11884

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AW/LSC/2016/0014**
Property	:	**9C and 9D Holland Road, London W14 8HJ**
Applicants	:	**Mr N. Kullman, Ms G. Kullman (1)** **Mr M. Miller, Ms C. Miller (2)**
Representative	:	**Ms Elizabeth England of Counsel**
Respondents	:	**Ms C. Norris (also known as Ms Kitty Mason)**
Representative	:	**In person**
Type of Application	:	**Reasonableness of Service Charges – Section 27A and 20C Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge Lancelot Robson** **Mr F. L. Coffey FRICS**
Hearing and determination dates	:	**30th June 2016** **14th July 2016**
Decision Date		**20th August 2016**

DECISION

DECISION SUMMARY

(Following "Scott" Schedule of disputed items prepared by Applicants)

A. Insurance 2012 – 2013 - the risks covered, and apportionment of the Premium is to be by fixed by an expert surveyor following the terms of Clause 1(b) of the Lease, taking account of the mixed uses in the building.

B. The correct apportioned percentage contributions of the Applicants for the years 2012 – 2013 (and subsequent years) remain those set out in the Leases.

C. Major Works 2013 - the Section 20 notices served were defective, therefore a maximum of £250 for the works is payable by each lessee at this time (subject to the outcome of any Section 20ZA application).

D. Emergency Works 2013 – the Section 20 notices served were defective, therefore a maximum of £250 for the works is payable by each lessee at this time (subject to the outcome of any Section 20ZA application).

E. The Respondent's supervision fees charged on the Major Works were reduced to 4% of £6,000, being the Tribunal's estimate of the reasonable cost of that element of the works, and the value of the Respondent's supervision thereof.

F. The Respondent's supervision fees charged on the Emergency Works were entirely unreasonable.

G. Management 2012 and 2013 - the annual management fee was reduced to £250 per annum. (plus VAT if applicable).

H. Miscellaneous items

   a). Pest Control 2012 - £500.16, 2013 - £500.16. Unreasonable – not payable.

   b). Cleaning 2012 -£275, 2013 - £150. Unreasonable – not payable.

   c). Professional fees 2013 - £628.91. Unreasonable – not payable.

   d). Reminder fees 2013 - £20. Unreasonable – not payable.

I. The Service charge demands for 2012 -2013 – There was insufficient evidence of compliance with relevant legislation, and therefore invalid, thus no sums demanded are yet due at this time.

J. Section 20C Order made. None of the Landlord's costs in connection with this application are chargeable.

K. Rule 13 – reimbursement by the Respondent of the Applicants' fees paid to Tribunal – Order made.

L. If the Respondent wishes to make Section 20ZA applications relating to the major works and emergency works in 2013, she must make a separate formal application to do so, with a request that it be determined by the members of this Tribunal.

BACKGROUND

1. By an application received on 8th January 2016, the First Applicants sought a determination under section 27A of the LANDLORD AND TENANT ACT 1985 (as amended) of reasonableness and/or liability under a (specimen) lease dated 6th February 1989 (the Lease) to pay service charges for the service charge years commencing on 1st January 2008, 2009, 2010, 2011, 2012, and 2013. The Second Applicants successfully applied to be joined to this application on 14th March 2016.

2. Pursuant to Directions given (without a hearing) on 13th January 2016, the parties attempted to prepare the case for a paper determination. The parties were unable to agree whether each had complied with Directions, or the documents to be in the hearing bundle. Thus a hearing was ordered by the Tribunal on 11th May 2016. The hearing bundles finally delivered to the Tribunal were not consistently numbered, and had two indexes neither of which was of much assistance. Documents were missing from all bundles, but often not the same ones. Ms England did her best to assist at the hearing, but much time was wasted in trying to create workable bundles.

Hearing

3. At the start of the hearing, the Tribunal ascertained that the Applicants had only become lessees in 2012 (2nd Applicants) and in 2013 (1st Applicants). Ms England confirmed that their cases related only to the periods during which they were lessees, but that evidence relating to previous years was relevant to their claims. Thus the Tribunal decided that the two service charge years actually in dispute were the years commencing 1st January 2012, and 2013 (see below).

