9634

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AF/LSC/2013/0742**
Property	:	**1 MOORLANDS, WILDERNESS ROAD, CHISLEHURST, KENT BR7 5HB**
Applicant	:	**MOORLAND (CHISLEHURST FLATS) LTD**
Representative	:	**ACORN ESTATE MANAGEMENT LTD**
Respondent	:	**ANNE SORAGHAN**
Representative	:	**N/A**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**MS L SMITH (LEGAL CHAIR)** **MR K CARTWRIGHT, FRICS** **MRS R TURNER JP**
Date and venue of Hearing	:	**20 February 2014** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**24 March 2014**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the sum of £2686.08 is payable by the Respondent in respect of the service charges for the year September 2012- September 2013

(2) The tribunal determines that the sum of £227.51 is payable by the Respondent in respect of her share of the roof repairs of £1180.

(3) The tribunal determines that the charges and penalty fee of £210 are not recoverable as administration charges under the Lease (although £60 may be recoverable if claimed as service charge). They are not therefore payable in relation to the sums claimed in the County Court proceedings.

(4) The tribunal makes the determinations as set out under the various headings in this Decision

(5) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so that the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge (if recoverable under the Lease)

(6) The tribunal determines that the Respondent shall pay the Applicant £190 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant

(7) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Bromley County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges [and (where applicable) administration charges] payable by the Applicant in respect of the service charge year September 2012-September 2013.

2. Proceedings were originally issued in the Northampton County Court under claim no. 3YM58278. The claim was transferred to the Bromley County Court and then in turn transferred to this tribunal, by order of District Judge Brett on 22 October 2013 .]

3. The relevant legal provisions are set out in Appendix 1 to this decision.

The hearing

4. The Applicant was represented at the hearing by Mr Moores who is the Chairman of the Applicant company and by Ms Castellani from the managing agent, Acorn Estate Management Ltd. The Respondent appeared in person assisted by Mr Warren and Mr Chappalte of the University of Law Legal Advice Centre who spoke on her behalf.

5. Immediately prior to the hearing, the Respondent's advisers handed in a skeleton argument. The start of the hearing was delayed while the tribunal considered the arguments raised and since the skeleton argument raised a few legal issues which had not been included in the Respondent's statement and the Applicant was not legally represented, the Tribunal reversed the order of submissions to ensure that the Applicant was able to deal with those issues.

The background

6. The property which is the subject of this application ("the Property") is a ground floor flat within an Edwardian house which was converted to 5 flats in the mid-1960s ("the old building"). The old building forms part of a larger development ("the estate") with a townhouse and 2 further flats ("the new building") making up the remainder. The lessees of the individual properties are responsible for sharing the costs of their own building and jointly contributing to the costs of the estate. The lessor is the company which is the Applicant in this case. Each of the properties on the estate has one share in the company and is entitled to one director.

7. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

8. The Respondent holds a long lease of the Property ("the Lease") which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease are set out in Appendix 2 and referred to below, where appropriate.

The issues

9. At the start of the hearing the parties identified the relevant issues for determination as follows:

   (i) The payability and/or reasonableness of service charges for the year 2012-13 relating to lighting, window cleaning, cleaning of the common parts, management fees and inadequate waste disposal based on a forecast for the period 30 September 2012 –

29 September 2013 on the basis that the services were not provided or were not properly managed and that there was a general failure to properly manage the estate.

(ii) The payability and/or reasonableness of service charges for roof repairs carried out in the service charge year 2011-12 in the amount of £1180 (for which the Respondent's share is £227.51).

(iii) The payability and/or reasonableness of the administration charges of £150 and penalty fee of £60.

10. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Service Charges for the year 2012-13

11. The Respondent challenged the charges on the basis of lighting, window cleaning, cleaning of the common parts, waste disposal and management charges for the year September 2012-September 2013. The Respondent's share of the service charge budgeted for that service charge year is £2686.08 (charged as 4 amounts of £671.52 between October 2012 and June 2013).

The tribunal's decision

12. The tribunal determines that the amount payable by the Respondent in respect of the service charge for the year September 2012-September 2013 is £2686.08.

