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MAN/32UG/LSC/2012/0032

HER MAJESTY'S COURTS AND TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD AND TENANT ACT 1985, SECTIONS 27(A) AND 19.
LANDLORD AND TENANT ACT 1987, SECTION 47.

IN THE MATTER OF FLAT 7, 8 AND 9 PALMER COLBY HOUSE, DUDLEY ROAD, GRANTHAM, NG31 9AD

APPLICANT	Blue Property Investment UK Ltd.
RESPONDENTS	Graham Jeffrey Henton and Marilyn Edwina Henton
HEARING	19/11/2012.
TRIBUNAL MEMBERS:	Mr C. P. Tonge, LLB, BA. MR. P. E. Mountain, FRICS, FNAEA.

SUMMARY OF THE DECISION

1.	Service charges for 2009 have already been paid.	
2.	The excess service charges for each flat are payable for 2009	£69.33
3.	The excess service charges for each flat are payable for 2010	£64
4.	The service charges for each flat are payable for 2011	£715
5.	The service charges for each flat are payable for 2012	£715
6.	Administration charges are payable for each flat	£150
7.	Interest is payable in respect of each flat	£71.98.
8.	Late/legal charges are payable in respect of each flat	£198
9.	Total for each flat owed and payable immediately	£1983.31

THE BACKGROUND TO THE APPLICATION

10. This application came before the Leasehold Valuation Tribunal by an application from the freeholder Landlord of the flats at their site at Palmer Colby House, Grantham, NG31 9AD, dated 1/3/2012. The application was for the Tribunal to consider service charge years 2009, 2010, 2011 and 2012, in respect of flats 7, 8 and 9 at the site, along with their allotted car park spaces. The application stated that no service charges had been paid by the Respondents for the service charge years 2009, 2011 and 2012. That excess charges had not been paid for 2009 and 2010. That administration charges, interest and legal expenses were also payable, because of non-payment of the service charges.

11. The Respondents held the remainder of long leases for each flat in question. All three leases had been granted on 31/1/2006 for a period of 999 years that was specified as commencing on 1/8/2005.

12. Directions were given on 12/4/2012.

13. The case was listed for an inspection of the site and a hearing of the case at Grantham Magistrates Court on 19/11/2012.

14. Both parties served a statement of case and hearing bundle and these were served on the other party.

THE INSPECTION

15. The Tribunal inspected the premises at 10am on 19/11/12. The Applicant was represented at the inspection by two members of the management company, Blue Property Management UK Ltd, Mr Peter Evans and Mr Tony Howard, the area manager. The Respondents were both present and accompanied by their son, Andrew Henton.

16. The complex had twelve flats and one house in a purpose built development between Dudley Street and the bank of the river Witham. Entry to the site was through a drive way into a car park. The drive way had a pedestrian gate and electronic gate for vehicular traffic. The electronic gate was not working at the time of the inspection and had been broken for four weeks. The gate system had a vertical bar and the Tribunal was aware that the Respondents had raised the point that this had been left in a condition where welds on the bar had been dangerous. The welds were noted to be smooth and painted over and not in any way dangerous.

17. Just inside the gates there was an area in which part of the development had been built over part of the entrance driveway. This left an area that had external weather boarding facing down onto the drive. There was a small hole and a small crack at two different locations in this boarding.

18. The drive led onto the car park. There was a hole in the surface of the car park that had been cordoned off so that three of the marked out parking areas could not be used. None of these spaces had been let with the flats subject of this case.

19. There was also a problem with the retaining wall of the car park, although that was not preventing the rest of the car park being used.

20. The Respondents had complained about the presence of a reportable weed, Japanese Knotweed in the area of the car park. The Tribunal saw a plant to the left of the car park when facing the river. The Tribunal also saw two plants one with leaves intertwined about the other at the end of the car park as the land went down towards the river. The Respondents contended that this was Knotweed, the representatives of the Landlord said that it was not, it was in fact bindweed. The Tribunal could not establish whether or not the plants were Knotweed.

21. The land to the left of the car park where the weed was growing was not part of the Landlords development, it was in a neighbour's garden. The weed at the bottom of the car park may have been in land belonging to the Landlord. The Tribunal noted that the immediate neighbours to both sides of this development had treated the land right to the river as their own, incorporating the whole of the land into their gardens. This had not been done at this development, but the car park was raised up above the level of the river and supported by the use of retaining walls. As such the car park could not have been taken right back to the water of the river.

22. Some plant material had been dumped over the fence at the end of the car park onto the land that went down to the river, but it was a small quantity and not unsightly.

