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RESIDENTIAL PROPERTY TRIBUNAL SERVICE
LEASEHOLD VALUATION TRIBUNAL for the
LONDON RENT ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985, AS AMENDED – SECTIONS 27A AND 20C

REFERENCE: LON/OOBE/LSC/2009/0373

Property:	**Flat 60 Brydale House, Rotherhithe New Road, SE16 2PU**
Applicant:	**London Borough of Southwark**
Respondent:	**Mr R Alharazim**
Appearances:	**Ms E Sorbjan, Litigation Officer** **Mr K J Perkins, Contract Administrator** **Ms E Awaritefe, Project Manager**
	For the Applicant
	Mr R Alharazim
	For the Respondent
Dates of hearing:	**15 and 27 January 2010**
Date of inspection:	**24 February 2010**
Date of Tribunal's Decision:	**23 March 2010**
Members of the Tribunal	**Mrs J S L Goulden JP** **Mr B Collins BSc FRICS** **Mr O N Miller BSc**

REFERENCE: LON/OOBE/LSC/2009/0373

PROPERTY: 60 BRYDALE HOUSE, ROTHERHITHE NEW ROAD, LONDON SE16 2PU

Background

1.The Tribunal was dealing with an application under S 27A of the Landlord and Tenant Act 1985, as amended ("the Act") 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.The Applicant landlord is the London Borough of Southwark and the Respondent lessee is Mr R Alharazim.

3.The Applicant had issued a claim in the Woolwich County Court (Claim Number 9LB50134) for payment by the Respondent of £21,223.36 in respect of his unpaid service charges (being a contribution to major works), interest and costs.

4.On hearing the solicitor for the Applicant and the Respondent in person, an Order dated 12 June 2009 was made by District Judge Lee transferring the case to the Leasehold Valuation Tribunal ("LVT") under paragraph 3 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.

5.It should be noted that the Tribunal's jurisdiction flows from the county court and such jurisdiction is limited to the amount claimed in respect of the service charge dispute only. Other issues, such as interest and county court costs remain within the jurisdiction of the county court, as was made clear in the County Court Order.

6. No. 60 Brydale House, Rotherhithe New Road, London SE16 2PU ("the property") is a ninth floor flat in a fifteen storey building containing 96 flats, namely Flats 1-96 Brydale House on the Hawkstone Estate (previously the Silwood Estate). Of those 96 flats, 20 are long leaseholders.The Tribunal was advised that during 2006/2007 the Applicant had carried out an exercise redefining the boundaries of estates *"to reflect the most recent developments and estates' current physical layout"* and that the change of the name of the estate had no bearing on the calculations in accordance with the lease terms. It was stated that the contract was for Brydale House only and the estate works undertaken were for the communal areas of Brydale House or were not rechargeable to the service charge account. At the request of both sides, the property, the block and the estate were inspected by the Tribunal on 24 February 2010. The Respondent does not reside at the property.

7.The Respondent's lease of the property was provided. This lease was dated 21 December 1993 and was made between the Applicant (1) and the Respondent (2) and was for a term of 125 years from 21 December 1998 at the rent of £10 per annum and subject to the terms and conditions therein contained. The Tribunal was advised that all the leases of the long leases in the block were essentially in the same form.

8.The dispute relates to major works carried out to the building following a feasibility report issued by Mouchel Parkman Services Ltd on 28 February 2006 following visual inspections carried out in August and October 2003 and January and February 2006. This report was stated to have been prepared *"in order to register the existing condition of the property and provides recommendations as to repairs and remedial action required to achieve the Decent Homes Standard..... the report has been compiled to highlight works to be undertaken in order to improve and upgrade the building, its local environment and internal condition of the units. The report has been prepared in accordance with the requirements of the Decent Homes Standard and provides recommendations to ensure compliance by 2010"*. The works commenced on 3 January 2007 and finished on site in April 2008 and the defects liability period expired in April 2009, although it is understood that there are still some outstanding issues with the contractors.

Inspection

9.The block in which the property was situated was inspected by the Tribunal on 24 February 2010 in the presence of the Respondent, Mr R Alharazim and Mr. A A Gueorguiev, the lessee of Flat 88. Ms E Awaritefe, Project Manager and Mr K J Perkins, Contract Administrator, attended on behalf of the Applicant.

10. The block was a large local authority block, being one of a number of tower blocks of varying heights in the location. There were some small communal grounds and a separate garage block.

11. The entrance doors to the block appeared to have been replaced, as had side entrance doors. There was no entryphone. The common parts, which had two lifts, were sparse, basic and uncarpeted and appeared to have been recently decorated. Concrete steps led to each floor.The Tribunal noted new lighting to the ground floor entrance, the corridors on each floor investigated and also emergency lighting on the roof.

