RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

CASE NUMBER: LON/OOAW/LSC/2009/0848

IN THE MATTER OF FLAT 9 117A LANCASTER ROAD LONDON W11 1QT and
IN THE MATTER OF SECTION 27A OF THE LANDLORD & TENANT ACT 1985 (as amended)

Parties	:	**Miss F Apicella**	**Applicant**
		Notting Hill Home Ownership	**Respondent**
Representations	:	**For the Applicant:-** **Miss Apicella in person** **accompanied by Mr S Newman** **For the Respondent:-** **Mrs S Hariri – Senior Property Manager** **Mr K Dunleavy – Notting Hill Leasehold Manager** **Miss N Murray – Service Charge Officer**	
Date of Pre-Trial Review	:	**5th January 2010**	
Date of Hearing	:	**10th May 2010**	
Inspection Date	:	**21st May 2010**	
Tribunal Members	:	**Mr A A Dutton (Chairman)** **Mr T Johnson FRICS** **Miss J Dalal**	
Decision Date	:	**14th June 2010**	

DECISION

The Tribunal makes the findings as set out below showing the sums payable in respect of the various items in dispute. In addition, the Tribunal orders that the Respondent should reimburse to Miss Apicella the sum of £200 for the application fee, £150 in respect of the hearing fee.

REASONS

A. BACKGROUND

1. This application was made by Miss Apicella on the 18th December 2009 and is in effect a continuation from an earlier application that she made to the Tribunal resulting in a determination in case number LON/OOAW/LSC/2008/0450 on the 6th March 2009.

2. In this application she repeated concerns that had been aired in the previous proceedings.

3. The application in this case raises issues in respect of the service charge years commencing in 2006 going on to the estimated expenditure for the year 2009/10. There is a commonality of items in dispute and one or two items which are for only a certain number of years. The issues that we were required to deal with are as follows:-

   - Window cleaning for all years
   - Cleaning costs for all years
   - Management charges for all years
   - Contributions to cyclical and reserve funds (including sinking fund) for all years
   - A review of s20 Procedures and the application of s20B to certain invoices
   - Bulk refuse costs for certain years
   - Estate management charges levied by the head landlord for the year 2009/10
   - An issue in respect of insurance premium for one year

   In addition, in the application Miss Apicella had sought to challenge audit fees, but accepted that these were no longer an issue, the Respondent having confirmed that audit fees were charged to everyone in the building.

4. It should be noted that at the time of the hearing of the above action in 2009 it appears that the accounts were in a state of some disarray. However by the time of this hearing the accounts had been corrected in that they reflected the correct number of leaseholders and a correct division of the service charges between all the flats in the

development. They were also certified accounts. Accordingly, where in the application Miss Apicella seeks a decision from us as to certain credits to be applied in respect of expenditure which was not in fact incurred, that is no longer an issue given the fact that we now have final accounts for each year in dispute, save this current year 09/10. In addition, in her application, Miss Apicella raises a number of questions that she invites us to answer which we will, as appropriate, deal with in the course of these Reasons.

5. We were provided with a bundle of documents consisting of some 195 pages on behalf of Miss Apicella and a smaller set of papers from the Respondent. We do not propose to dwell at length on the paperwork that was submitted as we had a full days hearing in which to hear from the parties and had read the papers. Miss Apicella's documents contained a detailed examination of each point of dispute.

6. We should however deal with the previous case which resulted in a decision in March of 2009. That Tribunal made certain findings in connection with the standard of management and cleaning. The Decision however records at paragraph 12:-

"In relation to other charges levied the Tribunal has little option but to determine that they are reasonably incurred since there is no clear evidence to the contrary and they are not in themselves outside the scale that might be expected for the complex. With regard to the two other issues, of management cleaning, the Tribunal is able to be more specific."

7. At paragraph 11 of the Decision the Tribunal had recorded the following:-

"It has been difficult to ascertain the facts in this case on the basis of the confused information presented. The Applicant had attempted to investigate the confusing and conflicting accounts of expenditure and the Respondent readily agreed that these were confusingly presented, but insisted that nothing had been incorrectly charged, even though it might not be clearly shown in the accounts."

