12019

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAM/LSC/2016/0231**
Property	:	**7 Barclay House, Well Street, London E9 7RA**
Applicant	:	**Mr Lee Cant**
Representative	:	**Mr Cant accompanied on the first day by Mr Smeaton and other friends**
Respondent	:	**London Borough of Hackney**
Representative	:	**Mr D Kilcoyne, Counsel** **Ms Pauline Campbell, Senior Lawyer, Mr Matthew Paul, Ms Olubukola Adleye and Mr Paul Davies all from the London Borough of Hackney**
Type of Application	:	**Liability to pay service charges and administration charges**
Tribunal Members	:	**Tribunal Judge Dutton** **Mrs E Flint DMS FRICS IRRV** **Mrs L Walter MA(Hons)**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR on 29th November 2016 and on 26th January 2017**
Date of Decision	:	**20th February 2017**

DECISION

DECISION

1. **The Tribunal determines that the Applicant has not been able to show that his claim under Section 27A of the Landlord and Tenant Act 1985 (the Act) has been proved and the Tribunal therefore determines that the service charges for the years 2010/11 to 2015/16 are reasonable and are payable.**
2. **The Tribunal sets out at the foot of the decision directions in respect of any application the Council may make in respect of costs under Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013.**

BACKGROUND

1. On 30th May 2016 Mr Lee Cant made application to the Tribunal for a determination of the liability to pay and the reasonableness of service charges claimed by the London Borough of Hackney in respect of his property 7 Barclay House, Well Street, London E9 7RA. In his application he sought to recover for the years 2010/11 through to 2015/16 but also then appeared to seek to recover for future years it would seem as far as 2021. His application referred to the Unfair Contract Terms Act, in particular a suggestion that the lease did not say that he should obtain legal advice before signing it and he was not, therefore, aware of the terms of same. For the years in question, it appeared he challenged all items of service charges.

2. Directions were originally issued on 19th July 2016 but, as a result of documents filed by Mr Cant, it was concluded that a further case management conference should take place, which it did on 8th September 2016. The background to these directions highlights the difficulties that have been associated with this case. The directions set out the limit of the Tribunal's jurisdiction and refused requests for the eventual hearing to be recorded or for the Applicant to adduce some 200 hours of video and audio evidence. In addition also, a requirement was imposed that there be a limit of three witnesses of fact to each party.

3. The directions went on to limit the issues to those contained in the Applicant's original statement of case and gave directions for the matter to come on for hearing on 29th November 2016. It is worth recording that Mr Cant made application to the Upper Tribunal for leave to appeal against the decision given by the Tribunal at the directions hearing on 8th September, but such permission was refused for the reasons set out in the refusal document, which we do not need to repeat in this decision.

4. Prior to the hearing, we had a substantial bundle of papers which contained amongst other things Mr Cant's statement of case, the Council's extensive response, witness statements of Mr Matthew Paul, Miss Olubukola Adeleye and Mr Paul Davies. There was some suggestion that Mr Cant might not be able to attend the hearing in November for illness reasons. A statement for fitness for work was provided from his GP but in fact he did attend the hearing. We also had delivered to us on the morning of the hearing a copy of the Counsel's skeleton argument which we gave Mr Cant some time to consider before we started.

5. Mr Cant's statement of case came in email format and raised a number of issues. Doing the best we can it seems that the following were matters that were complained of by Mr Cant:-

- The London Borough of Hackney's management charges.
- CCTV.
- Poor cleaning.
- Excessive electricity charges caused by external lights being left on and lack of bulb replacement and repairs.
- General repairs. This appeared to relate to the non-painting of his front door and problems caused by the play area adjacent to his property. It also related to works being carried out on the estate apparently by contractors causing nuisance and annoyance to him by the noise and hours that they worked.
- Footpath drainage, allegations being that these were blocked and caused flooding.
- Grounds maintenance, the suggestion being that the grass was cut too often, that the work was carried on early in the morning causing nuisance and annoyance.
- Block costs relating to; CCTV; cleaning; electric bills; repairs and footpaths which in essence were a repeat of earlier allegations.
- Mr Cant challenged the insurance costs and the management costs.