12. The Tribunal was invited by Mr Alharazim to inspect the interior of Flat 60, which was occupied at the time of inspection. In particular, the Tribunal's attention was drawn to the replacement window/door leading to the balcony.Replacement balcony panels were noted. The Tribunal was also asked by Mr Alharazim to inspect the flat entrance door.

13. Members of the Tribunal inspected the flat roof to the block, the covering of which had been replaced. Significant ponding was noted in some parts of the roof. The Tribunal also noted a quantity of nails, screws etc. lying on the surface, which appeared to have

been left by contractors. The Tribunal felt that these items should be removed to avoid damage to the new roof surface.

14. At the request of the Applicant, the Tribunal inspected the roof on an adjoining block on the same estate, namely John Kennedy House, which had been built at approximately the same time as the subject block. John Kennedy house was mostly in its original and unimproved condition (including the communal lighting). This was of assistance to the Tribunal in assessing the comparative condition of Brydale House.

15. Renovation to the flat roof of John Kennedy House had already commenced as at the date of inspection by members of the Tribunal. Some of the original roof covering had been removed and new felting put in place. In other places where renovation had not started, the roof appeared to have deteriorated since its original construction and some cracking and missing flashings were noted.

Hearing

16.The hearing took place on 15 and 27 January and 2 February 2010.

17.The Applicant, the London Borough of Southwark, was represented by Ms E Sorbjan, Litigation Officer. Evidence for the Applicant was provided by Mrs C Blair, Capital Works Manager, Mr K J Perkins MRICS of Mouchel Parkman Services Ltd. and Mr P Skelly MRICS of Potter Raper Partnership. The Respondent, Mr R Alharazim, appeared in person and was unrepresented.

18.Ms Sorbjan said that of the sum claimed in the County Court of £21,223.36, the amount due in respect of the service charges alone amounted to £20,170.38. The final account was due to be finalised shortly, but the draft final accounts indicated that the adjusted sum owed by the Respondent was £19,501.05. Ms Sorbjan said that she thought it unlikely that this sum would be varied and the Respondent had paid nothing.

19.The Tribunal had queried whether the Respondent would need to consider whether to make an application under S20C of the Act (limitation of landlord's costs of proceedings before the Tribunal), but was advised that, although the lease permitted the same, the Applicant's policy (at present being reviewed) was not to seek to place such costs on the service charge account and accordingly no determination was required of the Tribunal in this respect. However, the Applicant sought reimbursement from the Respondent of the hearing fee paid to the Tribunal of £140.

Application for dismissal

20.At the commencement of the hearing, the Respondent, Mr Alharazim, made an application for dismissal of the Applicant's case.

21.He said that the Applicant had been *"frivolous to a degree. They took me to court not on a proper account"*. He said that he had never received a hearing bundle from the

Applicant and Directions had not been complied with. The only bundle which he had received had been an unpaginated core bundle which did not have any of the documents on which he had relied included therein. He said that he had telephoned the Applicant on many occasions in this respect but without success in that he had never received a full paginated bundle. On 2 December 2009, Mr Alharazim had written to the Applicant and stated *"...I did not receive this bundle and this is the second time I am reminding you to send me the Bundle but you are refusing to comply with the direction of the LVT"*.

22.Ms Sorbjan said that two copies of the full hearing bundle had been sent to the Respondent. Both had been sent by recorded delivery, the first on 21 October 2009 and the second on 4 December 2009. The first copy of the hearing bundle had been sent on 21 October 2009 to the property address and the second copy of the hearing bundle on 4 December 2009 to the address where the Respondent now resides. The Tribunal permitted an adjournment in order that the Applicant could make further enquiries. Ms Sorbjan subsequently produced evidence of tracking within the Royal Mail system.

23.It would appear from that tracking evidence that, although clearly sent by the Applicant by way of evidence of an internal recorded delivery sheet dated 21 October 2009, there was no evidence that the first bundle sent to the property address had been signed for (although Ms Sorbjan said that the bundle had not been returned undelivered to the Applicant). However, the second copy of the hearing bundle sent on 4 December 2009 to Mr Alharazim at the address where he resides had been signed for by him. Mr Alharazim maintained that this was, once again, merely the unpaginated core bundle. The Tribunal is not persuaded that this was the case. The letter from the Applicant which had accompanied that bundle was dated 4 December 2009 and stated *"please find enclosed a further copy of the Trial Bundle for your immediate attention as requested. Please note that a previous copy of the bundle was sent to you about 3 weeks ago it appears that this may have been mislaid due to the recent postal strikes"*.

24.The reasons put forward by the Respondent in respect of his application for dismissal were weak and without merit, and were shown to be so by evidence submitted on behalf of the Applicant. The actions of the Applicant are not considered to be either frivolous, vexatious or an abuse of process.The Respondent has not demonstrated any prejudice to his case as alleged. Any documents on which he sought to rely and which he maintained were not in the bundle produced by the Applicant must surely be in his possession. The Tribunal must be fair to both sides. To dismiss an application is a discretionary power, and this Tribunal considers that to dismiss on the grounds as set out by the Respondent would be wholly disproportionate.