8. Notwithstanding that there was an apparent finding in respect of the charges for the years covered in this earlier application, which were the period 2006/7, 2007/8 and 2008/9, the Respondent agreed that we may revisit some of these matters in the hope that these issues can be resolved on a once and for all basis. As a result of that concession by the Respondent and in the light of the difficulties that our colleagues had encountered in reaching their decision in 2009 through the lack of information, it was agreed that we would proceed in accordance with Miss Apicella's application made in December of 2009.

9. It is perhaps also appropriate at this stage to give some of the background as to the leasing arrangements which exist for this development. The total development forms part of the Terence Higgins Trust Lighthouse Property. It comprises meeting rooms, café and garden at ground floor level which can be used by the general public. In addition, there appears to be Primary Care Trust premises also on the ground floor, and on the floors above was to be found the residential accommodation.

10. Notting Hill Housing Trust leases the premises 111-117 Lancaster Road from The London Lighthouse Limited. These premises comprise the residential units on the first floor and above, of which Miss Apicella's flat is but one. The Head Lease is dated the 23rd December 1998 and contains the obligations on Notting Hill Housing Trust and sets out the extent of the demise which in the First Schedule to the Lease are described as the premises at 111-117 Lancaster Road, London, as edged red on the plans provided. Those plans confirm that at ground floor level there is an entrance way with stairs and lift and then residential accommodation above.

11. The Lease under which Miss Apicella occupies was originally granted by Notting Hill Housing Trust to Notting Hill Home Ownership Limited. It has presumably been assigned to Miss Apicella and the terms are noted and will be referred to, as necessary, in the course of these Reasons.

B. HEARING

12. The hearing was held on the 10th May 2010 and it was agreed between the parties that we would deal with each specific items for the years in question. We record therefore, briefly, the evidence given to us in respect of the following items:-

a. Window Cleaning.

It was contended by Miss Apicella that there is no provision in the Lease for this and therefore it is not chargeable. In any event she said that there was no real evidence that window cleaning was carried out and certainly not more than once a year.

It is right to say that there appeared to be some confusion as to how the window cleaning costs were shown in the service charge accounts. As we indicated above, at the time this matter came before us there had been certified accounts prepared by independent auditors for the service charge years ending March 2007, 2008 and 2009. In the year 2006/7 there was no specific charge shown for window cleaning. However, we were told by the Respondent that in

also told that bulk refuse appeared to be included within this cleaning charge. The cleaning of the bin area, which appeared to be part of the charge rendered by the Respondent, was not it seemed within the demise of the Head Lease to the Respondent. Accordingly, it was argued by Miss Apicella that the cost of the removal of any dumped items should be covered by the Landlord or the Head Landlord, but certainly not the residents. We were told from the Respondent's perspective that the Head Lease required the Head Landlord to pass the costs on, which is how the matter was dealt with by the Respondent in this case. It seemed that historically the Head Landlord had not been charging properly, but that matters had now changed. However, we were told that nowadays the Head Landlord organised the removal of items either through the local authority or through the cleaners and it had been agreed that no commercial rubbish would be charged by the Head Landlord to the Respondent and then to the Tenants.

During the course of discussions in respect of this item of expenditure it was confirmed by the Respondent that only 50% of the service charges incurred by the Head Landlord are passed to the Respondent, and this was the contribution as referred to in the terms of the Head Lease. For the record, the definition of service charge in the Head Lease states as follows:-

"a fair and reasonable proportion of the Expenses attributable to the demised premises."

It appears that the fair and reasonable proportion has been assessed at 50%.

d. Surplus Cyclical Repairs/Reserve Fund

Insofar as the surplus was concerned, it appears that the Respondent instead of observing the terms of the Lease in this regard had been placing any surplus into the Cyclical Fund. The term of the Lease which deals with this is at 8.6:-

"As soon as practicable after the end of each Account Year the Landlord shall determine and certify the amount by which the estimate referred to in Clause 8.4:1 shall have exceeded or fallen short of the actual expenditure in the Account Year and shall supply the Leaseholder with a copy of the certificate and the Leaseholder shall be allowed or as the case may be shall pay forthwith upon receipt of the certificate the specified proportion of the excess or the deficiency."

We were told that in the year 2008/9 there had been a refund of the surplus for Leaseholders and this will be the case henceforth. This is of course assuming there is no deficiency.

