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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BK/LSC/2014/0592** **LON/00BK/LLC/2014/0007** **LON/00BK/LSC/2015/0006**
Property	:	**Ground Floor Flat, 229 Sussex Gardens, London W2 2RL**
Applicant	:	**231 Sussex Gardens Right to Manage Ltd**
Respondent	:	**Shelley Rebecca Sinclair**
Type of Application	:	**Payability of service charges**
Tribunal Members	:	**Judge Nicol** **Mr M Cairns MCIEH** **Mr CS Piarroux JP CQSW**
Date and venue of Hearing	:	**6th and 7th May 2015** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**17th June 2015, amended under the slip rule 30th June 2015**

DECISION

Decisions of the Tribunal

(1) The full sum claimed of £9,767.13 is payable by the Respondent to the Applicant in relation to arrears of service charges for the years 2010-2014.

(2) The Respondent's applications are rejected in their entirety.

(3) The Respondent shall pay to the Applicant the sum of £16,800 (£14,000 plus VAT) in respect of their legal costs.

Relevant legislation is set out in the Appendix to this decision.

The parties

1. The Respondent is the lessee of the subject property. She bought the lease with her then husband, Mr Grant Westall-Reece, in about 2001. In 2005 they joined with the lessees of six other flats at Sussex Gardens to buy the freehold using their enfranchisement rights under the Leasehold Reform, Housing and Urban Development Act 2005.

2. In order to facilitate the purchase of the freehold, the lessees formed two companies. The freehold is held by 231 Sussex Gardens Freehold Ltd which is not a party to these proceedings. The Applicant company was formed to manage the property. The Respondent has at all material times been a director of both companies.

3. The lessees decided to grant themselves long leases to replace their existing leases. On 12th June 2010 the Respondent entered into her new lease. The Applicant was made a party. Therefore, until 2010 the Applicant acted as the agent for the freeholder but thereafter delivered services and recovered service charges in its own right.

The applications

4. On 12th May 2014 the Applicant issued proceedings (claim number A30LV155) in the Chancery Division of the High Court in Liverpool for a declaration under section 81 of the Housing Act 1996 that service charges of £11,908 were payable by the Applicant and for a money judgment for the same amount. On 30th May 2014 the matter was transferred to the County Court in Central London which in turn transferred it to this Tribunal on 13th November 2014.

5. On 27th November 2014 the Respondent issued an application in this Tribunal under section 20C of the Landlord and Tenant Act 1985 that the Applicant's costs of legal proceedings should not be added to the service charge.

6. On 11th December 2014 the Tribunal held a Case Management Hearing for both the transferred county court case and the Respondent's s.20C application. At the hearing, the Respondent indicated that she wanted the Tribunal to consider not only the service charges for the period from 2010 to 2014 encompassed in the Applicant's action but also those for earlier years. On a county court transfer, the Tribunal is limited to deciding the issues contained within the transferred case and so, in her directions order, Judge Bowers stated at paragraph 4,

> It was explained that if Miss Sinclair wished to widen the service charge years to beyond that being pursued by the Applicant, then she would need to make her own application. If any such application was made in time, then it could be linked to the current cases.

7. On 22nd December 2014 the Respondent duly issued her own application challenging her service charges back to 2005 under section 27A of the Landlord and Tenant Act 1985. On 8th January 2015 Judge Samupfonda consolidated the three cases.

8. A further Case Management Hearing was held before Judge Latham on 10th February 2015. The Applicant was represented by counsel, Matthew Feldman, as it was at the final hearing on 6th and 7th May 2015. The Respondent represented herself, as she has done throughout.

9. Judge Latham's order set out five issues which the Respondent identified as her primary dispute and they are considered further below.

10. Judge Latham also heard the Applicant's application to strike out all or part of the Respondent's s.27A application:-

(a) He rejected their submission that it overlapped with the Applicant's county court case for the years 2010-2012 because that was not clear.