4. For ease of reference, the parties' common understanding of the chronology of this case as ascertained by the Tribunal at the hearing is as follows;

The property was built in about 1890 on 4 floors, comprising basement, ground, first and second floors. In 1928 the basement floor changed to commercial use, but remained united with the other floors. The upper floors were converted into three flats subsequently. The first and second floors were sold by the Respondent on long leases in 1988. In 1990 the ground and basement floors were separated. The basement (the largest floor) was converted for use as a school, and the ground floor remained in residential use. The Respondent remains the freeholder, and held the basement and ground floors jointly with her husband Mr Wilson on separate leases until 23rd December 2013, when the Respondent surrendered both leases and regranted them to herself

and Mr Wilson on different terms. The leases granted in 1988/9 were badly drawn and reserved service charge proportions adding up to 132% of the actual service charge. The Respondent varied the service charge proportions in 2013 so that the ground floor flat contributed 33%, and the basement contributed 1% to the service charge.

The 2nd Applicants took an assignment of the lease of the first floor flat "9C" on 6th June 2012. The 1st Applicants took an assignment of the lease of the second floor flat "9D" on 25th March 2013. The ground and basement floors were reunited by a surrender and regrant of a lease dated 23rd December 2013 (noted above), the uses remaining as residential on the ground floor, and as a school on the basement floor (apparently in response to a previous application to this Tribunal by the 1st Applicants under Section 35 of the Landlord and Tenant Act 1987).

Major works had been under discussion in the building since 2011, and work started in January 2013. The contractors (Tidybuild) very quickly (within days) discovered more serious problems and gave an estimate for emergency works, which the Respondent accepted without further consultation, as she thought work was very urgent.

5. Again, for ease of reference the Tribunal has summarised the parties' submissions and its decision under each of the subheadings set out below. The Appendix hereto contains extracts from relevant legislation.

Insurance 2012 – 2013

6. The Applicants submitted that the risks covered, and apportionment of the Premium should be by fixed by an expert surveyor following the procedure set out in Clause 1(b) and the Landlord's obligations in clause 4(2) of the Lease, taking account of the mixed uses in the building. They wanted this item to be settled by an expert, rather than decided by the Respondent, as at present. They also considered that the premiums were excessive. They had not been given sufficient details of the risks covered.

7. The Respondent submitted that the correct interpretation of the insurance obligation was to apply the contributions specified in the relevant leases in Clause 1(c) (both 33%). There was no need to apply clause 1(b), as the cost of instructing a surveyor would have to be passed on to the leaseholders. The building was insured under a block policy which included other properties of the Respondent. The cost of insuring this building was about 10% less because it was occupied by a nursery. The claims record (due to five external flooding claims in the 3 years prior to 2007) had boosted premiums.

8. The Tribunal considered the evidence and submissions. Clauses 1(b) 1(c) and 4(2) and para 12 of the Third Schedule provide:

1(b) *"By way of further rent the whole sum or sums as may be expended by the Lessor in effecting or renewing the insurance in accordance with the covenant in that behalf herein contained against the risks hereinafter mentioned (including any increased premiums payable by*

reason of any act or omission by the Lessee or any undertenant) and if the Demised Premises are insured jointly with other premises of the Lessor then the Lessee will pay such sum or sums attributable to the Demised Premises as shall be determined by the Lessor's Surveyor whose decision shall be final and binding on the Lessee such sum or sums in either case to be paid within 28 days of being demanded

(c) *By way of further rent 33% of the costs and expenses incurred by the Lessor in carrying out the obligations imposed by Clause 4(3) (4) (5) and (6) hereof such sums to be paid in the manner provided in the Fourth Schedule hereto"*

4(2) *"That the Lessor will at all times during the said term insure and keep insured the Building in the full reinstatement value thereof for the time being against loss or damage by fire and such other risks as the Lessor shall from time to time think fit and also against Architects and Surveyors fees in connection with the rebuilding of the Building and also against Property Owners Liability AND will make all payments necessary for the above purposes within seven days after the same shall become due and payable AND will produce on demand to the Lessee the policy or policies of such insurance and the receipt for the current premium or premiums for such insurance AND in the event of the Demised Premises being destroyed by fire or some other risk against which the Lessor has insured will (subject to all necessary statutory consents being obtainable) as soon as reasonably practicable after such destruction or damage expend the monies received from such insurance in reinstating the Demised Premises and (if applicable) the remainder of the Building"*

Third Schedule

12. *"To act fairly and reasonably in carrying out the Lessor's obligations hereunder and at all times to manage and maintain the Building economically and efficiently"*

9. The Tribunal noted that Clauses 4(3) (4) (5) and (6) made no other reference to insurance, so there appears to be no contradiction of Clause 1(b) in the Lease itself. (It also noted in passing that the new lease of the lower premises granted in 2013 appeared to omit a provision equivalent to Clause 1(b), and altered the user clause. It also appears to be in breach of the Landlord's covenants in the Lease. These may cause the Lessor difficulties later, although that particular matter is not for decision by this Tribunal).