We then turn to the question of the Cyclical and Reserve Fund status. For reasons that we are not wholly clear, it appears that the Respondent had set up in effect two reserve funds. There is no doubt that under the terms of the Lease, (see paragraph 8.4:2) there is a right for the Landlord to set up a Reserve Fund and this was not disputed by Miss Apicella. In the year 2006/7 a sum of £378.94 had been taken from the Cyclical Fund, apparently to deal with s20 issues. There was some dispute as this, and it was agreed by the Respondent that the amount of £378.94 will be credited back to the Cyclical Fund for the year 2009/10. Miss Apicella told us that in the yeas 2006/7 and 2007/8 she had paid £500, and in the years 2008/9, £800. These are of course based upon estimated items and it appears upon a review of the accounts that in fact in the year 2006/7 £500 had been placed into the Reserve/Cyclical Fund, but that her actual contribution for 2007/8 was £294 and for the following year £470. The assessment of what should be charged to the Cyclical/Reserve Fund was apparently based on all stock held by Notting Hill assessed on the size of the property. It appears that the Reserve Fund monies had been used in 2006 and 2008 to cover emergency repairs, although the payments of the invoices were only in 2008. This gives rise to other issues to which we will now turn.

e. Section s20B.

This section of the Act states that in essence if costs were incurred more than 18 months before a demand for payment of those sums is served on the Tenant, then the Tenant will not be liable. There is a caveat that the 18 month period does not apply if the Tenant had been notified in writing that the costs had been incurred and that they would subsequently be required to make payment. In this particular issue, it appears that some emergency works were carried out in 2006 and 2008. However, we were told by the Respondent that although the works were undertaken, it appears that the invoice in respect of these works did not reach the Notting Hill Housing Association's offices until August 2008, which is when they were paid. It appears that the Respondent had no particular knowledge of the works being undertaken and certainly the Applicant says that no scaffolding had been erected in these two years. Miss Apicella accepted that works were needed. However, the first they knew about the figure of £7,690, being the total of the two invoices, was in November of 2009 when she had contacted the freeholders. The only issue therefore was whether or not the demand made of Miss Apicella was within the 18 month rule. The Respondent says it was and Miss Apicella says it was not.

f. Management

Miss Apicella maintains that this has not improved since the last Decision. Concerns continue about the management of the estate and the lack of contact with Notting Hill. Her view was that the management charge of £251.90 is too high given the poor accounting, the relationships with tenants and property management difficulties that still exist. She thought that the management fee should in fact be waived for the year 2009/10. For the Respondent they indicated it was a standard charge and does not really cover their costs. They have heavy management issues to deal with and that matters had improved.

g. Estate Management Charge

This was a new charge raised by the freeholder. The terms of the Head Lease enable a Reserve Fund payment to be claimed and this was one of the items of expenditure. It was not however challenged by Miss Apicella. She challenged a number of items in the budget figures which were those that had been queried in previous years but, in addition, the charge for electricity, building insurance and claims made on behalf of the freeholder for ground maintenance, drains and sewage, fences, walls and lighting maintenance. The issues in respect of the electricity related to the costs of common part lighting. In respect of an insurance claim, this really came down to a policy excess that she had been required to pay, which if it had been split between all the flats (17) she would have been happy with. The other items, ground maintenance onwards, were charges raised by the freeholder and she did not think that they were in the main reasonable; although in some parts she did offer a contribution.

h. s20 Issues

This related to work carried out in 2009, finished in January 2010 which includes roofing work and works to skylights. It appears that by a letter dated 19th October 2008, the Respondent purported to give Notice under s20 of the Act. This followed a Notice having been served on them by the freeholder, the Terence Higgins Trust. The letter dated the 19th August gave until the 12th September to respond, which was the deadline that had been set by the freeholder. It appears that Miss Apicella responded to this on the 9th September. A letter of the 10th March was produced indicating the commencement of the works in April 2009, although Miss Apicella says that this was not received. What she did however eventually receive under cover of a letter of the 2nd April 2009 was a letter from the Terence Higgins Trust to Notting Hill Home Ownership dated the 22nd September 2008

setting out their response to the s20 Notice and stating in the final paragraph as follows:-

"*Our understanding is that we are not required to consult further with your tenants on this works and we therefore seek your approval to proceed to the award of the contract.*"

We were told that the Respondent took advice at the time and did not need to consult further with the tenants. It appears therefore that apart from the letter written on the 19th August 2008, no further steps under the s20 procedures were taken by the Respondent. It appears that the payment of these roofing costs have been settled from the Reserve Fund. These issues were raised by Miss Apicella with Miss Hariri in a letter dated the 5th May 2009.