(b) The Applicant further submitted that the Respondent's s.27A application should be struck out for the years prior to 2010 because, at that time, there was no contractual relationship between the parties but, again, Judge Latham thought this was not clear and stated, "This is a matter of law which will need to be determined at the hearing."

(c) Judge Latham further rejected the Applicant's application for costs against the Respondent under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the basis that they had fallen "far short of establishing that threshold." He did not state it expressly but, like the above two matters, he reached this decision on the basis of the material in front of him and did not intend it to be definitive or to exclude a similar application being made at the final hearing.

Strike-out application

11. At the hearing on 6th May 2015 Mr Feldman asked the Tribunal to use its powers under rules 6 or 9 of the aforementioned Tribunal Procedure Rules to limit the period of the service charges under consideration to that since April 2010. This was effectively a renewal of the strike-out application heard by Judge Latham. The Respondent asserted that the Applicant could not do so because Judge Latham had dealt with it but that is clearly wrong – on the contrary, he expressly referred it to the final hearing.

12. The Respondent also objected on the basis, she said, that the Tribunal had told her to bring her application. However, this is clearly a misunderstanding of what Judge Bowers had said. Judge Bowers was simply explaining the procedure to be used and was not expressing any

opinion on the merits of any later application, let alone whether it should include matters which would otherwise be excluded.

13. Having said that, the grounds put forward in support of the Applicant's application at the final hearing were different from those put forward earlier. Mr Feldman asserted that the period should be limited because:

(a) The sheer passage of time since the charges were incurred meant that it was unreasonable to allow the challenge to them to proceed.

(b) The Respondent and her husband had consented to the charges, not simply by paying them (which would not exclude an application as stated in section 27A(5) of the Landlord and Tenant Act 1985), but by participating in lessee meetings at which they were considered.

(c) The Respondent had delayed – she could and should have brought her challenge earlier.

14. The Tribunal heard submissions from both parties and considered the matter as a preliminary issue. The Tribunal informed the parties at the hearing that the Applicant's strike-out application had been rejected but sets out the reasons for that decision below.

15. As Mr Feldman pointed out, there is no limitation period under the Limitation Act 1980 which applies to a s.27A application but he did argue that the six-year period for simple contract claims would apply to the enforcement of any favourable decision by a restitutionary claim in the county court. However, he failed to take into account that the Respondent could recover any sums found not to be payable by withholding them from future service charges. This would be an equitable set-off which similarly has no limitation period and would not even require court proceedings.

16. Therefore, there is no applicable mandatory requirement excluding the Respondent's challenge to service charges back to 2005. Whether to strike out the claim is a matter of the Tribunal's discretion under its procedural rules.

17. Delay is a serious matter. Mr Feldman was right to point out that the longer a person waits to bring a challenge, the more likely it is that the other party will be prejudiced. It will be more difficult to locate the relevant documents and the memories of relevant witnesses will have faded, even assuming that they are available after a long period of time. In fact, in this particular case it was difficult to locate any particular prejudice to the Applicant. The documentation appeared to be more comprehensive than the Tribunal is obliged to use in many cases involving much more recent matters. The Tribunal was satisfied that the available material would allow it to reach a decision and do justice to both parties on the issues raised.

18. The Tribunal bore in mind that the Respondent has been representing herself. There is a limit to which the Tribunal can allow leeway to an unrepresented party because all parties, whether represented or not, are expected to comply with the relevant law and procedural rules. However, the Respondent was clearly not familiar with the applicable law and procedures for either the courts or this Tribunal. The Tribunal would be extremely reluctant to bring an end to her quest for justice on the sole basis of procedural irregularities which probably arose, at least in part, through her ignorance. That is not to say that the Respondent's actions are beyond criticism (see further below) – rather, the Tribunal is not satisfied that there is a sufficient basis for denying her the opportunity to put forward her substantive case.

19. Further, the Tribunal is far from satisfied that the Respondent ever expressed any consent to the service charges. The minutes to the relevant meetings are not agreed. They provide some guidance as to what transpired at each meeting but they are not so reliable as to provide sufficient evidence of what the Respondent did or did not consent to. Moreover, the Respondent asserted that she had raised her concerns consistently over a number of years and the Tribunal was not in a position to reject that assertion without full evidence.

