



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
RESIDENTIAL PROPERTY)**

Case Reference : **CAM/00KA/LIS/2018/0017**

Property : **10 & 17 Princess Lodge, 39 – 45 Princess Street, Luton LU1 5AT**

Applicant (Tenant) : **Faisal Basheer**

Respondent (Landlord): **Money Maker Limited**
Representative : **Irfan Sadeeq**

Date of Application : **23rd July 2018 (rec'd 25th July 2018)**

Type of Application : **to determine the reasonableness and
payability of the Service Charges (section
27A Landlord and tenant Act 1985) and
Administration Charges (Schedule 11
Commonhold & Leasehold Reform Act
2002)**

**to determine whether the landlord's costs
arising from the of proceedings should be
limited in relation to the service charge
(section 20C of the Landlord and Tenant
Act 1985)**

**for Costs under Rule 13 of the Tribunals
Procedure (First Tier Tribunal) Property
Chamber) Rules 2013**

Tribunal : **Judge JR Morris
Mr R Thomas MRICS
Mr N Miller BSc**

Preliminary Hearing : **27th November 2018**

Date of Directions : **3rd December 2018**

Date of Hearing : **12th March 2019**

Date of Decision : **18th April 2019**

DECISION

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Decision

1. The Tribunal determines that the following Service Charges are reasonable and payable by the Applicant to the Respondent when properly demanded and when evidence of the building's insurance is provided for the years ending 28th February as follows:
2013 £154.44
2014 £154.44
2015 £304.48
2016 £298.51
2017 £154.44
2018 £172.96
2. The Tribunal determines that the Administration Charges are not reasonable or payable.
3. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.
4. The Tribunal decided not to make an Order for costs under Rule 13 of the Tribunals Procedure (First Tier Tribunal) Property Chamber) Rules 2013.
5. The Tribunal Orders the Respondent to reimburse the Applicant the sum of £300.00 Tribunal Fees (£100.00 Application Fee and £200.00 Hearing Fee) within 30 days of the date of receipt of this Decision.

Reasons

Application

6. This Application, made on the 23rd July 2018 (received on the 25th July 2018), is for:
 - 1) a determination of the reasonableness and payability of the Service Charges incurred for the years ending 28th February 2013, 2014, 2015, 2016, 2017 and 2018.
 - 2) a determination regarding Administration Charges
 - 3) a determination whether the landlord's costs arising from the of proceedings should be limited in relation to the service charge section 20C of the Landlord and Tenant Act 1985.
 - 4) an order for costs and reimbursement of tribunal fees under Rule 13 of the Tribunals Procedure (First Tier Tribunal) Property Chamber) Rules 2013

The Law

7. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 and is set out in the Appendix to these Reasons.

The Lease

8. A copy of a Lease for flat Number 10, dated 24th May 2007, was provided which was said to be common to both the flats except the demise of 10 included a car parking space. The Leases were all between the Applicant as Landlord and the individual Tenants. These were each for a term of 99 years from the date of the Lease.
9. The Lease defines the “Estate” as the whole development (identified in Schedule 1) and the “Retained Premises” as those parts of the Estate not demised (identified in Schedule 2). The parts demised are the “Flats” (identified in Schedule 3). The “Building” means the building converted into flats.
10. The Service Charge provisions include the definitions of “Service Charges” which are said to mean the sum of £750.0 per annum as part of the Service Costs and “Service Costs” which are defined as the “costs and expenses described in the Ninth Schedule and shall include not only those costs and expenses which have been actually disbursed and incurred during the year in question but also such reasonable part of all such expenses out goings and other expenditure which are of a periodically recurring nature ...whenever disbursed incurred or made”. It is not clear in the Lease what the sum of £750.00 represents. It would appear that this just the sum payable by the tenant on first taking the Lease as a contribution to the initial Service Charge because it is made clear later in the Lease that the Service Charge and Service Costs will vary firstly depending on the estimated costs required for the year and secondly as a balancing payment or credit at the end of the year depending on the actual costs.
11. Under Clause 1 of the Lease the Tenant covenants to pay “additional and further rent payable under the provisions of paragraph 2 of the Fourth Schedule. Under Clause 4 of the Lease the Landlord may in its reasonable discretion create a reserve fund of such amount as is reasonable in order to provide for the renewal of equipment and materials required for the provision of the services and amenities herein provided and for carrying out works other than those of an annual recurring nature...”
12. Under paragraph 2 of the Fourth Schedule the Tenant Covenants: “To pay the Landlord by way of additional rent by one instalment in advance on the 29th September in each year ...such estimated sum as shall be reasonably required by the Landlord or its Agents.... of the reasonable and proper and necessary expense to the Landlord or performing the obligations and covenants ...contained in the Seventh Schedule ...and as soon as possible following the end of each such financial year the Landlord shall provide the Tenant with a summary of such expenses certified by the Landlords Accountants Surveyors or Managing Agents... and subject to Clause 4 hereof any necessary or subsequent adjustment ...shall be paid by the Tenant or credited to the Tenant ...”

13. Under paragraph 22 of the Fourth Schedule the Tenants covenant “to pay a fair proportion of all costs and expenses”. This was found to be an equal share for each unit i.e. 1/27th
14. Under the Fifth Schedule the Landlord covenants to inspect, repair and redecorate the exterior of the building and the Retained Premises and to keep them clean and reasonably lighted. The Landlord also covenants to insure the Estate including the Building and to provide the services referred to in the Seventh Schedule.
15. Under the Seventh Schedule the Landlord Covenants to provide and the Tenant agrees to pay a contribution for, amongst other things, staff for the general management, security or maintenance of the Estate, communal radio television and other aerials, the appointment of a solicitor accountant surveyor etc for the collection of rents or in connection with the Landlord’s obligations, the repairing, maintaining, rebuilding and cleansing of all roads, paths, pavements, sewers, drains etc.
16. The Ninth Schedule contains provisions for the assessment and payment of the Service Charge including:
 - “1. The Service Charge shall be the amount determined as hereinafter provided and payable at the times and in the manner hereinafter mentioned.”
 - “2. As soon as is reasonably possible after the end of the accounting year and thereafter at yearly intervals the Landlord will estimate the amount required for the Lessee to cover his liability for Service Charge for the following year...”
 - “3. Such estimate shall be based wherever possible on the actual costs and expenses of providing the said Services for the previous period...”
 - “4. The Landlord shall as far as it considers practicable equalise the amount from year to year of its costs and expenses by creating reserve funds...” It should be noted that it is a legal requirement pursuant to section 47A of the Landlord and Tenant Act 1987 that such reserves must be kept in a designated trust account.
17. Paragraph 23 of the Fourth Schedule states as follows;

“To pay to the Landlord all proper and reasonable costs charges and expenses (including Solicitors and Surveyors’ costs) properly incurred by the Landlord in or in proper contemplation of any proceedings under Section 146 and 147 of the Law of property Act 1925 notwithstanding forfeiture is avoided or otherwise that by relief granted by the Court or in connection with the preparation and service of schedules or dilapidations (whether during the term or following the expiry thereof) and the supervision of the works specified therein.”

Description & Inspection of the Property

18. The Tribunal inspected the Development prior to Preliminary Hearing on the 27th November 2018 in the presence of Mr Basheer, the Applicant, Mr Jason Berry Leaseholder of 116 Princess Lodge and Ms Tracy Waldron Leaseholder of 23 Princess Lodge, witnesses for the Applicant.

19. The Development is of 27 purpose built units constructed of brick under a pitched slate roof. The Development comprises a three-storey block on Princess Street of 24 flats fronting Princess Street (in which is situated the Properties of flats 10 and 17) and a further flat and two semi-detached bungalows built to the rear of Princess Street having access from Wellington Street. There is a narrow paved communal area with railings to the front of the blocks in Princess Street and a communal paved courtyard with raised beds and planters to the rear of the main block. In addition there is car parking for 8 of the flats (118A and B, 9, 10, 11, 22 and 23) with access from Wellington Street through gates that are operated via an electronic entry system. The development was completed in 2006.
20. The external communal paved courtyard was generally well maintained. The planters had been repaired by replacing some of the wooden sleepers. However, planting was scant and there was an encroachment of Japanese Knotweed into the car park from a neighbouring property which is likely to cause serious damage if left unchecked. The area around the waste bins was untidy where rubbish had spilt out. The narrow, paved area to the front of the main block in Princess Street contained a quantity of litter between the railings and the building. There is also a large quantity of litter in the street outside the car park gates in Wellington Street. The exterior of the block is in fair condition. There appeared to be some damage to the upvc soffits and fascia and the upvc rainwater goods are showing some signs of being affected by ultra violet light not uncommon after 12 years. It was noted that the roof had been repaired in the past year although the extent of the repair was not clear.
21. Only the block on Princess Street has internal communal areas. Access to these areas was via a door entry system. The block has 2 front entrances and corresponding rear doors. There are post boxes on the exterior of the wall near the front entrances and internally there is a door to each box. A number of the locks and hinges to the internal doors to the boxes have broken and remain unrepaired. Each entrance has a hallway and stairs to the upper floors where there are landings on each floor. Off each landing are 4 flats (8 flats per floor on the main block). The internal communal areas were carpeted and in fair to poor condition, there were marks on the walls, many of which could be removed by cleaning. The carpets were showing signs of wear and require vacuuming and cleaning. The window sills were covered with a layer of dust. The windows were dirty. Each flat had a utility cupboard with meters. There was a night storage heater in the hallway and on the landing of each floor run from the common meter. Access could not be obtained to the common meter so no reading could be taken.