23. The site was free of rubbish and litter. The windows were all clean.

24. There were two internal common areas designed to give access to flats at the site. These had external doors leading inside to corridors and stairs. The floor surfaces where there were stairways had non slip surfaces, the remainder were laminate wood surfaces. All of these surfaces were clean and dry. The internal wall areas had in some places been touched up or repainted and this work had not been done by the management company, but the paintwork on the walls looked to have been to a reasonable standard and was clean.

25. The Tribunal looked at the gutter above flat number 9. It was common ground that there had in the past been a problem with the gutter, but that looked as if it had been dealt with.

26. The Respondents brought the attention of the Tribunal to the fact that there screw holes in the wall of a landing where a fire extinguisher bracket and extinguisher had once been provided, but that they were now missing.

27. The Respondents pointed out that there was pedal cycle standing against a wall in the same landing area. The Tribunal saw that there was plenty of room to walk past the pedal cycle.

28. Generally, the Tribunal decided that the complex was in a good, clean and tidy condition.

THE LAW

Landlord and Tenant Act 1985

S27A Liability to pay service charges: jurisdiction

(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.

S19 Limitation of service charges: reasonableness.

(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 reasonably incurred, and
(b) where they are incurred on the provisions 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.

Landlord and Tenant Act 1987

S47 Landlord's name and address to be contained in demands for rent etc.

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—
(a) the name and address of the landlord, and
(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where—
(a) a tenant of any such premises is given such a demand, but
(b) it does not contain any information required to be contained in it by virtue of subsection (1), then (subject to subsection (3)) any part of the amount demanded which consists of a service charge or an administration charge ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

SCHEDULE 6

THE MAINTENANCE EXPENSES – PART 1

Moneys actually expended or reserved for periodical expenditure by or on behalf of the Lessor at all times during the Term herby granted in respect of the following:-

1. **Keeping** the Gardens and Grounds generally in a neat and tidy condition and tending and renewing all lawns flower-beds shrubs and trees forming part thereof as necessary and maintaining repairing and where necessary reinstating any boundary wall hedge or fence and any other walls hedges or fences within the Development and any benches seats or garden ornaments and keeping the footpaths roadway and car parking areas in good repair properly lit and clean and tidy and clear of snow

THE MAINTENANCE EXPENSES – PART 2

Moneys actually expended or reserved for periodical expenditure by or on behalf of the Lessor at all times during the Term herby granted in respect of the following:-

1. **Repairing** re-building re-pointing improving or otherwise treating as necessary and keeping all other parts of the Maintained Property in good and substantial repair order and conditions and renewing and replacing all worn or damaged parts of it

2.1 **Painting** with two coats at least of good quality paint or other suitable material so often as may (in the opinion of the Lessor) be necessary and in a proper and workmanlike manner all the external wood metal stone and other work of the other parts of the Maintained Property and the surfaces of all exterior doors and frames of the Building which usually are or ought to be painted at least once in every four years and in the last year of the said Term

2.2 **Painting** with two coats at least of good quality paint or other suitable material and/or (as the Lessor shall decide) papering with good quality wall and ceiling

covering the interior surfaces of the other parts of the Maintained Property usually so treated as often as may in the opinion of the Lessor be necessary

3. **Cleaning** as necessary the external and the internal faces of all windows in the Maintained Property and the external faces of all windows in the Premises

4. **Keeping** the Common Parts lit and cleaned at all times

5. **Providing** and paying such workmen as may be necessary in connection with the upkeep of the Maintained Property

6. **Insuring** the Building for the full reinstatement value against loss or damage by fire storm and tempest and such other risk as the Lessor shall decide provided:-

6.1 **The** insurance shall include:-

6.1.1 **The** cost of demolition and clearing of buildings and twelve and one half per cent of the sum insured for the architects' surveyors' engineers' and other relevant professional fees

6.1.2 **Additional** costs incurred in arranging comparable accommodation where any Flat is damaged so as to be uninhabitable up to ten per cent of the sum incurred

6.1.3 **Subject** to such cover being available to insure the Building in accordance with the current requirements of the Council of Mortgage Lenders Handbook for the time being in force

6.2 **If** the money receivable under any such insurance shall be insufficient to meet the cost of the necessary works of re-building repair or reinstatement then the deficiency shall be treated as a further item of expense under this Schedule recoverable from the Lessees of the Flats accordingly

6.3 **The** insurance shall be effected in the name of the Lessor and cover shall extend to the Lessees for the time being of the Flats and their mortgages