20. Therefore, the Tribunal was not satisfied that there was a sufficient basis for excluding any part of the Respondent's case and proceeded to hear submissions from both parties on the issues set out below. The Tribunal heard from only one witness, Mr Gavin Rankin, the current chairman of the Applicant's management committee.

The issues

21. As aforementioned, Judge Latham set out the following five issues as constituting the Respondent's primary dispute:-

(a) Heating charges of £11,358. The Respondent asserted that these related to a communal boiler to which she is not connected. She sought a refund of £7,496, being 66% of the total cost.

(b) Cleaning charges of £9,960. The Respondent asserted that she should be refunded £1,092.61, being 10.97% of the total amount. That percentage is specified in her lease, both before and after 2010, as her share of the service charge expenditure.

(c) Boiler Sinking Fund of £6,309. The Respondent asserted that she should be credited with her 10.97% share, £692.

(d) External Sinking Fund of £5,272. The Respondent again asserted that she should be credited with her 10.97% share, £278.

(e) The patio. The Respondent asserted that a patio had been sold by the freehold company for £6,000 but the proceeds should have been, but were not, distributed amongst the lessees. She claimed a credit of £658, also 10.97% of the total.

22. The Applicant asserted that it was extremely difficult to identify what issues the Respondent was raising because her submissions were spread across a number of documents and were expressed in an unclear way. However, the Respondent produced her own bundle of documents which were prefaced by a further five-page statement of her case which also usefully cross-referenced those documents. She clarified that the issues which she wished to raise were in that statement. As well as the five listed above, her statement identified the following issues:-

(a) She asserted that a number of invoices, totalling £535, had been incorrectly charged.

(b) There were some roadway charges incorrectly included in the service charge. The Applicant conceded this item and intend to credit all the lessees in due course, so it is not considered further below.

(c) There were four cheques for £4,000 paid to Knight Frank and the Respondent challenged what these were for.

(d) The Respondent claimed that the Applicant had mismanaged the property, in particular in the following ways:

(i) She claimed that Mr Doug Agble, a fellow lessee and past chairman, had been bullying, not only to her but to all her fellow lessees, and that this bullying had caused another fellow lessee, Mr Stephen Gruneburg, to withdraw his candidacy for chairman.

(ii) She asserted that Mr Agble denied her access to relevant files, instructed the Applicant's accountants not to speak to her, refused to provide the details of the building insurers so that she could pursue a claim in relation to her flat and failed to reply to a detailed e-mail she sent on 18th July 2012 setting out her concerns.

(iii) She said she had a meeting with Mr Rankin in August 2011 but no action resulted.

(e) She claimed costs of £10,000 for her time and expenses on the basis that the Applicant's solicitors, JB Leitch, had acted unreasonably in bringing, defending and conducting these proceedings. The alleged unreasonable behaviour included the following:

(i) She claimed that the Applicant had misled the Liverpool County Court by failing to acknowledge that she had been making payments to her current service charges. At the same time, she complained that JB Leitch were changing the figures the Applicant alleges she owes.

(ii) She asserted that the Applicant had failed to comply with the Tribunal's directions by failing to clarify what a sum of £5,965 related to, as referred to in paragraph 2 of Judge Bowers's order of 11th December 2014. She also complained in relation to the same issue that the Applicant had sent counsel to the Case Management Hearing with insufficient instructions.

(iii) In relation to the Applicant's submission to Judge Latham that there was no contractual relationship between the parties prior to 2010, the Respondent claimed that this was obviously misleading and wrong in that she was a director of the Applicant company and thereby had such a relationship.

(iv) She alleged that JB Leitch had failed to respond to her e-mail correspondence, in particular when seeking clarification of a breakdown between the service charge and the sinking fund.

