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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT sitting at
10 Alfred Place, London WC1E 7LR

Tribunal reference	:	**LON/00AF/LSC/2016/0027**
Court claim number	:	**B2CW1Y08**
Property	:	**Flat B, 103 Southlands Road, BR2 9QT**
Applicant/Claimant	:	**Almond Land Limited**
Representative	:	**JB Leitch Ltd, solicitors**
Respondent/Defendant	:	**Ms Farzanna Khan**
Representative	:	**Carpenter & Co, solicitors**
Tribunal members	:	**Judge Timothy Powell & Mr Michael Cartwright FRICS**
In the county court	:	**Judge Timothy Powell, with Mr Michael Cartwright FRICS as assessor**
Date of decision	:	**28 June 2016**

DECISION

Summary of the decisions made

(1) The following sums are payable by Ms Khan to Almond Land Limited, within 14 days of the date of this decision (i.e. by 12 July 2016):

(i) Service charges payable in advance: £3,420.16;

(ii) Ground rent: £125;

(iii) Legal costs under clause 4.5 of the lease: £4,882.38;

(iv) Interest at 8% calculated in the case of service charge demands from 24 December 2015 and in the case of ground rent demand from 5 July 2015, both to the date of judgment: £150.77.

The application

1. The applicant freeholder seeks a determination pursuant to section 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, an administration charge and ground rent payable by the respondent leaseholder, all in respect of the first floor flat, 103B Southlands Road, Bromley, Kent BR2 9QT ("Flat B").

2. Proceedings were originally issued against the respondent on 29 September 2015 in the County Court Business Centre under claim number B2CW1Y08. The respondent filed a Defence dated 23 October 2015, in response to which the applicant filed and served a Response to Defence dated 22 December 2015. The proceedings were then transferred to the County Court at Croydon and then to this tribunal by the order of District Judge Coonan dated 14 January 2016.

3. The tribunal issued directions and the matter eventually came to hearing on 9 May 2016.

The hearing

4. The applicant freeholder, Almond Land Ltd, was represented by Ms Caoimhe McKearney of counsel, instructed by J B Leitch Ltd solicitors, who was accompanied by Mr Kevin Rainer, the applicant's managing agent, working for Houston Lawrence Estate Management ("Houston Lawrence"). The respondent leaseholder, Ms Farzanna Khan, who had been represented in the court proceedings by Carpenter & Co solicitors, appeared in person, together with Mr Navid Mustaghfar, the managing agent for Flat B, which is sub-let to tenants.

The background

5. The subject property, Flat B, is one of two flats in a converted house, the other flat being on the ground floor. Ms Khan has owned Flat B since April 2008, though she receives all notices and correspondence relating to the property at her home address in South Croydon.

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

7. Ms Khan holds a long lease of Flat B, which requires the landlord to provide services and for the lessee to contribute towards their costs by way a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

The issues

8. The claim against Ms Khan comprised of the following:

   (i) A service charge due in advance for the period of 25 March 2015 to 28 September 2015 in the sum of £3,420.16. This was broken down as to some £670.16 for the cost of administration, general repairs and maintenance, and insurance, and some £2,750 being a reserve fund contribution in anticipation of major works later in the year;

   (ii) A late payment administration fee incurred on 21 May 2015 in the sum of £72;

   (iii) A demand for half of the annual ground rent, in the sum of £125; and

   (iv) Interest of £149.26 and legal costs of £1,023.00 to the date of issue.

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

   (i) Were the service charges, administration charges and ground rent properly demanded? This was directed to the content of the demands and whether they complied with the statutory requirements;

   (ii) Was it necessary for the applicant to have complied with the statutory consultation requirements in respect of the demands and, if so, had the applicant complied with those requirements? This was directed at the demand for a reserve fund contribution that reflected estimated costs for the proposed major works; and

   (iii) Were the charges raised reasonable?

County court issues

10. The order transferring issues to the tribunal was in very wide terms: "The matter to be remitted to the First Tier Tribunal (Property Chamber) London region for determination."

11. The tribunal now has jurisdiction to determine issues relating to ground rent or to costs, following amendments to the County Courts Act 1984, made by schedule 9 of the Crime and Courts Act 2013; and all First-tier Tribunal judges are now judges of the county court.