Reasons for the tribunal's decision

13. The Respondent's challenge in relation to lighting was not in relation to what was provided and charged to her but rather to an inadequacy of lighting in the ground floor of the old building which she said made access to the Property unsafe. She said she had suffered a fall as a result and that the failure to provide proper lighting and to respond to her complaints in that regard was illustrative of the Applicant's and agent's failure to properly manage the estate. Mr Moores said that there was outside lighting which the Respondent insisted did not work. Ms Castellani explained that were lights on 2 circuits – one on a timer and one on a switch so that if the timer was not on, the light could be switched on. She did accept that there was no light inside the front main entrance and said that it was on the agenda of the Applicant's Board for their meeting in March to consider installing a sensor light outside.

14. In relation to window cleaning, the Respondent again challenged on the basis of a failure to provide the service rather than the charge for what was provided. Mr Moores' statement in this regard referred to the history of the matter and that the Respondent had caused offence to the previous window cleaner who therefore refused to attend. Some properties on the estate did still share a window cleaner but the Respondent was not one of them and was not charged for window cleaning. The Tribunal pointed out that there was no requirement in the Lease for the Applicant to provide window cleaning and indeed the windows including the glass were part of the Respondent's demise under the Lease. It was also clear that the Respondent was not charged for window cleaning for the year in question.

15. In relation to cleaning of the common parts, the Respondent claimed that the cleaning was inadequate. She also asserted that the Applicant failed to clean the external parts of the estate so that rubbish piled up. She provided several photographs which she said showed that the old building including the refuse area were not adequately cleaned. In response, Ms Castellani explained that there had been some problems with cleaning in the past since the Applicant had engaged the services of a charitable organisation to provide those services. That organisation had failed to properly manage the service and accordingly their services had been dispensed with and no invoices had been paid except for when they had attended (and those problems had arisen in the previous service charge year). The Applicant was now using the company which had been used previously (and which was coincidentally a company which the managing agent used frequently). Mr Moores explained that no charge was made for waste disposal and this was not something which the Applicant was responsible for. Each individual was responsible for their own waste disposal. Problems had arisen where individuals were depositing food waste in the general wastebins which were only emptied by the local authority every other week. However, this was not the responsibility of the Applicant to sort out. He indicated that the only thing which the Applicant paid for in terms of refuse disposal was to the local authority to pick up garden waste (in the sum of £40 per month). In relation to cleaning, this was carried out fortnightly by 2 persons doing 1 hour each. They hoovered, dusted, polished woodwork and cleaned the communal door. The cost of this service for the old building was £25 or £12.50 per person per hour which the Tribunal did not consider unreasonable. The Respondent accepted that the cleaning had been a bit better recently (she thought the last few weeks) but was a bit vague about when the change had occurred and whether the problems could have been linked to the problems identified above. The Tribunal considered there was insufficient evidence to show that the cleaning was not properly payable. The Tribunal therefore considers that the amount claimed in the service charge forecast of £600 for the old building is payable and reasonable.

16. Management fees are £2160 for the estate (ie all 8 properties in the old building and new building). Ms Castellani explained that the Applicant's Board renews the contract annually. The managing agent do not carry out a full management service. For example, those with properties in the new building (which included Mr Moores) had recently commissioned a new roof for the new building and they had dealt with that themselves with no input from Acorn. She considered this was a sensible approach since Acorn would charge a 10% fee on the cost of works for such repairs. In terms of Acorn's regular service for the estate, they carry out regular inspections and deal with recovery of the service charge and assist with budgeting and financial information. They keep the books so that the service charge accounts can be drawn up. They also deal with payment of invoices but usually on instruction from the Applicant's directors confirming that the amounts were due. Acorn also deals with the cleaning contractor and deals with electricity suppliers, reviewing the cost of supply annually. Ms Castellani indicated that Acorn's usual minimum charge was £1950 + VAT. The Applicant was paying £2160 including VAT (therefore less than the minimum) for all 8 properties on the estate therefore equating to £270 per flat.

17. The Respondent's complaint was a general one. She referred to the issues of lighting, waste disposal, window cleaning and general cleaning as illustrative of the general failure to manage. However, as indicated above, the window cleaning and waste disposal are not the Applicant's responsibility and the Tribunal has accepted the evidence that the general cleaning is now of a reasonable standard. In relation to lighting, even if it is the case that the managing agents were made aware of that issue at an earlier date, it is the case that this issue is now being addressed. Mr Moores made the point that the Respondent has up to now failed to engage with the Applicant by, for example, attending meetings. The Respondent indicated that she would like to become a director but there is no evidence that she has taken any active role in the Applicant's efforts to deal with the estate to now. There was evidence in the bundle of complaints she has raised but there is also evidence that the managing agent has looked into those complaints in most cases and has responded. The Tribunal therefore considers that the charge for the management fee is payable and at £270 per flat is reasonable in amount. Accordingly, the Tribunal decides that the amount included in the service charge forecast of £2160 is payable and reasonable.