10. The Tribunal decided that clause 1(b) could not just be ignored. The Respondent had been the landlord when the Lease was granted. It appeared to have been inserted precisely because of the insurance complications caused by mixed use of the building. The Respondent's submissions on this point were unsubstantiated by evidence, and appeared unconvincing, particularly in the light of the effect of the Surrenders and Regrant of the ground floor and basement lease in

December 2013. The Tribunal decided that clause 1(b) should be implemented with effect from 1st January 2012, being the start of the first year in dispute, so that a Surveyor experienced in insurance matters reports in writing on the appropriate risks to be covered and the equitable apportionments of the premium. The Tribunal has noted the various submissions on the appropriate date that the service charge year should commence. It appears that 1st January has been used conventionally as the date for a number of years, and so long as the date was not being altered to the detriment of the leaseholders, (which was not alleged) the landlord is not prevented from using that date for the start of the year.

B. Apportioning other service charges

11. The Applicants submitted that the service charge percentages in the respective leases granted in 1988/89 (which were in substantially identical terms) were;

Flat C (per lease 16th September 1988)	– 33%
Flat D (per lease 9th March 1989)	-33%
Flat B (no details)	-33%
Flat A (no details)	-33%

Thus there was an apparent over-recovery of service charge. At all material times the leases of Flats A and B belonged to the Respondent and Mr Wilson. The Applicants had applied in September 2013 to the First-tier Tribunal to vary the leases so that the total sum payable would be 100% divided as to 25% for each flat. In response the Respondent had surrendered the leases of flats A and B to herself, and regranted a lease of both properties to herself and her husband on 23rd December 2013, in which the service charge percentages had been altered so that the united ground floor and basement unit contributed only 34% of the service charge contribution. The Applicants considered that this had been done following a judgment of the Upper Tribunal *(tribunal's note - Morgan v Fletcher [2009] UKUT 186 (LC))*, which held that in a similar situation that if the service charges had been altered to add up to 100%, albeit inequitably, the Tribunal had no power to vary the Lease under Section 35 of the Landlord and Tenant Act 1987. The Applicants had withdrawn the Section 35 application, as it appeared doomed to fail. However the Applicants invited the Tribunal to retrospectively vary the Lease percentages for the periods in issue prior to 23rd December 2013 relating to the Major Works and Emergency Works, when the Lease remained defective. They relied on Brickfield Properties v Botten [2013] UKUT 0133 (LC) as authority for this proposition. Further, it was the intention of the parties that the "improvements" (i.e. the major works) should be apportioned at 25% for each flat (relying on an email letter from the 1st Applicants to the Respondent dated 1st August 2013). Also, the Respondent appeared to be in breach of paragraph 12 of the Third Schedule.

12. The Respondent considered that the Applicants' leases clearly stated the relevant proportion to be 33%, and that was the agreement between the parties. The Applicants' predecessors had been invoiced and had paid the (estimated) service charges for 2012 and 2013, without complaint, as initially had the Applicants. The Applicants had taken a major part in agreeing the works to be done, and the proposal of contractors, particularly for the 2013 works. The Applicants should not now be allowed to dispute the charges. When asked by the Tribunal whether in altering the service charge proportions as noted above in the new lease she had a duty to have regard to the Applicants interests, the Respondent stated that she had a duty to be fair in administering the service charge, but not in invoicing.

