

5022



Residential
Property
TRIBUNAL SERVICE

**LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL**

Case Reference: LON/00BE/LSC/2009/0736

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN
APPLICATION UNDER SECTION 27A LANDLORD AND TENANT ACT
1985**

Premises:

Flat 2, 89 Long Lane London SE1 4PH

Applicant:

Mr. O. A. Hussain

Represented by:

Bensons Limited

Present:

Ms. K. Benson

Ms. M. Savva

Respondent:

Mr. F. Nerini

Present:

Mr. F. Nerini

Mr. Marozzi

Tribunal:

Mrs. N. Dhanani LLB (Hons)

Mr. L. Jarero BSc FRICS

Mrs. J. Clark JP

Date of Hearing and further directions:

28th January 2010

1. Background

- A. The application was transferred to the Tribunal by an order dated 16th October 2009 made by District Judge Wakem sitting at Lambeth County Court. (Claim Number: 9LB50499).
- B. The Applicant pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) seeks a determination of the reasonableness and liability to pay the service charge in the sum of £4883.36. The Respondent also makes an application under section 20C of the Act to disallow in whole or in part the costs incurred by the Applicant in these proceedings.
- C. The parties confirmed that it is agreed that as £200 has been paid directly to the Landlord the disputed service charge sum of £4883.36 is reduced to £4683.36.
- D. The sum of £4683.36 relates to outstanding service charge payments in respect of the years ending:
- (i) 24th June 2006,
 - (ii) 24th June 2007,
 - (iii) 24th June 2008, and
 - (iv) 24th June 2009.
- E. The Property that is the subject of this application is a self contained flat on the first floor of a three storey building known as Flat 2, 89 Long Lane, London SE1 4PH (“the Flat”).
- F. The Respondent occupies the Flat by virtue of a lease dated 17th September 1999 made between Seacrest Investments Limited (1) and Maria Rosaria Trenta (2) for a term of 125 years from 29th September 1992 (“the Lease”). The Lease was assigned to the Respondent on the 6th September 2002. The freehold reversion of the building in which the Flat is comprised is vested in the Applicant.

2. Directions

Directions were issued on the 13th November 2009 and the case scheduled for a hearing and an inspection on the 28th January 2010. Further directions were issued at the hearing on the 28th January 2010. The directions have been followed in the main although the Tribunal was not assisted by the late submission of representations and the Applicant's failure to prepare bundles which were indexed paginated and in chronological order. The Tribunal reconvened on the 2nd March to consider the further evidence submitted in response to the further directions and to make a decision.

3. Inspection

The Tribunal inspected the property on the 28th January 2010. The Respondent and Mr Marozzi were in attendance. The Flat is comprised in a Victorian end of terrace three storey building. The building is of traditional brick construction with a pitched roof and a balcony to the rear at first floor level.

The Property comprises of three self contained flats located one to the rear of the ground floor and one on each of the first and second floors. The flats have a communal entrance to the street and a communal entrance hall. The flats on the second and third floor are accessed via a communal carpeted staircase. The property to the front of the ground floor is occupied by a kebab restaurant with a street entrance.

4. Hearing

A. Attendance

Ms Kay Benson and Ms Maria Savva directors of Bensons Limited ("Bensons"), the managing agents instructed by the Applicant appeared on behalf of the Applicant. Bensons Limited manage the whole building excluding the kebab restaurant. The Respondent appeared at the hearing together with Mr Marozzi as a witness.

B. The Applicant's case

- (i) The Applicant relies on its County Court Particulars of Claim and its Statement of Case, as well as the written submissions made by Bensons Limited and the oral evidence presented at the hearing by Ms Benson and Ms Savva.
- (ii) It is the Applicants case that all the items included in the service charge demands have been properly incurred and are due and payable under the terms of the Applicant's Lease. Bensons have produced copies of the relevant service charge demands together with invoices in support and state that the leaseholders of Flats 1 and 3 pay the service charges when demanded.