Preliminary Hearing

22. The following was provided to the parties as a preamble to the Directions and is stated here for completeness of the Decision.
23. Following the Inspection, a preliminary hearing was held which commenced at about 11.00 and was attended by Mr Basheer Mr Berry, Ms Waldron and Mr Irfan Sadeeq, the Respondent's Representative, who arrived at about 12.00.

He said he had come to 'drop off' the accounts for the years 2015, 2016 2017 and 2018.

24. The Applicant provided a bundle which was not in accordance with the Directions and comprised a sheaf of papers many of which were not relevant. Nevertheless, the information given in the Application Form and in a Statement dated 19th November 2018 and in an oral statement at the hearing provided the background to and reasons for the Application and identified the issues. These statements are summarised as follows:
25. The Applicant said he had sought to sell 17 Princess Lodge but the purchasers have withdrawn because:
 - The calculation of the ground rent was not in accordance with the Lease.
 - The Landlord Respondent claimed that the Applicant owed ground rent and service charges for 10 Princess Lodge which was due to the Respondent's failure to submit a proper demand.
 - The failure of the Respondent to provide a building insurance policy schedule.
26. The Applicant said that in the course of a valuation for re-mortgaging the Properties in 2017, Japanese Knotweed had been found in the parking area which was reported to the Respondent who stated that the matter was for the Applicant to deal with.
27. He said the only accounts that have been provided are for the years ending 28th February 2015 and 2016. Both sets of accounts show round figures for expenses and no invoices or explanation of the costs said to be incurred have been provided.
28. At the hearing the Applicant said that the Respondent had failed to make demands for service charges in the proper manner. No Summary of Rights and Obligations had been provided with either the Service Charge or Administration Charge demands, failing to comply with section 21B of the Landlord and Tenant Act 1985 and the Service Charges (Summary of Rights and Obligations (England) Regulations 2007 (SI 2007/1257) and Administration Charges (Summary of Rights and Obligations (England) Regulations 2007 (SI 2007/1257)). He submitted that therefore, the Service Charges were not payable by the Applicant until a Service Charge demand was served with the Summary.
29. Also, at the hearing, the Applicant said that the Respondent had failed to make demands for ground rent on the prescribed form in compliance with section 166 of the Commonhold and Leasehold Reform Act 2002 and regulation 2 and Schedule of the Landlord and Tenant (Notice of Rent) (England) Regulations 2004 SI 2004 No 3096. The time given for payment must be not less than 30 days and no more than 60 days whereas the Respondent had required payment within 14 days. He submitted that therefore, the ground rent was not payable by the Applicant until a ground rent demand was served on the prescribed form.

30. In response to the Tribunal's questions the Applicant accepted that when properly demanded the reasonable service charges and the ground rent were payable. However, he said that the Respondent failed to provide the demands in a timely manner and had claimed in the demands (copies of some of which were provided) that he had made prior requests for the charges when he had not, and added penalty costs, which were not in accordance with the Lease and were unjustified. He submitted that if the charges were not properly demanded then the penalty costs were not payable.
31. The Applicant further stated that a request for a summary of relevant costs incurred was made to the Respondent under section 21 Landlord and Tenant Act 1985 for the year ending 28th February 2017 in November 2017 but no accounts have been provided. He said that only the accounts for the years ending 28th February 2015 and 2016 have been provided by the Respondent. He added that the Respondent had demanded £1,000 each year as an estimated service charge but failed to provide an account of the actual costs except for 2015 and 2016. The accounts that were provided did not show a sinking fund, deficit or surplus for those years.
32. Although requests have been made, the Respondent has failed to provide a breakdown e.g. for Building Maintenance or invoices for any of the costs incurred and many have been rounded e.g. utilities.
33. The Applicant added that the maintenance is poor, the communal area is cleaned and the carpets are vacuumed once or twice a year. The letter boxes and intercoms are broken. The vehicular entry gates are not working most of the time and were not operating from February 2017 until June 2018. The local authority cannot obtain access to empty the bins causing waste to be left in the communal area. The Applicant put all the items of the service charge in issue.
34. The Applicant stated that he had paid all sums demanded under protest because the Respondent threatened forfeiture of the Lease. He had not always paid the sums demanded on time previously because he wanted them to be properly demanded and justified with invoices etc., which the Respondent refused to do.
35. The Applicant said that he wanted an order requiring the Respondent to:
 - a. repay the penalties plus interest;
 - b. provide compensation of £3,037.50 for loss of rent from 10th May 2018 when Applicant's tenant left 17 Princess Lodge prior to the sale which the Applicant submitted the Respondent wrongfully caused not to proceed and council tax of £183.84 when number 17 was empty;
 - c. costs of £495.00 related to the loss of the sale;
 - d. pay the valuation fee of £320.00 for the re-mortgage which was declined because the respondent failed to remove the Japanese Knotweed;
 - e. provide proper accounts for the years ending 28th February 2013, 2014, 2015, 2016, 2017 and 2018;

- f. provide supporting documentation to evidence the Service Charge costs incurred for the years in issue.
36. In addition, the Applicant sought costs of:
£74.60 for printing;
£300.00 Tribunal fees;
Loss of earnings.
37. The Tribunal explained to the Applicant that it had jurisdiction to determine the reasonableness of Administration Charges, which were referred to by the parties as “penalties”. It also had jurisdiction to determine the reasonableness and payability of the service charges (referred to in a., e. and f.). The Tribunal can also award costs under rule 13 of the Tribunals Procedure (First Tier Tribunal) Property Chamber) Rules 2013 *if a person has acted unreasonably in bringing, defending or conducting proceedings*. However, subject to what determination was made, any enforcement was through the County Court.
38. Any compensation claim referred to in b., c. and d. was also a matter for the County Court.
39. The Tribunal was of the opinion that although the amount and enforcement of payment of the ground rent is outside its jurisdiction the reasonableness and payability of any administration charge levied for non-payment of the ground rent is within its jurisdiction.
40. The Respondent did not comply with the Directions issued on the 16th August 2018 and amended on 17th September 2019. The Respondent’s Representative, Mr Sadeeq, did not attend the inspection and arrived at the hearing late.
41. In response to the Tribunal’s questions Mr Sadeeq said that he had received a letter from the Tribunal informing him that the hearing was cancelled because the bundles had not been submitted. This was correct. However, the Tribunal had subsequently sent a letter on 21st November 2018 informing him that the bundles had been received and stating the time of the inspection and venue and time of the hearing. Mr Sadeeq said that he had not received this letter although the Tribunal noted that he had belatedly attended the hearing venue. He added that he also not received the bundle from the Applicant. The Applicant confirmed that this was the case stating that the bundle had been sent by tracked mail to the address given by the Respondent for correspondence and service of documents but it had not been delivered as there was no one to accept delivery and it had not been collected or a request received for re-delivery. Mr Sadeeq said had been away for the office for a few days.
42. He said that he had not complied with the Directions because he did not have all the information required which was held by his accountant and that he had instructed solicitors but they had not carried out his instructions. He added that he was the Respondent and that it was for the Applicant to provide a case against him.

43. The Tribunal informed the Mr Sadeeq that these are adversarial proceedings and that it is for each party to prove its case and that it was for the Respondent to comply with Directions.
44. He said that he had brought with him the Service Charge accounts for the years ending 28th February 2015, 2016, 2017 and 2018 but had not brought any of the supporting evidence such as invoices.
45. In response to the Tribunal's questions he said that the penalty sums charged were for late payment and were based upon the inconvenience caused to his firm. He did not feel that he should have to justify them in detail they were an assessment that he had made. He said that he sent accounts to all the Leaseholders each year with a Summary of Rights and Obligations with regard to the Service and Administration Charges and had demanded the ground rent in accordance with the legislation. When shown a copy of the letter demanding payment within 14 days Mr Sadeeq agreed that it was the demand he had sent.
46. The Tribunal found that the Respondent had not complied with the Directions and had not produced the information required. This in turn had meant the Applicant was not able to prepare his case with regard to the Service Charge items or the Administrative Charges.
47. The Tribunal determined, after a brief adjournment, that neither party had fully complied with the Directions and were not prepared adequately for the hearing. Since the Applicant's failure to prepare was due largely but not entirely to the Respondent's failure to provide information the Tribunal decided that in the interests of justice to treat the hearing as preliminary and to issue Directions for a fresh hearing. Following the fresh hearing the Tribunal would make a determination in relation to the reasonableness and payability of Service Charges and Administration Charges and decide whether it would make an order limiting the landlord's costs or an order in relation to reimbursement of fees or payment of costs to the Applicant.
48. The parties were reminded of the rubric at the top of the Directions Order. It was in both parties' interests to comply and that, particularly following this preliminary hearing, the failure to comply without good cause would result in serious detriment to the defaulting party.
49. The Respondent, as Landlord, was reminded that he must make arrangements to take service and receipt of all documentation at the address provided pursuant to section 48 of the Landlord and Tenant Act 1987.
50. The Tribunal recorded the Preliminary Hearing as stated above and issued Directions for a hearing on the 12th March 2019 on the 3rd December 2018.