7. **Insuring** any risks for which the Lessor may be liable as an employer of persons working on the Development or as the owner of the Development or any part thereof as it shall think fit

8. **Paying** all rates taxes duties charges assessments and outgoings whatsoever (whether parliamentary parochial local or of any other description) assessed charged or imposed upon or payable in respect of the Maintained Property or any part of it except insofar as they are the responsibility of the individual lessee of any Flat

9. **Abating** any nuisance and executing such works as may be necessary for complying with any notice served by a Local Authority in connection with the Development or any part thereof insofar as it is not the liability of or attributable to the fault of any individual Lessee or any Flat

10. **Preparing** and supplying to the lessees of the Flats copies of any regulations and house rules made by the Lessor governing the use of the Flats and/or the Maintained Property

11. **Generally** managing and administering the Development and protecting the amenities of the Development and enforcing or attempting to enforce the observance of the covenants on the part of the lessees of any of the Flats and for that purpose (insofar as the Lessor thinks fit) employing a firm of managing agents

12. **Employing** a qualified accountant for the purpose of auditing the accounts in respect of the Maintenance Expenses and certifying the total amount for the period to which the account relates

13. **Complying** with the requirements and directions of any competent authority and with the provisions of all statutes and all regulations orders and bylaws made thereunder relating to the Development except insofar as such compliance is the responsibility of the lessee of any individual Flat

14. **Administering** the Development and arranging for all necessary meetings to be held and complying with all relevant statutes and regulations and orders thereunder and if the Lessor thinks fit employing a suitable person or firm to deal with these matters

15. **The** provision maintenance and renewal of any other equipment and any other service which in the opinion of the Lessor it is reasonable to provide

16. **Bank** interest charges on working capital employed in operating the Maintenance Expenses Account

17. **The** provision of a Reserve Fund which may be invested in Trustee Securities with interest accruing to the Fund

18. **During** any period during which the Lessors itself undertakes the responsibility of managing agents as provided for in clause 12 of this Schedule such fees as would properly be charged by an independent professional firm of managing agents for similar responsibilities

SCHEDULE 7

THE LESSEE'S PROPORTION OF THE MAINTENANCE EXPENSES

1. **The** Lessee's proportion means one thirteenth part of the Maintenance Expenses attributable to the matters mentioned in Schedule 6 Part 1 and one twelfth of the Maintenance Expenses attributable to the matters mentioned in Schedule 6 Part 2 **PROVIDED ALWAYS** as follows:-

1.1 **the** certificate of the accountant for the time being of the Lessor as to the total amount of the Maintenance Expenses for the period to which the account relates shall be binding on the Lessor and the Lessee

1.2 if the Lessee shall at any time during the said term object to any item of the Maintenance Expenses as being unreasonable or the insurers mentioned in

Schedule 6 being insufficient then he shall give notice in writing of his objection to the Lessor who shall consider the same in the best interests of the Development and make such decision as it thinks reasonable in the interest which decisions shall be final and binding **PROVIDED ALWAYS** that any objection by the Lessee under this sub-paragraph shall not affect the obligation of the Lessee to pay to the Lessor the Lessee's Proportion of the Maintenance Expenses in accordance with paragraph 3 of this Schedule

2. An account of the Maintenance Expenses (distinguishing between actual expenditure and reserve for future expenditure) for the period ending on the 31st December next following the date when construction of the Building shall have been completed and for each subsequent year ending on 31st December during the said Term shall be prepared and the Lessor shall within three months of the date of each account serve on the Lessee a copy thereof and of the accountant's certificate

3. The Lessee shall pay to the Lessor the Lessee's Proportion of the Maintenance Expenses in manner following that is to say:-

3.1. In advance by Standing Order by twelve equal monthly instalments on the first day of each month in every year throughout the Term the Lessee's Proportion of the amount estimated by the Lessor or its managing agents as the Maintenance Expenses for the year ending on the next 31st December (the first payment to be apportioned if necessary from the date of this Lease) **PROVIDED** that for the first yearly period there shall be substituted the period from the date of this Lease to the 31st December next following the date when construction of the Building shall have been completed and the payments on account shall be adjusted accordingly

3.2 **Within** twenty-one days after the service by the Lessor on the Lessee of the copy of the accounts and certificate referred to in paragraph 2 of this Schedule for the period in question the Lessee shall pay to the Lessor (or be entitled to receive from the Lessor) the balance by which the Lessee's Proportion respectively exceeds or falls short of the total sum paid by the Lessee to the Lessor pursuant to paragraph 3.1 of this Schedule during the said period