C. The Respondents Case

- (i) The Respondent relies on the Defence and Counter claim submitted in response to the Applicant's County Court Claim, as well as written submissions and the statements of Miss Sarah Yeh (the lessee of Flat 1 for the period from 1998 to 2006), Mr Philip Sum (the current lessee of Flat 1), Mr Paolo Marozzi who resides at Flat 2. The Respondent and Mr Marozzi made oral submissions at the hearing.
- (ii) The Respondent's main dispute is in connection with the charges in each of the service charge year in respect of the following items:
 - (a) the management fees
 - (b) the pest control
 - (c) the cleaning
 - (d) the legal fees.
- (iii) The Respondent confirmed that he accepts liability for the remaining items shown on the service charge schedules such as the electricity charges in so far as the items are supported by invoices.

D. Matters in dispute

- (i) Management fees

The Respondent alleges that there has been a failure on the part of Bensons to properly manage the building and to adequately perform its duties. The Respondent disputes the whole of the management fee on the basis of the amount of time he has spent painting the common parts, changing the light bulbs and vacuuming the carpet.

The Respondent relies on the manner in which Bensons managed the repair works to the roof in support of his case.

It is admitted that the damage first occurred in October 2005 when the tenant of the kebab restaurant attempted to install a new chimney. It is further admitted that the roof was not fully repaired until a week before the hearing in January 2010.

The Respondent contends that the inordinate delay in the satisfactory completion of the repair works is attributable to the mismanagement of the repair works by Bensons and illustrates the general lack of management of the Building by Bensons. The Respondent states that upon notifying Bensons of the damage, Bensons arranged for the repairs to be undertaken by the tenant of the Kebab shop despite agreeing to appoint a professional contractor. The Respondent informed Bensons that the repairs had not been undertaken to an adequate standard and in January 2007 Bensons finally agreed to appoint a contractor to undertake the works but the works were not actually completed until January 2010. The Respondent has produced copies of his email correspondence with Bensons in support and relies on an email dated 14th February 2007 from Ms Savva to illustrate what he considers to be the “manipulative and mischievous” management of building by Bensons. Ms Savva’s email states that the roofer is in the area and tried to contact Mr Marozzi to obtain access to undertake the roof works but there was no reply. The email states that the roofer is making his way

down to 89 Long Lane within the next hour and requests that he is given access.

The Respondent further contends that as a result of the delay in undertaking the repairs the Flat suffered extensive water damage to the walls and ceiling areas in the kitchen and living room as well as structural damage. The Respondent is of the view that had the repair works been completed satisfactorily immediately after the damage first occurred, the damage to the Flat would not have been so bad.

In addition the Respondent claims that Bensons have failed to arrange proper cleaning of the building and have improperly instructed and organised the pest control contractors despite objections from the leaseholders of the flats.

The Respondent's claims are supported by the written statements and the copy correspondence produced by the Respondent.

Bensons argue that management fees are payable under the terms of the Lease. They contend that they manage the property to an adequate standard. They explained that the management fee is an agreed fixed fee. Ms Kay clarified that in addition to the management fee there is a separate charge for items of disbursement such as letters, legal notices, any reminders, bank charges, office copy entries etc and although Bensons had not produced an itemised schedule in support of this separate charge it was agreed that they would produce an itemised schedule of the charge.

The Applicant denies he failed to maintain and keep the roof in good repair. Bensons submit that as soon as they were informed of the problem they referred the matter to the Applicant. The

Applicant confirms the tenant of the kebab restaurant fitted a flue to his premises and this involved some works to the roof and resulted in some damage to the roof. The Applicant admits that the repair works undertaken by the tenant of the kebab shop were not carried out to a good standard. The Applicant contends that upon being notified of the damage to the roof he requested assistance from Bensons, and they commissioned Stuart Henley & Partners Chartered Surveyors who produced a report which confirmed the repair works to the roof had been done to a poor standard. On the 3rd December 2009 the Applicant instructed an independent roofing company to carry out the work in accordance with report produced by Stuart Henley & Partners. Bensons contend that the delay in the completion of the roof works is attributable in part to the lack of cooperation from the Respondent in granting access.