12. Accordingly, the Tribunal wrote to the parties on 8 February 2016, stating that it intended to deal with all issues raised by the county court proceedings at the forthcoming tribunal hearing, that is to say, where appropriate, the tribunal judge appointed to hear the case would exercise the power to sit as a county court judge at the same time and to appoint his tribunal wing member as a county court assessor. In the view of the tribunal, the interests of justice were best served by one body hearing all the evidence and making all the relevant decisions in the case; and there would be an advantage to the parties as well, by saving both time and expense.

13. Both parties welcomed the tribunal's proposal to sit as a county court in order to deal with any issues not normally dealt with by the Tribunal. Accordingly, Judge Powell presided over both parts of the hearing, which has resolved all matters before both the tribunal and the court. His tribunal wing member, Mr Cartwright, was appointed as assessor for the county court trial. These reasons will act as both the reasons for the tribunal decision and the reasoned judgment of the county court, where a separate order has been made.

Determinations and reasons

14. Documents in the hearing bundle are referred to by their tab number and page number, so that [5/1] refers to tab 5, page 1.

(i) Validity of the demands

(a) The demands for service charges and the administration charge

15. The service charge request [2/54] was sent by Houston Lawrence to Ms Khan at her South Croydon address on 25 March 2015.

16. In her county court Defence dated 23 October 2015, Ms Khan put her landlord to proof that any valid demand had been served on her and that it complied with the requirements of section 48(1) of the Landlord and Tenant Act 1987. In her Statement of Case for the tribunal dated 10 February 2016, Ms Khan's position was that the demands failed to comply with both section 47 and section 48 of the 1987 Act; and she relied upon the Upper Tribunal decision in *Beitov Properties Ltd v Elliston Martin* [2012] UKUT 133 (LC).

17. Section 47 requires any written demand for rent or other sums payable to the landlord under the terms of the tenancy to contain the name and address of the landlord, and, 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. Where the demand does not contain such information, the amount of any service charge or administration charge demanded "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."

18. With regard to section 48, a landlord is required to furnish the tenant with an address in England and Wales at which notices maybe served on him by the tenant. Where a landlord fails to comply, any rent, service charge or administration charge, once again, is to be treated "for all purposes as not being due" until a landlord does comply.

19. We determine that the original demands for service charge and administration charge [at 2/54 and 2/56] did not comply with sections 47 and 48 of the Landlord and Tenant Act 1987. This is because neither of them states the landlord's address, namely Third Floor, La Plaiderie Chambers, La Plaiderie, St Peter Port, Guernsey GY1 1WG ("the landlord's current address"), and neither provides a specific address in England and Wales at which notices maybe served on the landlord. Indeed, both demands are obviously non-compliant with sections 47 and 48, even to an untrained eye, as the dedicated space on each notice for the insertion of the section 47 and 48 address has been left entirely blank.

20. Despite being defective at the time of their issue, the applicant is however correct to say that sections 47 and 48 of the 1987 Act are merely suspensory provisions, so that, once compliance has been effected, those provisions can no longer be used to withhold or refuse payment of service charges, administration charges, or rent due under the lease. All that has to be provided is the landlord's current address and an address in England and Wales for the service of notices, without any need for a fresh demand to be issued: see paragraph 13 of *Beitov v Martin* [5/37]; and the oversight can be cured even after proceedings have been issued: see paragraph 23 of *Michael Stanley Staunton v Norma Kaye and Alfred Taylor* [2010] UKUT 270 (LC) [5/46].

21. In the present case, the landlord's reply to defence dated 22 December 2015 cured the defects under sections 47 and 48, where at paragraph 22 [2/4] the claimant's solicitors provided the landlord's current address at La Plaiderie, Guernsey, and an address in England and Wales at which notices may be served by the tenant, namely Pollen House, 10 Cork Street, London W1S 3NP.

22. From the service of that document upon Ms Khan's solicitors, any argument about the invalidity of the demands fell away and so Ms Khan was simply wrong to have relied upon those grounds in her Tribunal statement of case dated 10 February 2016 [4/3 and 4/4].

(b) Demand for rent

23. The demand for ground rent is in a slightly different position. The rent demand [2/58] was sent by Homeground Management Ltd on 22 May 2015, once again to Ms Khan at her South Croydon address. The demand was for £125, being half of the annual ground rent in respect of Flat B for period 25 March 2015 to 28 September 2015. Although, in accordance with the terms of the lease, it was said that the amount was due on 25 March 2015, the requirement on the face of the demand was for Ms Khan to pay that sum on 5 July 2015.