Hearing on 12th March 2019

Attendance

51. The hearing was attended by Mr Faisal Basheer, the Applicant and two witnesses, Mr Jason Berry and Ms Tracey Waldron. Mr Irfan Sadeeq, the Respondent's Representative did not attend.

Applicant's Case

52. The Applicant provided a list of outstanding issues between the Applicant and the Respondent which are summarised as follows:
1. The service charges for the years in issue have not been demanded in the proper manner and no accounts or invoices to support the expenses have been provided;
 2. £4,225.00 of penalties/administration charges have been paid by the Applicant and were wrongfully charged;
 3. Compensation of £3,037.50 for loss of rent, £183.84 council tax and £371.86 for causing the sale of 17 Princess Lodge not to proceed;
 4. Costs of £435 related to the loss of the sale;
 5. Valuation fee of £320.00 for the re-mortgage fee which was declined due to the Respondent's failure to remove Japanese Knotweed;
 6. Provide proper accounts for the years ending 28th February 2013, 2014, 2015, 2016, 2017 and 2018;
 7. provide supporting documentation to evidence the Service Charge costs incurred for the years 2015 and 2016;
 8. Printing costs estimated at £74.60;
 9. Tribunal fees of £300.00;
 10. Loss of earnings for 3 days estimated at £750.00;
 11. Postage costs of £50.00
 12. Compensation of £560.00 for mortgage costs.
53. The Tribunal again explained that the claims for compensation in points 3, 4, 5 and 12 are matters for the County Court and not within the jurisdiction of the Tribunal.
54. At the hearing the Applicant reiterated the points he had made at the Preliminary Hearing which are set out above namely that:
- a) The Respondent had failed to make demands for service charges and administration charges in the proper manner and that no Summary of Rights and Obligations had been provided.
 - b) Notwithstanding a request for a summary of relevant costs incurred was made to the Respondent under section 21 Landlord and Tenant Act 1985 for the year ending 28th February 2017 in November 2017, no accounts have been provided.
 - c) The only accounts that have been provided are for the years ending 28th February 2015 and 2016. Both accounts show round figures for expenses and no invoices or explanation of the costs said to be incurred have been provided.
 - d) The Respondent has failed to make demands for ground rent and service charges in the proper manner and claims penalty costs when

the charges are not paid, notwithstanding, they are not demanded correctly and notwithstanding that the Lease does not provide for any such penalties.

55. The Applicant stated that he had paid all sums demanded under protest because the Respondent threatened forfeiture of the Lease.
56. The Applicant submitted copies of the accounts for the years ending 28th February 2015 and 2016 which stated as follows:
57. Service Charge for Year ending 28th February 2015
- | | |
|-------------------------------------|------------|
| Utilities | £2,500.00 |
| Insurance | £3,571.00 |
| Cleaning | £5,000.00 |
| Building Maintenance | £7,710.00 |
| Accountancy Fee | £480.00 |
| Administration Fee (Management Fee) | £5,000.00 |
| Total | £24,261.00 |
58. Service Charge for Year ending 28th February 2016
- | | |
|-------------------------------------|------------|
| Utilities | £2,500.00 |
| Insurance | £3,410.00 |
| Cleaning | £5,000.00 |
| Building Maintenance | £6,870.00 |
| Accountancy Fee | £480.00 |
| Administration Fee (Management Fee) | £5,000.00 |
| Total | £23,260.00 |
59. The Applicant states that the accounts do not show a sinking fund, deficit or surplus for the year.
60. There is no breakdown of the costs e.g. Building Maintenance, which are rounded.
61. The maintenance is poor, the communal area is cleaned and the carpets are vacuumed once or twice a year. The letter boxes and intercoms are broken. The vehicular entry gates are not working most of the time and were not operating from February 2017 until June 2018. The local authority cannot obtain access to empty the bins causing waste to be left in the communal area.
62. In addition, the Applicant sought costs of:
£74.60 for printing;
£300.00 Tribunal fees;
Loss of earnings.
63. The Preamble to the Directions following the Preliminary Hearing identified the issues for the Respondent and the Directions provided a clear indication as to the manner in which the Respondent should respond and the timeline gave the Respondent ample opportunity to respond.

64. The Respondent made no attempt to answer in writing or orally by attending the hearing, the issues raised by the Applicant or to comply with the Directions.

Discussion and Determination

65. The Tribunal found that the accounts for the years ending 28th February 2015 and 2016 which had been provided were not a record of the actual costs incurred. It is difficult to know of what they were intended to be a record, other than an estimated service charge.
66. As the Applicant stated, the accounts do not show a sinking fund, deficit or surplus for the year or a balancing figure. It appears that the Respondent merely charges a standard estimate year on year. From the inspection it is apparent that expenditure is incurred but no account of the actual costs or their supporting documentation are provided to the Leaseholders in accordance with the Lease.
67. The Applicants agreed that some service charge costs had or should have been incurred in relation to the heads itemised in the accounts. In the absence of evidence of the actual costs from the Respondent, the Tribunal took the view that it could only make its own assessment of a reasonable service charge taking into account such evidence as was available, including its inspection, and the knowledge and experience of its members.
68. The Applicant provided a copy of the Tribunal's Decision and Reasons Case Number CAM/00KA/LSC/2011/2016 dated 5th July 2011 for an Application made by the Respondent for a determination of the reasonableness of service Charges incurred for the years ending 28th February 2008, 2009 2010 and to be incurred for 2011 (the Previous Case).
69. For that Application the accounts itemised the same heads of the Service Charge and the Respondent had provided evidence of Buildings Insurance, Cleaning, a Schedule of Repairs and General Maintenance, and Accountancy Fees.
70. The Tribunal considered each of the heads of the Service charge for the years presently in issue referring to the evidence adduced in the Previous Case where appropriate.

Service Charges

Utilities/Communal Electricity

71. The Tribunal found that the only utility is the electricity to the communal areas which comprises the light and heat to the communal areas and for the outside lights and automated gates. The Accounts for 2015 and 2016 said the cost for this was £2,500. In the Previous Case the Landlord had said that due to problems with the electricity supplier, British Gas, in locating the accounts relating to the Landlord's supply the landlord had made an estimate of what the cost was likely to be in readiness for when an invoice was made by the

supplier. The explanation was accepted and the estimate of £2,000 was determined to be reasonable.

72. The Tribunal noted that in 2011 the Development was new and it was not unreasonable to create a reserve for a utilities invoice which went back until 2007. In the present case the Tribunal found that it was not reasonable merely to demand an amount in the service charge for electricity for nearly ten years on account without seeking to obtain an actual reading and an invoice from the supplier. The Respondent was under an obligation to obtain an actual reading and related invoice from the electricity supply company. The Tribunal found that electricity had been used but in the absence of any invoice from the electricity supplier an estimated charge of £750.00 per annum for each of the years in issue was reasonable until an invoice from the supplier based upon an actual reading was provided.

Buildings Insurance

73. Copies of the Insurance Policies and Schedules had been provided in the Previous Case. The Respondent adduced no evidence on this occasion other than the sum of £3,571 in the accounts for 2015 and £3,410 in the accounts for 2016.
74. The Applicant said that on 3rd May 2018 he asked for copies of the policy and details of payment of the premium in response to the purchaser's enquiries when he was selling Flat 17. However, he had never received them. He said that the only information he had seen with regard to insurance related to a quotation not payment. He submitted that the Insurance premiums referred to in the Accounts related to quotations and not premiums paid.
75. The Applicant added that he had been involved in the setting up of a Right to Manage Company which has served a Notice of Claim informing the Respondent that it intends to acquire the right to manage the premises on 25th March 2019.
76. In the course of setting up the Right to Manage Company the participating leaseholders had sought to obtain details of past and current insurance. The insurers that were contacted with which the Respondent had said he was insured said that they had no record of the premises being insured with them.
77. Ms Tracey Waldron gave an oral witness statement on behalf of the Applicant stating that her mortgagee had for many years required her to pay an additional sum by way of premium in order that the mortgagee could insure the Property because it said that there was no record of insurance.
78. The Applicant submitted that the Development had not been insured for the years in issue because a) no evidence had been adduced by the Respondent to show that the Development had been insured for the years in issue, and yet this should be a relatively easy task; b) when inquiries had been made on behalf of the prospective Right to Manage Company the insurance companies with whom the Respondent had said he had placed the insurance did not know of any such insurance.