Bensons state that upon being notified of the problem they requested the Respondent provide two estimates for the internal repair works so the matter could be processed through the insurance but despite repeated requests the Respondents have failed to provide the requested estimates. Bensons produced emails dated 27th October 2006 and 23rd September 2009 in support.

(ii) Pest Control

The Respondent contends that the infestation of cockroaches occurred upon the refurbishment of the kebab shop in 2005 and that prior to this there was no problem with cockroaches. Although the Respondent accepts that once the infestation had occurred the Applicant had to act to clear the infestation. It is his view that as the problem was created by the tenant of the kebab shop failing to keep his premises clean and free of infestation the cost of any treatment should be borne by the tenant of the kebab shop and not the leaseholders of the flats.

Mr Marozzi had been told by the tenant of the kebab shop that it was highly likely that the cockroaches came from the second hand kitchen equipment installed in the shop. Bensons entered into a contract with Crystal Services Plc ("Crystal") to treat the infestation. The Respondent states that the leaseholders opposed the appointment of Crystal and wanted to seek advice and have the infestation dealt with by the Local Council as they felt that Crystal were expensive.

It is admitted that Flats 2 and 3 were heavily infested with German and Oriental cockroaches.

The parties accept that Crystal was employed to undertake a three part intensive treatment against the cockroaches in all three flats and the staircase at a cost of £493.20 from the 15th February 2006 and at the same time Bensons entered into an agreement for twelve routine inspections and treatments each year at a cost of £214.50 per quarter plus VAT.

The Respondent contends that the agreement for routine inspections and treatments continued for a period of three years despite there being no signs of infestation in the building in the last 24 months. The Respondent disputes there that there is provision in the Lease permitting the Applicant to charge for such services. The Respondent further contends that the Applicant failed to comply with the consultation requirements under Section 20 of the Act in relation to this contract. The Respondent relies on the statements of Philip Sum in particular his letter of the 6th January 2010 in support.

Bensons submit that the cost of the pest control is payable by the lessees under the terms of their Lease. They contend that there is a problem with pest control in the borough of Southwark generally and deny that the problem can be

attributed to the kebab restaurant. They state that there was a pest control problem with the building as far back as 1991 prior to Bensons undertaking the management of the building. They state that they did contact the Council, but the Council would only deal with individual properties and were not interested in commercial lettings. They rely on a copy of an email as to their conversation with the officer of Southwark Council.

Bensons accept that the contract with Crystal was not terminated until about a year after Mr. Philip Sum had requested that it be cancelled. Ms Savva explained that under the terms of the contract it could only be terminated in writing upon giving one quarters notice. So although they had received a telephone request from Mr. Philip Sum to cancel the contract with Crystal in December 2007, they could not act until they received a written request for a cancellation of the contract. The written request was received from Mr Sum in January 2008, however the contract was not cancelled until July 2008 as the contract required a quarter's notice in writing for a cancellation. Ms Savva admitted that the period from January till July when the contract was finally cancelled is more than a quarter and that had they acted sooner the contract could have been terminated sooner.

Bensons contends that the Section 20 consultation requirements do not apply to the contract for the initial intensive treatment as the cost of £493.20 is below the amount for which consultation is required. As to the contract for routine visits they contend that as this involves a quarterly fee of £252.04 this too is below the limit requiring consultation.

(iii) Cleaning

The Respondent contends that the cleaning is not undertaken regularly and when cleaning has been carried out it has been of

a poor standard. The Respondent himself has had to clean the common parts of the building on many occasions. The Respondent states that in 2006 the cleaners did not have access to the building and so they were unable to clean the building. Bensons had asked him for keys and he had not provided any so he states the cleaners would not have been able to gain access to the building.