24. Once again in her defence dated 23 October 2015, Ms Khan had put the claim to proof that any valid rent demand had been served on her and that an address in England and Wales at which notices could be served had been provided, as required by section 48 of the 1987 Act. In her tribunal statement of case on the 10 February 2016, Ms Khan relied upon the fact that the ground rent demand "annexed to the Reply to the Defence" did not contain the prescribed notes for leaseholders and the landlord "cannot begin any legal steps for recovery of the rent until it has previously served the demand in the correct format." [4/4]

25. We determine that the ground rent demand is and was valid at the date of issue of proceedings. First, an address is given for the landlord at Mont Crevelt House, Bulwer Avenue, St Sampson, GY2 4LH. Although this is not the landlord's current address, it is the address given on the official copy of the register of the freehold title [2/8] and, as such, we are satisfied that it is a place where the landlord is to be found, i.e. from which it carries on business and/or through which the lessee can communicate with the landlord: see paragraph 11 of *Beitov v Martin*. Even if that were not so, the restriction on payability in section 47 is limited to that part of the demand which consists of a service charge or administration charge, and it does extend to demands for ground rent.

26. With regard to the requirement under section 48, the ground rent demand does include an address in England and Wales at which notices may be served on the landlord, namely the Pollen House address.

27. While it is clear that the copy of the ground rent demand annexed to the Reply to the Defence [2/58] does not contain the prescribed notes for leaseholders, on the face of the demand there are explicit words that make reference to those notes, namely: "(note 2 – see overleaf)". The copy of the ground rent demand annexed to the applicant's Reply dated 18 March 2016 [5/49 & 50] does include the relevant notes for leaseholders that accompanied the original demand for rent which, it is said at paragraph 22 of that Reply, "have been accidentally omitted from the Reply [to the Defence]" [5/5].

28. While Ms Khan was vague as to whether she had received the original ground rent demand at her South Croydon home address, or whether she had received it and passed it on to the managing agent of Flat B, Mr

Mustaghfar, she did confirm that she had received previous rent demands that she had paid without question.

29. Given this, and the fact that the ground rent demand came from the specialist ground rent company in what was undoubtedly a fully automated process, there is no reason at all to doubt that the original ground rent demand was properly served on Ms Khan in May 2015, accompanied by the notes to leaseholders, which were almost certainly printed on the reverse of the demand itself. When asked why she had not simply paid her ground rent as she had done many times before, Ms Khan said that it was not a question of not paying this demand, but it was simply part and parcel of not paying the whole of the amount in the county court claim. She had relied on her solicitor, who she said had not advised her to pay the ground rent.

30. Having established that the various demands were either valid from the start, or any defects had been cured by 22 December 2015, we then went on to consider the second issue, that relating to consultation on major works.

(ii) Statutory consultation requirements

31. In paragraph 3 of her county court Defence [1/3], Ms Khan complained that "the Particulars of Claim fail to state the extent to which [the service charges claimed] are said to comprise qualifying works of a value above £250 as defined by section 20ZA of the Landlord and Tenant Act 1985. To the extent however which they do comprise such works, the claimant is put to proof that the relevant consultation requirements have been met".

32. This issue is dealt with comprehensively in paragraph 18 of the landlord's Reply to Defence dated 22 December 2015 [2/3], in which it was pointed out that the service charges claimed had been demanded in advance in respect of a half year. The service charges were to enable the claimant to carry out proposed extensive external repair and decoration works, an outline of which was annexed, together with a service charge budget. As the works had yet to be carried out and no expenditure had been incurred, it was averred that section 20ZA of the 1985 Act "is irrelevant to this claim".

33. Despite this, in her tribunal Statement of Case [4/1], Ms Khan pressed the consultation point for any works which will cost any leaseholder more than £250. Despite having been given a bullet-point outline scope of works, with some 14 items of proposed external works [2/60] and a budget statement relating to the proposed cost [2/62], Ms Khan complained that she had insufficient information to determine whether the advance charges were reasonable. She also raised an issue relating to the construction of a bin store, which she said would be an improvement rather than a repair.

34. With regard to consultation, we were satisfied that the £250 limit was not relevant in a situation where a demand was made merely for an advance charge for proposed works, which had not yet been incurred. However, the service of a notice of intention to carry out works might be relevant to an issue as to whether an advance demand was reasonable, or not.