79. The Tribunal determined that, in the absence of evidence to the contrary, the premiums for insurance referred to in the accounts for the years ending 28th February 2015 and 2016 appeared reasonable. Nevertheless, these premiums were not payable until the Respondent provided evidence of the premiums that had actually been paid. In addition, in the absence of accounts for other years stating an amount of the annual insurance premium and any policies documents or details of other premiums the Tribunal determined the insurance premiums for other years in issue not reasonable until the Respondent provided evidence of the premiums that had actually been paid.

Cleaning

80. The Applicant stated that the internal communal area is cleaned and the carpets are vacuumed once or twice a year. The Tribunal said that it had found the two internal areas of the block in fair condition although surfaces such as window sills had clearly not been wiped for some time.
81. Ms Waldron gave oral evidence on behalf of the Applicant stating that she works from home and so was able to monitor when the internal communal areas were cleaned. She said that this occurred very rarely, a few times a year when the carpets would be vacuumed. She said that the reason the staircases were in fair condition was because the Leaseholders cleaned the areas themselves.
82. The Tribunal noted from the Previous Case that cleaning of the communal areas was carried out by MHMD Associates Ltd and invoices were provided. In 2011 it was noted that the charge was at a rate of £130.00 per week. In 2010 the rate was £123.00 per week and 2008 and 2009 the rate was £100.00 per week the cleaner attending on average at least 2 days a week (i.e. 18 to 20 hours). The accounts for 2015 and 2016 gave a figure of £5,000 but without any supporting evidence. In the absence of similar evidence to that provided in the Previous Case, the Tribunal found that based on what it saw at the inspection and what the Applicant and Ms Waldron had said cleaning was carried out about once every two months. Based on a rate of about £50.00 a visit to vacuum the carpets and wipe down the staircase and other surfaces, the Tribunal determined a sum of £300.00 per annum to be reasonable for each of the years in issue.

Repairs and General Maintenance

83. Unlike in the Previous Case, no schedule was provided itemising the repairs and maintenance works and cost were provided for the years in issue. The Tribunal found from its inspection that work had been carried out. The Tribunal referred to the Schedule that had been provided in the Previous Case for guidance as to what work had been done. Certain items appeared each year between 2008 and 2011 and included:
Gardening, weeding, plant food and additional plants
Gutter cleaning
Refuse Disposal
Servicing of the automated gates

Miscellaneous repairs to light fittings, storage heaters, door locks of the main communal doors etc.

84. In addition, for each year in the Previous Case there had been some major repairs. In 2008 there was evidence of repairs to the doors, car park lights and a total figure of £1,950 was determined to be reasonable. In 2009 the internal light switches had been replaced with motion sensors together with other lighting repairs at a cost of £2,680 and a total cost of £4,100 was determined to be reasonable. In 2010 the interior and exterior of the building had been decorated at a cost of £2,850 and a total cost of £4,680 was determined to be reasonable.
85. There was no evidence adduced that during the years in issue there had been significant works of this kind and the Respondent had failed to provide any supporting evidence for the figures of £7,710 and £6,870 in the accounts for 2015 and 2016, respectively. However, there was evidence that some gardening had taken place and the Applicant conceded that the guttering had been cleared, refuse disposed of and the automated gates serviced. Servicing the fire alarms and the annual fire risk assessment are statutory obligation and therefore it was assumed that this was carried out.
86. Based upon the Schedules of Repair and Maintenance that were produced by the Respondent in the Previous Case the Tribunal identified the following items and, in the absence of other evidence, costed them as in the Previous Case as follows:
- | | |
|--|-----------|
| Gardening, weeding, plant food and additional plants | £250.00 |
| Gutter cleaning | £250.00 |
| Refuse Disposal | £250.00 |
| Servicing of the automated gates | £250.00 |
| Service fire alarms and annual fire risk assessment | £100.00 |
| Total | £1,100.00 |
87. The Tribunal made an allowance of £400.00 for other miscellaneous repairs e.g. to doors and lights for the years 2013 to 2017. An allowance of £900 was made for the year 2018 to take account of the repair to the roof, the actual cost of which was unknown.
88. Therefore, the Tribunal determined a sum of £1,500 per annum for each of the years in issue except 2018 for which a sum of £2,000 was determined to be reasonable. The Tribunal did not make an allowance for inflation as this was not considered significant over this period.

Accountancy

89. The only accounts that had been provided were for the years ending 28th February 2015 and 2016. The unsigned certificate accompanying the accounts states that the accounts are a fair summary based upon accounts, receipts and other documents produced to the accountant. As the Tribunal has no evidence of the information that was provided to the accountants it is not able to determine whether the sums referred to in the accounts are reasonable.

90. The service charge accounts for the years ending 28th February 2015 and 2016 were produced, notwithstanding the lack of supporting evidence. The Tribunal determined that a charge of £480 per annum is a reasonable accountancy fee. However, no accounts were produced for the other years in issue and therefore, the Tribunal found that no charge could be made by the Respondent until they were produced.

Administration or Management Fee

91. The Administration or Management Fee was in the previous case said to relate to arranging repairs, the collection of service charges, use of phone, use of computer, use of office, travelling to the premises, arranging insurance, and preparing accounts.
92. The Respondent claimed £5,000 per annum for Management Fee for 2015 and 2016 and equivalent of £185.00 per unit. The Tribunal assumed that a similar figure would apply to the other years in issue.
93. The Tribunal found that very little management had taken place. No evidence had been adduced to indicate that any significant repairs had taken place other than basic maintenance. The Tribunal was only provided with statements from the Applicant and Ms Waldron to say that cleaning was carried out by the leaseholders other than occasional visits from a cleaner employed by the Respondent. It was also questionable that any insurance had been arranged. As noted below the collection of service charges appeared not to be in accordance with the legislation.
94. The Tribunal therefore determined that a nominal charge of £1,620, which equates to £60.00 per unit was a reasonable management charge.

Summary

95. The Tribunal did the best it could, based upon such evidence as it had and the knowledge and experience of its members to assess a reasonable service charge for such services as had been provided.
96. The summary of the service charge determined to be reasonable for the years in issue is as set out in the table below.

Service Charge for the year ending 28th February						
	2013	2014	2015	2016	2017	2018
	£	£	£	£	£	£
Utilities	750.00	750.00	750.00	750.00	750.00	750.00
Building Insurance	0	0	3,571.00	3,410.00	0	0
Cleaning	300.00	300.00	300.00	300.00	300.00	300.00
Repairs and Maintenance	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	2,000.00
Accountancy Fee	0	0	480.00	480.00	0	0
Management Fee	1,620.00	1,620.00	1,620.00	1,620.00	1,620.00	1,620.00
Total Service Charge	4,170.00	4,170.00	8,221.00	8,060.00	4,170.00	4,670.00
Applicant's Share	154.44	154.44	304.48	298.51	154.44	172.96

Payability of the Service Charge

97. The Tribunal considered the evidence and submissions of the Applicant with regard to the demands for the service charge.
98. In the absence of evidence to the contrary the Tribunal found that no Summary of Rights and Obligations had accompanied the Service Charge Demands required under the Service Charges (Summary of Rights and Obligations (England) Regulations 2007 (SI 2007/1257)). Therefore, the Service Charges were not payable by the Applicant until a Service Charge demand was served with the Summary and the Service Charges properly demanded.

Administration Charges

99. The Respondent provided no submissions that the Lease authorised Administration Charges for late payment of either service charges or ground rent. The tribunal noted paragraph 23 of the fourth Schedule of the Lease which allowed the Landlord to charge an individual tenant costs where action was taken in contemplation of any proceedings under s146 of the Law of Property Act 1925. The Tribunal found that there was no indication that the Administration Charges were in contemplation of such proceedings.
100. Even if the Administration Charges had come within paragraph 23 the Respondent provided no justification for the amount of the Administration Charges claimed, for either the Service Charges or the Ground Rent. The charges appeared wholly arbitrary and therefore in the absence of evidence to the contrary the Tribunal determined that the amount of the Administration Charges was unreasonable.
101. The Tribunal also found that the demand for the Ground Rent did not comply with prescribed form under section 166 of the Commonhold and Leasehold Reform Act 2002 and regulation 2 and Schedule of the Landlord and Tenant (Notice of Rent) (England) Regulations 2004 SI 2004 No 3096. The time given for payment must be not less than 30 days and no more than 60 days whereas the Respondent had required payment within 14 days.
102. Therefore, due to the defective demands the Administration Charges levied for non-payment of the Ground Rent Charges were determined to be unreasonable.
103. In addition, the Tribunal had found that the Service Charges were not payable by the Applicant until a Service Charge demand was served with the Summary of Rights and Obligations (Summary of Rights and Obligations (England) Regulations 2007 (SI 2007/1257)). As the Service Charges were not payable due to the defective demands the Administration Charges levied for non-payment of the Service Charges were determined to be unreasonable. Although, the defective service of the Service Charge demands may be remedied by service of the demand with appropriate accompanying documents, nevertheless, since the Administration Charge demand is based upon a defective Service Charge demand, the Administration Charges are not

reasonable and so not payable even if subsequently demanded with the accompanying documents.