SCHEDULE 8

COVENANTS BY THE LESSEE - PART 1

Covenants enforceable by the Lessor

1. To pay the rents reserved by this Lease on the days and in the manner provided without deduction **PROVIDED ALWAYS** that if and whenever the Lessee shall pay the said rent after fourteen days after the date on which it has become due then the Lessee shall pay by way of additional rent to the Lessor interest upon such arrears at the rate of 5% per annum above Lloyds TSB Bank Plc Base Lending Rate for the time being in force calculated from the date the rent became due to the date of payment

2. To yield up at the termination of the Term the Premises together with the Landlord's fixtures and appliances and any replacement thereof in such good and substantial repair order and condition as shall be consistent in all respect with the due performance and observance of the covenants on the part of the Lessee and the conditions contained in the Lease

3. To pay all costs charges and expenses (including legal costs and fees payable to a surveyor and any value added tax thereon) incurred by the Lessor in or in contemplation of any proceedings or the service of any notice under sections 146

and 147 of the Law of Property Act 1925 including the reasonable costs charges and expenses aforesaid of an incidental to the inspection of the Premises the drawing up of schedules and dilapidations and notices and any inspection to ascertain whether any notice has been complied with and such costs charges and expenses shall be paid whether or not forfeiture for any breach shall be avoided otherwise than by relief granted by the Court

4. **To** pay and Indemnify the Lessor against all costs of expenses including (without prejudice to the generality of the foregoing) solicitors costs and surveyors fees in respect of or incidental to any advice sought or any action reasonably contemplated or taken by or on behalf of the Lessor in order to prevent or procure the remedying of any breach of non performance by the Lessee of any of the covenants conditions or agreements contained in this Lease and on the part of the Lessee to be observed and performed such costs in include the secretarial and administrative costs of the Lessor occasioned by the same

5. **At** any time within six calendar months next before the termination of the Term to permit intending lessees and tenants authorised by order in writing of the Lessor or its agents to view the Premises at reasonable hours in the daytime by appointment

6. **To** pay and discharge all rates taxes assessments charges duties and other outgoings whatsoever whether parliamentary parochial or of any other kind which now are or during the Term shall be assessed or charged on or payable in respect of the Premises or any part of them or by the landlord tenant owner or occupier in respect of the Premises

7. **To** pay to the Lessor the Lessee's Proportion of the Maintenance Expenses at the times and in the manner provided in this Lease and also to pay any Value Added Tax chargeable in respect of it

PROVIDED ALWAYS that if and whenever the Lessee shall pay any of such payments after fourteen days after the date of which they become due then the Lessee shall pay to the Lessor interest upon such arrears at the rate of 5% per annum above Lloyds TSB Bank Plc Lending Rate for the time being in force calculated from the date the payment becomes due to the date of payment

8. **To** keep the Lessor indemnified in respect of Council Tax and any other charges for other services payable in respect of the Premises which the Lessor shall from time to time during the Term be called upon to pay such sum or sums to be repaid to the Lessor on demand

9. **To** repair and keep the Premises (but excluding such parts as are included in the Maintained Property) and every part of them and all landlords' fixtures and fittings and all additions in good and substantial repair order and condition at all times during the Term including the renewal and replacement forthwith of all worn or damaged parts but so that the Lessee shall not be liable for any damage which may be caused by any of the risk covered by the insurance referred to in paragraph 7 of Schedule 6 hereof (unless such insurance shall be wholly or partially vitiated by any act or default of the Lessee or other occupiers of the Demised Premises or of any member of the family employee or visitor of the Lessee or such occupiers) or for any work for which the Lessor may be expressly liable under the covenants of the part of the Lessor hereinafter contained in this Lease

10. If the Lessee shall (in the exercise of the rights conferred upon him by paragraph 8 of Schedule 4) require access to any other part of the Development to give at least forty eight hours notice in writing (except in case of extreme urgency when no notice shall be required) to the Lessor or its agents and to the owners or occupiers of that part of the Development to which the Lessee requires access and

THE WRITTEN REPRESENTATIONS

THE APPLICANT

29. The Applicant bought the freehold of the development on 3/7/2009. The Applicant indicated that the prior Landlord had not ignored the long leaseholder "right to first refusal".

30. The Applicant had, since the purchase of the freehold, provided the services that there was a duty to provide under the three leases in favour of the Respondents. In so far as the Applicant knew, the Respondents had failed to pay service charges for 2009. The Respondents had paid those demanded for 2010. They had not paid excess charges for 2009 and 2010. They hand not paid the service charges for 2011 and 2012.