13. The Tribunal considered the submissions and evidence. It noted that the service charge demands and invoice trail in the bundle was very incomplete. Some earlier service charge demands going back as far as 2006 appeared to be dated 12th August 2013, and others appeared to be undated or refer to items uncharged in previous service charge years. There were almost no copies or references to the statutory information which should have been sent with demands. Despite the deficiencies, there appeared to be little or no evidence of previous dealings between the parties which would indicate that anything other than 33% had been charged to each Applicant. It was clear that the Applicants expected that only 25% would be charged for the various major works affecting all four units in 2013, until an email on 8th August 2013, although it was not clear from the evidence that this proposal had been formally acknowledged or accepted by the Respondent. It was also clear that final service charge demands for 2013 had been sent to the Applicants after they had become lessees (see e.g. the demand dated 2nd December 2013 sent to the 2nd Applicants relating to Flat C. Also there only appeared to budget figures for 2012, with no final account for that year in the bundle.

14. As stated at the hearing, the Applicants are not entitled to challenge service charges finally demanded and paid prior to becoming lessees, and Ms England conceded that point in relation to service charges for periods prior to 2012. The Applicants are not debarred from challenging final accounts addressed to them after becoming lessees, whether or not the landlord had already received monies on account. As a trustee, the Respondent must account to his beneficiaries, being the lessees for the time being of each Flat. The Tribunal accepted the Applicants' submission that payment of a sum alone is not an admission or acknowledgement that the sum is properly due (see Section 27A(5) of the 1985 Act). Thus the Respondent cannot rely on that point in this case. The Tribunal considered that the Respondent's explanation for altering the service charge percentages to her advantage after the Applicants had made a Section 35 application in 2013 was unattractive. The background facts suggested a breach of trust in that the Respondent's actions amounted to preferring one group of beneficiaries against another. However this is matter for a court rather than this Tribunal. It decided that the Applicants could not make another Section 35 application within

a Section 27A application, whether prospectively or retrospectively. Also it was obliged to follow the decision in Morgan v Fletcher (above).

C. Major Works 2013

15. These works were a group pf works including cyclical redecoration, repairs and minor improvements. The Applicants submitted that the works were "qualifying works". No valid Section 20 procedure had been followed, and noted that the Respondent had admitted this point, but had not applied for a dispensation under Section 20ZA of the 1985 Act. Certain submissions relating to dispensation were also made, but in view of the Tribunal's comments below relating to Section 20ZA, these are not summarised here).

16. These works (commenced in August 2013) were by way of improvements to the Building. Between April and July 2013 the parties worked together to obtain quotes and move the works forward, but on 2nd July 2013 the Applicants sent an email with concerns that their views were not being considered. In August 2013 there were 2 major issues between the parties;

    a) the apportionment of the charges (see the Tribunal's decision above)

    b) the Respondent's management fee of 12% - the Applicants considered that they were not properly consulted on the full cost of the works, particularly this fee, and were thus unfairly prejudiced.

17. The Respondent submitted that the works were instigated and agreed by the leaseholders. No work would have been started if they had not seen the estimates requested the work and authorised it. The works were carried out be the cheapest of the five contractors asked to quote. Section 20 notices had been served in 2011 with a specification which was never carried out. The new leaseholders were given the specification and the budget for 2013 based on these estimates. The protective netting (£380) was erected after a request from Mr Kullman before the work started. The redecoration of the front was only carried out as requested and agreed by the current leaseholders of Flats C and D. after taking estimates from their (suggested) contractors. They paid 50% of their share of the works at the time and emphasized their desire to get the work done by their contractor which was much the cheapest. The scaffolding was chosen by the leaseholders after 3 quotes had been obtained, and they paid 50% in advance. The exterior repairs were again agreed by the leaseholders and they paid 50% but did not pay the balance due for the work.

18. The Tribunal considered the evidence and submissions. The Tribunal noted that there was insufficient evidence of the Respondent's demands for payment and copies of the necessary prescribed notices being sent to the Applicants. Thus at this time no sum is payable by way of service charge by the Applicants until the necessary demands have been served in accordance with statute. It seemed clear that the lessees had considerable knowledge of and involvement in the planning of this work

from 2011 onwards. The Applicants also had input from January 2013 on, although relations appeared to have soured from early July 2013. The previous lessees and then the Applicants had paid estimated amounts towards the work but the final account for this work was dated 2nd December 2013. The work therefore fell into the service charge year 2013. The Applicants were entitled to make this application as they were lessees during part of that year, and at least partly responsible for paying the service charges. (The issue of whether payment was a bar to making the application has been dealt with above. The Respondent's case must fail because she admitted that the Section 20 notice procedure was not followed. Thus at this time only a maximum of £250 is payable is payable by the relevant Applicants for their Flat. The option of a Section 20ZA application remains open to the Respondent relating to this item.

