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H.M. COURTS & TRIBUNALS SERVICE  
LEASEHOLD VALUATION TRIBUNAL

Sections 19 and 27A of the Landlord and Tenant Act 1985 (as amended)  
("the Act")

<b>Case Number:</b>	<b>CHI/45UE/LIS/2012/0053</b>
<b>Property:</b>	<b>27 Wakehurst Drive, Southgate, Crawley, West Sussex RH10 6DL</b>
<b>Date of Application:</b>	<b>8 May 2012</b>
<b>Applicant:</b>	<b>Mr William Dukes</b>
<b>Respondent:</b>	<b>Crawley Borough Council</b>
<b>Tribunal:</b>	<b>Ms E Morrison LLB JD (Lawyer Chairman) Mr N I Robinson FRICS (Valuer Member)</b>
<b>Date of the Tribunal's Decision:</b>	<b>28 August 2012</b>

**The Application**

1. The Applicant leaseholder applied under section 27A (and 19) of the Act for a determination of his liability to pay service charges for service charge year 2005/06. The only element of the service charge remaining in dispute is a charge of £250.00 arising from repairs to the balcony of 25 Wakehurst Drive. The Respondent is the freeholder of the block of which both 25 and 27 Wakehurst Drive form part.
2. The Tribunal may also consider, pursuant to regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003, whether one party should be required to reimburse the Tribunal fees incurred by another party in these proceedings.
3. Further to directions given by the Tribunal on 17 May 2012, the application was determined on the basis of written submissions, neither party having requested an oral hearing.

## Summary of Decision

4. The costs of the repairs to the balcony of 25 Wakehurst Drive, Crawley are not recoverable by the Respondent from the Applicant as part of the service charge for year 2005/06.
5. No order is made for reimbursement of fees.

## The Lease

6. The lease for 27 Wakehurst Drive is dated 31 January 1995 and is for a term of 125 years from that date, with a yearly ground rent of £10.00.
7. The relevant provisions in the lease may be summarised as follows:
  - (a) The tenant is liable to pay 1/6<sup>th</sup> of the "management charges" incurred by the landlord in carrying out the obligations contained in clauses 3, 5, 6 and the 8<sup>th</sup> schedule of the lease relating to the block of 6 flats which includes 27 Wakehurst Drive.
  - (b) The landlord's obligations in the 8<sup>th</sup> schedule include a covenant to keep in good and substantial repair "the main structure of the Property [defined as the block] including all ... exterior and all party walls and structures..."
  - (c) The 2<sup>nd</sup> schedule reserves to the landlord "the external main structural parts of the Property including ...the structural parts or railings of any balconies".
  - (d) The 3<sup>rd</sup> schedule defines the demised premises as "including the surface of the floors above the joists and the surface of the floor of the balcony (if any)..."
  - (e) The tenant's covenants in the 6<sup>th</sup> schedule include an obligation to keep in good and substantial repair and condition ... the demised premises..."
  - (f) Under clause 6 of the lease the landlord covenants that the leases granted of other flats will contain similar covenants.

## The Inspection

8. On 27 July 2012 the Tribunal attended the block of flats containing both 27 Wakehurst Drive and 25 Wakehurst Drive, the latter being the flat in respect of which the disputed service charges were incurred. Mr Dukes and Mr Benning, a Housing Officer from Crawley Borough Council, were also present.
9. The block is one of several similar two-storey blocks in a development of flats built as local authority social housing in, the Tribunal was advised, 1954. Flats 25 and 27 are both on the first floor and are approached by a common external stairway.
10. Some of the flats, including the Applicant's flat, have a recessed balcony the front outer edge of which is in line with the main building line, the room behind being set back. The Applicant's balcony floor is finished with a smooth concrete, over a concrete substrate. There is a rendered upstand to the front edge of the balcony and the smoothed concrete is dressed up under the rear face of this concrete upstand.

11. Flat 25 is the only flat, not only in the block but in the entire development, which incorporates a cantilevered balcony projecting beyond the building line. The leaseholder at Flat 25 did not afford access and therefore an inspection of this balcony from the interior of the flat was not possible. Accordingly the Tribunal was only able to view the balcony from ground level. The balcony appeared to be of concrete construction with a small upstand around the outer edge and it could be seen that a lead flashing had been dressed over the edge of the balcony. On the top face of the lead, an asphalt coating was visible. It was not possible to see the top surface of the balcony.

## **The Law and Jurisdiction**

12. The tribunal has power under section 27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when service charge is payable.
13. By section 19 of the Act service charges are only payable to the extent that they have been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