Evidence

23. These issues are considered in turn below but the Tribunal must comment first on the issue of evidence. During the hearing, the Respondent made a number of assertions, including those above, some of which involved allegations of serious misbehaviour by her fellow lessees and company directors. In an effort to ensure that, as an unrepresented litigant, the Respondent was properly able to present her case, the Tribunal asked her, when each assertion or allegation was raised, to point the Tribunal to the relevant document or documents or the passage or passages in a relevant document which would support what she said. She also said that she was supported by other lessees and the Tribunal asked her why they were not present and to point to documents in which their support was expressed.

24. On the majority of occasions when asked, the Respondent was unable to point to anything which supported her assertions. On other occasions, the evidence was thin at best. The Tribunal was concerned that her inexperience in litigation might have led her to miss opportunities to compile her evidence but she summarised her position in relation to the evidence towards the close of the hearing by stating,

> I did my homework. I went to the managing agents and went through their files three times and got all the information I needed.

25. The Respondent was extremely confident in her factual assertions. She seemed to want the Tribunal to take her word for many things, as if her integrity were obvious or even known to the Tribunal. She must realise that cases are decided on the evidence, not mere assertion, whatever the standing of the person making those assertions. The fact is that her case has failed in large part because she had little or no evidence for what she claimed.

Heating charges

26. There are 13 flats within the block at 229-233 Sussex Gardens. There is a communal hot water system served by a communal boiler. There was a move to replace it with individual systems for each flat but there was insufficient support and so it has been left to each lessee. The

Respondent's 2010 lease provides in paragraph 2 of Schedule 3 for charges to reduce to zero if she separates from the communal system. She did this in 2012 but the Applicant mistakenly continued to charge her. Eventually, they acknowledged their error and credited her in the amount of £3,795.62 which she does not challenge.

27. Under the aforementioned paragraph 2 of Schedule 3 of her 2010 lease, the Respondent covenanted to pay 10.97% of the expenses incurred in connection with the matters set out in Parts B and C of Schedule 7 and of a fair proportion of the expenses of supplying hot water. Under Part C of Schedule 7 the Applicant covenanted to maintain the communal hot water boiler (para 1), maintain any other plant (para 2) and supply hot water (para 11). The Respondent's pre-2010 lease contains provisions in similar form, even with the same numbering, save that the hot water system is not separately mentioned in paragraph 2 of Schedule 3.

28. The boiler has been managed by separate managing agents since before the lessees exercised their enfranchisement rights. Currently it is Knight Frank. The four cheques to them for £4,000 each (see paragraph 22(c) above) were for this purpose.

29. The Respondent does not challenge that there have been costs incurred in relation to the maintenance of the boiler and associated plant but claims that she should not be liable for those costs. In early 2014 she had a meeting with Mr Harvey Berg of Granvilles, the Applicant's then managing agents, and offered to pay one-third of the share of the bill apportioned to her. This appears to have been a compromise offer and there seems to be no rational basis for reducing her bill by that particular amount rather than any other amount.

30. The Respondent's complaint is that she has never received heating from the boiler, only hot water, and therefore has been paying more than she should and subsidising fellow lessees who did use the communal system for heating as well as hot water. There are two problems which are fatal to her submission:

(a) Her pre-2010 lease specified the apportionment of the relevant costs, namely 10.97%. Service charges are not apportioned according to the benefit received but in accordance with the lease. Since the lease specified the apportionment for the years prior to 2010, the Tribunal has no power to alter it, even if some of the hot water from the boiler went to heating other flats but not hers.

(b) Paragraph 2 of Schedule 3 of the 2010 lease appears to allow for a different apportionment for the expenses of the hot water system but the Applicant does not seem to have made any use of this as the Respondent has continued to pay the same apportionment for all costs within her service charges. Therefore, there might be an argument that the apportionment should have changed to reflect the possibility that the Respondent used less of the hot water, not using it for heating, until

she finally disconnected altogether from the system. However, the problem for the Respondent is that the Tribunal was presented with no evidence as to the use made by other flats of the communal heating or how that compared to the use made of hot water, for the period 2010-2012 or any other period. There is not even any evidence that it would result in any difference to the Respondent's charges.