D. Emergency Works 2013

19. The Applicants repeated their submissions noted at paragraph 15 above.

20. These works (in fact commenced in February 2013) were to deal with water penetration to the ground floor through a defective roof covering on the balcony of Flat 9C (installed by the previous lessee). The Respondent was obliged by Clause 4(3)(a) of the Lease to carry out the repairs at the cost of the service charge which was passed on to the lessees. The Respondent did not take reasonable steps to "test the market" (see Forcelux v Sweetman [2001] 2 EGLR 173). The Respondent simply chose Tidybuild because they were already on site. The initial estimate from Tidybuild was £3,200 plus VAT. The final cost was £4,967 plus VAT. The work was not very urgent, as the email dated 12th January 2013 in the bundle tended to suggest. There was discussion of this work in 2010. The final invoice dated 15th February 2013 showed additional works not mentioned to the Applicants. Double glazed doors had been fitted to the ground floor flat costing £2,120 plus VAT. They were not emergency works.

21. The Respondent submitted that the works to the First Floor roof terrace were emergency repairs. The full extent of the damage was discovered during redecoration and ceiling repair work to the ground floor flat. The dangerous nature of the damage and the need to make the building watertight forced immediate action using the builders on site at the time (Tidybuild). The joists supporting the roof terrace had rotted way because the previous owners of Flat C had made holes in the asphalt and water had decayed the terrace, its supports and the timber frames of the opening below as well as the plaster on the walls and the metal edges to the plaster around the opening. A wooden balustrade had been built which damaged the protective coping stones, and water was entering the building in many places along the balcony. Flats B and C were affected by this work. The new owners of Flat D were not affected. They had no interest in the property at the time and purchased after the work was completed in March 2013. The owners of Flat D paid in full for the work. The only query was the management fee as it became payable after March 2013 and was raised by Flat D after the Kullmans purchased. The

owners of Flat C got photos and saw the damage for themselves. They paid for the work and did not raise any queries at the time.

22. In answer to questions, the Respondent stated that she had not discussed the costs of the emergency work with the lessees. The sale of Flat D was just going through. The building needed to be made watertight to keep the householders safe. The Applicants said in an email on 20th January 2013 that the work was done well. The Respondent believed that the estimate given by Tidybuild was in the region of £3,200 as she had mentioned to lessees. She agreed that she thought she was at the mercy of Tidybuild when the problems were discovered and she genuinely believed that it was not possible to do temporary works and consult on the remaining work. The building was now watertight. She was unaware that the District Surveyor should have been involved in the discussions relating to the building work, although she was supervising the work. She still considered that she was competent to do so. Asked about betterment and the double glazed doors she agreed that that item should not have been charged to the service charge. She had been aware of the works done by the previous lessees of Flat C which had damaged the balcony. They had been done without consent, but she had nothing about it because she knew they would be unable to pay. It was only when the work was opened up that she realised how bad the problem was.

23. The Tribunal considered the evidence and submissions. Again, the Respondent admitted that no Section 20 notices had been served. Following that admission, the Tribunal decided that a maximum of £250 for the works is payable by each lessee at this time (subject to the outcome of any Section 20ZA application). The Tribunal noted that the betterment works were not properly chargeable to the service charge at all. Also, as noted above, no valid demands for service charges appear to exist, and until such are made no sum is payable by the Applicants.

E and F. The Respondent's supervision fees (for C and D above)

24. The Applicants submitted that the fees demanded (12% of the total cost of all the works) were unreasonable. The work done was poor. The agreement for this work constituted a Qualifying Long Term agreement, upon which the lessees should have been consulted. There had been no consultation or warning that these fees would be charged. The Applicants believed that if the Applicants carried out most of the work then there would be no supervision charge, as agreed in March 2013, and evidenced in the email dated 1st August 2013.

25. The Respondent submitted that she had done all the supervision for the works. The successful contractor for the major works had cost less than the contractors suggested by the Applicants. She had decided on the figure of 12% by enquiring about surveyors' charges before the work started. 12% was normal for the industry. She was unsure if she had charged 12% of the works plus VAT, but agreed that she should not charge on the VAT element. She had decided not to initiate a new Section

20 procedure as the leaseholders had initiated proceedings. The Lease allowed her to charge a supervision fee.