31. In respect of the service charge for 2009 the Applicant relied upon a document at page 135 of the Applicants evidence bundle, suggesting that the prior Landlord had not been paid service charges for that year. There was no other written evidence on this point.

32. As a result of the Respondents failure to pay service charges when demanded the Applicant had sought to charge administration charges and interest and some fees in relation to legal work.

33. The services provided by the Applicant were window cleaning, cleaning the interior common parts and keeping them lit, keeping the exterior common parts lit and tidy, providing care taking, renewals and repairs and insurance for the development. The Applicant indicated that all these were provided to a good standard.

34. The management company was aware that the Respondents were making complaints about the site maintenance and cleaning and the area manager had attempted to contact the Respondents to discuss matters.

35. In relation to the car park the Applicant provided a good deal of information to establish that they were going to great lengths to resolve this problem. It had come about because the soil that should be giving support to the surface of the car park was slipping away underneath the car park.

36. The Applicant was aware that the Respondents had taken some photographs, but said that they took the view that they were irrelevant.

37. The Applicant was aware that there had been a case in the County Court between the prior Landlord and the Respondents over non-payment of service charges but took the view that this was also irrelevant. The Applicant had not served any documents relating to the Court Case.

THE RESPONDENTS

38. The Respondents submitted that there had been a case in the County Court that was dealt with on 21/1/2009. After that case they had paid the service charge for all three flats for 2009. It was not the Respondents fault that the previous Landlord had failed to keep a proper record of what had happened in and after that hearing and had failed to record that the service charge for 2009 had been paid. No documents had been served in relation to the order of the Court.

39. The Respondents submitted that they had not been given the right of first refusal of the purchase of the freehold by the prior Landlord. They submitted that in their view, because of this fault the sale to the Applicant was not valid and therefore the Applicant could not demand any service charges at all.

40. The Respondents submitted that they were not told who the new freeholder was, after the purchase.

41. The Respondents indicated that they accepted that some service charges were due but that the services provided had been provided at an unacceptably low standard. They said that they had complained about this in writing.

42. The Respondents said that the windows were always dirty. The internal common part floors were dirty and that when they were washed this was done in such a way as to leave the floor slippery. That on one occasion they had seen the maintenance man park his vehicle outside the site and sit there for two hours without attempting to do any work at all.

43. The Respondents indicated that both they and other long leaseholders took the view that the maintenance and cleaning of the site was very sub-standard. They referred to photographs, but did not serve any. They did serve 6 letters that appeared to have been written by other long leaseholders at the site. The Respondents had asked the Tribunal to contact these potential witnesses to ask them what evidence they could give.

44. The Respondents submitted that the failure to repair the surface of the car park, failure to paint the internal common part walls, failure to repair the drive electronic gates, failure to deal with the Knotweed and failure to keep the site clean was a substantial breech of the requirements in the lease to maintain and clean the site. Such that the Landlord was in breach of contact.

THE HEARING

45. The hearing commenced at about 11.15 am on 19/11/12 at Grantham Magistrates Court. The persons who had been present at the inspection of the property were present at the hearing.

46. At the start of the hearing the Tribunal indicated that it had not contacted the potential witnesses on behalf of the Respondents and that the letters would have no evidential value

because the Applicant had told the Respondents before the hearing in writing that the letters were not accepted. The Tribunal pointed out that it was certain that the case would go over into the afternoon. It was for the Respondents to decide if they wanted to call any witnesses and that they could be called in the afternoon.

47. It was agreed by both parties that all three long leases were in exactly the same terms.

48. The Respondents had served a very late document dealing with the Applicants response to the Respondents case. The Applicants representatives were given as much time as they needed to read and digest the content of that document.

EVIDENCE ON BEHALF OF THE APPLICANT

49. The exact amount that the Applicant contended he was owed by the Respondents was investigated. The Applicants representatives referred to pages 48,49 and 50 of their bundle of evidence and explained that as at 23/1/2012, the Respondents owed them £2258.33 per flat. This included administration charges of £150 per flat brought about because of late payment. A payment had been received for the 2010 service charge and this had been deducted from the amount owing.

50. The figure calculated as at 23/1/2012 included the unpaid service charge for 2009 of £545 per flat. They relied on one document to establish that the service charge for that year had not been paid at page 135 of the Applicants bundle. This was a breakdown of expenditure for that year and it suggested that the service charge for 2009 was still not paid when that document had been prepared on behalf of the previous freeholder. There were no other records in their possession that could help in deciding whether or not this service charge had been paid to the prior freeholder. They did not accept that the Respondents had paid the 2009 service charge.