35. In the present case, the papers contained a copy of such a notice [at 5/30 & 31] annexed to the landlord's Reply dated 18 March 2016. This had been issued on the 17 November 2014 by Houston Lawrence (though the date on the top of the notice is 14 November). The notice is addressed generically "To all leaseholders of: 103 Southlands Road, Bromley, Kent BR2 9QT." While Ms Khan said she had not seen the notice of intention before March 2016, we found her evidence on this point, and on the receipt/non-receipt of other documents, to be rather vague and uncertain. The impression we formed was that she did not particularly pay much attention to the documents that she received at her South Croydon address, but she passed them on as a matter of course to her managing agent, Mr Mustaghfar.

36. We preferred the evidence of Mr Kevin Rainer from Houston Lawrence, who said that notice of intention would have been sent to Ms Khan at her usual South Croydon address. It would then would have been followed by the budget document [2/62], which would have accompanied the original service charge demand of 25 March 2015 [2/54], so that Ms Khan would have known not only that the proposed works were planned, but the amount that they would likely cost.

37. Ms Khan and Mr Mustaghfar complained that they had insufficient information about the proposed works that would enable them to obtain their own quote from a builder, to decide whether the amount being demanded as an estimated cost was reasonable or not. Indeed, it was said that this exercise was only possible after receipt of the landlord's tribunal Reply dated 18 March 2016, which annexed a detailed specification of work from Hallas & Co, chartered surveyors [5/12-19], although even then this was uncosted.

38. We disagree. While the notice of intention dated 17 November 2014 may have been extremely sparse in its detail, it would have been taken the simplest of enquiries to discover what proposed works lay behind the notice of intention. By 22 December 2015, Ms Khan had received an outline scope of works for approval [2/60]; and even a rough calculation of the possible cost of the 14 listed items of proposed expenditure would have given her an immediate idea whether the £11,000 total cost being demanded from the two leaseholders was approximately right, or too much.

39. Although Mr Mustaghfar said that he wanted to look at the figures in more detail because he felt he could "shave off" some costs, that was

not the point: whatever the *final* costs maybe, the question was whether the sums demanded *in advance* were reasonable for the works that the landlord planned to carry out. In the end, having looked at the Hallas & Co specification works, Mr Mustaghfar (and therefore Ms Khan) concluded that the proposed costs were about right; but that point could and should have been reached much earlier in the process (even, it is suggested, before proceedings were issued), if only sufficient steps had been taken by Ms Khan and her advisers to obtain the information upon which the service charge was based.

40. The construction of the bin store area the front apparently relates to the tarmacing of the bin area at the front of the premises. Since the Fifth Schedule of lease [2/44] provides for the maintenance, repair, renewal, rebuilding and alteration of areas "from time to time set aside by the landlord for the storage of refuse", the proposed works would appear at first blush to come within the terms of the lease. However, a determination is not necessary on the question of whether these works constituted an improvement, or not, since we were told that they had been removed from the specification of works.

41. In summary, therefore, issues relating to consultation have no relevance to the reasonableness of these demands.

(iii) Reasonableness of the demands

42. At the hearing, Ms Khan no longer disputed the reasonableness of the contribution towards the reserve for future works, nor did she complain about the reasonableness of the other service charge items that formed part of the demand.

43. While we therefore had no difficulty concluding that the service charges demanded were reasonable and payable by Ms Khan, the situation with regard to the £72 administration charge [2/56] was different. At paragraph 15 of her tribunal Statement of Case, Ms Khan stated [4/4] that the landlord was not entitled to recover this as a cost arising from non-payment of the sum due, as it had not been shown that there was a sum due at the time. This must be correct. The late payment administration fee is dated the 21 May 2015. It was based on the late payment of service charges on a defective demand [2/54], whose defects were not cured until 22 December 2015. Section 47 of the 1987 Act means that until that time the service charge "shall be treated for all purposes as not being due from the tenant to the landlord" and, therefore, there was no default in payment such that would justify the landlord raising a £72 late payment administration fee.

44. The ground rent itself was not subject to a valid demand until the following day, when a ground rent demand dated 22 May 2015 was issued by Homeground Management Ltd [2/58].