Bensons state that the cleaning is undertaken every other week on a Tuesday morning. Bensons claims that the cleaners gained access to the building by arriving early in the morning and being let in by the tenants of the top flat. Bensons state that the Respondent has never met the cleaning contractors as he is rarely at the Flat. Bensons are adamant that the cleaners do clean the communal areas and so their invoices are justified and payable. Ms Savva confirmed that they undertake random checks to ensure the cleaning is undertaken. She also stated that the cleaners had complained that individual leaseholders were leaving a lot of builders rubbish in the common parts when they were modernising their flats.

(iv) Legal fees

The Respondent objects to these charges as he states he does not know what they relate to. He takes the view that he is responsible for his own legal fees and so the Applicant should bear their own fees.

Ms Benson confirmed that they would be able to justify the legal fees and produce solicitor's invoices in support.

5. The Lease

A. The Lease defines:

- (i) “the building” as 89 Long Lane Bermondsey London SE1
- (ii) “the Demised Premises” as Flat 2 situate on the first Floor 89 Long Lane London SE1
- (iii) “the Common Parts” as the main entrance passages landing staircases gates access footpaths means of refuse disposal (if any) and any other areas included in the Title above referred to provided by the Lessor for the common use of residents at the Building and their visitors and not subject to any lease or tenancy to which the Lessor is entitled to the reversion.”
- (iv) “Lessee’s share of total expenditure” as 33.33%

- B. By virtue of Clause 5.01 of the Lease the Respondent covenants to pay 33.33% of “..the reasonable costs and expenses expected to be incurred by the Lessor in compliance with its obligations under Clauses 6.04 and 7 of the Lease and all other costs and expenses incurred in the management of the Building together with the Insurance and other Premiums payable by the Lessor whether under the terms hereof or by way of separate agreement together with such monies as the Lessor shall at its reasonable discretion deem appropriate to build up a reasonable reserve to meet the maintenance expenditure of subsequent years (hereinafter called” the Expenditure’”)”.
- C. Under Clause 5.02 the Service charge payments are payable on demand by two equal half yearly payments in advance on the 24th day of June and the 25th day of December in each year.
- D. The Lessor covenants to keep the Building insured under the provisions of Clause 6.04 of the Lease
- E. Under Clause 7.01 of the Lease the Lessor covenants inter-alia to maintain in good and substantial repair and condition the main structure of the Building, all gas water mains pipes drains waste water sewage ducts electric cables and wires, the Common Parts.
- F. Under Clause 7.03 the Lessor covenants to keep clean and lighted the Common Parts.

- G. The Lessor may under Clause 7.05(a) employ a firm of Managing Agents to manage the Building and “..discharge all proper reasonable fees salaries charges and expenses payable to such agents or such other person who maybe managing the Building including the cost of computing and collecting the rents and the Contributions in respect of the Building or any parts thereof.
- H. Under Clause 7.05 (b) the Lessor may employ “ all such surveyors builders architects engineers tradesmen accountants or other professional persons as may be necessary or desirable for the proper maintenance safety and administration of the Building”.
- I. Clause 7.09 provides that the Lessor may “.....do or cause to be done all such works installations acts matters things as in the reasonable discretion of the Lessor may be considered necessary or advisable for the proper maintenance safety amenity and administration of the Property”.

6. The law

Section 18 of the Act defines the term “service charge” and “relevant costs” as follows:

“(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 the rent—

(a) which is payable, directly or indirectly, for services, repairs, maintenance 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.”

Section 19 of the Act provides that:

(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 reasonable 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.

Under the provisions of Section: 27A of the Act:

“(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.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or 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.”