13. At the conclusion of these matters the parties confirmed that they had dealt with all issues that needed to be aired. The Respondent confirmed that they would not be seeking to recover the costs of these proceedings and that therefore an order under s20C of the Act could be made. It was suggested, however, that in making this concession, their management fees should be allowed in full.

14. Miss Apicella sought to claim her costs under the Commonhold & Leasehold Reform Act Schedule 12 paragraph 10, whereby costs can be awarded if the Tribunal considers that a party to the proceedings has acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings. Her only claim however is in respect of postage which she told us was £6.70 for each item that she delivered, of which there were two and a further 8.50 for documentation sent to the Respondent and the Tribunal. She did however seek to reimbursement of the application fee of £200 and the hearing fee of £150.

15. The Respondent contended that they had done all they could and had offered meetings which Miss Apicella had refused to attend.

C. INSPECTION

16. We inspected the subject premises on the 21st May in the presence of Miss Apicella and a representative of the Respondent. The property is over four floors. At ground floor level there is a flight of stairs and a lift leading to three floors of residential accommodation, albeit one of them on a mezzanine basis. The communal windows were not less than approximately six feet in height and those to the front being perhaps twelve feet or more, and certainly not the easiest to clean. At the time of our inspection the common parts were clean, although the carpet was in part stained and showing signs of wear. We also noted water ingress damage to the ceiling at Miss Apicella's floor

level. There was a lift serving the residential premises and at the other end of the building what appeared to be a commercial lift with emergency stairs. We did not internally inspect any of the flats.

17. Externally there was a very narrow walkway to the right hand side of the premises when looking at it from the road which would be too narrow for any ladder to be installed for the purposes of cleaning the windows in the common parts to the side. On the ground floor we noted the existence of the Beacon Medical Centre and also the Terence Higgins Trust premises which as we have indicated above includes various meeting rooms, treatment rooms and a pleasant café and garden area. There was also car parking, a small area to the front and more extensive parking to the left hand side and rear. We noted the bin store now apparently used exclusively by the residents and a bin store to the left of the development used by the Trust and the medical centre.

D. THE LAW

18. The law in this matter is to be found at s27A of the Act which we have applied in this case. We have also considered the provisions of s20C for the costs, s20B in respect of the ability to recover costs where they were incurred more than 18 months before the demand and also s20 itself and the statutory instruments dealing with the consultation requirements.

E. FINDINGS

19. We will deal firstly with the question of window cleaning. In an invoice dated the 22nd February 2008 which was produced to us, there appears to be an indication that the cleaning should be carried out quarterly and that one visit would be £1,027.91. The evidence we heard appeared to indicate that only one cleaning session was undertaken, and this was the sum that was paid. This contrasts with a letter dated the 30th April 2010 to Miss Apicella from the Respondents which was produced at the hearing, which appears to indicate that the cleaning of external windows and internal communal windows would be carried out on a quarterly basis at a cost of £287.50 per visit. This is a substantial reduction. We bear in mind also that the Lease to Miss Apicella indicates that the glass is included within her demise and that on the face of it the cleaning of the windows to her flat would be her responsibility. Therefore, in our findings, there is no obligation on the landlord to clean the windows of the flats. If, however, they can externally clean all windows and deal with the communal windows on a quarterly basis for £287.50 per visit, a division between the common parts windows and the private flats at 50/50 would seem reasonable, given the complexity of cleaning the large common parts windows. It appears however that

only one clean was undertaken. Accordingly, for the years in question we will allow the sum of £150 in respect of the cleaning of the common parts windows. We would add, however, that the figure shown in the letter of the 30th April 2010 does seem to us to be good value, but whether or not the lessees take up the offer of their windows being cleaned is of course a matter for negotiation between the parties. **However, as we have indicated above, we will allow the sum of £150 for each year in dispute for window cleaning.**

20. Insofar as the bulk refuse items are concerned from the year 2007/8 onwards, **we find that all should be disallowed**. We were assisted in this decision by the plans contained in the Head Lease which to us showed that the demised premises to the Respondent did not include the car parking or bin store areas. Therefore it appears to us that the Respondents should not have a liability in this regard and should not therefore pass it on to the lessees. Clearly the removal of domestic refuse from the residents would be covered by their Council Tax payments, but dumping of items in the common parts to the residential accommodation is of course a different issue, and if that arises, then it is an expense the Respondent landlord would need to meet.