26. The Tribunal could locate no final accounts for the either set of major works, although the service charge demand dated 2nd December 2013 included a supervision fee of 12% on £8,940 referring to the front redecoration, but with no invoice or breakdown. There was a breakdown on Page 82 of the bundle, but this was difficult to compare with other evidence.

27. The Tribunal rejected the Applicants' submission that the supervision work constituted a qualifying long term agreement. Such an agreement must be for a term exceeding 12 months. In this case there appeared to be no agreement. The Respondent had merely decided to make a charge. While the Applicants believed that no supervision fee was to be charged for the Major Works, the Tribunal found no evidence of concurrence by the Respondent. It noted that it was poor practice to charge a fee without a written agreement. Nevertheless the Respondent had arranged some work, although there was little evidence of inspection either during or after completion of the works. The Respondent exhibited little knowledge or experience of supervising major works, as was evident from some quite basic mistakes, such as not consulting on the "Emergency" Works. Contrary to the Respondent's submission it would have been possible to make the building watertight temporarily quite cheaply and then carry out consultation, or issue a Section 20ZA application. Even at the hearing the Respondent did not understand the necessity or even the procedure for making such an application. Betterment works had been instructed, and charged to the collective service charge without notice or authority.

28. For the standard of work done, the top professional market rate was inappropriate. The Tribunal decided, taking a broad brush approach, and allowed the Respondent 4% on £6,000 as a supervision fee for the Major Works to take account of the standard of work done. The Respondent's intervention in the Emergency Works appeared to have led to extra expense to the Applicants. In that case the Tribunal decided that no fee would be reasonable for the standard of work done. The Respondent's supervision charges on the Emergency Works (£11,782) were entirely unreasonable.

G. **Management 2012 – 2013**

28. The Applicants submitted that the charge was high, given the modest general service charge expenditure, on arranging pest control and insurance. They proposed a charge of £100 per unit. The agreement was a qualifying long term agreement, and there had been no consultation. The building was in an appalling state. The Respondent had other businesses to run.

29. The Respondent considered that the charge was reasonable and that her duties were extensive, e.g arranging tenants' meetings, answering

questions, organising repairs, ensuring the "flip valve" (an anti-flooding device) in the basement area was regularly maintained, cleaning, inspecting the building, paying bills. Local agents such as Marsh and Parsons would charge £500 per unit for such work. The previous agent had charged £600 per year in 2003. When the Respondent took over the management in 2005 she had consulted the lessees. They wanted her to do the job. She considered that she was competent to do the job and complied with necessary rules. In answer to questions, she agreed that she had no professional qualifications but owned a large number of other properties. She was aware of the RICS Code of management for Residential Flats, but was not familiar with it. The building was in good condition. She did not charge the service charge for some items as these were paid by the School, e.g. repainting every year. However she had no proof of these payments. When asked about ongoing matters, she could not remember sending any invoices after the final service charge account had been sent for 2013. She had inspected the common parts at the end of 2015. She had last inspected the flats in 2013, when she had access. Access had been refused since then. She had not been asked to produce the service charge demands, so there none in the bundle. She considered the Applicants were in arrears, rejecting the suggestion that the problem was due to her administration, as suggested by one of the Applicants in an email dated 1st August 2013.

30. The Tribunal considered the evidence and submissions. The service charge demand for 2013 was instructive. In addition to the Major Works and Emergency Works, the following items appeared to have been managed; pest control, insurance, and protective netting. Other previous years suggested that minor repairs had also been dealt with. Cleaning was not mentioned in 2013, although invoices had been produced from a cleaner for previous years, and for 2014. There was no evidence that the accounts complied with Paragraph 6 to the Fourth Schedule of the Lease, which required an audit. The Respondent noted in written submissions that since there were only 4 leases, she was not obliged to provide a statutory accounts certificate. She had for many years prepared the accounts herself, to save cost. The Tribunal noted that there appeared to be no final account for 2012, and it was not clear when the various final accounts had been sent to the Applicants. No written management agreement was in the bundle so it was difficult for the Applicants to claim that it was a Qualifying Long Term Agreement. Neither side had produced evidence of the current state of the property, but correspondence from both sides in the bundle suggested that there were ongoing problems.