6. In his original statement of case, after having set out the items which caused him concern he then went on to refer to various pieces of legislation including the 1985 Landlord and Tenant Act, the 1987 Landlord and Tenant Act, the Unfair Contract Terms Act 1977, Data Protection Act, Harassment Act, Environmental Act 1995 and United Nations Convention on Disability Rights. He referred in particular to section 8 of the Landlord and Tenant Act 1985 in respect of lettings of houses at low rent which we will return to in due course. The submission also specifically referred to section 19 of the 1985 Act and the Consumer Rights Act of 2015.

7. Under section C of his statement, he set out what he believed to be the numerous errors of the Council which included, for example, that a fee in respect of lifts should not be charged to him. Further, fees in relation to the upkeep of the toddler's play area should not be charged to him as it was not a service he ever used and was not wanted by him. Indeed, it caused him considerable nuisance he said. The sanity "and mental age" of the Council was questionable because of the "low maturity of response." The document then went on to consider the seven principles of public life and recited a number of references to articles in the Hackney Gazette and other references to examples of anti-social behaviour. Under a heading DBLC of SI references were made to world debt burden and master bond vouchers which were, with respect to Mr Cant, difficult to relate to the proceedings before this Tribunal. The statement then went on to deal with the provisions of section 20C of the 1985 Act and at page 173 of the bundles the statement went on to list again a number of issues that Mr Cant wished to raise concerning the actions or inactions of the Council. There then followed a heading of Understanding digital engagement in later life, where again references were made to matters that appear to have no relevance to this Tribunal.

8. There was a section relating to the terms of the lease confirming that Mr Cant purchased the lease in June of 1987 from a Mr Killi but that it appears no party explained the terms of the lease to Mr Cant and that the Council should have done so. It appears that Mr Cant was never informed prior to signing the lease that he would be liable to pay for repairs and other fees over a number of blocks on the estate and that this triggered the Unfair Contract Terms Act 1977.

9. References made in the statement to the case management conference that was due to be held in September, which we do not need to consider for the purposes of this decision, and raised a number of questions concerning issues in dispute which we have already referred to. Reference is then made to the Tribunal Rules of Procedure, in particular the overriding objectives and case management powers and comments on what is considered to be reasonable or not. Finally, a Scott Schedule had been attached to the statement for the years in question indicating that each item of expenditure was challenged by cross reference to paragraphs in the statement of case.

10. Prior to the hearing, on 23rd November 2016, Mr Cant sent an email to the Tribunal and it is perhaps appropriate to record some of the contents so that it puts the evidence of Mr Cant and the basis of his case in some context. The email appears to be a notice of "Immunity from Treason" directed to employees, directors etc of UK PLC, the London Borough of Hackney, with interested parties suggested to be the Chief Executive Officer of the Ministry of Justice, the Tribunal and all Judges involved. The email contends that this Tribunal had conspired with the Police to deny equality of arms by refusing to adjourn a hearing after the Police appeared to have taken possession of Mr Cant's computer/computers. The suggestion made is that the Tribunal was an agent of the criminal cover up of the crimes committed by UK PLC in collusion with the London Borough of Hackney and Metropolitan Police. This purported to take the form of a statutory declaration signed by Mr Cant and two of his friends. We do not propose to go into any further detail in connection with this document, which is recited merely to indicate the difficulties that the Council, and indeed this Tribunal, had in dealing with Mr Cant's claims.

11. In response to these various documents the Council had provided a full statement which attempted to deal with each item raised by Mr Cant in a chronological order setting out the costs associated with each item of service charge for the years challenged and indeed estimated to 2016/17.

12. It set out for each item challenged by Mr Cant the costs incurred in those years with various explanations as to what had been undertaken and the services provided by the Council.

13. It appeared that the actual and anticipated expenditure charges for the years were as follows:-

- For the year 2010/11 the charge to Mr Cant was £1,164.68 which included estate and block charges. It seems that in respect of block charges, only repairs, cleaning and lighting were charged.

- For the year 2011/12 a total claimed was £1,374.62 and again block repairs, cleaning and lighting were charged, together with a communal TV aerial maintenance contribution of £1.28.
- In the year 2012/13 the total cost was £1,125.60, again with the same three block outgoings and as with previous years the estate costs related to repairs, cleaning, lighting, maintenance, footpaths, drainage and CCTV. Separate headings, as it had for the previous years, for building insurance and management charges were included. It is appropriate to note that the management charges in 2010/11 were split between a neighbourhood management charge of £95.68 and a management charge of £134.89. The neighbourhood management charge was not claimed in the following years and the management charge settled at under £200 per year except for the estimated charge for 2016/17.
- For the service charge year 2013/14 the total cost was £1,288.05 with the same block costs including a communal TV aerial charge of £13.24.
- In the year 2015/16 the same items of expenditure occurred at much the same levels and the same was the case for the year April 2016 to March 2017.