21. We turn then to the question of cleaning, excluding windows. The difficulty with the years that we need to consider is that in some cases window cleaning has been included within the cleaning costs and not differentiated and it appears from the evidence that there are occasions when bulk refuse charges have also been included under this heading. We note however that the previous Tribunal had reached a conclusion in respect of the cleaning costs which they found had been *"reasonably incurred for the low grade service that is currently being provided."* It appears that even if one accepts that there is some charging for bulk refuse within the cleaning, that the overall costs to Miss Apicella are less than £250 a year. **We do not think that this is so unreasonable and doing the best we can with the information before us we allow the cleaning charges as claimed by the Respondent for each year.**

22. We turn then to the question of the surplus charges. In the year ending 2006/7 the surplus was £384.44 divisible between five lessees, giving a figure of **£76.88** to Miss Apicella for that year. In the following year a surplus of £733.39 is found, giving a share to Miss Apicella of **£43.14**. **We find that those sums should be reimbursed to the Applicant for those years.** We are told that there was a refund of the surplus in the year 2008/9 and where appropriate this will be the same for future years, so this should not cause a future problem.

23. We turn then to the Cyclical/Reserve Fund payments. Much of the confusion in this appears to have arisen because of the use by Miss Apicella of budget figures as against the actual figures which are now available to us. She indicated in evidence to us that she thought a figure of £400 was a reasonable contribution to the Reserve Fund. In the past she had made contributions in excess of that, but she believed that in fact for the year 2006 it was £500, 2007/8 £294, and 2008/9 £470. **In those circumstances we do not propose to disturb those figures.**

24. We turn then to the question of the management fees. We accept that it is improving, but it still seems to us to be lacking. It is right to say however that in the course of the hearing it became apparent that there was some confusion on behalf of the Respondent as to their obligations under the Lease between themselves and Miss Apicella, and between themselves and The London Lighthouse Limited. This in part appears to have been the reason for some of the misunderstandings and concerns that have arisen between the Applicant and Respondent. If there were no problems with the management we would have thought a reasonable sum for managing the block would be somewhere between £200 and £250 per unit. However, as there are still problems, we believe that an allowance of that amount is too high. **However there is improvement and we are prepared to allow a figure of £150 for the budget for the year 2009/10.**

25. The estate management charges for the year 2009/10, which amount to some £15,500, were set out in a letter to Miss Semira Hariri by Matt Knight, the National Estates Manager for Terence Higgins Trust, dated the 17th March 2009 and which was within the bundle of documents before us. Miss Apicella had responded to the Respondent by a letter dated the 13th December 2009 and we refer to that in making our findings. Miss Apicella indicated that she took no point in respect of the management fees of the Terence Higgins Trust, nor the contribution to the sinking fund. Insofar as the building insurance was concerned, the issue here, as we indicated above, related not to the premium payable but the fact that she had been required to pay a policy excess of £125 (being half the total excess) in respect of damage caused to her flat, which was not her fault. This seems to us to be a reasonable proposition. **We find therefore that the total sum claimed in respect of insurance is reasonable at £176.40, being her contribution, but that she should receive an allowance of 16/17ths of the policy excess that she paid (£117.65), meaning that her contribution for this year would in fact be £58.75.** In respect of ground maintenance, she offers **£12.22** based upon the cost of Kensington & Chelsea domestic bin hire for the year in question and that seems to us to be a reasonable proposal and one that we find is correct.