Service charge item & amount claimed

18. The Respondent challenged the claim of £227.51 in relation to roof repairs

The tribunal's decision

19. The tribunal determines that the amount of £227.51 is payable and reasonable in respect of the Respondent's share of the roof repairs of £1180.

Reasons for the tribunal's decision

20. The principal basis of the Respondent's challenge to the charge for roof repairs was that work had been carried out to the roof of the old building in 2008 and that the charge for further work was unreasonable as the Applicant/managing agent should have ensured that the work carried out in 2008 was to a reasonable standard or reverted to the contractor from 2008 to remedy the problem or ensured that there was a guarantee in place in relation to the 2008 works which the Applicant could have called on.

21. It was accepted by Mr Moores that the work carried out in 2008 and 2012 was to the same area namely to the flat roof over the second floor of the old building (above flat 5) and that the work had been to replace the roof. He explained that in 2008, the work was mainly because when the roof was lifted, it was found that there had been such serious water ingress that the joists above flat 5 were suffering from wet rot which had required complete roof replacement. Flat 3, though, had been suffering leaks into that flat for a number of years and those problems had not been alleviated by the roof replacement. The lessee of flat 3 had therefore taken steps to commission a survey (paid for by that lessee) which had shown that the leaks were emanating from the flat roof (from beneath the flashings) which required to be dealt with urgently. The other 4 lessees in the old building had paid their contribution to that work but the Respondent had refused (and her share had been paid by the lessee in flat 3 until it could be recovered). Mr Moores submitted that it was unrealistic for the Respondent to suggest that a roof contractor would ever guarantee that a roof would never leak. He indicated that the work carried out in 2012 had stopped the leaks into flat 3.

22. The Respondent's advisers submitted that the need to charge her for the 2012 works was due to the Applicant's failure to secure a guarantee for the 2008 works. They referred to the case of Continental Property Ventures Inc v White [2006] 16 EG 148 to the effect that the cost of such works might be unreasonable if it could be shown that the works should have been the subject of a guarantee at no cost to the Respondent. The Respondent's advisers also relied on an extract from a report carried out in 2012 which had pointed to the poor quality of repairs. It was pointed out to them, though, that this related to the pitched roof and not the flat roof and there was no evidence that the repairs to the flat roof were substandard – it being the case that the need for the 2012 repairs was due to works being required to the flashings and not to the roof itself.

23. The Tribunal agrees with Mr Moores that it is unrealistic to expect a roof contractor to provide a guarantee that a roof once replaced will not leak particularly where, as here, the further leak appears to arise not from the roof itself but from the flashings around the roof. There was no evidence that the 2008 works had not been properly carried out and as a matter of fact it was the case that there was no guarantee nor any evidence that, even if one had been obtained, it would cover any more than the flat roof surface. The amount claimed of £1180 (of which the Respondent's share is £227.51) is not unreasonable. Accordingly, the Tribunal considers that the charge for the 2012 works to the roof of £1180 and the Respondent's share of £227.51 is payable and reasonable.

Whether the administration charges and penalty fee totalling £210 are payable and reasonable

24. The Respondent challenged these on the basis that there was no provision in the Lease permitting the Applicant to recover them and in any event that they were unreasonable as they amounted to a penalty.

The tribunal's decision

25. The tribunal determines that the sum of £210 is not recoverable as an administration charge under the Lease. If the administration charge had been determined to be payable, the Tribunal would have found the sum of £60 reasonable but would have found the sum of £150 to be unreasonable. The issue of whether the £60 is recoverable as part of the service charge will only arise if claimed as such.