14. We have noted all that is said in the Council's written response.

15. We noted also Counsel's skeleton argument and in particular the submission at paragraph 18 which says as follows *"in short it is submitted that A has not done enough to raise a prima facie case that the sums charged are not due (or are not reasonable for the purpose of section 19 of the 1985 Act), there is no particularity or detail in relation to any of the matters set out in his statement of case. There is no documentary evidence supporting his case (eg alternative costings). There are no other witnesses and no expert witnesses."*

HEARING

16. The hearing was late in starting and was adjourned for 20 minutes or so to give Mr Cant the chance to at least read the skeleton argument, which he had been offered when he arrived but refused to take.

17. Mr Cant told us at the start of the hearing that his statement of case in the bundle was only part of the claim and that he had not been able to complete his work to submit before the Tribunal because of demolition works at the block which took place all day long. These works were apparently refurbishments of tenanted flats. He told us that he had short clips of filming showing children playing in the playground, an area which was not wanted by residents. Indeed, he told us the residents had asked for it to be moved to a different area. He said that when he moved in the play area was a car park and had been changed without approval some five to seven years ago. He considered that he got no benefit of the car park that it was unreasonable for him to be expected to pay for the playground and indeed anything else he did not use.

18. To enable the matter to proceed it was agreed that the Council would call their witnesses and that Mr Cant would be required to put all points he wished to those witnesses so that his case could be fully understood.

19. The first witness called by the Council was Mr Matthew Paul, a Leasehold and Income Officer. He had provided a written statement with some photographic evidence. The statement confirmed Mr Cant's liability to make payments in respect of service charges by reference to the lease, the wording of which was set out in the statement, in some detail. Mr Paul's statement then provided details of the individual costs for the items challenged by Mr Cant being the estate and block CCTV, estate and block cleaning, estate and block lighting and electrical costs, repairs, estate roads, footpaths and drains, estate ground maintenance, insurance and management fees. The statement also went on to deal with concerns raised by Mr Cant concerning the erection of scaffolding at his property. The statement also confirmed that Barclay House forms part of Frampton Park Estate and that under the terms of the lease Mr Cant was contractually obliged to contribute to the costs incurred on the whole of the estate. The statement confirmed that there has been no charge for the lift from 2009/10 onwards. Further, it was confirmed that the play area was within the Frampton Park estate and was an expense that all residents had to contribute towards. The statement went on to deal with various other matters raised by Mr Cant.

20. Mr Cant, helpfully assisted by Mr Smeaton, firstly indicated that he had not received the bundle of papers that was before us. This was disputed by the Council who said that they had been couriered to Mr Cant. Mr Cant then thought that possibly the bundle had been received by a neighbour and although he had a note from that neighbour, it appears that he had not gone to collect it. He said also he had had no note from the courier. This problem with the bundles resulted in a further adjournment whilst the matter was investigated at which point Miss Berry intervened and we adjourned to give time for her to be removed from the Tribunal room.

21. Inquiries made by the Council with the courier company indicated that Mr Cant had in fact signed for the bundle and that it had been delivered on the day said.

22. We then continued with the evidence of Mr Paul. He was asked some questions about the building works in the locality to Mr Cant's property, which he thought were works being undertaken under the Decent Homes Project, although he could not say how many tenanted properties were affected. He thought that the contract with the builders limited the time that they could work between 8.00am and 5.00pm in the week.

23. Questions were raised about a various number of expenses. What was established was that the costs payable by Mr Cant were calculated on a bed-weighting basis. This is not an uncommon method, we were told, and on the estate it gave a percentage liability for Mr Cant of 0.1028%. The same was carried out in respect of the block to give a liability of 2.8391%. It appears that Mr Cant had last made a payment in October of 2015. On the question of CCTV, Mr Cant told us that he had moved in about 30 years when CCTV was not available. He did not believe that he had been informed by the Council that they were going to install it and had not obtained consent. Indeed he said it was of no use because in 2005 he had been attacked two times although it seems that cameras had not been installed until 2009. We were reminded at this point by Mr Kilcoyne that the directions of 8th September 2016 were specific. No allegation of overcharging in the statement of

case had been made nor was there any allegation that the costs were unreasonable and that this should be borne in mind when evidence was heard.

