



## 1. Background

- (a) The property, is a purpose built flat in a development of 16 flats in four blocks flat 2 (the subject property) is held by Niraj and Dipa Haria (the Respondents) on a long lease.
- (b) The Applicant is represented by Mr Khan the Director of Kingsfield Estate Limited and the freeholder of the subject premises.
- (c) On 15 May 2009 proceedings were issued in the Watford County Court in the sum of £850 for unpaid service charges for 2007. On 9 April 2010 the proceedings were transferred to the Leasehold Valuation Tribunal for a determination of the reasonableness and liability to pay service charge for 2007.
- (d) Directions were given by the Tribunal on 18 May 2010, and the matter was set down for hearing on 25 August 2010. The Directions required the Applicant to on or before 15 June 2010 provide a statement of case “*explaining by reference to the service charge accounts for the year 2007, all the costs it has incurred in respect of that year, and accounting for all funds transferred to it when it took over the management of the development from Weatherby Management.*” The Applicant was also required to by no later than 10 August 2010 serve a bundle of all of the documents required by the Tribunal for the determination. The Applicant did not comply with the directions.
- (e) On 24 August 2010, Mr Khan, the Applicant telephoned the Tribunal and stated that he wished to withdraw the proceedings. Mr Khan was asked to make a written request. At the hearing on 25 of August 2010, no formal Notification Of Withdrawal was received. Neither did Mr Khan nor anyone on behalf of the Applicant, attend the hearing, either to present the claim or formally ask for the matter to be withdrawn.
- (f) The Tribunal noted that the Respondents had attended and wished to make representations concerning the reasonableness of the charges. On

that basis the Tribunal determined that the matter ought to proceed to a determination.

### The law

2. *Section 18(1) of the Landlord and Tenant Act 1985 (“the Act”) provides that, for the purposes of the relevant parts of the 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, 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.*

*Section 19(1) 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 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.*

*Section 19(2) of the Act provides that, 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.*

*Section 27A (1) of the Act provides that 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 –*

- (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.

*[Section 27A(3) of the Act provides that an application may be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance 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.]*

### **3. The Decision of the Tribunal**

The Tribunal determined that the following sums are reasonable and payable for the service charges for 2007

<b>Service charge headings</b>	<b>Amount claimed by Applicant</b>	<b>Amount determined as reasonable and payable by the Tribunal</b>
Insurance	£2722	£2604.33
Lighting and heating	£675	£200
Cleaning	£576	£200
Repairs and Maintenance	£3288	£350
Printing, Postage and Stationary	£516	Nil
Telephone	£244	Nil
Motor expenses	£221	Nil
Legal and professional fees	£650	£50.00 per flat for management fees
Accountancy	£1000	£425.54
Annual return	£30	Nil
Sinking Fund		Nil

## Evidence

1. At the hearing the Tribunal had been provided with a very small bundle of documents which contained a statement from the Respondent and miscellaneous invoices from the Applicant. There was no accompanying witness statement or any explanation of the charges provided by the Applicant.
2. The Tribunal were informed that the Respondents accepted the **Insurance** save that there was a discrepancy between the sum claimed as due by reference to the service charge account (£2722) and the broker's certificate. **The Tribunal have determined that the sum set out on the certificate of £2604.33 in the absence of any explanation is reasonable and payable by the Respondent.**
3. The Respondents informed the Tribunal that they had not received copies of or being given the opportunity to inspect the **Electricity** bills. They informed the Tribunal that they had been without external lighting since 2007, and provided photographs, which tended to support this assertion. They stated that there was no communal heating, and a push button timer switch provided the light for the common parts. The Tribunal in the absence of evidence for the cost of electricity, noted that there was also some electricity usage for the intercom system. Given this the Tribunal accept that there is a communal supply at the premises, and have used their knowledge and expertise as a Tribunal to access the cost of the electricity at £200 per annum. **The Tribunal find that the cost of electricity in the sum of £200 is reasonable and payable for 2007.**
4. The Tribunal were provided with three invoices in relation to the cost of the cleaning. Two of the invoices referred to "cleaning at the above premises", which was 11 Osprey Close. The Tribunal noted that this was the office of Mr Khan. There was one other invoice from "Magic Maid" in the sum of £48.76 for 4 hours cleaning at 2-17 Hazelwood Close.
5. The Respondents agreed that this sum was a reasonable amount, albeit that they did not accept that the cleaning was carried out more frequently than once a quarter. The Tribunal accepted the Respondents'

evidence, which they found to be credible and reliable. **The Tribunal find that the sum of £200 for four periods of cleaning for the year is reasonable and payable.**