Application under Section 20C Landlord and tenant Act 1985

104. The Applicant applied for an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant.
105. The Respondent had failed to provide accounts and supporting documents for the years in issue which could have prevented this matter from coming before the Tribunal. This failure was compounded by the Respondent's failure to comply with Directions. Indeed, the tribunal was of the opinion that the Respondent had not incurred any costs in respect of these proceedings.
106. Therefore, the Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant.

Application for Costs

107. The Applicant made an application under Rule 13 of the Tribunals Procedure (First Tier Tribunal) Property Chamber) Rules 2013 for costs on the basis that the Respondent had acted unreasonably and/or for reimbursement of fees.
108. The Tribunal applied the three-stage test in *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander; Ms Shelley Sinclair v 231 Sussex Gardens Right to Manage Limited; Mr Raymond Henry Stone v 54 Hogarth Road, London SW5 Management Limited* [2016] UKUT 290 (LC), LRX/90/2015, LRX/99/2015, LRX/88/2015 considering:
 - (i) Whether the Applicant had acted unreasonably, applying an objective standard;
 - (ii) If unreasonable conduct is found, whether an order for costs should be made or not;
 - (iii) If so, what should the terms of the order be?
109. The Tribunal also took into account the meaning of "unreasonable" in *Ridehalgh v Horsefield* [1994] Ch. 205 which dealt with a wasted costs order, the principles of which we consider apply in this case:

"Unreasonable" means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as

optimistic and as reflecting on a practitioner's judgement, but it is not unreasonable.

110. The Tribunal considered whether the Respondent had acted unreasonably. It found that it had in failing to comply with any of the Tribunal's Directions. However, it did not consider that an order for costs should be made. The Tribunal did not consider that the Applicant had incurred much by way of costs in preparing his case and any copying costs would have had to be incurred whether the Respondent had complied with Directions or not.
111. The reimbursement of the Application and Hearing Fees are not reliant upon reasonableness. The Tribunal was of the opinion that if the Respondent had produced accounts and supporting documents as required under the Lease then the Applicant would probably not have applied to the Tribunal. Therefore, the Tribunal orders the Respondent reimburse the Applicant the sum of £300.00 Tribunal Fees (£100.00 Application Fee and £200.00 Hearing Fee) within 30 days of the date of receipt of this Decision.

Judge JR Morris

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.

Appendix of Relevant Law

The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.

Section 18 Landlord and Tenant Act 1985

- (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, improvement 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 of which the service charge is payable.*
- (3) *for this purpose*
 - (a) *costs include 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 period*

Section 19 Landlord and Tenant Act 1985

- (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 provision 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 21B Notice to accompany demands for service charges

- (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 withholds 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) *Regulations under subsection (2) may make different provision for different purposes.*
- (6) *Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.*

Section 27A Landlord and Tenant Act 1985

- (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 arbitration agreement to which the tenant was a party*
 - (c) *has been the subject of a determination by a court*
- (5) *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*

Schedule 11 Commonhold and Leasehold Reform Act 2002

- 1. *Meaning of “administration charge”*
 - (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.*

2. *Reasonableness of administration charges*

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

- (1) *Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—*
 - (a) any administration charge specified in the lease is unreasonable, or*
 - (b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.*
- (2) *If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.*
- (3) *The variation specified in the order may be—*
 - (a) the variation specified in the application, or*
 - (b) such other variation as the tribunal thinks fit.*
- (4) *The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.*
- (5) *The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.*
- (6) *Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.*

5 *Liability to pay administration charges*

- (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).*

20C Limitation of service charges: costs of proceedings

- (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 First-tier 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 the 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;*
 - (ba) *in the case of proceedings before the First-tier Tribunal, to the 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 the 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.*

Rule 13 of the Tribunals Procedure (First Tier Tribunal) Property Chamber) Rules 2013

The Tribunal may make an order in respect of costs only-

- (b) *if a person has acted unreasonably in bringing, defending or conducting proceedings*



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
RESIDENTIAL PROPERTY)**

Case Reference : **CAM/00KA/LIS/2018/0017**

Property : **10 & 17 Princess Lodge, 39 – 45 Princess Street, Luton LU1 5AT**

Applicant (Tenant) : **Faisal Basheer**

Respondent (Landlord): **Money Maker Limited**
Representative : **Irfan Sadeeq**

Date of Application : **23rd July 2018 (rec'd 25th July 2018)**

Type of Application : **to determine the reasonableness and payability of the Service Charges (section 27A Landlord and tenant Act 1985) and Administration Charges (Schedule 11 Commonhold & Leasehold Reform Act 2002)**

to determine whether the landlord's costs arising from the of proceedings should be limited in relation to the service charge (section 20C of the Landlord and Tenant Act 1985)

for Costs under Rule 13 of the Tribunals Procedure (First Tier Tribunal) Property Chamber) Rules 2013

Tribunal : **Judge JR Morris
Mr R Thomas MRICS
Mr N Miller BSc**

Preliminary Hearing : **27th November 2018**

Date of Directions : **3rd December 2018**

Date of Hearing : **12th March 2019**

Date of Decision : **18th April 2019**

DECISION

Decision

1. The Tribunal determines that the following Service Charges are reasonable and payable by the Applicant to the Respondent when properly demanded and when evidence of the building's insurance is provided for the years ending 28th February as follows:
2013 £154.44
2014 £154.44
2015 £304.48
2016 £298.51
2017 £154.44
2018 £172.96
2. The Tribunal determines that the Administration Charges are not reasonable or payable.
3. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.
4. The Tribunal decided not to make an Order for costs under Rule 13 of the Tribunals Procedure (First Tier Tribunal) Property Chamber) Rules 2013.
5. The Tribunal Orders the Respondent to reimburse the Applicant the sum of £300.00 Tribunal Fees (£100.00 Application Fee and £200.00 Hearing Fee) within 30 days of the date of receipt of this Decision.

Reasons

Application

6. This Application, made on the 23rd July 2018 (received on the 25th July 2018), is for:
 - 1) a determination of the reasonableness and payability of the Service Charges incurred for the years ending 28th February 2013, 2014, 2015, 2016, 2017 and 2018.
 - 2) a determination regarding Administration Charges
 - 3) a determination whether the landlord's costs arising from the of proceedings should be limited in relation to the service charge section 20C of the Landlord and Tenant Act 1985.
 - 4) an order for costs and reimbursement of tribunal fees under Rule 13 of the Tribunals Procedure (First Tier Tribunal) Property Chamber) Rules 2013

The Law

7. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002 and is set out in the Appendix to these Reasons.

The Lease

8. A copy of a Lease for flat Number 10, dated 24th May 2007, was provided which was said to be common to both the flats except the demise of 10 included a car parking space. The Leases were all between the Applicant as Landlord and the individual Tenants. These were each for a term of 99 years from the date of the Lease.
9. The Lease defines the “Estate” as the whole development (identified in Schedule 1) and the “Retained Premises” as those parts of the Estate not demised (identified in Schedule 2). The parts demised are the “Flats” (identified in Schedule 3). The “Building” means the building converted into flats.
10. The Service Charge provisions include the definitions of “Service Charges” which are said to mean the sum of £750.0 per annum as part of the Service Costs and “Service Costs” which are defined as the “costs and expenses described in the Ninth Schedule and shall include not only those costs and expenses which have been actually disbursed and incurred during the year in question but also such reasonable part of all such expenses out goings and other expenditure which are of a periodically recurring nature ...whenever disbursed incurred or made”. It is not clear in the Lease what the sum of £750.00 represents. It would appear that this just the sum payable by the tenant on first taking the Lease as a contribution to the initial Service Charge because it is made clear later in the Lease that the Service Charge and Service Costs will vary firstly depending on the estimated costs required for the year and secondly as a balancing payment or credit at the end of the year depending on the actual costs.
11. Under Clause 1 of the Lease the Tenant covenants to pay “additional and further rent payable under the provisions of paragraph 2 of the Fourth Schedule. Under Clause 4 of the Lease the Landlord may in its reasonable discretion create a reserve fund of such amount as is reasonable in order to provide for the renewal of equipment and materials required for the provision of the services and amenities herein provided and for carrying out works other than those of an annual recurring nature...”
12. Under paragraph 2 of the Fourth Schedule the Tenant Covenants: “To pay the Landlord by way of additional rent by one instalment in advance on the 29th September in each year ...such estimated sum as shall be reasonably required by the Landlord or its Agents.... of the reasonable and proper and necessary expense to the Landlord or performing the obligations and covenants ...contained in the Seventh Schedule ...and as soon as possible following the end of each such financial year the Landlord shall provide the Tenant with a summary of such expenses certified by the Landlords Accountants Surveyors or Managing Agents... and subject to Clause 4 hereof any necessary or subsequent adjustment ...shall be paid by the Tenant or credited to the Tenant ...”