24. There was then questioning concerning the estate cleaning as well as the block cost. A general allegation was made by Mr Cant that the grassed areas were not dealt with properly and that refuse had been left in bags and not collected. It was suggested that the external lights came on at odd times and that there were still missing and/or broken bulbs. The lights remaining on meant, in Mr Cant's view, that the electricity costs were higher than they should have been. He indicated not for the first time that he had been prohibited from producing all the evidence he wished because his computers had been seized by the Police and that these contained months of photographs to substantiate the allegations particularly in respect of the lack of cleaning and lighting. It seems these computers were seized on 13th September 2016. He also told us that some of his witnesses were ill and could not attend.

25. Mr Kilcoyne at this point confirmed that the arrears owed by Mr Cant as at 29th November 2016 stood at £3,319.21.

26. After the luncheon adjournment, further questions were raised of Mr Paul concerning repairs to the pavements and the roads, the lack of repair to the door appeared to be resolved in that Mr Cant accepted that the door fell within the definition and demise of his flat, although he did not know why other doors appeared to have been repaired. Mr Cant told us that drains to the front of his property had been blocked causing an overflow across the pathway and produced a photograph from his mobile phone, which did not, in truth, support his assertion. It is true there were some puddles in the roadway but we established that some roads were in fact maintained by the Highways Authority although not the one fronting Mr Cant's property and others fell within the estate expenditure.

27. Mr Cant disputed the number of attendances for grass cutting which he said was too high and that he was susceptible to the noise caused both by the grounds maintenance and also by works in the vicinity of his property.

28. On the question of insurance Mr Cant told us that he had obtained some alternative quotes, some of which were slightly higher or lower than the Council's costs. As a matter of record, these insurance costs varied as one would expect, although not to any degree. Apart from the estimated cost for the year 2016/17 they were no higher than £168.16 and that was in the year 2010/11. Mr Cant raised concerns in respect of scaffolding, which had been erected too close to Mr Cant's windows preventing him from opening those. Apparently this matter had been taken to court but the scaffolding had been removed and it appeared that the case did not proceed. A suggestion was also made of asbestos issues and also the costs associated with the upkeep of the community halls throughout the estate, although we were told that no charge was made to the lessees.

29. After Mr Paul we heard from Mr Paul Davies, who was the Accounts Officer at the Council. He told us that in respect of the management charge calculation this was dealt with on a percentage basis of the overall costs for the block or the estate. In 2010 there had been two charges for neighbourhood and management but in 2011/12 the neighbourhood charge was brought back in-house so that it came

under the heading 'management charge'. The assessment of the appropriate percentage to charge was undertaken following interviews with members of staff on the time spent on various administration tasks and a review of various overheads. The time devoted to leaseholders was assessed and taking these matters into account this gave the percentage rate for the charge made by the Council. We were also told that the Council did undertake benchmarking with other local authorities to assess the level of costs. Mr Cant did, however, accept that the management costs were comparable to other Council estates following discussions that he had with other tenants. He was, however, sceptical as to the basis upon which the percentage rate had been calculated.

30. Finally, we heard from Miss Olubukola Adeleye who again had made a statement. She worked as the Team Leader for the Estate Management Team and told us that regular visual inspections were carried out by Estate Inspection Officers. She accepted that Mr Cant had made a series of complaints regarding nuisance from the flat above his property, which had been referred to the Anti-Social Behaviour Team. She was aware that Mr Cant had lodged a formal complaint regarding the play area and the Council's management of anti-social behaviour in the summer of 2015.

31. In evidence to us she confirmed that the estate was highly regarded and was a positive environment. She accepted that the improvements to the tenanted property under the Hackney Improvement Programme could be disruptive but leaseholders carried out their own works to their own flats and she had had no complaints from anybody, apart from Mr Cant. She was unable to help us with whether or not the works to Mr Cant's block had been concluded. She said she was not specifically aware of problems with drains and that the office where she worked was some 200 yards away and that she regularly walked past Mr Cant's block. She told us that the caretaker was on the estate every day and there was a cleaning supervisor. In her experience the estate was kept clean and that there had been no complaints made to her concerning the cleaning around Barclay House. As to the children's play area, she said she had seen a petition that Mr Cant had submitted with neighbours' complaints. She told us she had followed it up but got little response. There was it seems a tenants' residents association which had been suspended for a few months but which had been reinstated in October of 2016.