Reasons for the tribunal's decision

26. The Respondent's advisers pointed out that the Applicant relied on a resolution of the Applicant's Board as the basis for recovery of these charges. That was not a provision of the Lease. The Respondent's advisers also elicited during cross-examination of Mr Moores that the sum of £150 levied by the Applicant company was a penalty for failure to pay and were not linked in any way to the cost to the Applicants of recovering the service charge. Ms Castellini explained that the administration charge of £60 was for the issue of 3 demands for payment. The Tribunal considers that the amount sought in relation to the administration charges of £60 is reasonable but that the amount of £150 is not reasonable as it was accepted that this was a penalty and did not represent any actual cost to the Applicant. In relation to payability, insofar as the Applicant relied on clause 2(17) of the Lease, the Respondent's advisers submitted that this clause was not sufficiently wide to permit recovery of the administration charge as no notice under s146 had been prepared or served and the clause did not refer to any proceedings ancillary to such notice which might have permitted recovery (Freeholders of 69 Marina v Oram [2011] EWCA Civ 1258).

27. In response, Mr Moores and Ms Castellani referred to paragraph C(2) of the Schedule to the Lease which gave the Lessor the right to *"prescribe and put into force such additional regulations and provisions as the Lessor may from time to time consider necessary or desirable for the general amenity and comfort of the Lessees of the building or for ensuring the proper control and administration of Moorlands..."*. The Respondent's advisers challenged that reliance on the basis that any such general provision should be construed strictly and against the lessor.

28. The Tribunal agrees that clause 2(17) is not wide enough to permit the Applicant to recover fees via that provision (although the Applicant did not seek to rely on that provision). The Tribunal also agrees that paragraph C(2) of the Schedule is general and cannot support a claim for a charge which the Applicant openly admits is intended to be a penalty and not a reflection of the cost of any service. The Tribunal also considers that it is not directed at recovering administration charges of the type that the Applicant seeks to claim. Accordingly, the sums claimed of £210 are not payable. The Tribunal did though consider the sum of £60 to be reasonable and this might be recoverable via the service charge if claimed as such.

Application under s.20C and refund of fees

29. At the end of the hearing, the Applicant made an application for a refund of the fees that it had paid in respect of the hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision. The fee paid for the hearing is £190.

30. In the skeleton argument and at the hearing, the Respondent's advisers applied for an order under section 20C of the 1985 Act. Mr Moores objected to this. Ms Castellani explained that the Applicant had sought to keep the costs down by not instructing solicitors and by Mr Moores taking responsibility for the evidence. As Mr Moores pointed out, if there was no provision to recover costs from the Respondent via the Lease and no ability to recover via the service charge, the Applicant would be unable to recover its costs of the hearing even if entirely successful. The Respondent's advisers submitted in reply that there was no provision under the Lease to recover the costs either via the service charge. The Tribunal pointed them to clause 2(6)(b)(v) which appeared to the Tribunal to permit of a claim for legal costs via the service charge. Whether or not it is payable, in any event, taking into account the determinations above, the tribunal determines that it would not be appropriate to make an order under section 20C so that

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

the Applicant may seek to pass its costs incurred in connection with the proceedings before the tribunal through the service charge.

The next steps

31. The tribunal has no jurisdiction over county court costs. This matter should now be returned to the Bromley County Court.

Name: Ms L Smith **Date:** 24 March 2014

Appendix 1

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose –

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(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,

© the amount which is payable,
(d) the date at or by which it is payable, and
© 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,
© the amount which would be payable,
(d) the date at or by which it would be payable, and
© the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which –
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
© has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the

proceedings are concluded, to any residential property tribunal;

© in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

© in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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,
   © the amount which is payable,
   (d) the date at or by which it is payable, and
   © the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
   (a) has been agreed or admitted by the tenant,
   (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
   © has been the subject of determination by a court, or
   (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
   (a) in a particular manner, or
   (b) on particular evidence,
   of any question which may be the subject matter of an application under sub-paragraph (1).

Appendix 2
Relevant Clauses of the Lease

WHEREAS:-

(1) The Lessor is the owner in fee simple in possession of the property known as Moorlands Wilderness Road Chislehurst Kent (hereinafter referred to as "Moorlands") which is coloured blue on the plan A being part of Moorlands and adapted the same for use as five self contained flats and has erected or provided eight garages and the Lessor has erected a further building in the position coloured yellow on Plan A as one house or maisonette and two flats the buildings coloured blue, the building coloured yellow and the garages are respectively referred to as "the old building", "the new building" and "the garages".