31. In these circumstances, the Tribunal is bound to reject the Respondent's challenge to the charges for the boiler.

Cleaning charges

32. Prior to enfranchisement, the previous freeholders employed a husband and wife team as caretakers and cleaners. They used to be provided with a flat as well. The Applicant retained their services after enfranchisement, although one of them has since died.

33. The Respondent has asserted that she receives no benefit from their services. She says there are no caretakers and the only cleaning is done to communal areas to which she has no access. The Applicant disputes this and asserts that the external areas that she benefits from are cleaned.

34. There is an expenditure breakdown for 2010 in which various services are coded. These show that the Respondent was charged for caretaking or porterage services but not for the cleaning of the internal common parts. The Tribunal accepts that this was the normal breakdown of charges applied each year – there was certainly no evidence to the contrary, although it is a pity that breakdowns were not provided for every year. The Tribunal is satisfied that this establishes she has not paid for a service she did not receive.

35. However, a more fundamental problem is that the Tribunal could not identify anything in the Respondent's lease which allows the Applicant to relieve her of her share of the expenditure on the internal common parts. Under the aforementioned provisions of Schedules 3 and 7 to her lease, she is required to pay 10.97% of the Applicant's expenditure on the "Reserved Property" which includes the internal common parts. The fact is that the lease requires the Respondent to pay towards the cost of services from which she receives no benefit. She has actually been under-charged, not over-charged.

Reserve funds

36. The lease provides that a reserve fund may be compiled from any excess charges collected in each year. Under the previous freeholder, it seems that a practice grew up to separate the reserve fund into four elements: External Painting, Internal Painting, Boiler and Lift.

37. The Respondent has asserted that she should not be contributing to the Internal Painting or Lift reserve funds. She points to evidence that in one year the former was in deficit and the agent expressed an intention to cover that deficit from other parts of the reserve fund. She believes she should be credited with amounts from the External Painting and Boiler reserve funds on the basis that they have been wrongly applied.

38. There is a number of problems with the Respondent's analysis:

(a) Despite the Tribunal making efforts to explain it to her, the Respondent was unable to understand that the deficit she referred to in one part of the reserve fund was part of a dynamic picture which would change over time. The fact that it was in deficit at one point in time did not create any need to cover that deficit at that or any particular point in time if the Applicant anticipated receiving money later which would cover it. There is no evidence that money from other parts of the reserve fund were shifted to this part of the reserve fund rather than later service charge income covering the deficit.

(b) On the other hand, even if money had been shifted around in this manner, that does not mean the Respondent is entitled to any credit. It is irrelevant if the money received from her was applied to a bill which forms part of her service charges or not, so long as she is charged the correct amount for her. The Tribunal is satisfied that she was.

(c) As mentioned above, the Respondent's lease does not distinguish between the different reserve funds or the different parts of the property as she contends. On the Tribunal's reading again, her lease requires her to contribute to the costs and the reserve funds even though she does not directly benefit from the expenditure.

39. Therefore, the Respondent is not entitled to a reserve fund credit of any kind.

The patio

40. The Respondent has asserted that the freehold company sold a patio and the money received should have gone to the lessees. Again, there is a number of problems with her argument:

(a) The Applicant has no knowledge of this alleged sale. The Respondent had no evidence that it went ahead. Therefore, there is no evidence of any money received from a patio sale.

(b) The Applicant would have had no part in any patio sale. It was the freeholder's to sell and the Applicant is not the freeholder. The fact that the members of both companies were the same is irrelevant.

(c) This is not a service charge matter and so not something over which the Tribunal has any jurisdiction. Many lessees who are members of management companies fail to understand the distinction between service charge matters, which are determined under their leases, and company matters, which are separate and determined in accordance

with the company's memorandum and articles of association. Money received by a freeholder from a land sale has nothing whatsoever to do with service charges. Any entitlement a lessee has to a share of the proceeds would be through their membership of the company – their lease would be silent on the subject. It is clear that the Respondent has had the same difficulty understanding the distinction.