31. The Tribunal was satisfied that some management had occurred in the years in issue, however it appeared to be slightly sporadic. The Respondent's lack of management knowledge appeared to be a problem. The service charge appeared to relate to four units, during the most of the period in question, thus the unit charge was effectively £150 (VAT was not being charged). If the management was being done competently, the Tribunal would have accepted the price being charged.

In the light of the Respondent's performance, the Tribunal decided to reduce the total management charge to £250 per year.

H. Miscellaneous items

a) Pest Control 2012 - £500.16, 2013 - £500.16

32. The Applicants queried the necessity for this contract, and also suggested it was a Qualifying Long Term Agreement on which they should have been consulted, although they had no documentary evidence of the terms of the agreement.

33. The Respondent submitted that the previous leaseholders had arranged and paid for this service. The historic contract continued. The current leaseholders had not asked for it to be discontinued.

34. The Tribunal decided that such a service was not unreasonable. No one had suggested the pests had gone. However there were no invoices in the bundle, nor was there any evidence as to the terms of the agreement. Without invoices or a copy of the contract the Tribunal decided that the cost was unreasonable.

b) Cleaning 2012 -£275, 2013 - £150

35. The Applicants submitted that no cleaners were seen on site 2012, but in 2013 there was no charge for cleaning. They wished to see the invoices. (It was not clear to the Tribunal where the sums quoted had come from).

36. The Respondent submitted that the previous tenants had authorised and paid for the service.

37. The Tribunal discovered invoices for previous years, but only the budget for 2012, showing an item for internal cleaning of £260 and external cleaning for £520. The £520 figure had been carried across to the service charge. No cleaning charge appeared in the 2013 final accounts. There were no relevant invoices. Again the Tribunal decided that without invoices or other satisfactory documentary evidence the cost was unreasonable.

c) Professional fees 2013 - £628.91

38. The Applicants submitted that there was no evidence for this charge, and queried its purpose.

39. The Respondent submitted that this sum related to the 2013 challenge to the service charge percentage and also over non-payment of ground rent. There were no invoices because Applicants did not ask for them.

40. The Tribunal noted that it was disputed that some ground rent was due during the period, but there was no evidence of any legal involvement in that matter. The Respondent appeared slightly disingenuous at the hearing in saying that the Applicants had not asked for the invoices.

They had queried the reason for the invoices in the Scott Schedule, which she had answered without producing any documentary evidence. It seemed to the Tribunal that the Respondent must have at some point consulted solicitors over the Section 35 Application, but there was no evidence of any solicitors' letters or invoices in the bundle. Whatever the reason for the charge, the Tribunal decided that without invoices or other satisfactory documentary evidence the charge was unreasonable.

d) Reminder fees 2013 - £20

41. The Applicant submitted that this charge was inappropriate and unreasonable.

42. The Respondent submitted that she was entitled to charge for sending reminders to the Applicants under the terms of the Lease. She had sent a reminder and thus made a charge.

43. The Tribunal noted that again there was no invoice and no details. It also noted the email noted above, where the First Applicants disputed the necessity for sending another cheque. In any event, reminders are normally within the general annual management fee. No management agreement was produced. The Tribunal decided that without invoices or other satisfactory documentary evidence the charge was unreasonable.

I. The Service charge demands for 2012 -2013

44. As noted above, The Tribunal decided that there was insufficient evidence of compliance with relevant legislation, and therefore invalid, thus no sums demanded are yet due at this time.

Costs

J. Section 20C Order

45. The Applicants submitted that the Lease allowed the recovery of the Respondent's costs in connection with this application through the service charge. The factors to be considered were; the relative success of the respective parties, the proportionality of the litigation, and the conduct of the parties. Where a lessee had been successful, an order should be made, but if the lessee was not successful unusual circumstances would be required to justify an order. Given the fact that the Respondent conceded that no valid Section 20 notices had been served, and that she had charged the Applicants for betterment to the French windows to her property on the ground floor, and that the maintenance was poor, the Tribunal should make an order under Section 20C of the Landlord and Tenant Act 1985.

46. The Respondent denied that the building was poorly maintained. She had tried to keep the service charges to a minimum. The Respondent also considered that the Applicants had agreed to the works being done, so she had proceeded with the works.