1. The Lessor hereby demises unto the Lessee ALL THAT the flat numbered 1 situate on the Ground floor of the building .....TO HOLD the same unto the Lessee from ..... for the term of NINETY NINE YEARS PAYING THEREFOR...AND ALSO PAYING on demand as additional rent the contributions specified in Clause 2(6) hereof.

2. The Lessee HEREBY COVENANTS ....with the Lessor in manner following that is to say:-

.....

(3) From time to time and at all times during the said term well and substantially to repair cleanse maintain and keep the demised premises (except those parts mentioned in Clause 3 hereof) and all additions made to the demised premises and the fixtures therein and the internal walls sewers and drains cisterns pipes wires ducts and appurtenances thereof with all necessary reparations cleansings and amendments whatsoever and to keep the same in good and substantial repair (except as aforesaid) And it is hereby declared and agreed that there is included in this covenant as repairable by the Lessee (including replacements whenever such shall be necessary) all cables wires and pipes used for the supply of gas water or electricity solely to the demised premises There are also included in this covenant the windows of the demised premises

.....

(6) To pay to the Lessor on demand the proportion of the expenses incurred by the Lessor or estimated in respect of the items set out in paragraph (a) of this sub-clause that the rateable value of the demised flat bears to the total rateable value of all the flats in the old building and the proportion of the expenses set out in paragraph (b) of this sub-clause that the rateable value of the demised flat bears to the total of the rateable values of all the flats in the old building and the new building and the garages and the Lessor may require the Lessee to make quarterly contributions in respect of such expenses either incurred or estimated

(a) (i) repairing maintaining and decorating the exterior of the old building including the roofs walls tradesmens staircase structure drains water and gas mains electricity cables and appurtenances thereof

(ii) repairing maintaining decorating lighting and cleaning of the entrance hall staircase and passages in the old building

(b)(i) repairing maintaining and renewing the garages walls fences gates drive paths and drains of Moorlands and of stocking and maintaining the garden and replacing such shrubs trees and plants as may die or require replanting

.....

(v) all such other work carried out by the Lessor or by the Company hereinafter referred to or expenditure incurred by the Lessor or by the Company hereinafter referred to in the performance of their respective obligations under this lease

(vi) reasonable expenses for the management and secretarial work in connection with Moorlands

...

(17) To pay all expenses (including Solicitor's costs and Surveyor's fees) incurred by the Lessor incidental to the preparation and service of a Notice under section 146 of the Law of Property Act 1925 notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court.

....

3. The Lessor HEREBY COVENANTS with the Lessee...in manner following that is to say:-

....

(2) At all times during the said term as and when need or occasion shall require to repair maintain and redecorate the exterior of the old building including external walls roofs tradesmens staircase structure drains water and gas mains electricity cables and appurtenances

(3) At all times during the said term as and when need or occasion shall require to cleanse drain repair maintain and renew the garages walls fences enclosures and gates of Moorlands and the drive and footpaths and drains thereof and stock and maintain the garden and replace such shrubs trees and plants as may die or require replanting

....

(5) To keep the entrance hall staircase and passages in the old building in good repair and condition and redecorate the same from time to time as may be required and to keep the same clean and with means of lighting during the hours of darkness

...

4. IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:-

(6) It is hereby agreed and declared between the parties that the Lessor having formed a Company known as Moorlands (Chislehurst Flats) Limited with a share capital of £81 divided into one Lessors share of £1 (entitled to nine votes) and eight Lessee's shares of £10 each (entitled to one vote each):-

(a) The Lessee will take up on completion one Lessee's share and pay to the said Company the sum of £10.

(b) The said Company pursuant to its Memorandum and Articles of Association being under an obligation to perform all the covenants on the part of the Lessor contained in Clause 3 hereof and to enforce the covenants on the part of the Lessee (other than the covenant for the payment of rent) the Lessor shall be relieved of all liability in respect thereof.

(c) the Lessee shall pay to the said Company all monies due from the Lessee under the provisions of Clause 2(6).

THE SCHEDULE before referred to

...

C. GENERALLY

.....

(2) The Lessor reserves to himself the right to prescribe and put into force such additional regulations and provisions as the Lessor may from time to time consider necessary or desirable for the general amenity and comfort of the Lessees of the building or for ensuring the proper control and administration of Moorlands and to modify and vary the present and all future regulations and provisions as the Lessor may deem fit and all such regulations and provisions shall be observed by the Lessee.