13. Under paragraph 22 of the Fourth Schedule the Tenants covenant “to pay a fair proportion of all costs and expenses”. This was found to be an equal share for each unit i.e. 1/27th
14. Under the Fifth Schedule the Landlord covenants to inspect, repair and redecorate the exterior of the building and the Retained Premises and to keep them clean and reasonably lighted. The Landlord also covenants to insure the Estate including the Building and to provide the services referred to in the Seventh Schedule.
15. Under the Seventh Schedule the Landlord Covenants to provide and the Tenant agrees to pay a contribution for, amongst other things, staff for the general management, security or maintenance of the Estate, communal radio television and other aerials, the appointment of a solicitor accountant surveyor etc for the collection of rents or in connection with the Landlord’s obligations, the repairing, maintaining, rebuilding and cleansing of all roads, paths, pavements, sewers, drains etc.
16. The Ninth Schedule contains provisions for the assessment and payment of the Service Charge including:
 - “1. The Service Charge shall be the amount determined as hereinafter provided and payable at the times and in the manner hereinafter mentioned.”
 - “2. As soon as is reasonably possible after the end of the accounting year and thereafter at yearly intervals the Landlord will estimate the amount required for the Lessee to cover his liability for Service Charge for the following year...”
 - “3. Such estimate shall be based wherever possible on the actual costs and expenses of providing the said Services for the previous period...”
 - “4. The Landlord shall as far as it considers practicable equalise the amount from year to year of its costs and expenses by creating reserve funds...” It should be noted that it is a legal requirement pursuant to section 47A of the Landlord and Tenant Act 1987 that such reserves must be kept in a designated trust account.
17. Paragraph 23 of the Fourth Schedule states as follows;

“To pay to the Landlord all proper and reasonable costs charges and expenses (including Solicitors and Surveyors’ costs) properly incurred by the Landlord in or in proper contemplation of any proceedings under Section 146 and 147 of the Law of property Act 1925 notwithstanding forfeiture is avoided or otherwise that by relief granted by the Court or in connection with the preparation and service of schedules or dilapidations (whether during the term or following the expiry thereof) and the supervision of the works specified therein.”

Description & Inspection of the Property

18. The Tribunal inspected the Development prior to Preliminary Hearing on the 27th November 2018 in the presence of Mr Basheer, the Applicant, Mr Jason Berry Leaseholder of 116 Princess Lodge and Ms Tracy Waldron Leaseholder of 23 Princess Lodge, witnesses for the Applicant.

19. The Development is of 27 purpose built units constructed of brick under a pitched slate roof. The Development comprises a three-storey block on Princess Street of 24 flats fronting Princess Street (in which is situated the Properties of flats 10 and 17) and a further flat and two semi-detached bungalows built to the rear of Princess Street having access from Wellington Street. There is a narrow paved communal area with railings to the front of the blocks in Princess Street and a communal paved courtyard with raised beds and planters to the rear of the main block. In addition there is car parking for 8 of the flats (118A and B, 9, 10, 11, 22 and 23) with access from Wellington Street through gates that are operated via an electronic entry system. The development was completed in 2006.
20. The external communal paved courtyard was generally well maintained. The planters had been repaired by replacing some of the wooden sleepers. However, planting was scant and there was an encroachment of Japanese Knotweed into the car park from a neighbouring property which is likely to cause serious damage if left unchecked. The area around the waste bins was untidy where rubbish had spilt out. The narrow, paved area to the front of the main block in Princess Street contained a quantity of litter between the railings and the building. There is also a large quantity of litter in the street outside the car park gates in Wellington Street. The exterior of the block is in fair condition. There appeared to be some damage to the upvc soffits and fascia and the upvc rainwater goods are showing some signs of being affected by ultra violet light not uncommon after 12 years. It was noted that the roof had been repaired in the past year although the extent of the repair was not clear.
21. Only the block on Princess Street has internal communal areas. Access to these areas was via a door entry system. The block has 2 front entrances and corresponding rear doors. There are post boxes on the exterior of the wall near the front entrances and internally there is a door to each box. A number of the locks and hinges to the internal doors to the boxes have broken and remain unrepaired. Each entrance has a hallway and stairs to the upper floors where there are landings on each floor. Off each landing are 4 flats (8 flats per floor on the main block). The internal communal areas were carpeted and in fair to poor condition, there were marks on the walls, many of which could be removed by cleaning. The carpets were showing signs of wear and require vacuuming and cleaning. The window sills were covered with a layer of dust. The windows were dirty. Each flat had a utility cupboard with meters. There was a night storage heater in the hallway and on the landing of each floor run from the common meter. Access could not be obtained to the common meter so no reading could be taken.

Preliminary Hearing

22. The following was provided to the parties as a preamble to the Directions and is stated here for completeness of the Decision.
23. Following the Inspection, a preliminary hearing was held which commenced at about 11.00 and was attended by Mr Basheer Mr Berry, Ms Waldron and Mr Irfan Sadeeq, the Respondent's Representative, who arrived at about 12.00.

He said he had come to 'drop off' the accounts for the years 2015, 2016 2017 and 2018.

24. The Applicant provided a bundle which was not in accordance with the Directions and comprised a sheaf of papers many of which were not relevant. Nevertheless, the information given in the Application Form and in a Statement dated 19th November 2018 and in an oral statement at the hearing provided the background to and reasons for the Application and identified the issues. These statements are summarised as follows:
25. The Applicant said he had sought to sell 17 Princess Lodge but the purchasers have withdrawn because:
 - The calculation of the ground rent was not in accordance with the Lease.
 - The Landlord Respondent claimed that the Applicant owed ground rent and service charges for 10 Princess Lodge which was due to the Respondent's failure to submit a proper demand.
 - The failure of the Respondent to provide a building insurance policy schedule.
26. The Applicant said that in the course of a valuation for re-mortgaging the Properties in 2017, Japanese Knotweed had been found in the parking area which was reported to the Respondent who stated that the matter was for the Applicant to deal with.
27. He said the only accounts that have been provided are for the years ending 28th February 2015 and 2016. Both sets of accounts show round figures for expenses and no invoices or explanation of the costs said to be incurred have been provided.
28. At the hearing the Applicant said that the Respondent had failed to make demands for service charges in the proper manner. No Summary of Rights and Obligations had been provided with either the Service Charge or Administration Charge demands, failing to comply with section 21B of the Landlord and Tenant Act 1985 and the Service Charges (Summary of Rights and Obligations (England) Regulations 2007 (SI 2007/1257) and Administration Charges (Summary of Rights and Obligations (England) Regulations 2007 (SI 2007/1257)). He submitted that therefore, the Service Charges were not payable by the Applicant until a Service Charge demand was served with the Summary.
29. Also, at the hearing, the Applicant said that the Respondent had failed to make demands for ground rent on the prescribed form in compliance with section 166 of the Commonhold and Leasehold Reform Act 2002 and regulation 2 and Schedule of the Landlord and Tenant (Notice of Rent) (England) Regulations 2004 SI 2004 No 3096. The time given for payment must be not less than 30 days and no more than 60 days whereas the Respondent had required payment within 14 days. He submitted that therefore, the ground rent was not payable by the Applicant until a ground rent demand was served on the prescribed form.

30. In response to the Tribunal's questions the Applicant accepted that when properly demanded the reasonable service charges and the ground rent were payable. However, he said that the Respondent failed to provide the demands in a timely manner and had claimed in the demands (copies of some of which were provided) that he had made prior requests for the charges when he had not, and added penalty costs, which were not in accordance with the Lease and were unjustified. He submitted that if the charges were not properly demanded then the penalty costs were not payable.
31. The Applicant further stated that a request for a summary of relevant costs incurred was made to the Respondent under section 21 Landlord and Tenant Act 1985 for the year ending 28th February 2017 in November 2017 but no accounts have been provided. He said that only the accounts for the years ending 28th February 2015 and 2016 have been provided by the Respondent. He added that the Respondent had demanded £1,000 each year as an estimated service charge but failed to provide an account of the actual costs except for 2015 and 2016. The accounts that were provided did not show a sinking fund, deficit or surplus for those years.
32. Although requests have been made, the Respondent has failed to provide a breakdown e.g. for Building Maintenance or invoices for any of the costs incurred and many have been rounded e.g. utilities.
33. The Applicant added that the maintenance is poor, the communal area is cleaned and the carpets are vacuumed once or twice a year. The letter boxes and intercoms are broken. The vehicular entry gates are not working most of the time and were not operating from February 2017 until June 2018. The local authority cannot obtain access to empty the bins causing waste to be left in the communal area. The Applicant put all the items of the service charge in issue.
34. The Applicant stated that he had paid all sums demanded under protest because the Respondent threatened forfeiture of the Lease. He had not always paid the sums demanded on time previously because he wanted them to be properly demanded and justified with invoices etc., which the Respondent refused to do.
35. The Applicant said that he wanted an order requiring the Respondent to:
 - a. repay the penalties plus interest;
 - b. provide compensation of £3,037.50 for loss of rent from 10th May 2018 when Applicant's tenant left 17 Princess Lodge prior to the sale which the Applicant submitted the Respondent wrongfully caused not to proceed and council tax of £183.84 when number 17 was empty;
 - c. costs of £495.00 related to the loss of the sale;
 - d. pay the valuation fee of £320.00 for the re-mortgage which was declined because the respondent failed to remove the Japanese Knotweed;
 - e. provide proper accounts for the years ending 28th February 2013, 2014, 2015, 2016, 2017 and 2018;