25.The application for dismissal was refused.

Application for adjournment

26.The application for dismissal having been dismissed, the Respondent made an application for an adjournment of the proceedings, a further copy of the paginated bundle having been handed to him at the hearing.

27.Mr Alharazim said that he needed further time to go through the paginated bundle which he denied had ever been sent to him. He said that there was a considerable amount of paperwork to get through and although the Tribunal had allowed him additional time to consider the same, he did not feel that he could absorb all the information.

28.The Leasehold Valuation Tribunals (Procedure) (England) Regulations 2003, Regulation 15(2) states:

"Where a postponement or adjournment has been requested the tribunal shall not postpone or adjourn the hearing except where it considers it is reasonable to do so having regard to-

(a) the grounds for the request;
(b) the time at which the request is made; and
(c) the convenience of the parties"

29.The basic premise is that the Tribunal should not permit adjournments unless it is reasonable to do so. In this case, the Tribunal was of the view that:-

(a) The grounds for the request are without merit. Mr Alharazim had requested an adjournment of the entire proceedings (rather than the adjournment during the hearing which was offered to him). A previous hearing had been fixed for 2 and 3 November 2009 which had already been adjourned due to the illness of Mr Alharazim.There is a cost to the public purse of hearings before the Tribunal, which the Tribunal must take into account.
(b) The application was very late in the day, having been made at the commencement of the hearing and after the failure of the Respondent's application to dismiss. The matter had been transferred to the Tribunal as long ago as June 2009,the County Court proceedings having been issued in February 2009. This matter has therefore been proceeding within the judicial system for almost a year.
(c) The Applicant was resisting the application and its witnesses were present at the hearing prepared to give evidence. The Tribunal must consider the interests of both sides.

30.It is encumbent on the Tribunal to consider proportionality and the interests of justice.

31.The application to adjourn was refused.

32.After hearing the Respondent's applications to dismiss the application and then to adjourn the hearing, the Tribunal afforded the parties several adjournments throughout the hearing in order to see whether the issues between the parties could be narrowed. This proved unsuccessful.

33.It was difficult to ascertain the issues which required the determination of the Tribunal. However, using the Respondent's letter to the Applicant as guidance (but as

expanded throughout the hearing), it would appear that the outstanding issues were as follows:-

Failure to comply with S20 consultation
Failure to supply summary of tenant's rights
Computation of service charge contribution
General repairs
External decorations
Electrical works
Windows and doors
Drainage
Security/front entrance doors
Roof
Structural
Balcony
Refuse chambers
Reimbursement of fees

34.Although included in the major works were other items such as selective boiler replacement and kitchen renewal to tenanted properties, these were non chargeable items to the service charge.

35.The cost of external decorations was initially challenged but, after full explanations were made to MrAlharazim, the challenge was withdrawn. Mr Alharazim also challenged costs in relation to the door entry system, but this had been omitted from the specification and therefore not charged to the service charge account.

Evidence

36.The burden is on the Applicant to prove its case with such relevant evidence as is sufficient to persuade the Tribunal of the merits of its arguments. The Tribunal is not permitted to take into account the personal circumstances of the parties when making a decision.

37.The salient points of the evidence and the Tribunal's determination is given under each head but the Tribunal considers that it might be helpful to the parties if it sets out the basis on which its considerations are made.

38.The Tribunal has to decide not whether the cost of any particular service charge item is necessarily the cheapest available or the most reasonable, but whether the charge that was made was **"reasonably incurred"** by the landlord ie was the action taken in incurring the costs and also the amount of those costs both reasonable.

39.The difference in the words "reasonable" and "reasonably incurred" was set out in the Lands Tribunal case of **Forcelux Ltd v Sweetman and Parker (8 May 2001)** in which it was stated, inter alia,

"....there are, in my judgment, two distinctly separate matters I have to consider. Firstly the evidence, and from that whether the landlord's actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Secondly, whether the amount charged was reasonable in the light of that evidence. This second point is particularly important as, if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense, without properly testing the market. It has to be a question of degree...."

Failure to comply with S20 consultation

40.In the Respondent's statement of case dated 5 September 2009,it was stated that the Applicant had failed to comply with the statutory requirements under the Act in that *"on September 2006 I made an observation in relation to the proposed major works, as a result the Applicant failed to respond to me in regards to my observation. Further, in several correspondences with the Applicant, since May 2007, I was asking why I did not have a response to my observation but the Applicant refused to answer and continue to keep silent on the matter....finally on 26 November 2008, the Applicant admitted that they did not send me a response to my residential address but they sent one to the leasehold property.....Furthermore the Applicant did not mentioned* (sic) *when they expected the works to start, and when the work was expected to finished* (sic). *Some of the works the Applicant is claiming now that was carried out were not mentioned on the section 20 Notice of Proposal. The Applicant did not provide me with any major works report that was carried out by any professionals prior to consultation neither during the consultation process"*. Mr Alharazim said that the works omitted from the first Notice of Intention included bird netting, dry risers, pavements and satellite dishes.