6. **The Repairs and Maintenance:** Tribunal noted that there was no evidence of any invoices for the premises repairs for 2007, save for one, which referred to block 2 in the sum of £250 for internal decoration. The Tribunal heard evidence from the Respondent that save for some sporadic gardening they could not recall any repairs or maintenance having been carried out. The Tribunal accept that it is likely that there was some internal decoration of block 2, and that there was during the summer months, at least one occasion on which gardening was carried out. **The Tribunal therefore find on a balance of probabilities that the sum of £350 for the repairs and maintenance ( which includes the gardening) is reasonable and payable**
7. **Accountancy fees.** The Tribunal noted that there was a discrepancy between the invoiced amount from Rizvi and Co Accountants and the amount set out in the service charges. The sum claimed in the invoiced amount is for £425.54 plus vat of £74.46. The Tribunal have considered the service charge accounts and have noted that there is no accountant's certificate, or explanation of whether invoices were actually considered by the accountant. The Tribunal also noted that the invoice did not contain details of the accountants VAT registration. The Tribunal consider that the fee payable ought to be limited to the invoices sum (minus the VAT). **The Tribunal find that the sum of £425.54 is reasonable and payable.**
8. **The Administrative expenses (Printing, Postage and Stationary etc)**  
The Tribunal noted that clause 3 D of the lease, provided for the payment of maintenance charges, and that the fifth schedule of the lease referred to the discretion of the Applicant to-: "*.. employ a care taker or porter and such other person as the company may from time to consider...*" The lease also provided that expenses incurred by the company in the running and management of the Building were payable by the Leaseholders (fifth schedule clause (8) (a)) However no details

have been supplied for these items. The Tribunal also noted that costs were claimed for the telephone, motor expenses and legal and professional fees. The Tribunal accept that there were some expenses that were incurred by the Applicant. However there is no evidence to support the sums specifically claimed. The Respondents also complained that they were not afforded the opportunity to inspect the invoices or otherwise query the level of management at the building. The Tribunal have therefore had to use its knowledge and expertise to assess what a reasonable sum would be for these items.

9. **The Tribunal have considered that the sums claimed are for the management of the building and have assessed the charge payable at £50 per flat (Total of £800). For the convenience of the parties this has been referred to as a management fee.**
10. **The Annual Return:** The Tribunal noted that no evidence had been provided to support this sum accordingly the Tribunal find that this sum is not reasonable and payable.
11. **The Sinking Fund:** The Tribunal noted that although this was referred to in the budget it was not included in the service charge account. The Tribunal note that no information of the amount held on trust for the leaseholders has been provided, and there are no details of any maintenance plan for the building. Accordingly, the Tribunal find that the budgeted sum claimed of £4770 is not considered reasonable and payable. The Applicant should set out details on the amount held as reserve as part of the service charge.

### **The Respondents Application under Section 20 C of the Landlord and Tenant Act 1985**

The Respondents made an application under section 20 C at the hearing. Section 20 C in summary provides that the Tribunal may make an order that any or all of the cost incurred in connection with the Leasehold Tribunal proceedings are not to be regarded as relevant cost for the purpose of service charges payable by the Leaseholders. The Tribunal, having considered all of

the circumstances, do not consider that the Applicant made effective and proper representation. The tribunal also noted that the Respondent had partially succeeded on their claim. **Given this, we consider that in all the circumstances of the case it is just and equitable to grant the section 20 application sought.**

54. The Tribunal determine that the Applicant should within 42 days serve a revised service charge demand based on our findings.

CHAIRMAN ..... *M. Kelly* .....  
DATE ..... *6 September 2010* .....