- f. provide supporting documentation to evidence the Service Charge costs incurred for the years in issue.
36. In addition, the Applicant sought costs of:
£74.60 for printing;
£300.00 Tribunal fees;
Loss of earnings.
37. The Tribunal explained to the Applicant that it had jurisdiction to determine the reasonableness of Administration Charges, which were referred to by the parties as “penalties”. It also had jurisdiction to determine the reasonableness and payability of the service charges (referred to in a., e. and f.). The Tribunal can also award costs under rule 13 of the Tribunals Procedure (First Tier Tribunal) Property Chamber) Rules 2013 *if a person has acted unreasonably in bringing, defending or conducting proceedings*. However, subject to what determination was made, any enforcement was through the County Court.
38. Any compensation claim referred to in b., c. and d. was also a matter for the County Court.
39. The Tribunal was of the opinion that although the amount and enforcement of payment of the ground rent is outside its jurisdiction the reasonableness and payability of any administration charge levied for non-payment of the ground rent is within its jurisdiction.
40. The Respondent did not comply with the Directions issued on the 16th August 2018 and amended on 17th September 2019. The Respondent’s Representative, Mr Sadeeq, did not attend the inspection and arrived at the hearing late.
41. In response to the Tribunal’s questions Mr Sadeeq said that he had received a letter from the Tribunal informing him that the hearing was cancelled because the bundles had not been submitted. This was correct. However, the Tribunal had subsequently sent a letter on 21st November 2018 informing him that the bundles had been received and stating the time of the inspection and venue and time of the hearing. Mr Sadeeq said that he had not received this letter although the Tribunal noted that he had belatedly attended the hearing venue. He added that he also not received the bundle from the Applicant. The Applicant confirmed that this was the case stating that the bundle had been sent by tracked mail to the address given by the Respondent for correspondence and service of documents but it had not been delivered as there was no one to accept delivery and it had not been collected or a request received for re-delivery. Mr Sadeeq said had been away for the office for a few days.
42. He said that he had not complied with the Directions because he did not have all the information required which was held by his accountant and that he had instructed solicitors but they had not carried out his instructions. He added that he was the Respondent and that it was for the Applicant to provide a case against him.

43. The Tribunal informed the Mr Sadeeq that these are adversarial proceedings and that it is for each party to prove its case and that it was for the Respondent to comply with Directions.
44. He said that he had brought with him the Service Charge accounts for the years ending 28th February 2015, 2016, 2017 and 2018 but had not brought any of the supporting evidence such as invoices.
45. In response to the Tribunal's questions he said that the penalty sums charged were for late payment and were based upon the inconvenience caused to his firm. He did not feel that he should have to justify them in detail they were an assessment that he had made. He said that he sent accounts to all the Leaseholders each year with a Summary of Rights and Obligations with regard to the Service and Administration Charges and had demanded the ground rent in accordance with the legislation. When shown a copy of the letter demanding payment within 14 days Mr Sadeeq agreed that it was the demand he had sent.
46. The Tribunal found that the Respondent had not complied with the Directions and had not produced the information required. This in turn had meant the Applicant was not able to prepare his case with regard to the Service Charge items or the Administrative Charges.
47. The Tribunal determined, after a brief adjournment, that neither party had fully complied with the Directions and were not prepared adequately for the hearing. Since the Applicant's failure to prepare was due largely but not entirely to the Respondent's failure to provide information the Tribunal decided that in the interests of justice to treat the hearing as preliminary and to issue Directions for a fresh hearing. Following the fresh hearing the Tribunal would make a determination in relation to the reasonableness and payability of Service Charges and Administration Charges and decide whether it would make an order limiting the landlord's costs or an order in relation to reimbursement of fees or payment of costs to the Applicant.
48. The parties were reminded of the rubric at the top of the Directions Order. It was in both parties' interests to comply and that, particularly following this preliminary hearing, the failure to comply without good cause would result in serious detriment to the defaulting party.
49. The Respondent, as Landlord, was reminded that he must make arrangements to take service and receipt of all documentation at the address provided pursuant to section 48 of the Landlord and Tenant Act 1987.
50. The Tribunal recorded the Preliminary Hearing as stated above and issued Directions for a hearing on the 12th March 2019 on the 3rd December 2018.

Hearing on 12th March 2019

Attendance

51. The hearing was attended by Mr Faisal Basheer, the Applicant and two witnesses, Mr Jason Berry and Ms Tracey Waldron. Mr Irfan Sadeeq, the Respondent's Representative did not attend.

Applicant's Case

52. The Applicant provided a list of outstanding issues between the Applicant and the Respondent which are summarised as follows:
1. The service charges for the years in issue have not been demanded in the proper manner and no accounts or invoices to support the expenses have been provided;
 2. £4,225.00 of penalties/administration charges have been paid by the Applicant and were wrongfully charged;
 3. Compensation of £3,037.50 for loss of rent, £183.84 council tax and £371.86 for causing the sale of 17 Princess Lodge not to proceed;
 4. Costs of £435 related to the loss of the sale;
 5. Valuation fee of £320.00 for the re-mortgage fee which was declined due to the Respondent's failure to remove Japanese Knotweed;
 6. Provide proper accounts for the years ending 28th February 2013, 2014, 2015, 2016, 2017 and 2018;
 7. provide supporting documentation to evidence the Service Charge costs incurred for the years 2015 and 2016;
 8. Printing costs estimated at £74.60;
 9. Tribunal fees of £300.00;
 10. Loss of earnings for 3 days estimated at £750.00;
 11. Postage costs of £50.00
 12. Compensation of £560.00 for mortgage costs.
53. The Tribunal again explained that the claims for compensation in points 3, 4, 5 and 12 are matters for the County Court and not within the jurisdiction of the Tribunal.
54. At the hearing the Applicant reiterated the points he had made at the Preliminary Hearing which are set out above namely that:
- a) The Respondent had failed to make demands for service charges and administration charges in the proper manner and that no Summary of Rights and Obligations had been provided.
 - b) Notwithstanding a request for a summary of relevant costs incurred was made to the Respondent under section 21 Landlord and Tenant Act 1985 for the year ending 28th February 2017 in November 2017, no accounts have been provided.
 - c) The only accounts that have been provided are for the years ending 28th February 2015 and 2016. Both accounts show round figures for expenses and no invoices or explanation of the costs said to be incurred have been provided.
 - d) The Respondent has failed to make demands for ground rent and service charges in the proper manner and claims penalty costs when

the charges are not paid, notwithstanding, they are not demanded correctly and notwithstanding that the Lease does not provide for any such penalties.

55. The Applicant stated that he had paid all sums demanded under protest because the Respondent threatened forfeiture of the Lease.
56. The Applicant submitted copies of the accounts for the years ending 28th February 2015 and 2016 which stated as follows:
57. Service Charge for Year ending 28th February 2015
- | | |
|-------------------------------------|------------|
| Utilities | £2,500.00 |
| Insurance | £3,571.00 |
| Cleaning | £5,000.00 |
| Building Maintenance | £7,710.00 |
| Accountancy Fee | £480.00 |
| Administration Fee (Management Fee) | £5,000.00 |
| Total | £24,261.00 |
58. Service Charge for Year ending 28th February 2016
- | | |
|-------------------------------------|------------|
| Utilities | £2,500.00 |
| Insurance | £3,410.00 |
| Cleaning | £5,000.00 |
| Building Maintenance | £6,870.00 |
| Accountancy Fee | £480.00 |
| Administration Fee (Management Fee) | £5,000.00 |
| Total | £23,260.00 |
59. The Applicant states that the accounts do not show a sinking fund, deficit or surplus for the year.
60. There is no breakdown of the costs e.g. Building Maintenance, which are rounded.
61. The maintenance is poor, the communal area is cleaned and the carpets are vacuumed once or twice a year. The letter boxes and intercoms are broken. The vehicular entry gates are not working most of the time and were not operating from February 2017 until June 2018. The local authority cannot obtain access to empty the bins causing waste to be left in the communal area.
62. In addition, the Applicant sought costs of:
£74.60 for printing;
£300.00 Tribunal fees;
Loss of earnings.
63. The Preamble to the Directions following the Preliminary Hearing identified the issues for the Respondent and the Directions provided a clear indication as to the manner in which the Respondent should respond and the timeline gave the Respondent ample opportunity to respond.

64. The Respondent made no attempt to answer in writing or orally by attending the hearing, the issues raised by the Applicant or to comply with the Directions.