41.The Applicant contended that it had complied with the S20 consultation requirements. A Notice of Intention had been issued on 21 April 2006 and a Notice of Proposal had been issued on 10 August 2006, copies of which were supplied, as were copies of the observations received. The Tribunal was advised that the detailed specification as at that time had not shown since the works had, at that time, not yet gone out for tender.

42.The Tribunal has considered the documentation supplied. The Notice of Intention dated 21 April 2006 had been sent to the Respondent's address and set out, as it is required to do, the general outline of the proposed works. There is no obligation on the Applicant under the Act to set out within that document each and every item of work intended to be carried out. The Notice of Intention stated that the detailed specification of works could be inspected at the Home Ownership Unit at the address supplied or, on written request, a photocopy sent to the tenant at a cost of £20. Mr Alharazim said that he had not inspected the detailed specification of works nor requested a photocopy thereof to be sent to him at a cost of £20. In the view of the Tribunal, the Notice of Intention complied with the legislation, as did the subsequent Notice of Proposal dated 10 August 2006.

43. It is noted that the Notice of Proposal was sent to the property address (rather than the address where Mr Alharazim resides), but this may have been because in Mr Alharazim's leaseholder observation form which he had signed and dated, he had inserted the address as the property address. There is no obligation on the Applicant to send to tenants any major works reports prior to or during consultation as suggested by Mr Alharazim.

44.As to Mr Alharazim's contention that there had been no reply to his observations, the Tribunal has had sight of a copy of his observations dated 15 May 2006, together with a copy of a reply to him dated 24 May 2006 from the Applicant confirming receipt of his observations. This letter states, inter alia, *" I would like to thank you for the points that you have raised in your letter. I have forwarded your comments to the Investment Programme Manager"*. There was also provided to the Tribunal a copy of observations from Mr Alharazim dated 4 September 2006. In that letter, he had inserted the address as 60 Brydale House. A reply was sent to him at 60 Brydale House dated 13 September 2006.

45.The Tribunal rejects the Respondent's arguments under this head.

Failure to supply summary of tenant's rights

46.In the Respondent's statement of case dated 5 September 2009, it was stated *"the Applicant failed to serve valid service charge demands for the major works. The Applicant failed to provide me with a summary of my rights and obligations when sending me invoices for payments. Therefore the Applicant has breached Section 21B(1) of the Landlord and Tenant Act 1985. As a result the major works charges are not payable"*.

47.The Applicant said that the relevant provision had come into force on 1 October 2007 and the service charge demands had been sent before that date, the date of the invoice being 21 September 2007. In support, the Tribunal was provided with a summary of tenants' rights and obligations issued by the Home Ownership Unit apparently at some time in 2008 which had been sent to all tenants paying service charges. It was argued that as at the date of the invoice, there was no obligation to provide a summary of rights.

48.S21B(1) of the Act states:.

"A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges"

49.S21B (3) of the Act states:

"A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand"

50.The Tribunal accepts that the invoice is the demand. The Tribunal also accepts that since S21B(1) came into force after the date of the demand, as at that date there was no obligation on the Applicant to supply a summary of rights.

51.Even if this interpretation is not correct, the summary of rights merely gives a tenant the right to withhold payment only until the S21B(1) had been complied with. It does not render the service charges in respect of which the demand refers not liable to be paid at all.

52.The Tribunal rejects the Respondent's arguments under this head.

Computation of service charge contribution

53.This issue was only raised specifically on the last day of the hearing in the Respondent's closing submissions.

54.Mr Alharazim contended that the rechargeable estimated cost of 5/546 was based on a computation which the Applicant had maintained was a method agreed and approved with the consultative body for leaseholders and freeholders. Mr Alharazim contended that the computation was incorrect, had not been agreed and had not been calculated correctly. He provided case law in support and said that the charges were no longer recoverable under S20B of the Act since computation was an essential preliminary to any demand for a service charge contribution and no such computation had been properly made.

55.It is noted that the arguments now put forward by Mr Alharazim are not included in his Defence at the County Court although in his response to the Applicant's statement of case he said that he was not aware of the consultative body and no one had consulted with him.

56.The Third Schedule to the lease states at Clause 6:

"(1) The Service Charge payable by the Lessee shall be a fair proportion of the costs and expenses set out in paragraph 7 of this Schedule incurred in the year

(2)The Council may adopt any reasonable method of ascertaining the said proportion and may adopt different methods in relation to different items of costs and expenses"

57.In the Applicant's statement of case, it was stated "*the Applicant used a bed-weighting method for major works charges, whereby a property is being assigned a weighting of 4 units with an additional unit for each bedroom. The Respondent has 1 bedroom properties* (sic) *attracting a bed weighting of 5 units (ie 4 units plus 2 bedrooms). There are 546 units allocated to his block and therefore the Respondent's contributions are 5/546*".