51. The figure calculated as at 23/1/2012 included an excess charge of £69.33 for service charge year 2009 and an excess charge of £64 for service charge year 2010. At the end of each year it had been calculated that the service charge that had been demanded for that year had not been enough to cover the service charge cost and an excess amount had therefore been demanded.

52. In relation to the Administration charges the Applicant pointed out that at the bottom of every demand for service charges there was a warning that Administration charges would be made if service charges were paid late and that these were payable under the leases. The witness said that it was very difficult to maintain a site to a proper standard when long leaseholders were refusing to pay the service charges that were properly being demanded.

53. The figure calculated as at 23/1/2012 did not include interest charged upon the late service charges or fees to cover legal work done. Page 61 and 62 of the Applicants bundle were referred to. Interest had been calculated as per the leases at £168.89 per flat and a charge for legal work had been levied as per the leases at £348 per flat. Page 62 was the demand for payment.

54. The total figure that the Applicant said that the Respondents owed was therefore £7875.66 in respect of 3 flats over 4 years.

55. In relation to the charge for legal work the Applicants representative said that this work was necessary. The Respondents had refused to pay the service charges. They had to pursue payment. They had conducted a search at the Land Registry to see if a mortgage company had registered a charge. They found that charges were registered for all the flats and had then written to the mortgage suppliers to see if they would pay the unpaid debts. This extra work all had to be paid for.

56. When the approach to the mortgage companies had failed they had no choice but to bring this action before the Leasehold Valuation Tribunal. There had been fees and the cost of getting the cases ready for the hearing.

57. In relation to the Administration charges the Applicants representative agreed that the lease did not give any time limits as to when the charge could be levied. The management company had selected 14 days as being reasonable for early demands, 7 days for later demands that would only have to be made in the case of non-payment after several weeks.

58. In relation to the electronic entrance gate the Applicants representative indicated that the gate had always been problematical. It was over 3 meters wide and too flexible. They had conducted a great deal of work to try to keep it working and improve it. They had fitted three actuators already and had a forth ready to be fitted. On three occasions they had successfully claimed the cost of the repair from the insurance company, so there had been no cost to the long leaseholders and there was another claim against insurance pending. The gates were being subjected to criminal damage.

59. The management company had fitted a damper to reduce noise in the hope that whoever was causing the damage would stop doing so if the action of the gate was quieter.

60. The management company had fitted a magnetic lock to make the closed gates more rigid.

61. A post had been fitted for safety reasons and when that had been welded the weld might have been rough until it was ground down. That would have happened in one process that would only have stopped if the workman had to stop and come back the next day to complete the work. It was then painted. The weld would not have been left in a dangerous condition.

62. The management agent had repaired the gutter over flat number 9 promptly. The care taker was sent out to collect rubbish that often blew in from the street. He had a tracker on his vehicle so that they knew he was at the site when he was supposed to be. He was paid to complete one visit per fortnight, any more would put costs up. An employee window cleaner was sent to the site every two months to clean the windows.

63. The management company intended to repaint the walls of the internal common areas shortly.

64. The management company did not accept that there was Knotweed on or near the site. The plants had been identified as Bindweed, but further discussions would take place with the Respondents about this.

65. The management company said that the care taker did the mopping and internal floors should not be left slippery after cleaning. All the stairs were fitted with anti- slip coverings.

66. The management company said that they were doing their best to resolve the problem of the hole in the car park. They accepted that the hole had become bigger over time. The repair was going to be very expensive and they had been doing their best not to have to pass the cost on in a service charge. They had claimed against the insurance company. They had attempted to pursue the water ways board.

67. The management company were now about to commence consultation procedures with the long leaseholders before commencing the repairs.

EVIDENCE ON BEHALF OF THE RESPONDENTS

68. The Respondents raised the issue of the prior Landlord ignoring the possibility that the long leaseholders might wish to buy the freehold of the property, the "right of first refusal". The Tribunal explained the workings of the "right of first refusal" pursuant to Landlord and Tenant Act 1987. Further, the Tribunal indicated that this was not a matter that the Tribunal considered to be relevant to the issues in this case. Whether or not the "right of first refusal" had been offered the leases were all valid and binding.

69. The Respondents accepted that they had signed the leases for these properties and that they were therefore bound by the content of the leases.

70. Further, the Respondents accepted that under the terms of each lease potentially they were liable to pay service charges as demanded by the Landlord. However, they contended that the services had not been provided to a proper standard and that therefore it would not be reasonable for them to pay the full amounts as demanded.