Assorted invoices

41. The Respondent pointed to invoices she had found on the Applicant's file which related to internal repairs. She asserted that they had been included in her service charge, although she had no evidence of that and, as before, the Tribunal had no reason to doubt the effectiveness of the Applicant's coding system for separating out costs. In any event, the same point applies here as has already been mentioned above – the Tribunal can identify nothing in the lease which relieves the Respondent of her contribution to such costs.

General mismanagement

42. The Respondent asserted that Mr Agble had been bullying but was unable to present a single shred of evidence to support her assertion. This was a serious allegation which should never have been made without clear and substantial evidence. It was clearly unreasonable for the Respondent to have done so.

43. The Respondent made allegations of a lack of communication but undermined her case by providing only one side of her communications with the Applicant in her bundle. For example, she pointed to her e-mail of 18th July 2012 setting out various concerns which she claimed were never answered. In fact, Mr Agble did reply by e-mail, setting out each concern with his response beneath.

44. One of the Respondent's concerns was that the accountants would not speak to her. Mr Agble replied, "The accountants objected to you calling them at unscheduled times. You have been offered opportunities to speak with them at scheduled times but have so far declined to take up the offer. This offer remains open." The Respondent's version of events is not reliable given her failure to provide supporting evidence and sometimes making allegations which the evidence demonstrates are not true. Therefore, the Tribunal accepts that Mr Agble's response reflects the true position.

45. The Respondent's claim that it was Mr Agble's fault that she was unable to recover the cost through the buildings insurance of a new central heating timer due to a water leak from the flat above is not supported by the evidence. An e-mail dated 20th December 2010 from Mr Pearl of Dawnchurch Properties tells a different story, suggesting the

Respondent was late reporting the problem and then failed to co-operate with the contractor sent to fix it. There is simply no evidence that any mismanagement by the Applicant was involved.

46. The Tribunal is satisfied from all the evidence made available to it that while the Respondent is at fault for deliberately and unjustifiably withholding her service charge payments over many years, there is insufficient evidence to suggest that the Applicant is guilty of mismanagement, either at all or such as to affect the amount payable by the Respondent in service charges.

Costs

47. The Respondent has applied under section 20C of the Landlord and Tenant Act 1985 for an order that the Applicant's costs of these proceedings may not be added to the service charge. There appears to be no provision in the lease for the Applicant to do so. If that is so, then the Respondent is not in any danger of such a thing happening but that is irrelevant to the Tribunal's decision on this point.

48. The principal factors which the Tribunal considers under section 20C are which party has succeeded on the issues and how each party has conducted itself. The Respondent has failed on all issues except the roadway charges which the Applicant has conceded. However, the Respondent has made a number of allegations about the way the Applicant's solicitors have conducted themselves.

49. By the time of the Tribunal hearing, the Applicant was claiming that the Respondent owed £9,767.13 rather than £11,908.13 as originally claimed. This was because they acknowledged that the Respondent had recently made some payments. The Respondent made a number of complaints about this:

(a) She claimed that the Applicant failed to acknowledge her payments before the Liverpool County Court. However, it is common that claims for money before the county court have to be adjusted due to changing circumstances. Of course a party should present their case based on current circumstances but, if the county court punished a party every time they presented out-of-date data, it would grind to a halt. So long as the correct information is made available at the final determination and no-one is prejudiced by the late provision of any information, then a court is unlikely to be bothered.

(b) The Respondent rather contradicted her above point by complaining both that the Applicant should not have applied her payments to her arrears, rather than her ongoing service charges, and that the Applicant's solicitors kept changing the amount of their claim. The Respondent did not clearly state that her payments were intended exclusively in relation to her ongoing service charges rather than her arrears so the Applicant was fully entitled to apply those payments as

they wished. Furthermore, the Applicant was right to change the amount of their claim by acknowledging her payments, as she herself asserted.