Insofar as the drains and sewage charges are concerned, she offers a sum of **£44.11**, being 50% of the amount claimed, which seems to us reasonable. There is no evidence of any expenditure in respect of this item in the past, but it is a possibility that it will arise and therefore a contribution in respect therefore is not unreasonable. We agree with her view that there is no need to make any contribution towards the fences and walls as there are no items of expenditure of this nature, and of course the question as to whether or not the residents should contribute is a matter for conjecture. The final item on the estate management figure related to lighting maintenance in the sum of £1500, being **£88.24** for each resident. Miss Apicella thought this was excessive, but it seems to us that it is important that the lighting is maintained, and although we suspect it is on the high side, it does not seem to us to be so unreasonable as to disturb it. The matter can of course be reviewed when the actual costs are known, as we are only dealing with budgeted figures. In so far as the other budgeted figures are concerned, namely the audit fee, cleaning, electricity, fire alarm maintenance, general repairs and stock condition survey we allow the sums claimed by the Respondent, many of which are not in any event disputed by Miss Apicella as they can be reviewed if thought necessary when final accounts are produced and they are not far apart from the previous years actual costs.

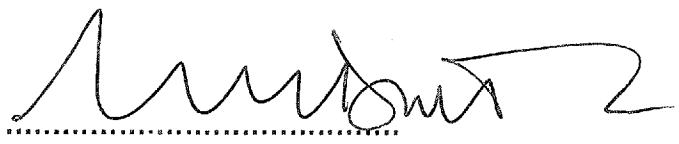
26. We then turn to the question of the s20 procedures. We find that the letter that was sent by the Respondent on the 19th August 2008 is defective in that it does not give the lessees 30 days for a response. It is right to say that Miss Apicella was able to respond within that period, but matters are of course compounded on viewing the letter from the Terence Higgins Trust of the 22nd September 2008, which Miss Apicella said she had not seen at that time, which indicates that the Trust are complying with their requirements, but the Respondent did not. They appeared to have forsaken any attempt to adhere to the s20 procedures from this point onwards. We do appreciate however that they were in a somewhat difficult position in that they were being served with s20 documentation from the Head Landlord giving them little or no time to pass that information on to the Tenant. However, to in effect wash their hands of the procedures after the initial letter seems to us to be unreasonable. It may be that they can find comfort by seeking dispensation under s20ZA, but that is for another Tribunal to consider. **Our findings are however that the demands made in respect of these works should be limited to £250.**

27. There is no such limit in respect of the emergency repairs carried out in November 2006 which were £3,290, or in February of 2008 which were £4,250. Neither exceeds the £250 allowance and therefore s20 procedures are not an issue. However, what does become an issue in

this case is s20B. The accounts for 2008/9 are dated the 15th September 2009. They are just within 18 months of the invoice which is dated the 31st March 2008 from the head landlord. **Accordingly, by the skin of their teeth pursuant to s20B(2) the Respondents are entitled the recover the sum of £4,250 which is £250 for each lessee.** The same cannot however be said for the invoice dated the 22nd November 2006. This is clearly outside the accounts period and the 18 month rule would in our findings apply. **Accordingly, as a result, by virtue of s20B, a contribution towards the November invoice which totals £3,290 cannot be recovered from Miss Apicella.**

28. The landlords indicated they would be not be seeking the cost of these proceedings and accordingly we make an order under s20C barring them from seeking to recover the costs through the service charge regime. Given the success that Miss Apicella has had, we find it reasonable to refund to her the application fee and the hearing fee which totals £350. M1ss Apicella also sought to recover her costs of postage under the provisions of the Commonhold and Leasehold Reform Act 2002 schedule 12 paragraph 10. The sums involved are minor but we do think it could be said that the Respondents have acted in a manner set out in paragraph 10(2)(b) and accordingly we do not make an order for reimbursement in this case.

29. We hope that our findings, which are more detailed than the previous decision due to the better evidence available to us, will lead to a rapprochement between the parties. We find the development pleasant and the added bonus of the Terence Higgins Trust garden and café facilities, as well as the general ambiance of the development produces a pleasant environment. There is the need for the Landlord to perhaps review their management procedures and certainly in Miss Apicella they have somebody who would be, we are sure, a bonus to them in ensuring that matters are conducted in accordance with the Lease. Better liaison would also be appropriate. We do hope however that Miss Apicella will now be able to draw a line under these issues and move on.



14th June 2010

ANDREW A DUTTON