71. The Respondents accepted that under the terms of each lease administration charges were payable, in the event of a failure to pay the service charges. However, they said that the services had been provided to such a poor standard that it in their view it would not be reasonable to require them to pay administration charges.

72. The Respondents accepted that under the terms of the leases interest charges were also payable, in the event of a failure to pay the service charges. However, they said that the services had been provided to such a poor standard that in their view it would not be reasonable for them to have pay interest charges.

73. The Respondents accepted that under the terms of the leases late/legal charges were also payable, in the event that they failed to pay the service charges. However, they said that the services had been provided to such a poor standard that in their view it would not be reasonable for them to have to pay late/legal charges .

74. The Respondents accepted that the Applicant had contacted their mortgage provider in respect of these three properties to see if the mortgage provider would pay the debt owed pursuant to the various demands for payment by the Landlord. The mortgage provider had then contacted the Respondents about this approach to them by the Landlord. The Respondents had told the mortgage provider not to pay the Landlord.

75. The Respondents said that after the purchase of the freehold by the Respondent, they did not know who the freeholder Landlord was.

76. The Respondents accepted that they had paid the service charge that had been demanded by the Landlord for 2010. They accepted that they had assumed that the new Landlord was Blue Properties Investment UK Limited. They accepted that this name appeared upon each service charge relevant to this case. The Respondents accepted that the Landlord and management company shared the same address and that the Landlord was stated to be care off the management company upon the service charge demands. They accepted that the Landlords address was on each demand for payment.

77. The Respondents stated that the weed seen by the Tribunal that morning in two locations near to the car park was Japanese Knotweed. Mr Henton indicated that he had 40 years of experience in horticulture and could identify Knotweed himself. The Respondents indicated that they took the view that the management company were not taking proper action to deal with the Knotweed.

78. The Respondents accepted that if the weed were in fact Knotweed and that if it was in fact on the Landlords land that it would take a great deal of money to take proper action towards it and the cost would have to be passed onto the long leaseholders.

79. The Respondents indicated that they took the view that the Landlords management agents had delayed far too long in dealing with the hole in the car park. However they did agree that it was proper for the Landlords agents to pursue payment for the work being provided by anyone other than themselves.

80. In relation to the electronic gate at the entrance to the site. The Respondents indicated that prior to this Landlord acquiring the site, the gate had worked properly. After purchase of the site the gate had never worked properly. They said that this was a failure to provide proper services.

81. The long list of repairs and improvements that had been carried out towards the gate by the management company was put to the Respondents. The Respondents were asked what else the management company should have done. The Respondents indicated that the

management company should have kept them better informed as to what the management company was doing.

82. The Respondents raised the issue that usually the site had rubbish and litter upon it. They accepted the fact that the site had been free of rubbish and litter today. They then sought to produce photographs to the Tribunal that would assist the case for the Respondents in this regard. The representative of the Applicant objected to the Tribunal seeing those photographs on the basis that they might be prejudicial.

83. The Tribunal indicated that it had seen references to photographs in the Respondents written case, but had not seen any photographs produced and served as part of the case. The Tribunal asked the Respondents why the photographs had not been produced and served at an earlier time than in the middle of the hearing. The Respondents indicated that they were not very good photographs and that therefore they had not served them as part of their case.

84. The Tribunal members adjourned for a short period of time to consider this issue in private and decided not to permit the photographs to be adduced. The Tribunal took the view that although these photographs had been referred to in the written case on behalf of the Respondents that the failure to serve them as part of their case was a breach of direction 2 that had been given on 12/4/2012. It would be a breach of natural justice to admit those photographs at this late stage.

85. In relation to the issues of dirty, slippery internal floors and litter. The Respondents accepted that the maintenance man was sent by the management company on a regular basis and that the area manager also visited to check the site. The Respondents did not think that proper supervision was given of the maintenance man and his work.

86. Mr Henton gave evidence that the service charge for 2009 had been paid after the court case between these Respondents and the prior Landlord.

87. Mrs Henton also gave evidence that the service charge for 2009 had been paid after that court case and that it had been paid out of her current account. She accepted that no bank statement had been produced to support this evidence.

88. The Respondents closed their case by indicating that they were not refusing to pay the service charges, they just want services to be provided to a proper standard. They chose not to call any witnesses.

THE DELIBERATIONS

89. These took place in the absence of the parties after the parties had left the court room.

90. The Tribunal agreed with the evidence that had been presented to the effect that all three leases were in the same terms.