Section 20 of the Act provides for the limitation of service charges in the event that the statutory consultation requirements are not met. The consultation requirements (in so far as is relevant to this case) apply where it is proposed that any agreement or contract for a term of more than twelve months is

entered into by or on behalf of the landlord or superior landlord and the amount payable by any one contributing leaseholder exceeds £100 in any year. If a landlord fails to consult in accordance with the requirements of Section 20 then the landlord may only recover costs up to a maximum of £100 per leaseholder per annum.

7. Decision

The Lease requires the Respondent to pay by way of a service charge 33.33% of the reasonable costs incurred by the Applicant in the management of the Building together with the Insurance and an amount towards a reasonable reserve fund. The payments are due on demand by two equal half yearly payments in advance on the 24th day of June and the 25th day of December in each year.

Service Charge year ending 24th June 2006

The amount in dispute for the service charge demanded on the 12th June 2006 is £590.50.

(i) management fees

Tribunal having inspected the Building were of the view that as the Building comprises only three flats the management duties are not particularly onerous. Bensons had arranged the Building insurance. They had arranged for the cleaning of the building but apart from sporadic ad hoc inspections they had no system for adequately monitoring the cleaning to ensure that it was undertaken regularly and to the required standard. Bensons had organised the pest control but they had not managed the pest control services and had allowed the contract to continue unnecessarily even after the problem had been eradicated. Bensons had not ensured that the roof was repaired to a reasonable standard within a reasonable time. The inordinate delay in undertaking the roof repairs had caused the Respondent great hardship and inconvenience due to the damage caused to his living room and kitchen. Although the Tribunal accepts that a management fee of £500 plus Vat for

the provision of management services is generally considered to be reasonable, in this case due to the poor management of the Building as stated above the Tribunal do not consider such a fee can be justified and consider that a management fee of £400 plus Vat to be reasonable. However as no management fee is shown in the service charge account for the year ending June 2006 the Tribunal did not allow a sum for management fees in this year.

(ii) pest control

The Tribunal finds that the provisions of the Lease in particular Clause 7.09 entitles the Applicant to provide pest control services and charge the Respondent for such services by virtue of Clause 5.01 of the Lease.

The Tribunal accepts that it is impossible to trace the cause of the infestation and once the Applicant was aware of the problem it was reasonable for him to arrange pest control for the building.

Although the Tribunal accepts that the cost of the services provided by Crystal may not be the cheapest, the Tribunal do not consider that the cost to be disproportionate or unreasonable. The Applicant is not obliged to obtain the cheapest service, provided the costs incurred are reasonable.

The Tribunal is not persuaded that it was necessary to enter into an agreement for twelve routine inspections and treatments as well as the intensive treatment. In the Tribunal's opinion it would have been more prudent for the Applicant to wait until the conclusion of the intensive treatment and reassess the problem before entering into the agreement for the routine inspections.

The Tribunal had difficulty in reconciling the amounts £761.110 and £403.620 for Crystal shown in the Schedule of service charges for the year ending June 2006 with the invoices as the invoice from Crystal dated 21/03/2006 shows the sum of

£493.21 and the invoice from Crystal dated 31/03/2006 shows the sum of 252.04.

The Tribunal accepts that the contract for the intensive treatment did not does not require consultation under Section 20 of the Act and allows the sum of £352.50 (including Vat) in respect of the intensive treatment.

The agreement for twelve routine inspections and treatments each year was for a fixed period of one year continuing indefinitely unless terminated in writing by the appropriate notice at a cost of £214.50 per quarter plus Vat. The Tribunal considers this agreement is subject to the provisions of Section 20 of the Act, as it is an agreement for a period of over twelve months and the contribution of each leaseholder towards the costs of the agreement exceeds £100 per year. Thus the Applicant should have consulted the leaseholders prior to entering into the agreement. The Applicant's failure to consult in accordance with the provisions of Section 20 limits the amount of the leaseholder's contribution in respect of the agreement for the routine inspections and treatment to £100 (including Vat) per year. In this year the Building was subjected to both the intensive treatment and the twelve routine inspections and treatments. The Tribunal is of the view that the routine inspections and treatments cannot be justified if the Building is also subject to the intensive treatment and so for this reason the Tribunal does not allow the cost of the routine inspections and treatments.