32. She was asked some questions by Mr Cant and Mr Smeaton concerning the undertaking of repairs. She told us that this went to a repair contact centre and occasionally she got involved, perhaps to take some photographs. She told us that the staff undertook detailed inspections when they would pick up issues relating to communal repairs, health and safety matters, graffiti and fly-tipping and this happened once a month.

33. Following the conclusion of Miss Adeleye's witness evidence the matter was adjourned on the basis that the Council would provide submissions on the evidence taken to date which we hoped would assist Mr Cant to respond thereto. He was obliged to provide his response by 19th December and the matter would be listed for a subsequent hearing.

34. Thereafter the Council did indeed file further submissions dealing with various matters and setting out issues which the Tribunal could determine and those that

it could not. It was submitted that those matters we could determine would be a possible set off for various allegations raised by Mr Cant, such as nuisance, quiet enjoyment etc, possibility of any set off under the Consumer Rights Act 2015 and under section 19 the 1985 Landlord and Tenant Act. The document went on to deal with the Applicant's statement of case and its inadequacies, the matters of which we have noted.

35. In response Mr Cant filed a substantial bundle of documents which included what purported to be witness statements and other documents which were, with respect to Mr Cant, not relevant to the issues before us.

36. On 26th January 2017 the matter reconvened with Mr Kilcoyne again representing the Council accompanied by Mr Paul and Miss Ziaie-Fard. Mr Cant attended, again with Mr Smeaton and friends, but also Mr Edward William Ellis. The hearing started 15 minutes late and Mr Ellis immediately imposed himself indicating that he was assisting Mr Cant. We were informed by Mr Kilcoyne that Mr Ellis was a disqualified solicitor and that a formal order of the court had been made that he should not assist any party in proceedings. Mr Ellis told us that he was an equity lawyer and that because evidence had been retained by the Police until after the first hearing this had closed the evidence stage of the case and he had advised Mr Cant to rest his case without adducing any further evidence. We were not prepared to accept Mr Ellis as acting on behalf of Mr Cant. Mr Cant, however, said that he wished to conclude his case and not to produce further evidence, again prompted by Mr Ellis. After discussions with the parties and at Mr Kilcoyne's suggestion, we adjourned the case for some half an hour or so to give Mr Cant the chance to consider his position. However, he returned to the hearing room and told us that "the citizen relies on the jurisdiction case and the documents before us and had no further comments to make." He confirmed that this decision had been made freely.

37. Mr Kilcoyne wanted to make some points and handed in some further legislative documentation, in particular relating to section 8 of the Landlord and Tenant Act 1985 and the updated Consumer Act of 2015. His view on the section 8 point was that the service charges should be included in rent and this, therefore, took the tenancy outside the provisions of that act. In addition also, he contended that long leases would not generally be subject to these provisions and that accordingly section 8 did not apply. He asked us to issue directions for a potential claim under Rule 13 which the Council would consider in due course.

38. Thus ended the case somewhat bizarrely and without Mr Cant fully putting his issues before us other than dealt with in cross examination of the Council on the first hearing date.

THE LAW

39. The law applicable to this matter is set out below.

FINDINGS

40. This is a difficult case. Some of the allegations made by Mr Cant are wholly without our jurisdiction. In addition, some of the threats made by Mr Cant or by

those assisting him are, to say the least, illogical. Threats of treason and suggestions that the London Borough of Hackney owes trillions of pounds does nothing to assist us in trying to reach a determination under section 27A of the Landlord and Tenant Act 1985. The evidence in this case was by and large one way. Mr Cant raised allegations in his statement of case which were responded to fully by the Council both in their written response and the witness statements which we referred to, but also in the evidence given by those witnesses which we accept was honestly given.