91. The Tribunal considered the terms of these leases and concluded that the service charges demanded in this case were potentially payable under the terms of schedule six, part 1 and part 2. Further, they were to be paid in advance under the terms contained in schedule 7.

92. The Tribunal noted that clause 3.2 (page 6) stated that "rents" were to include maintenance expenses referred to in schedule 7. The Tribunal also noted that in schedule 8, clause 1, the Respondents entered into a covenant to pay the "rents" within 14 days of their being demanded. Failure to do so resulting in the Respondents being liable to interest as calculated in that clause. Interest was also chargeable for late payment under schedule 8, clause 7. The Tribunal decided that interest charges were therefore potentially payable and had been correctly calculated in accordance with each lease.

93. The Tribunal decided that in the event of late payment or non-payment, as had taken place in this case, then administration charges were payable under schedule 8, clause 4. Also, that costs and expenses were also payable under the same clause. The Tribunal concluded that this clause did include the costs described by the Applicant as late/legal fees in page 61 of the written evidence.

94. The Tribunal decided that the Landlord had complied with section 47 of the Landlord and Tenant Act 1987 in that the Landlord had provided his name and address on each service charge demand.

95. As such all of the various charges demanded by the Applicant were potentially payable under the terms of the lease.

96. The Tribunal considered the evidence given regarding the 2009 service charge. The Applicants case was based on one document that had been provided to the Applicant by the prior Landlord. The representatives of the Applicant had no personal knowledge of whether the service charge had been paid or not.

97. The Respondents had always contended in their written evidence that this charge had been paid and they had been consistent in their case up to and including their separate oral evidence on this point.

98. The Tribunal was troubled by the fact that the Respondents had chosen not to serve any written evidence on the point, but the Tribunal did note that the Applicants response to the written evidence on this point was to suggest that it was not relevant to the case.

99. On balance the Tribunal decided that it would accept the evidence of the Respondents. The service charge for that year had been paid.

100. As such, although the interest as demanded by the Landlord was potentially payable the interest charged upon late payment of the 2009 service charge was not payable. A deduction of £96.91 in respect of each flat would be made in relation to this.

101. The Tribunal considered the evidence given by both parties as to the standard of the services that were being provided and decided that the Landlord, through its management agents

was providing all the services and insurance cover that it was required to provide. That these services were being provided to an adequate standard and the charges are reasonable.

102. The Tribunal noted that the entrance gate to the site had caused problems but took the view that the management agents had taken proper steps to repair and improve this gate, whilst doing everything they could to minimise the cost to the Respondents.

103. The Tribunal thought that it was regrettable that the hole in the car park had taken so long to repair and was still not repaired. However, it was evident that this repair was a huge task that would be very expensive. The Tribunal took the view that the management agents had acted responsibly in pursuing every possible alternative before deciding that there was no other recourse but to pass on the cost of this repair to the long leaseholders. In deed had the management agents rushed into repairs at the expense of the long leaseholders the Respondents might well have criticised the management agents for not acting in the way that they have now acted.

104. The Tribunal was unable to conclude whether or not the weed seen in two places near to the car park on the site was Japanese Knotweed. The Tribunal could not decide whether the land at the rear of the car park was the Landlords land. However, the Tribunal did conclude that there can be no realistic criticism of the way that the management agents have dealt with this issue.

105. The excess service charges for 2009 and 2010 are both due and payable.

106. The service charges for years 2011 and 2012 are both due and payable.

107. Subject to paragraph 100 of this decision, interest charges as demanded are both due and payable.

108. Administration charges as demanded are both due and payable.

109. Late/legal fees as demanded are both due and payable. In the view of the Tribunal these expenses were reasonably incurred in circumstances where the Respondents were refusing to pay service charges that were payable. The Applicant was left with no other choice but to attempt to obtain payment from the mortgage company that held the charges on each property and failing that by bringing the case before this Tribunal.

THE TRIBUNALS DECISION

110.	Service charges for 2009 have already been paid.	
111.	The excess service charges for each flat are payable for 2009	£69.33
112.	The excess service charges for each flat are payable for 2010	£64
113.	The service charges for each flat are payable for 2011	£715
114.	The service charges for each flat are payable for 2012	£715
115.	Administration charges are payable for each flat	£150
116.	Interest is payable in respect of each flat	£71.98
117.	Late/legal charges are payable in respect of each flat	£198
118.	Total for each flat owed and payable immediately	£1983.31

Mr C. P. Tonge. LLB. BA.

Chairperson.