## **Background**

14. The original demand for the 2005/06 service charge is dated 1 October 2006 and was for a total of £648.43 for Flat 27. This sum included building maintenance costs of £452.97, of which £275 was Flat 27's share of £1650 spent on repairs to Flat 25's balcony, and £71.66 was Flat 27's share of £430 spent on tiling to Flat 25's balcony. The accompanying invoice of the same date required payment of £693.09, made up of the balance of the 2005/06 service charge that had not already been paid on account, charges for ground rent and insurance, and an on account demand for 2006/07 .
15. Following complaints by the Applicant, the Respondent reduced the charge of £275 to £250 (because it accepted that there had been no consultation as required by section 20 of the Act) and withdrew the charge of £71.66 for the tiling, stating this had been charged to the block in error. After making a further adjustment by way of reduction in the surveyor's fee the service charge for 2005/06 was reduced by £103.69 to £544.74. This took the form of a credit note against the invoice of 1 October 2006. No payment has been made by the Applicant towards this invoice.
16. Both parties made written submissions to the Tribunal. Following the inspection the Tribunal invited further submissions from both parties as to:
  - (i) The make-up or construction of the balcony to Flat 25 at the date of the lease and/or prior to the 2005 repair;
  - (ii) What exactly occurred in 2005 that necessitated the repair;
  - (iii) What precise repairs were undertaken, including the provision of copies of any quotations, job sheets, and invoices;
  - (iv) The reason for the provision of tiling to Flat 25's balcony in January 2006, with copies as above.

The Respondent then provided further written submissions.

### **The Applicant's Case**

17. Mr Dukes's written submission contended that the costs of the repair to Flat 25's balcony were the responsibility of the leaseholder of that flat, and were not chargeable to the block as part of the service charge. He said the works were carried out after a report that water was ingressing Flat 19 (the ground floor flat below Flat 25) from the balcony. He referred to a tenant's covenant in the 6<sup>th</sup> schedule of the lease "not to permit any water or liquid to soak through the floors of the demised premises" and argued this meant that if Flat 25's balcony had caused the leak, then it was that flat leaseholder's responsibility. He did not provide evidence as to the contents of Flat 25's lease but in the course of the inspection Mr Benning confirmed that it was also demised on a long lease.

### **The Respondent's Case**

18. The Council submitted that the balcony was part of the building fabric or structure which was the landlord's responsibility under the 8<sup>th</sup> schedule and therefore the repairs were properly recoverable through the service charge. A job record sheet described the works as "Front balcony leaking causing ingress of water into flat below". It disputed that the leak came from an internal source, saying there were no reports of internal leaks from Flat 25. The repairs to the balcony were necessary and carried out at reasonable cost.
19. The further submissions included an email dated 14 August 2012 from a surveyor who stated "I hereby confirm that the balcony is of concrete construction with an asphalt covering, we assume that the covering was replaced like-for-like, although we cannot confirm this".
20. No further information as to the pre-repair make-up of the balcony, the cause of the water leak, the nature of the repair work, or the reason for the tiling was provided.

### **The Determination**

21. In order for the costs to be recoverable through the service charge, the balcony repairs must have been to the structure of the balcony, which is reserved to the landlord in the 2<sup>nd</sup> schedule, as opposed to the floor surface of the balcony which is part of the tenant's demise and his repairing responsibility under the provisions in the 3<sup>rd</sup> and 6<sup>th</sup> schedules referred to above. It is assumed that the provisions in the lease of Flat 25 are the same as those in the lease of Flat 27.
22. If the water leak was caused by a failure of the floor surface of Flat 25's balcony the repair of that floor surface would be the tenant's responsibility, as would any consequential damage to the concrete structure beneath. If the water leak was caused by a defect in the concrete structure of the balcony that would be the landlord's responsibility to repair and the costs recoverable through the service charge.

23. In this case the evidence is insufficient to identify which component part of the balcony failed and caused the water ingress to Flat 19. Such evidence as must have existed when the repairs were carried out in 2005 has been lost through passage of time and is no longer available. There is no reliable evidence as to what comprised the balcony floor surface either at the date of the lease or immediately prior to the repair in 2005 and there is no evidential basis on which one could conclude that the current balcony floor surface, which is said to be asphalt, is the same as the previous surface. As the balcony is projecting it is reasonable to conclude that the water must have travelled through the external concrete structure into the fabric of the building, but it is not possible to identify whether the water permeated the concrete as a result of water leaking through the balcony floor surface or as a result of cracks or other failures in the concrete itself.
23. In this case the Respondent as landlord wishes to rely on the provisions of the lease to recover the repair costs. That has been challenged by the Applicant leaseholder. It is then for the Respondent to provide sufficient evidence that the costs are recoverable. As the Respondent has failed to do this, the Tribunal determines that no part of the £250 charge for the repair of Flat 25's balcony is recoverable as part of the 2005/06 service charge. The service charge, already reduced to £544.74 as explained above, is therefore reduced to £294.74 and by any further appropriate credit for surveyor's fees (which the Tribunal lacks information to calculate).
24. For the avoidance of doubt this decision does not affect any other elements of the charges in the Invoice dated 1 October 2006, which have never been in dispute.

#### **Reimbursement of Fee**

25. In his submission, Mr Dukes requested reimbursement of the £70 application fee he had paid. While he has succeeded in his application to the Tribunal, it is clear that he has used this dispute as justification for non-payment, for almost 6 years, of other monies in respect of which there has never been any dispute. Taking all the circumstances into account, the Tribunal makes no order for reimbursement.
26. In its submission the Council requested recovery of costs under section 20C of the Act. Such a request is misconceived as only a tenant can apply under section 20C.

Chairman: \_\_\_\_\_  
E Morrison LLB JD

Dated: 28 August 2012