(iii) cleaning

The Tribunal having inspected the building were satisfied that the common parts are cleaned, although the Tribunal cannot be satisfied that the cleaning is undertaken on a regular basis since there is no record such as a log book of the dates on which the cleaner attended despite the random spot checks undertaken by Bensons. In view of the size of the building and the small area of common parts the Tribunal consider the charge of £65 per

month for cleaning services to be unreasonable and consider the sum of £30 plus Vat per month to be a more reasonable charge for the cleaning services. The Tribunal has therefore allowed the sum of £300 plus Vat for ten months of the year when Bensons were undertaking the cleaning and £60 for the remaining two months of the year when Mr Athansiou who is not registered for Vat undertook the cleaning. This gives a total sum of £412.50 in respect of the cleaning.

Service Charge year ending 24th June 2007.

The amount in dispute in respect of this service charge is £1062.39.

(i) management fees

The comments above apply equally in respect of this year and so the management fees are limited to £400 plus Vat.

The Tribunal could find no invoice in support of the charge of £38.23 listed as being a charge by Bensons and dated 25/05/2007 and so the charge is not allowed

(ii) pest control

In this year the Building was subjected to the twelve routine inspections and treatments at a total cost of £858 per annum plus Vat, but as stated above since the Applicant failed to consult the leaseholders in accordance with Section 20 of the Act each leaseholder's contribution towards these costs is limited to £100. Thus the Respondent is liable for £100.

(iii) cleaning

The views expressed above as to the cost of the cleaning apply equally to the cleaning charges for the year ending June 2007. The Tribunal after making an allowance for an increase to the cleaning charge consider a charge of £33 plus Vat per month to be reasonable. Although the Service Charge Schedule for the year ending June 2007 lists an item for cleaning dated 23/06/2007, the tribunal was not able to reconcile this with the copy invoices produced and so this amount is not allowed.

Thus a total cost allowed in respect of the cleaning for the year amount to £396 (an amount for Vat is not included as PMA Cleaning is not registered for Vat), and the Respondent is liable to pay 33.33% of this cost which amounts to £132.

Service Charge year ending 24th June 2008,

The total amount of the service charge in dispute for the year ending June 2008 is £1055.92.

(i) management fees

The Tribunal for the reasons stated above consider the management fees should be limited to £400 plus Vat.

Bensons have included a charge of £150 for Sundries. In view of the RICS Service Charge Residential Management Code which specifies the duties of a managing agent it is the Tribunals view that the items to which this charge relates should have been provided for within the management fee charged by Bensons and a separate charge for items such as letters, email correspondence received and action by email, telephone and fax and telephone cannot be justified and so the sum of £150 for sundries is not allowed.

(ii) pest control

The Respondent's contribution towards the cost of the pest control is limited to £100 for the reason stated above.

(iii) cleaning

The Tribunal consider a charge of £33 plus Vat per month to be reasonable in respect of the cleaning. Thus the sum of £396 is allowed (an amount for Vat is not included as PMA Cleaning is not registered for Vat) the Respondent is liable to pay 33.33% of this cost which amounts to £132.

(iv) electricity

The service charge account includes an item for electricity in the sum of £ 50.00 dated 20/06/2008 as there was no invoice in the bundle relating to this item it is disallowed.

Service Charge year ending 24th June 2009

The total amount of the service charge in dispute for the year ending June 2009 is £1218.90.

(i) management fees

A management fee of £400 plus Vat is allowed as above but the sundries charge of £150 is not allowed for the reasons stated above.

(ii) pest control

The charge of £252.04 in respect of the pest control is not allowed as the charge could have been avoided had Bensons promptly cancelled the contract when requested.