41. It may well be that there are certain issues, as is often the case, in living on an estate where there are a substantial number of residents some long lease holders, some tenants of the Council. It may well be also that Mr Cant's case was inhibited by the Police seizing his computer for reasons that were not known to us. Mr Cant had during the course of the hearing sought to introduce some photographs, which were on his mobile phone which did not really assist us. There may be instances when the external lighting is on at the wrong time but it was impossible to tell when that might have been or how often that occurred. Looking at the charges made on an annual basis and individually charged to Mr Cant, it is not possible for us to see from the evidence before us that any of these costs were unreasonable. Mr Cant adduced no evidence of comparable charges. Although the management fee would not ordinarily under the RICS guidance be charged on a percentage basis, the actual costs of management, save for the year 2010/11 has never exceeded £200 which does not seem to us to be unreasonable given the nature of the estate. As we have indicated, no comparable evidence was given and we understood from Mr Cant that the management charges made on this estate were not dissimilar to those on others. The same could be said for the insurance. As we have indicated above, the insurance costs for the year are under £170 save for the estimate for 2016/17 which does not on the face of it appear to be unreasonable and again no evidence was adduced to show that a cheaper insurance costs could be obtained elsewhere.

42. We are, therefore, left to conclude that whilst there may be one or two items that were susceptible to challenge by Mr Cant, he has not adduced any compelling evidence, or any evidence at all in reality, which enables us to reduce any of the costs that have been claimed by the Council. Insofar as we can tell the costs that have been incurred have been reasonably incurred and those costs seem to us to be of a reasonable amount. We therefore find that for the years in question those costs are payable and that Mr Cant should, therefore, pay any shortfall that is outstanding in respect of the years in dispute.

43. We would just comment on two matters. It seems to us that section 8 of the Landlord and Tenant Act 1985 does not apply in this case. It cannot, we would have thought, been Parliament's intention that long leases that frequently have low rent levels would be subject to this provision. We find, on the basis of the submissions made and our consideration of the section, that service charges would be payable as rent and would, therefore, take the property outside the low rent provisions. In any event, if we are wrong, there is no evidence that this property was not fit for human habitation. No suggestion appears to have been made by Mr Cant that his flat was not habitable save insofar as there was noise and nuisance caused by neighbours.

44. The other point raised by Mr Cant was under the Unfair Contracts Terms Act. This appeared to relate to the lack of advice he was given when he entered into the assignment of the lease in 1987. He suggested that the Council was under an obligation to advise him. This cannot be right. The party who he should have received advice from would have been those solicitors, if any, who represented him on the purchase. In any event, it seems that the issues raised by Mr Cant were many years after he completed the purchase of the flat. We do not consider that the Unfair Contract Terms Act applies in the circumstances suggested by Mr Cant. If there were any lack of advice, then it rests with others but it seems to us that the limitation period applicable to any negligent advice has long since passed.

45. If the Council feels it appropriate to seek to pursue a claim for costs against Mr Cant under Rule 13, then the directions applicable are set out below.

1. Within 28 days of this decision having been issued, the Respondent will provide a written statement to the Applicant setting out why it considers that the Applicant has acted unreasonably within the meaning of the rule and setting out in full detail the costs the Respondent says it has incurred as a result of such alleged unreasonable conduct. Those costs must include full details of the fee earners, their hourly rates, the time spent and the tasks undertaken. The statement of costs must be signed by an appropriate Council Officer confirming that the costs claimed do not exceed the amount payable by the Applicant. If Counsel's fees are sought to be recovered, details of Counsel's hourly rates and the brief fee must be provided.

2. Within 28 days of receipt of the document from the Respondent under direction 1 above, the Applicant must reply thereto setting out such grounds to support his contention that he has not acted unreasonably in connection with the proceedings, including the commencement of same and conduct during the course of the proceedings also indicating what level of costs if any they would approve with reasons for any challenge.

3. Fourteen days after receipt of the Applicant's response at 2 above, the Respondent shall send to the Applicant and file with the Tribunal a final reply to the Respondent's response and lodge with the Tribunal the documents served under direction 1 and under direction 2.

4. Within 28 days of the receipt of the papers under paragraph 3 above the Tribunal will consider the application and issue a decision shortly thereafter. The matter will be dealt with by way of paper determination but if any further directions or alterations to timescales are sought those must be requested of the Tribunal as quickly as possible.

Judge: Andrew Dutton

A A Dutton

Date: 20th February 2017

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.
2. 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.
3. If the application is not made within the 28-day time limit, such application must include a request to 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.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie 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.

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
(a) the person by whom it is payable,
(b) the person to whom it is payable,
(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.