LONDON RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL

Case Reference: LON/OOAH/LSC/2010/0328

THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A of the Landlord and Tenant Act 1985 AND UNDER SECTION 168 (4) of the Commonhold and Leasehold Reform Act 2002

Applicant: M.I.C. Developments Ltd

Respondent: Mr O.B. Bamisaiye

Premises: 49 Gillett Road, Thornton Heath, Surrey CR7 8RL

Date of Applications:	13 May 2010
Date of Oral Pre-Trial Review:	8 June 2010
Date of Hearing	9 September 2010
Appearances for Applicant:	Mr M. Carpenter - Director Mrs C. Muller Carpenter - Director Mr D. Williams – Property Maintenance
Appearances for Respondent	None
Leasehold Valuation Tribunal:	Mrs B. M. Hindley LL.B Mr M. Matthews FRICS Mr O. Miller
Date of Tribunal's Determination	17 September 2010

1. This is an application under Section 27 A of the Landlord and Tenant Act 1985 and Section 168(4) of the Commonhold and Leasehold Reform Act 2002, to determine the reasonableness of service charges for the years 2003 – 2010 and for a determination that breaches of covenant have occurred.
2. The applicant is the freeholder of the property which is managed by Blue Properties Ltd, a company wholly owned by the directors of the freehold company and which trades from the same address. The applicants purchased the property in February 2002.
3. The respondent is the current lessee of the ground floor flat which, according to information obtained from the Land Registry, he purchased in July 2008. He holds under the terms of a lease dated 28 March 1978 for a term of 99 years from 1 January 1972 between (1) LC and M Properties Limited, (2) Progressive Homes Limited and (3) Dudley Peter Bristow.
4. A Pre Trial Review took place on 8 June 2010 but neither party attended or were represented.
5. The respondent subsequently has not complied with the Directions nor contacted the Tribunal.
6. After the hearing on 9 September 2010 the Tribunal inspected the subject property, accompanied by Mr Carpenter and Mrs Muller Carpenter, directors of the applicant company. They found it to comprise two purpose built flats in a terrace of similar properties built, circa 1890, so that adjacent front doors from the street led to the ground floor and the first floor flats.
7. The upper flat was vacant and was being redecorated. The Tribunal was unable to gain access to the ground floor flat. From the steps of the first floor flat leading down to the very overgrown rear garden, the Tribunal was able to see that there was little remaining of a dividing fence which had once existed between the gardens of the two flats and that there was no dividing fence between the gardens of the subject property and its neighbour.
8. At the hearing the Tribunal considered the issues raised under both applications which arose because a leaseholder of the ground floor flat, Dr Heather David, had sold her interest to the respondent and neither had responded to letters from the applicants..

Service Charge Costs

9. At the commencement of the hearing Mrs Muller Carpenter said that they were no longer pursuing costs for the years 2003 and 2004.

Insurance

10. The Tribunal noted that the insurance costs sought for the years remaining in question were, respectively, £288.80, £312.11, £321.11, £331.47, £433.48, £468.22 and that under the terms of the lease the respondent was liable for 50% of those costs.
11. The Tribunal had sight of the insurance documents for each of the years in question which showed that the property was insured by Norwich Union. They were satisfied that the sum insured was appropriate and that the premiums were reasonable, reasonably incurred and, therefore, payable.

Management Charges

12. The applicants sought an annual management charge of £125 for each of the years but were unable to point to any provision in the lease permitting a management charge to be made.
13. In the absence of an appropriate clause in the lease, and having inspected the property and found no common parts, the Tribunal is not persuaded that this charge is reasonable, reasonably incurred and, therefore, payable.

Ground Rent

14. The Tribunal explained to the applicants that this charge is not within their jurisdiction under Section 27A

Other Costs

15. The applicants claimed, in the year ending 2006, a court fee of £80 in respect of a judgement which they had obtained against the former lessee, Dr Heather David. The Tribunal was not persuaded that this was a service charge cost within Section 27A of the Act.
16. The applicants also claimed £1950 in respect of remedial building works and £160. 62 in respect of an associated building control notice.
17. Mrs Muller Carpenter informed the Tribunal that these works had come about because the former lessee had removed two walls in the ground floor flat without providing appropriate support and, as a consequence, the floor of part of the first floor flat had become dangerously unstable. The then tenant of the first floor flat had informed the applicants in February 2008 that the floor adjacent to her WC was 'sinking'. Building Control had inspected the property as an emergency on Sunday, 3 February 2008 and, had the works not been carried out, would have issued a dangerous structure notice. The works had subsequently been inspected and signed off by Croydon Council Building Control on 5 August 2010. The applicants produced photographs showing the extent of the works required.
18. Because it was an emergency situation no competing estimates had been obtained and the works had been carried out by Mr David Williams, a builder known to the applicants. As a consequence of the necessary works the applicants first learnt of the demolition work in the ground floor flat and, from a Land Registry search, of the assignment of the lease of the ground floor flat to the respondent.
19. The Tribunal is of the opinion that this is not a cost recoverable under Section 27A of the Act.

Breaches of Lease Terms

20. The applicants claimed various breaches of the terms of the lease by the former and the present lessee:
    (A) Under Clause 2 (8) 'Not to make or permit to be made any alterations or additions to the demised premises................except with the consent in writing of the lessor and in accordance with the plans and specification which shall have been first submitted to and approved by its surveyor........'

(B) Under Clause 2 (8) ' obtain all licenses approvals, permissions and other things necessary under any Statute Statutory Instrument Regulation or Byelaw in connection with any such alteration.......'

(C) Under Clause 2 (20) 'Within one month of every assignment assent mortgage charge transfer or underlease to produce the same to the lessor's solicitors for registration...........'

(D) Under Clause 2 (5) '...........effectually and substantially to repair uphold support maintain drain fence and cleanse the demised premises and keep it in good and substantial repair and condition...........'

(E) Under Clause 2 (1) 'To pay the rents reserved at the time and in the manner aforesaid'

(F) Under Clause 2(5) if 'it shall become necessary ....to rebuild the demised premises or any part thereof then the lessee shall at his own cost....................carry out such rebuilding and in particular but without prejudice to the generality of the of the foregoing to keep the demised premises in the state of repair necessary to afford such support and protection to the other parts of the said building as they now enjoy.........'

21. On the basis of the unchallenged evidence of Mrs Muller Carpenter, Mr Carpenter and Mr David Williams, the Tribunal is persuaded that, with the exception of (D) above, all of the breaches are made out. They are not satisfied that the absence of a dividing fence in the rear garden or the state of the rear garden is attributable to the lessees of the ground floor flat since, from their own inspection, the poor state of the whole garden was apparent as was the absence of a fence dividing the garden of the property from its neighbour.

Chairman B. M. Hindley Date 16/9/10