45. For all these reasons, £72 administration fee is disallowed for not being payable at the time it was raised.

Claims for costs

46. Both parties submitted a schedule of costs that they wished to claim against the other.

47. Since Ms Khan succeeded in only one very minor matter only, she is not entitled to her costs, said to have been some £2,883.00.

48. By contrast, the landlord's schedule of costs totalled some £6,400.80; and the landlord made its claim for costs on two bases. First, was that the small claims track costs rules did not apply to the claim, as it had not been allocated to the small claim track ("SCT"); but, secondly, even if that were not the case, the landlord relied on its contractual right to recover costs from the lessee, pursuant to the terms of the lease and relying upon the Court of Appeal decisions in *Freeholders of 69 Marina v Oram and Ghoorun* [2011] EWCA Civ 1258 ("*69 Marina*") and *Chaplair Ltd v Kumari* [2015] EWCA Civ 798 ("*Chaplair*").

49. The legal arguments in support of the lessee's liability to pay costs are set out in paragraph 29 and 30 of the landlord's Tribunal reply [5/6 & 7] and these were supported by counsel's submissions at the hearing.

50. The submissions may be summarised as follows: while the tribunal is a "no-cost" jurisdiction and is unable to make any award of in respect of a party's costs (save where there has been unreasonable conduct), the county court *can* make an award equivalent to the costs incurred, of both tribunal proceedings and court proceedings on the small claims track, where there is a *contractual entitlement* to such costs.

Our decision

51. We are satisfied that the landlord is entitled to an order for the recovery of its costs against the lessee, Ms Khan, not as an award of costs by the court or tribunal under the respective procedure rules, but as a matter of contractual entitlement, for the following reasons.

Our reasons

52. It is clear that, in all cases, the award of costs is in the discretion of the court: see section 51 of the Senior Courts Act 1981; and this discretion cannot be fettered by the parties, even by way of a contractual agreement.

53. With regard to the first basis of claim for costs, the county court proceedings were for a small debt of £3,617.16, far below the SCT limit of £10,000. Ms McKearney for the landlord rightly conceded that such a claim "undoubtedly would have been allocated to the small claims track" and, given that this was a very straightforward claim, we exercise our statutory discretion to apply the SCT costs rules to the county court action, so that only fixed costs and court fees would be payable.

54. The second basis of claim relates to the landlord's claim for its cost of both the county court and the tribunal proceedings, as a matter of contractual entitlement, under clause 4.5 of the lease. The landlord seeks an order from us, sitting as a county court, to avoid having to incur additional costs of returning to the court for such an order.

55. Clause 4.5 of Ms Khan's lease [2/20] is the lessee's covenant:

> "4.5 To pay to the Landlord on demand all costs charges and expenses (including legal costs and fees payable to a Surveyor) which may be incurred by the Landlord
>
> 4.5.1 in or in contemplation of or incidental to any proceeding under Sections 146 and/or 147 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the Court and
>
> 4.5.2 ... and
>
> 4.5.3 incidental to the recovery of rent or other monies due and payable hereunder or to the remedying of any breach of covenant on the part of the Tenant herein contained."

56. In *69 Marina*, the Court of Appeal decided that the costs of seeking a determination of the tribunal are recoverable as a necessary step in contemplation of proceedings under section 146 of the Law of Property Act 1925, notwithstanding the SCT rule.

57. The wording of clause 4.5.1 is very similar to the wording of "clause 3(12)" in *69 Marina*. In that case, referring to the requirement in section 81 of the Housing Act 1996 for a landlord to obtain a final determination that an amount of service charge was payable by a lessee, the Court of Appeal found, at paragraph 20 of the decision that:

> "Given that the determination of the Tribunal and a s.146 notice are cumulative conditions precedent to enforcement of the Lessees' liability for the Freeholders' costs of repair as a service charge it is, in my view, clear that the Freeholders' costs before the Tribunal fall within the terms of clause 3(12)."

That is, the court concluded that the costs of the tribunal proceedings were recoverable from the lessees under the terms of the lease.

58. The Court of Appeal went further in *Chaplair*, where once again the lease terms were similar to those in Ms Khan's lease. It decided that a landlord had a contractual entitlement to its costs under the lease, even though the proceedings were partly before a tribunal and partly before the county court on the small claims track.