58.There is clearly a typographical error in the statement of case. Although it is acknowledged that the Respondent's property has one bedroom, the statement goes on to refer to two bedrooms. However, the bed weighting computation was of five units (being four units plus one bed room) and is therefore correct.

59.The Respondent's arguments under S20B are rejected. A computation in accordance with the lease terms has been made and service charges are recoverable.

General repairs

60.The block charge under this head was £189,755.30 of which the Respondent's contribution was £1,952.49 including fees. General repairs were placed under this head where they could not be specifically identified under any other heading.

61.Mr Alharazim said that there had been double counting and items also appeared under other headings. There was no challenge in respect of the fees. He said that the Applicant was *"manipulating figures"*.

62.As a general point, it is felt that the accounts as presented were far from clear and were difficult to understand. In addition, the references throughout the feasibility report in respect of the Decent Homes Standard would, it is suggested, raise suspicions in the minds of lessees that the works were being carried out in order to reach some Government target rather that because works were necessary.

63.The Tribunal is critical of some of the evidence provided on behalf of the Applicant which was thin and of little probative value. However, the assistance of Mr Skelly was helpful to the Tribunal. He went through the contract instructions and priced specifications and identified items which fell under this head. At its request, Mr Skelly provided further information to assist the Tribunal.

64. It is noted that in a letter from the Applicant to the Respondent dated 26 June 2008 it was stated *"the term general repairs is a heading we use for general items of repair, these have been included in this contract as they are necessary to your property. If a general repair is need* (sic) *to your property it is either carried out as an unitemised repair – and charged to your annual service charges – or as part of a major works contract. You will not be charged twice for the same work"*

65.The Tribunal determines that, in respect of general repairs, the block charge of £189,755.30 (of which the Respondent's contribution was £1,952.49 including fees) is relevant and reasonably incurred and properly chargeable to the service charge account.

External decorations

66.The block charge under this head was £72,766.21 of which the Respondent's contribution was £748.73 including fees.

67.The Respondent said that there had been no need to carry out external decorations since the block had been painted *"only months before the job – why paint again?"*. There was no challenge in respect of fees.

68.The Applicant's case was that there had been no external decorations undertaken shortly before the major works as alleged by the Respondent. Sums had been omitted at the estimate stage and thereafter only measured items had been placed to the service charge account.Mr Skelly said that the works included redecoration of all previously decorated surfaces to external and communal areas.

69.The Tribunal went through the contract instructions and specifications.

70.The Tribunal determines that, in respect of external decorations, the block charge of £72,766.21 (of which the Respondent's contribution is £748.73 including fees) is relevant and reasonably incurred and properly chargeable to the service charge account.

Electrical works

71.The block charge under this head was £145,972.16 of which the Respondent's contribution was £1,336.74 including fees.

72.Mr Alharazim said that the cost was excessive and that the Applicant had acted unreasonably in that the works had not been required. There was no challenge in respect of fees.

73.Mr Alharazim referred to the feasibility report in which it was stated *"our inspections would suggest that in principle the landlord's electrical supply system seems in a good order"*. He considered that the works had been overspecified, but if any electrical works had been required they should not cost more than £700. There were far too many lights installed in the corridors.

74.Mr Perkins said that the electrical works carried out included lights in the corridors and on the roof, together with perimeter lighting and emergency lighting. Details of the work carried out and the costings were referred to.

75.In a letter to the Respondent from the Applicant dated 26 June 2008 it was stated that the lighting to the communal areas was considered inadequate and should be upgraded *"and the number increased to improve the environment aspects of these areas and the safety of residents and visitors to the block"*.

76.In a further letter to the Respondent dated 15 October 2008, full explanation was provided by the Applicant in respect of the works carried out. From this it appeared that although it was accepted that there had been rewiring in the previous 5 to 7 years, part of the mains intake cable to the majority of the properties was surface mounted without conduit protection, the provisions for communal lighting in the corridors were inadequate and insufficient with a number of old luminaries which did not conform to current

standards, there was an absence of emergency lighting on the internal fire escape routes in breach of building regulations. This letter added *"your claim that the electric wiring is perfect is incorrect"*.

77.The Tribunal considers that the Respondent has failed to prove his case and he has produced no evidence that the works should cost no more than £700.

78.The Tribunal determines that, in respect of electrical works, the block charge of £145,972.16 (of which the Respondent's contribution is £1,336.72 including fees) is relevant and reasonably incurred and properly chargeable to the service charge account.

Windows and doors

79,The block charge under this head was £798,876.47 of which the Respondent's contribution was £7,315.72 including fees.

80.There was a challenge to the cost of the windows and door units, which Mr Alharazim considered excessive. He did not challenge the cost of fitting or the fees.

