79. The Respondent's 50% share amounted to £49.39. She has already paid £56.14. Therefore she has overpaid by £6.75. There was no claim for insurance in 2009 as the Respondent has already paid per share. There has not yet been a claim for insurance in 2010.

42. **Window cleaning**: clause 5.1(j) of the lease obliges the Applicants to clean the windows, window frames and glass screens. The Tribunal concludes that having the windows cleaned on a 3 monthly basis is reasonable. The Tribunal accepts the evidence of the Applicants that the work was done to a reasonable standard. The Tribunal accepts that the cost paid by the Applicants was reasonable bearing in mind that it included cleaning the doors. The Tribunal does not consider that the alternative quote obtained by the Respondent is comparable. There is no evidence that the price included cleaning doors and the detail was far too vague. The Applicants paid £85 in 2009 and £20 in 2010. 50% of those sums are payable by the Respondent.

43. **Repairs to front gate**: this was work done by Mr. Marks. For the reasons set out at paragraph 37, the Applicants are not entitled to charge for that work through the service charge.

44. **External painting**: although the Applicants are proposing to carry out work, they have not yet done so and have not incurred any expenditure and, therefore, there is no claim on which the Tribunal is able to make a determination. The Tribunal drew the attention of the parties to the need to consider the consultation provisions set out in section 20 of the Act.

45. **Provisional service charge**: in view of the Applicants' acceptance that they were asking the Tribunal to determine actual expenditure for 2009, there is no need for the Tribunal to determine whether the claim for a provisional service charge in 2009 was reasonable. That charge is no longer payable as it has been replaced by actual expenditure.

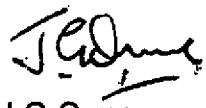
46. **Interest:** the Tribunal makes no determination in respect of interest as it does not form part of the service charge. However, the Tribunal points out that

under section 21B of the Act, the service charge is not payable until a demand has been served accompanied by a summary of the rights and obligations of tenants as prescribed by the Act. The Tribunal also notes from the statement issued by the Applicants, that they have charged interest at 4% per month on a compound basis. The lease provides for annual interest, not monthly, at 4% over Barclays bank plc base rate per calculated on a simple basis.

47. **Section 20C and fees**: the Tribunal considers that the Applicants have brought this application upon themselves by failing to follow the procedures set out in the lease for preparing estimates of service charge and service charge accounts. Their application has failed to a substantial extent. The Tribunal considers that it would be unfair for any costs which the Applicants may have incurred in bringing the application to be added to the service charge and, for those reasons, the Tribunal makes an order under section 20C of the Act. For the same reasons, the Tribunal is not prepared to make an order that the Respondent should reimburse the Applicants for the fees which they have incurred in making the application.

48. In summary, the Tribunal concludes that, of the sums claimed by the Applicants, the following sums are payable by the Respondent by way of the service charge:

	2008	2009	2010
Gutter cleaning/downpipe	£26.40		£8.80
External light	0.00		
Cleaning paving stones	0.00	0.00	0.00
Buildings insurance	-£6.75		
Window cleaning		£42.50	£10.00
Repair to front gate		0.00	
External painting			0.00
Provisional service charge		0.00	
Totals	£19.65	£42.50	£18.80



J G Orme
Chairman
31 May 2010

RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN LEASEHOLD VALUATION TRIBUNAL

Case Number: CHI/40UB/LSC/2010/0014

In the matter of: 33 Coombe Lane, Shepton Mallet, Somerset, BA4 5XA

And in the matter of an application under Section 27A of the Landlord and Tenant Act 1985 (as amended) for a determination of liability to pay service charges and under Section 20C of that Act.

Between:

1. Mr. Arnold Marks
2. Mrs. Irene Marks Applicants

and

Mrs. Ester Soares Respondent

Date of substantive decision: 31 May 2010
Date of application for permission to appeal: 16 June 2010
Members of the Tribunal: Mr. J. G. Orme (Lawyer chairman)
Mr. T. E. Dickinson BSc FRICS (Valuer member)
Mr. M. R. Jenkinson (Lay member)
Date of refusal of permission to appeal: 23 June 2010

Decision of the Leasehold Valuation Tribunal on the application by the Respondent for permission to appeal

For the reasons set out below, the Tribunal refuses permission to appeal.

Reasons

1. In its decision dated 31 May 2010, the Tribunal determined the sums that were payable by the Respondent to the Applicants by way of service charges in respect of 33 Coombe Lane, Shepton Mallet for the years ended 25 December 2008, 2009 and 2010.

2. By letter dated 16 June 2010, the Respondent requested permission to appeal the decision to the Lands Tribunal now the Upper Tribunal (Land Chamber).

3. The letter sets out 2 grounds on which the Respondent says that the decision was wrong, namely:

    a. She challenges the Tribunal's decisions in respect of the costs of gutter cleaning and window cleaning in the years 2008, 2009 and 2010. In respect of window cleaning, she seeks to adduce new evidence as to the reasonable cost of cleaning the windows;
    b. She says that she is not liable to pay the service charges because the Applicants did not attach to the demands for payment of the service charges the summary of tenant's rights and obligations as required by Section 21B of the Landlord and Tenant Act 1985.

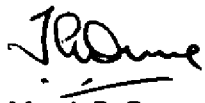
4. The Tribunal refuses permission to appeal on the first ground because the Respondent is seeking to appeal against clear findings of fact made by the Tribunal in its decision. She relies on matters which, apart from the new evidence as to the cost of window cleaning, were before the Tribunal at the hearing. The Tribunal made its decision taking those matters into account. The Tribunal sees no reason for allowing the Respondent to adduce further evidence as to the cost of window cleaning as she had the opportunity to present such evidence at the hearing.

5. The Tribunal refuses permission to appeal on the second ground because it makes no difference to the Tribunal's decision. Section 21B(3) provides that *"a tenant may withhold payment of a service charge which has been demanded from him if subsection (1) has not been complied with in relation to the demand."* The subsection means what it says. It does not provide that the service charge is not payable, merely that the tenant may withhold payment. The Section clearly anticipates that a defect in demands may be rectified by re-issuing the demands with the appropriate summary attached. The Applicants said in evidence that they re-issued all the demands for service charges with the appropriate summary attached in September 2009. The Respondent said that that did not happen until March 2010. If, as she submits, the demands were re-issued with the appropriate summary attached in March 2010, then she can no longer withhold payment of the service charges. They are now payable and due. In so far as there is any argument about interest, interest cannot be charged for a period prior to the date on which the demands were re-issued.

6. For those reasons, the Tribunal considers that the Respondent has no real prospect of success in an appeal. The Tribunal considers that there is no other compelling reason why the Respondent should be

given permission to appeal. The Tribunal refuses permission to appeal.

7. The Respondent may make a further application under Section 175 of the Commonhold and Leasehold Reform Act 2002 for permission to appeal to the Upper Tribunal (Land Chamber). The Lands Tribunal Rules 1996 (SI 1996 No.1022) set out the procedure for making such an application. Any such application must be made to the Upper Tribunal within 14 days of the date on which this decision is sent to the Respondent. The address of the Lands Tribunal is: 43-45 Bedford Square, London WC1B 3AS.



Mr. J G Orme
Chairman
Dated 23 June 2010