47. The Tribunal considered the evidence and submissions. The Applicants had been substantially successful on many important points. The evidence on the substantial matters determined above demonstrated that the Respondent had insufficient experience and understanding of her obligations as manager of the building. She admitted at the hearing that although she was aware of the relevant RICS management code, she had no recent knowledge of the contents thereof. It was also apparent to the Tribunal that her inexperience of supervising building work had resulted in considerable extra expense against the service charge. It also appeared from the paucity of relevant invoices in the bundle that the Respondent had not kept satisfactory service charge accounts. She sought to excuse the lack of invoices by stating that the Applicants had not asked for them to be produced, however the Tribunal decided that it should be self-evident to a competent manager that if a charge is challenged as being unreasonable, the relevant invoices must form the most compelling evidence of the actual cost. It is for the manager, as trustee of the service charge money, to prove expenditure. The Tribunal also decided that in the absence of agreement, the only reasonable course open to the Applicants was to bring this application. The Tribunal decided to make an order under Section 20 that none of the Respondent's costs of this application were reasonable costs to be added to the service charge.

K. Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

48. The 1st Applicants applied for an order for reimbursement of their application and hearing fees paid to Tribunal in respect of this application. They submitted that unlike Rule 13(1), Rule 13(2) was not a punitive provision requiring them to prove unreasonable conduct, and for the reasons noted above they requested the Tribunal to exercise its discretion to make an order.

49. The Respondent resisted the application for the reasons submitted in relation to the Section 20C order (see above).

50. The Tribunal considered the evidence and submissions. Rule 13 gives the Tribunal a discretionary power to make awards relating to costs and fees. It accepted the Applicants' submission that the threshold for an award under Rule 13(2) was not as high as in Rule 13(1), and that its discretion was wider. The Tribunal considered that the Respondent had volunteered for the management of the building. While it accepted that her motive was to reduce costs, (she described it as run on a shoe string) the Respondent was still obliged to manage competently. A competent manager in this case would have taken a more considered approach to the emergency works, recognised a justifiable challenge to the service charges over the lack of valid Section 20 notices, and made her own application under Section 20ZA for a dispensation. In all the circumstances the Tribunal decided to exercise its discretion and order the Respondent to pay the Applicants' application and hearing fees paid to the Tribunal.

L. Section 20ZA application

49. The Respondent had indicated that she wished to make a Section 20ZA application in one of her written statements. However, on consideration of the rules, the Tribunal decided that until a formal written application was made, and the fee paid, it could not accept an application. If the Respondent wishes to make Section 20ZA applications relating to the Major Works and Emergency Works in 2013, she should make a formal separate application to do so, with a request that it be determined by the members of this Tribunal. The Tribunal cannot predict whether it will grant such applications, as applications are considered on their merits, based on the evidence presented by the parties at that time.

Tribunal Judge: Lancelot Robson 20th August 2016

Appendix

Landlord & 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.

20 Limitation of service charges: consultation requirements

(1)Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a)complied with in relation to the works or agreement, or

(b)dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

(2)In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3)This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4)The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a)if relevant costs incurred under the agreement exceed an appropriate amount, or

(b)if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5)An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a)an amount prescribed by, or determined in accordance with, the regulations, and

(b)an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6)Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in

determining the relevant contributions of tenants is limited to the appropriate amount.

(7)Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA Consultation requirements: supplementary

(1) Where an application is made to a [leasehold valuation tribunal] for a determination to dispense with all or any of the consultation requirements in relation to qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

Section 21B

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant witholds a service charge under this section any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) and (6)....

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,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(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.

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 leasehold valuation 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 a leasehold valuation tribunal;
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the

proceedings are concluded, to any leasehold valuation 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

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,

(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.

(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,
(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) 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,
(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.

(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)

(7) Nothing in Section 168 affects the service of a notice under Section 146(1) of the Law of Property Act 1925 in respect of a failure to pay-
(a) a service charge (within the meaning of section 18(1) of the 1985 Act), or
(b) an administration charge (within the meaning of Part 1 of Schedule 11 to this Act).

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

Regulations 13(1) - (3)

13.-(1) The Tribunal may make an order in respect of costs only-
(a) under Section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
(b) if a person has acted unreasonably in bringing, defending, or conducting proceedings in-
(i) an agricultural land and drainage case,
(ii) a residential property case, or
(iii) a leasehold case; or
(c) in a land registration 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 application or on its own initiative.