81.Mr Alharazim also challenged the fact that the door to the balcony of his flat had been replaced by the Applicant.He maintained that it was his responsibility since it was part of his flat (as was the original structure). He also said that the front door to the flat and the windows were also part of his flat and he was not liable to pay if the Applicant repaired or replaced the same.

82.The relevant clause in Mr Alharazim's lease states that the words "the flat":-

"means the flat and land (if any) shown coloured pink on the plan or plans attached hereto and known as Number 60 on the ninth floor of the building and including the ceilings and floors of the flat the internal plaster and faces of the exterior walls of the flat and the internal walls of the flat (and internal walls bounding the flat shall be party walls severed medially) but excluding all external windows and doors and window and door frames the exterior walls roof foundations and other main structural parts of the building"

83.The Tribunal considered the lease terms during the hearing and advised Mr Alharazim that it was clear that the windows and doors were specifically excluded from the demise of the flat in the lease and therefore it was the Applicant's responsibility to repair or replace the same, the cost of which would fall on the service charge account.

84.In support of his contention that the unit costs were too high, Mr Alharazim produced to the Tribunal a rough drawing of three windows and one door marked *"estimate"* which was in handwriting, undated and appeared to show that the cost of supplying the three windows was £750 and the cost of supplying one door was £450. The estimate was from a firm called Top Double Glazing Ltd. Mr Alharazim said that he had passed this firm and called in to ask for an estimate. No windows had been inspected by that firm.

85.The estimate supplied by Mr Alharazim was wholly inadequate. The firm was not VAT registered, the estimate (which was not a quotation) was for supply only and it is simplistic for Mr Alharazim to request an estimate for his windows/door only. The Applicant has responsibility for the block and not for the Respondent's windows alone. In addition, the cost of fixing the window/door units must be added and, from the window and door design on the front elevation produced by the Applicant at the hearing and also from the Tribunal's inspection, the windows are not uniform. Further the cost to the Respondent includes fees and the percentages, based on the cost of works, has not been challenged.

86.The Tribunal determines that, in respect of windows and doors,the block charge of £798,847.47 (of which Mr Alharazim's proportion is £7,315.72 including fees) is relevant and reasonably incurred and properly chargeable to the service charge account.

Drainage

87.The block charge under this head was £73,845.29 of which the Respondent's contribution was £759.83 including fees.

88.Mr Alharazim said that the work had not been carried out and disputed the figures. He said that he had not only been charged block costs and *"they are putting things all over the place"* There was no challenge to fees.

89.Mr Skelly said that the cost of the drainage works had been in respect of the entire Rotherhithe Estate but the Respondent had only been charged block costs (disputed by the Respondent). A CCTV survey carried out in December 2007 had identified the need for remedial works to drainage local to the block and rainwater goods

90.Ms Sorbjan said that at the estimated stage, drainage, gulleys and pipework were all estate costs but by the time of preparation of the statement of case, the name of the estate had changed. However, this was irrelevant because all the works carried out and for which the Respondent was charged were works to the block and the draft final accounts showed that all the costs were block related.

91.The Tribunal determines that, in respect of drainage, the block charge of £73,845.29 (of which Mr Alharazim's proportion is £759.83 including fees) is relevant and reasonably incurred and properly chargeable to the service charge account.

Security/front entrance doors

92.The block cost under this head was £31,560.07 of which the Respondent's contribution was £324.74 including fees.

93.Mr Alharazim said that nothing had been done to the main doors, although they may have been painted and the front doors of the flats were not the responsibility of the landlord. There was no challenge to fees.

94.Ms Sorbjan said that this issue did not relate to the door entry system but two main doors with panels had been replaced together with small doors from the outside staircase and the doors to some of the flats.

95.Mr Skelly referred the Tribunal to the Project Manager's instruction dated 7 August 2007 and said that the architraves to the front entrance doors, plant room doors and those to 64 flats had been replaced.

96.The Tribunal has already considered the relevant lease terms and has rejected the Respondent's contention that the doors are not the landlord's responsibility (see paragraphs 82 and 83 above). It also rejects his contention that no work was carried out. He produced no evidence as to costs.

97.The Tribunal determines that, in respect of security/front entrance doors, the block cost of £31,560.07 (of which the Respondent's contribution is £324.74 including fees) is relevant and reasonably incurred and properly chargeable to the service charge account.

Roof

98.The block cost under this head was £149,987.20 of which the Respondent's contribution is £1,543.30 including fees.

99.In his statement dated 5 September 2009, Mr Alharazim stated that the Applicant had failed to carry out its obligation to make adequate repairs to the roof and therefore, through the Applicant's negligence, the roof required major repair and renewal. In support, he referred to the feasibility report which indicated that a survey had been carried out 3 ½ years earlier which had classified the roof coverings as being potentially non decent and since that time the Applicant had failed to maintain the roof adequately in breach of its lease covenants. Mr Alharazim said that if they had attended to the roof when it had first been raised, it would not have cost so much and he thought that his contribution would have been between £200-£300 and the work should have been completed within a year of concerns first being raised.