59. Although our powers to award costs are restricted under both the court's and the tribunal's procedure rules, *69 Marina* and *Chaplair* make it clear that we have power to award costs on a contractual basis, when sitting as a county court judge and assessor, under either or both clause 4.5.1 and 4.5.3 of Ms Khan's lease; and we now do so.

60. Having said this, it is clear from the decisions in *Gomba Holdings (UK) Ltd v Minories Finance Ltd (No 2)* [1993] Ch 171 and *Church Commissioners v Ibrahim* [1997] EGLR 13 - both of which were approved, applied and quoted by the Court of Appeal in *Chaplair* - that the award of costs and the extent of costs remain firmly within our discretion.

61. Furthermore, any costs that may be awarded to the landlord will fall within the definition of an "administration charge" within the meaning of paragraph 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002: see *Christoforou v Standard Apartments Limited* [2013] UKUT 0586 (LC), LRX/84/2012 and LRX/88/2012.

62. Paragraph 1 of Schedule 11 states:

> "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) ...,
>
> (b) ...,
>
> (c) 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."

63. Under paragraph 2, a variable administration charge is payable only to the extent that the amount of the charge is reasonable; and by paragraph 5, application may be made to the First-tier Tribunal to determine whether such a charge is payable and reasonable in amount. As such, we have a continuing role as a tribunal to consider whether the sums claimed are payable and reasonable.

64. We turn now to the amount of the landlord's costs.

Amount of costs

Submissions by Ms Khan

65. Ms Khan said she was shocked that she might find herself liable to pay her landlord's costs of proceedings. She argued that she should not be liable to pay costs at all and made submissions in support of her position.

(i) Alghussain v Eton College

66. The first was an argument based on the House of Lords decision in *Alghussein Establishment v Eton College* [1988] 1 WLR 587, which, she said, was authority for the proposition that a party should not be able to recover its costs under a contract, if it is in breach of the contract itself. She said that the breach of duty by the landlord in the present case was the duty to ensure that the demands were compliant with sections 47 and 48 of the Landlord and Tenant Act 1987 and the duty to consult in advance of incurring cost on major works. She said that the landlord had incurred unnecessary costs in the present case and that the appropriate award would be that each party should bear its own costs.

67. At the lunchtime break we obtained a copy of the decision and gave it to the parties to read, before we heard their submissions on it in the afternoon session. Having done so, we concluded that the facts of *Alghussein* were very different from the present case. *Alghussein* concerned a party who was in wilful default of a contract, but was nonetheless insisting that the other party comply with its obligations under it; and with a contract that was very poorly drafted.

68. The House of Lords held that the principle that a party in default under a contract cannot take advantage of his own wrong is, in general, a rule of construction rather than an absolute rule of law. In our view, the case did not establish any general principle, as had been suggested by Ms Khan; and, ultimately, we found no benefit from the decision on the facts of the present case, especially as there was no breach of the lease on the part of the landlord.

(ii) Practice Direction - Pre-Action Conduct and Protocols

69. Secondly, Ms Khan also relied on the Practice Direction - Pre-action Conduct and Protocols (which applies to disputes where there is no approved pre-action protocol), to say that the landlord had not provided all of the documentation that was necessary prior to the issue of the proceedings and that, therefore, the landlord should be deprived of it costs.

70. However, in the tribunal's view, the landlord *had* supplied all of the necessary documents to Ms Khan prior to issue. Not only was a notice of intention to carry out works served in November 2014 and a demand and budget served on Ms Khan in March 2015, but the correspondence at tab 6 of the hearing bundle shows that letters before action was sent to her in May and in July 2015, so that there can be no doubt that Ms Khan was aware that a liability to pay ground rent and service charges had arisen.

71. Although it was not in the pleadings, Mr Mustaghfar gave oral evidence that he had made a phone call to Houston Lawrence, possibly in response to the solicitor's letter before action in May 2015. He had apparently spoken to Kevin Rainer, or to somebody else who had provided Mr Rainer's e-mail address (he was unsure), to ask about the demand that had been made. Apparently, the response had been that details of the proposed works would be sent to Mr Mustaghfar. When asked if he had received those details, Mr Mustaghfar said 'No'. When asked what he had done to chase those details, given the threat of proceedings, he confirmed that he had not sent any e-mail or letter, and he had not telephoned a second time. The overall picture, therefore, is that there had been ample opportunity for Ms Khan and/or her advisers to engage with and contact Houston Lawrence and/or JB Leitch solicitors, to obtain the information that they felt they needed, that would explain how the very precise demands had been formulated.