(iii) Cleaning

Allowing for an increase cleaning charges the sum of £36 plus Vat per month is considered by the Tribunal to be reasonable. The Tribunal could not locate a copy of the invoice dated 06/01/2009 in respect of cleaning charges in the papers produced by Bensons so these costs are not allowed.

Section 20(c)

- i. The Respondent submitted an application under section 20(c) for the Applicant's costs incurred in connection with these proceedings not to be added to the service charge.
- ii. Bensons have produced invoices in support of legal costs in the sum of £788.50 claimed from the Respondent. The invoices produced do not include a narrative specifying the nature of the legal services provided. The invoices relating to the legal fees produced show sums of £235, £35, £165 and £2319.26, they do not set out an amount of £788.50. Bensons in their letter of the 4th February 2010 have sought to clarify the sum of £788.50 comprises of the following:

£ 35.00 Court Fees

£165.00 Disbursements

£503.70 Legal Fees

£ 84.80 Legal Fees

The Respondent contends that as he has had to pay his own legal fees he should not be required to contribute to the Applicant's costs as well.

The Tribunal is of the view that the Applicant failed in communicating effectively with the Respondent and many of the problems have arisen as a result. The Tribunal is also of the view that Bensons have not managed the building to an adequate standard. The Tribunal appreciates the Respondent's frustration at the delay in the repairs to the roof. The service charge schedules produced cannot be readily understood and reconciled and the Tribunal is of the view that this may have exacerbated the problem and caused further misunderstanding. In the circumstances the Tribunal are not persuaded that it would be just and equitable to allow the Applicant to add his costs to the service charge.

Conclusion

G. Accordingly in view of the above the Tribunal determines the total service charges payable are as follows:

<u>Service charges year ending June 2006</u>	<u>£</u>
1. Building Insurance	1030.82
2. Cleaning £30 for 10 months £300 plus Vat = 352.50	
£30 for 2 months = 60.00	
3. Electricity	92.96
4. Pest Control	352.00
5. Repairs	654.25
6. <u>Sundries</u>	<u>000.00</u>
7. <u>Total</u>	<u>2542.53</u>

The Respondent is liable for £847.51 in respect of the year ending 24th June 2006.

<u>Service charges year ending June 2007</u>	<u>£</u>
1. Building Insurance	967.10
2. Cleaning	396.00
3. Electricity	191.86
4. Management Fee	470.00
5. Pest Control	100.00
6. Repairs	145.00
7. <u>Sundries</u>	<u>000.00</u>
8. <u>Total</u>	<u>2124.96</u>

The Respondent is liable for £708.32 in respect of the year ending 24th June 2007.

<u>Service charges year ending June 2008</u>	<u>£</u>
1. Building Insurance	967.10
2. Cleaning	396.00
3. Electricity	111.71
4. Management Fee	470.00
5. Pest Control	100.00
6. Repairs	249.00
7. <u>Sundries</u>	<u>000.00</u>
8. <u>Total</u>	<u>2293.81</u>

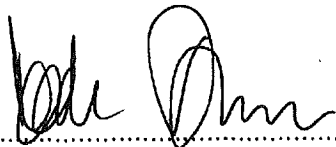
The Respondent is liable for £764.60 in respect of the year ending 24th June 2008.

<u>Service charges year ending June 2009</u>	<u>£</u>
9. Building Insurance	996.01
10. Cleaning	432.00
11. Electricity	143.32
12. Management Fee	465.00
13. Pest Control	000.00
14. Repairs	710.00
15. <u>Sundries</u>	<u>000.00</u>
16. <u>Total</u>	<u>2746.33</u>

The Respondent is liable for £915.44 in respect of the year ending 24th June 2009.

The Tribunal is aware that the Respondent has paid some sums towards the service charges in respect of the above years and so it is the balance which remains due.

Chairman.....



Date.....

29th April 2010