100.In addition, in his closing submissions, Mr Alharazim asked the Tribunal to make an order for damages against the Respondent for breach of covenants in the lease. He provided authorities in support. No challenge was made in respect of the standard of works carried out or the fees.

101.Mr K J Perkins MRICS gave evidence as a witness of fact for the Applicant and referred to his statement dated 18 December 2009. He was employed by Mouchel as Senior Building Surveyor and it was his firm who surveyed the building, drafted the specification for the works and managed the project on site. In his statement he said "*in my opinion the works specified were required in order to keep the building in a state of repair*".

102.Mr Perkins had not carried out the Mouchel survey or drafted the specification and had only been involved in the project from January 2007, some six weeks after it had started. Mr Perkins had remained on the project until its completion in April 2008. He said that from reading the report it would appear that the roof was failing in that it was not doing what it was intended to do and that rainwater was getting through. In his view *"it is a false economy to do patch repairs on a 40 year old roof. It would have needed replacement anyway. It was well past its replacement date"*.

103.Mr P Skelly, a partner in Potter Raper Partnership, was the quantity surveyor involved in the project and gave evidence as a witness of fact. Mr Skelly referred to his statement dated 5 October 2009 in which it was stated that he was involved in the preparation of the tender documents, checking the pricing of the tender documents, checking and comparing the tenders, monitoring the spend, assessing and certifying the payments to the contractor and preparing a final account (which was, at the date of the hearing, yet to be agreed).

104.In Mr Skelly's view, if the works to the roof had been carried out as a single contract to replace the roof coverings, the cost would have been higher since cost for scaffolding and preliminaries would have been placed entirely under this head, rather than apportioned across all the works. A site manager would have been required and site facilities. He did not know if scaffolding of the whole building had been required, but there would have been economies of scale and it would be better to have carried out the roof works as part of a larger project. There had been little or no variations and the renewal of the roof coverings were as tendered.

105.Mr Skelly rejected Mr Alharazim's contention that there would have been an increase in the cost of materials over three years in the order of 30%. He said that he thought it would be an increase of 3% to 5%. On making enquiries during the hearing of the Building Cost Information Service, he produced evidence that in respect of the all-in Tender Price Index the percentage increase in total was 14%.

106.Ms Sorbjan said that repairs had been done as and when required and the roof had been maintained. She said that a sample of each area was not as detailed as the feasibility survey which had related to the whole roof. She said that funding had to be allocated to this particular scheme and the Applicant had obtained approval within a reasonable time. She said that if one considered the history, matters had been put in motion from 2004. She provided a repairs schedule from 1991 to 2006.

107.The Tribunal does not find that there has been historical neglect and the Respondent has not provided firm evidence as to the cost of roof coverings if the same had been replaced three years earlier. His suggestion, from his own limited experience of purchasing DIY items, that costs had risen by some 30% over three years has not been substantiated. The Tribunal has no jurisdiction to order damages for breach of covenant (even if breach of covenant had been found, which is not the case).

108. The Tribunal determines that the block charge in respect of the roof works in the sum of £149,987.20 (of which the Respondent's contribution is £1,543.30 including fees) is relevant and reasonably incurred and properly chargeable to the service charge account.

Structural

109.The block cost under this head was £288,852.32 of which the Respondent's contribution was £2,972.15 including fees.

110.Mr Alharazim said that some of the works had not been carried out. There was no challenge to the professional and administration fees.

111.Mr Skelly said that this was a fixed price contract unless there was a variation for the tendered works. He described the works as repairs and protective coatings to concrete surfaces, removal of loose block walling and infill with aluminium panels, repairs and protective coatings to brickwork and plaster repairs. He also took the Tribunal through three extensions of time which, he said expired finally on 21 March 2008 and therefore between 21 March 2008 and the contractual completion date of 18 April 2008, the contractors were liable in damages which was estimated at £19,950 and which was being pursued.

112.Mr Alharazim, having had the above explained to him by Mr Skelly, accepted that repairs had been carried out but asked the Tribunal to make a determination in respect of the cost thereof (in respect of which he provided no evidence).

113. Three extensions of time costs had been issued, the first of which gave an extension of time to 18 December 2007, the second of which gave an extension of time to 31 January 2008 and the third gave an extension of time to 21 March 2008. Actual completion (for which no extension of time had been given was 18 April 2008). All the extension of time costs had been granted *"on the basis that additional consultation/design approvals were required to the windows to the southern elevation one/two bedroom flats. This element of the works falls on the critical path and as such the relevant extension of time has been granted"*. The second extension of time confirmed that an additional week had been included to cater for the Christmas shutdown.