72. Even when proceedings were later issued, there is no evidence to show that efforts had been made to contact Houston Lawrence or JB Leitch, to find out exactly what lay behind the claim. The defence certainly put the landlord to proof of validity of the demands, but it did not say in an express terms that documents explaining the charges had not been provided. In the event, the landlord did provide a very detailed reply to defence dated 22 December 2015, which gave details of the proposed works, the budgeted amounts, the additional service charges that remained unpaid and demands upon which the claim was based. However, even at that stage, Ms Khan did not pay the sums that she either clearly owed or did not dispute, nor did she use the information relating to proposed works to form a view about their likely general cost, such that she could have formed a view about the reasonableness of the proposed cost of major works.

73. Instead, Ms Khan continued to pursue technical points relating to the demands, points which had little merit. The landlord provided further details in its tribunal Reply dated the 18 March 2016 but, even then, it was only apparently on 27 April 2016 that Ms Khan's solicitors made an offer to settle, which the landlord refused as being unacceptable. By that stage, the vast bulk of the costs had already been incurred.

Assessment of the landlord's costs

74. The landlord's costs totalled some £6,400.80. The solicitors' work before county court and the tribunal was carried out by a grade B fee-earner at £192 per hour plus VAT, supported by a grade C fee-earner at £161 per hour, and a grade D legal assistant, at £118 per hour. The schedule of work done on documents was necessarily longer than the lessee's schedule, involving documents prepared before both the court and the tribunal. It also included disbursements.

75. No complaint can be made about the charging rates of the fee-earners concerned, which were considerably lower then the charging rate of Ms Khan's own solicitor, at £250 per hour plus VAT. However, the schedule of costs gave scant detail of the work carried out, short of the total time spent and the sum claimed under each heading; and there were some items of work in the schedule which appeared to be excessive in terms of the time taken.

76. The schedule of costs claims a total of 5.5 hours for correspondence between solicitor and own client, but no detail is given. This case began as a simple debt action, but involved more work than was probably expected, by reason of the defence putting the landlord to proof of all the sums claimed. However, 5.5 hours is a lot of time to claim, when many of the letters are likely to have been short, routine communications, charged in 6 minute units; and there was no evidence as to the nature or length of longer letters. It is therefore appropriate to reduce the amounts claimed for the following fee-earners: B, 3.2 to 2.5 hours, C, 1.5 to 1.2 hours; and D, 0.8 to 0.7 hours: a total of £755.80.

77. Some 1.4 hours are claimed for telephone calls and this does not seem exceptional for litigation lasting several months, so is allowed in full: £250.20.

78. The 1.7 hours claimed for letters to Ms Khan and her solicitors and the 0.5 hours for telephone calls, once again do not appear exceptional for litigation of this length, so are allowed in full: £306.40.

79. Some 1.5 hours for letter and 0.6 hours for telephone calls to others, presumably the court and the tribunal, are not specified in detail, but again do not appear excessive and are allowed in full: £335.20.

80. This makes a total of £1,647.60 for attendances, letters and telephone calls.

81. For work done on documents (following the schedule numbering):

    1. 0.6 hours is claimed for the review of the lease by a grade A fee-earner and 0.3 hours by a grade B fee-earner, but

presumably, these should have been grade B and C, respectively. Either way, it should not have taken so much time for an experienced leasehold litigator to read the lease and quickly identify the key clauses in it. Therefore, 0.4 and 0.3 hours are allowed, respectively: £125.10;

2. 0.5 hours of a grade C (presumably D) fee-earner is claimed for the drafting of the claim form and particulars. This is standard, routine work, based on the figures provided by the landlord, and involves the inputting of only brief details onto an online form; 0.4 hours allowed: £47.20;

3. The 0.2 hours claimed for reviewing the Defence is allowed: £38.40;

4 & 5. For drafting the Reply to Defence, some 2.2 hours are claimed and, in addition, 0.4 hours for the preparation of the Annexes to the Reply; a total of 2.6 hours. Presumably, the Annexes were collated first, from documents provided by the landlord, and the Reply was prepared by reference to them. Although the Reply deals with technical matters, the issues are straightforward and the time taken seems high for a grade A (presumably B) fee-earner. We would reduce the overall time to 2.3 hours, say 0.3 hours to collate the Annexes and 2 hours to prepare the Reply: £441.60;