(c) Paragraph 2 of Judge Bowers's order of 11th December 2014 asked for clarification of a sum of £5,965. The Respondent's first complaint in relation to this was that the Applicant's barrister could not provide that clarification at the hearing itself before Judge Bowers. It is, of course, preferable that counsel has all the information to hand but it is not unreasonable behaviour that one party has yet to compile all the details at the early stage of a case management hearing. It is one of the purposes of such a hearing to see what steps need to be taken to ensure any gaps are filled. Again, if the courts or tribunals punished parties whenever there was a lack of detailed information at a case management hearing, the system would grind to a halt.

(d) The Respondent's second complaint in relation to this sum is that such clarification was never provided. As with many of the Respondent's complaints against the Applicant about a lack of information, her allegation has turned out to be untrue. The clarification was provided at paragraph 25 of the Applicant's Statement of Case, namely that it was made up of £2,545.43 for the year end balance for the year ending 31st March 2011 and £2,720.56 for the following year.

(e) The Respondent complained that the Applicant made a submission that was clearly wrong, namely that the parties had no contractual relationship when they did. In fact, she again failed to distinguish between two different situations. Her relationship with the Applicant is as director. The Applicant's submission related to the fact that they were not a party to the lease until 2010 so that, before then, there was no contractual relationship under the lease. That submission was clearly right, not clearly wrong.

(f) The Respondent's claim that JB Leitch had failed to respond to her e-mail correspondence when seeking clarification of a breakdown between the service charge and the sinking fund again turned out to be wrong. JB Leitch's reply of 2nd April 2015 gave a very brief response. It would have been more understandable if the Respondent had claimed that the response was in some way insufficient but instead she wrongly claimed that there had been no response at all.

50. The Tribunal is satisfied on the basis of the above matters that there are no grounds for a section 20C order. The Respondent made a further application for costs under rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 relying on the same matters. Given the high threshold which applied in establishing "unreasonable behaviour", there is even less of a basis for a rule 13 order in favour of the Respondent.

51. In relation to her rule 13 application, the Respondent had put her claim at £10,000. This was not based on any expenditure she had incurred but was rather the amount which she understood the Applicant to be

claiming. Again, the Respondent has misunderstood. Costs are not recovered on the basis that each party may claim the same amount but on what expenditure was actually involved. It is not uncommon for parties to differ significantly in the amount they spend – there is no necessary equivalence. Even if the Tribunal had been minded to make an order in principle, the order would have been for no costs because the Respondent yet again failed to provide any evidence to support her claim.

52. Instead, the Tribunal is satisfied that it is appropriate to make a rule 13 order against the Respondent. Apart from her recent payments which she intended to pay for current and ongoing service charges, the Respondent has never paid her service charges unless and until required to do so in order to participate in the enfranchisement and to obtain her new lease. She has sought to defend herself on spurious grounds unsupported by anything like sufficient evidence, as set out in detail above. Her behaviour has clearly passed the high threshold of "unreasonable".

53. The Applicant submitted a Statement of Costs providing a breakdown of their legal costs which total £19,860.40 (£16,582 plus VAT). The Schedule of work done on documents wrongly included the compilation of the statement of costs for the application which Judge Latham rejected. The Tribunal accepts that the Respondent has been difficult to deal with but the costs nevertheless appear to be on the high side proportionate to the amount in dispute. In the circumstances, the Tribunal allows costs of £16,800 (£14,000 plus VAT).

Name: NK Nicol **Date:** 17th June 2015

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 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;
(c) 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.

Section 27A

(1) An application may be made to the appropriate 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 the appropriate 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.

(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,
(c) 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.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Orders for costs, reimbursement of fees and interest on costs

13.—(1) The Tribunal may make an order in respect of costs only—

(b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
(ii) a residential property case, or
(iii) a leasehold case; ...

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—
(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and
(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—
(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or
(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the "paying person") without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—
(a) summary assessment by the Tribunal;
(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the "receiving person");
(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998, section 74 (interest on judgment debts, etc) of the County Courts Act 1984 and the County Court (Interest on Judgment Debts) Order 1991 shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.

(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.