114. The extension of time costs totalled £115,866 and during the hearing, and although this issue had not been challenged by the Respondent but had been raised by the Tribunal, Mr Skelly was requested to obtain further information. He was unable to do so. The Tribunal therefore requested further information from the Applicant and any representations from the Respondent.

115.Mr Perkins said that the first extension of time was granted to accommodate a halt in the window installation works to the one/two bedroom flats on the southern elevation in view of objections raised by the tenants and residents in respect of aluminium frame panels, reduced light levels and other fenestration issues which involved various

revisions. The second extension of time covered further delays attributable to the removal of the masonry walling for which advice was sought from consultant structural engineers in respect of such removal since the windows had been fabricated. The third extension followed several meetings with interested parties at the request of the local authority during which the contractors were requested to substantiate their extension of time requests. Mr Perkins also said that the extensions of time were less than that requested by the contractors.Documentation was provided in support. The Tribunal was satisfied with the Applicant's response.

116. The Tribunal determines that, in respect of structural works, the block cost of £288,852.32 (of which the Respondent's contribution is £2,972.15 including fees) is relevant and reasonably incurred and properly chargeable to the service charge account.

Balcony

117.The block charge under this head was £130,439.21 of which the Respondent's contribution was £1,342.16 including fees.

118.The Respondent's challenge was that the work had not been required and the cost was excessive. In a letter to the Applicant dated 27 May 2008, he said *"why do you have to repair the balcony when the balcony was in perfect condition? This is just another unreasonable work and cost"*

119.Mr Perkins said that the vast majority of works were installation of new panels together with the cost of asphalt above the areas. Mr Alharazim said that there had been no asphalt put down above his area and Ms Sorbjan said that asphalt works were only carried out where necessary and the area above the Respondent's flat may not have needed work.

120.Ms Sorbjan said that the glass panels had become discoloured and cracked and all the panels had to be replaced because otherwise it would be a planning issue. The work involved taking out the balustrade panels, refurbishing the rails and replacing the same with blue perforated steel panels. Mr Alharazim accepted that the panels had been replaced.

121.In a letter written to the Respondent dated 15 October 2008, following further enquiries of the area office which managed the contract, it was stated *"the assessment of the balcony panels concluded that as some of the metal frames were showing signs of deterioration and some of the glazed panels are cracked or damaged these would be replaced as part of the major works. The metal replaced also is self finished which means they do not require long term maintenance as opposed to the panels that were previously there which required ongoing repairs and maintenance"*.

122.Since Mr Alharazim does not reside at the property, it may be that he was unaware of the works to the balcony which had taken place. However during the hearing, he confirmed that he accepted that the glass panels were no longer in situ and had been

replaced with blue perforated steel panels. He produced no evidence that the work was not required or as to costs.

123.The Tribunal determines that the block charge in respect of the balcony works in the sum of £130,439.21 (of which the Respondent's contribution is £1,342.16 including fees) is relevant and reasonably incurred and properly chargeable to the service charge account.

Refuse chambers

124.The block charge under this head was £13,178.82 of which the Respondent's contribution was £135.60 including fees plus an apportionment being the percentage of preliminaries and scaffolding costs.

125.Mr Alharazim did not challenge the fees, preliminaries or scaffolding costs and said that he did not know how much the work should cost.

126.From a consideration of the draft final accounts, it appears that the works included works to the refuse chutes,the bin chamber, refuse chute hoppers and renewal of defective/missing tiles including hacking off additional tiles.

127.The Tribunal determines that, in respect of the refuse chambers, the block charge of £13,178.82 (of which the Respondent's contribution is £135.60 including fees plus an apportionment of preliminaries and scaffolding costs) is relevant and reasonably incurred and properly chargeable to the service charge account.

Reimbursement of fees

128.The relevant fee under this head was the £140 paid to the Tribunal in respect of the hearing fee. All previous fees paid by the Applicant were in respect of the County Court proceedings over which the Tribunal has no jurisdiction.

129.The Tribunal considered whether to exercise its discretion under Regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.

130.The Tribunal acknowledges that both sides have incurred costs which are irrecoverable.

131. In this case, the Respondent has not paid any part of the sums due from him for a considerable period of time. The County Court proceedings were issued as long ago as 19 February 2009. The Tribunal has had sight of considerable correspondence between the parties from which it appears that the Applicant has endeavoured to answer the queries raised by Mr Alharazim. In addition, the length of the hearing before the Tribunal was extended in that the Respondent made two applications, firstly to dismiss the application and, after that failed, to postpone the hearing. This Tribunal considered that both of the Respondent's applications had been without merit.

132.The Tribunal intends to exercise its discretion under this head and makes an order for the Respondent to reimburse to the Applicant of the hearing fee of £140.

The Tribunal's determinations as to service charges are binding on the parties and may be enforced through the county courts if service charges determined as payable remain unpaid.

CHAIRMAN.....

DATE.....23rd March ... 2010.....