6. Dealing with the court directions and directions questionnaire is straightforward work for grade A (presumably B) fee-earner, so we would reduce the 0.6 hours claimed to 0.4 hours: £76.80;

7. We allow the 0.4 hours claimed for reviewing the respondent's tribunal statement of case, as the applicant needed to understand the nature of the continuing dispute: £64.40;

8. With regard to drafting a Reply to the said statement of case, some 4.4 hours is claimed. This was a key document in the case, a substantial document which dealt with the points raised by the respondent, including relevant law and several annexes. From the amount claimed, it was apparently carried out by a grade C fee-earner, which is appropriate, but the overall time spent seems too long. We would therefore reduce the time to 3.7 hours: £595.70;

9. The construction of the hearing bundle is allowed at 1.4 hours, as the product was comprehensive and useful; however, copying is an office overhead, and the 1.1 hours of grade D fee-earner time on this is disallowed. Amount therefore allowed is: £225.10;

10. Drafting the useful bundle index at 0.4 hours is allowed, as part and parcel of preparing the bundle for hearing: £64.40;

11. The instructions to counsel were not seen, but the comprehensive hearing bundle was by this stage self-explanatory, so the detail necessary for counsel in any instructions was less: we would allow 0.7 rather than 1.0 hours: £112.70;

12. Some 1.2 hours was claimed for costing and the preparation of a statement of costs. Costing should have been largely automatic and if the statement of costs was not also automatic, it is likely to have been very straightforward in the light of electronic time records. We allow 0.6 hours of grade D fee-earner time for this: £70.80.

82. This makes a total of £1,862.20 for work done on documents. In addition, we accept counsel's fees of £750 plus VAT for the hearing itself, which was not excessive for the work involved and which compared favourably with Ms Khan's counsel's fees for preparing the defence. We also allow the Land Registry fees of £9 and tribunal hearing fee of £190.

83. At this stage, the solicitors' costs come to £3,509.80, exclusive of VAT and disbursements.

84. As Ms Khan was technically correct in saying that the service charge and the administration charge demands were not valid at the point of issue, we consider that she should not have to pay for the cost of proving that fact. No breakdown was given of the costs that were incurred on this discrete issue, nor of the costs pre- and post-transfer to the tribunal. However, approximately 33% of the costs in the schedule of work done on documents related to court work, and 66% to tribunal work. Given that the invalidity of the service and administration charge demands was not cured until the landlord's Reply dated 22 December 2015, a reduction of one-third of the landlord's costs, up to that date would appear appropriate, i.e. a 10% reduction in the overall costs.

85. This would result in an overall sum of £3,158.82, exclusive of VAT, for the landlord's solicitors' costs of the proceedings. In total, therefore, the overall costs would be:

	£
Solicitors' costs	3,152.82
Counsel's fees	750.00
Disbursements	199.00
VAT on solicitors' and counsel's fees	780.56
Grand total	**£4,882.38**

86. We consider that costs at the above figure are reasonable and were necessarily incurred.

87. Therefore, the Tribunal concludes that the appropriate award of costs will be £4,882.38.

Rate of interest

88. With the regard to interest, the landlord sought this at the statutory rate of 8%, whereas Ms Khan urged the tribunal to award this at lower contractual rate in the lease. The parties accepted that this was the matter for our discretion. In our view, the statutory rate prevails; and the agreement of the parties does not prevent or otherwise limit the landlord's right to claim interest at the higher rate on a statutory, rather than a contractual, basis.

Conclusion

89. By way of conclusion, we make the following awards in favour of the landlord:

    (i) Service charges payable in advance: £3,420.16;

    (ii) Ground rent: £125;

    (iii) Legal costs under clause 4.5 of the lease: £4,882.38;

    (iv) Interest at 8% calculated in the case of service charge demands from 24 December 2015 and in the case of ground rent demand from 5 July 2015, both to the date of judgment: £150.77.

90. The landlord has asked for the order to be made as an order of the county court so that it can be directly enforceable without further application having to be made to the court. We will accede to this request and have drawn a form of judgment that will be submitted with these reasons to the County Court sitting at Croydon, to be entered in the court's records. All payments are to be made by 12 July 2016.

Name: Judge Timothy Powell **Date:** 28 June 2016

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).