Discussion and Determination

65. The Tribunal found that the accounts for the years ending 28th February 2015 and 2016 which had been provided were not a record of the actual costs incurred. It is difficult to know of what they were intended to be a record, other than an estimated service charge.
66. As the Applicant stated, the accounts do not show a sinking fund, deficit or surplus for the year or a balancing figure. It appears that the Respondent merely charges a standard estimate year on year. From the inspection it is apparent that expenditure is incurred but no account of the actual costs or their supporting documentation are provided to the Leaseholders in accordance with the Lease.
67. The Applicants agreed that some service charge costs had or should have been incurred in relation to the heads itemised in the accounts. In the absence of evidence of the actual costs from the Respondent, the Tribunal took the view that it could only make its own assessment of a reasonable service charge taking into account such evidence as was available, including its inspection, and the knowledge and experience of its members.
68. The Applicant provided a copy of the Tribunal's Decision and Reasons Case Number CAM/00KA/LSC/2011/2016 dated 5th July 2011 for an Application made by the Respondent for a determination of the reasonableness of service Charges incurred for the years ending 28th February 2008, 2009 2010 and to be incurred for 2011 (the Previous Case).
69. For that Application the accounts itemised the same heads of the Service Charge and the Respondent had provided evidence of Buildings Insurance, Cleaning, a Schedule of Repairs and General Maintenance, and Accountancy Fees.
70. The Tribunal considered each of the heads of the Service charge for the years presently in issue referring to the evidence adduced in the Previous Case where appropriate.

Service Charges

Utilities/Communal Electricity

71. The Tribunal found that the only utility is the electricity to the communal areas which comprises the light and heat to the communal areas and for the outside lights and automated gates. The Accounts for 2015 and 2016 said the cost for this was £2,500. In the Previous Case the Landlord had said that due to problems with the electricity supplier, British Gas, in locating the accounts relating to the Landlord's supply the landlord had made an estimate of what the cost was likely to be in readiness for when an invoice was made by the

supplier. The explanation was accepted and the estimate of £2,000 was determined to be reasonable.

72. The Tribunal noted that in 2011 the Development was new and it was not unreasonable to create a reserve for a utilities invoice which went back until 2007. In the present case the Tribunal found that it was not reasonable merely to demand an amount in the service charge for electricity for nearly ten years on account without seeking to obtain an actual reading and an invoice from the supplier. The Respondent was under an obligation to obtain an actual reading and related invoice from the electricity supply company. The Tribunal found that electricity had been used but in the absence of any invoice from the electricity supplier an estimated charge of £750.00 per annum for each of the years in issue was reasonable until an invoice from the supplier based upon an actual reading was provided.

Buildings Insurance

73. Copies of the Insurance Policies and Schedules had been provided in the Previous Case. The Respondent adduced no evidence on this occasion other than the sum of £3,571 in the accounts for 2015 and £3,410 in the accounts for 2016.
74. The Applicant said that on 3rd May 2018 he asked for copies of the policy and details of payment of the premium in response to the purchaser's enquiries when he was selling Flat 17. However, he had never received them. He said that the only information he had seen with regard to insurance related to a quotation not payment. He submitted that the Insurance premiums referred to in the Accounts related to quotations and not premiums paid.
75. The Applicant added that he had been involved in the setting up of a Right to Manage Company which has served a Notice of Claim informing the Respondent that it intends to acquire the right to manage the premises on 25th March 2019.
76. In the course of setting up the Right to Manage Company the participating leaseholders had sought to obtain details of past and current insurance. The insurers that were contacted with which the Respondent had said he was insured said that they had no record of the premises being insured with them.
77. Ms Tracey Waldron gave an oral witness statement on behalf of the Applicant stating that her mortgagee had for many years required her to pay an additional sum by way of premium in order that the mortgagee could insure the Property because it said that there was no record of insurance.
78. The Applicant submitted that the Development had not been insured for the years in issue because a) no evidence had been adduced by the Respondent to show that the Development had been insured for the years in issue, and yet this should be a relatively easy task; b) when inquiries had been made on behalf of the prospective Right to Manage Company the insurance companies with whom the Respondent had said he had placed the insurance did not know of any such insurance.

79. The Tribunal determined that, in the absence of evidence to the contrary, the premiums for insurance referred to in the accounts for the years ending 28th February 2015 and 2016 appeared reasonable. Nevertheless, these premiums were not payable until the Respondent provided evidence of the premiums that had actually been paid. In addition, in the absence of accounts for other years stating an amount of the annual insurance premium and any policies documents or details of other premiums the Tribunal determined the insurance premiums for other years in issue not reasonable until the Respondent provided evidence of the premiums that had actually been paid.

Cleaning

80. The Applicant stated that the internal communal area is cleaned and the carpets are vacuumed once or twice a year. The Tribunal said that it had found the two internal areas of the block in fair condition although surfaces such as window sills had clearly not been wiped for some time.
81. Ms Waldron gave oral evidence on behalf of the Applicant stating that she works from home and so was able to monitor when the internal communal areas were cleaned. She said that this occurred very rarely, a few times a year when the carpets would be vacuumed. She said that the reason the staircases were in fair condition was because the Leaseholders cleaned the areas themselves.
82. The Tribunal noted from the Previous Case that cleaning of the communal areas was carried out by MHMD Associates Ltd and invoices were provided. In 2011 it was noted that the charge was at a rate of £130.00 per week. In 2010 the rate was £123.00 per week and 2008 and 2009 the rate was £100.00 per week the cleaner attending on average at least 2 days a week (i.e. 18 to 20 hours). The accounts for 2015 and 2016 gave a figure of £5,000 but without any supporting evidence. In the absence of similar evidence to that provided in the Previous Case, the Tribunal found that based on what it saw at the inspection and what the Applicant and Ms Waldron had said cleaning was carried out about once every two months. Based on a rate of about £50.00 a visit to vacuum the carpets and wipe down the staircase and other surfaces, the Tribunal determined a sum of £300.00 per annum to be reasonable for each of the years in issue.

Repairs and General Maintenance

83. Unlike in the Previous Case, no schedule was provided itemising the repairs and maintenance works and cost were provided for the years in issue. The Tribunal found from its inspection that work had been carried out. The Tribunal referred to the Schedule that had been provided in the Previous Case for guidance as to what work had been done. Certain items appeared each year between 2008 and 2011 and included:
- Gardening, weeding, plant food and additional plants
 - Gutter cleaning
 - Refuse Disposal
 - Servicing of the automated gates

Miscellaneous repairs to light fittings, storage heaters, door locks of the main communal doors etc.

84. In addition, for each year in the Previous Case there had been some major repairs. In 2008 there was evidence of repairs to the doors, car park lights and a total figure of £1,950 was determined to be reasonable. In 2009 the internal light switches had been replaced with motion sensors together with other lighting repairs at a cost of £2,680 and a total cost of £4,100 was determined to be reasonable. In 2010 the interior and exterior of the building had been decorated at a cost of £2,850 and a total cost of £4,680 was determined to be reasonable.
85. There was no evidence adduced that during the years in issue there had been significant works of this kind and the Respondent had failed to provide any supporting evidence for the figures of £7,710 and £6,870 in the accounts for 2015 and 2016, respectively. However, there was evidence that some gardening had taken place and the Applicant conceded that the guttering had been cleared, refuse disposed of and the automated gates serviced. Servicing the fire alarms and the annual fire risk assessment are statutory obligation and therefore it was assumed that this was carried out.
86. Based upon the Schedules of Repair and Maintenance that were produced by the Respondent in the Previous Case the Tribunal identified the following items and, in the absence of other evidence, costed them as in the Previous Case as follows:
- | | |
|--|-----------|
| Gardening, weeding, plant food and additional plants | £250.00 |
| Gutter cleaning | £250.00 |
| Refuse Disposal | £250.00 |
| Servicing of the automated gates | £250.00 |
| Service fire alarms and annual fire risk assessment | £100.00 |
| Total | £1,100.00 |
87. The Tribunal made an allowance of £400.00 for other miscellaneous repairs e.g. to doors and lights for the years 2013 to 2017. An allowance of £900 was made for the year 2018 to take account of the repair to the roof, the actual cost of which was unknown.
88. Therefore, the Tribunal determined a sum of £1,500 per annum for each of the years in issue except 2018 for which a sum of £2,000 was determined to be reasonable. The Tribunal did not make an allowance for inflation as this was not considered significant over this period.

Accountancy

89. The only accounts that had been provided were for the years ending 28th February 2015 and 2016. The unsigned certificate accompanying the accounts states that the accounts are a fair summary based upon accounts, receipts and other documents produced to the accountant. As the Tribunal has no evidence of the information that was provided to the accountants it is not able to determine whether the sums referred to in the accounts are reasonable.

90. The service charge accounts for the years ending 28th February 2015 and 2016 were produced, notwithstanding the lack of supporting evidence. The Tribunal determined that a charge of £480 per annum is a reasonable accountancy fee. However, no accounts were produced for the other years in issue and therefore, the Tribunal found that no charge could be made by the Respondent until they were produced.

Administration or Management Fee

91. The Administration or Management Fee was in the previous case said to relate to arranging repairs, the collection of service charges, use of phone, use of computer, use of office, travelling to the premises, arranging insurance, and preparing accounts.
92. The Respondent claimed £5,000 per annum for Management Fee for 2015 and 2016 and equivalent of £185.00 per unit. The Tribunal assumed that a similar figure would apply to the other years in issue.
93. The Tribunal found that very little management had taken place. No evidence had been adduced to indicate that any significant repairs had taken place other than basic maintenance. The Tribunal was only provided with statements from the Applicant and Ms Waldron to say that cleaning was carried out by the leaseholders other than occasional visits from a cleaner employed by the Respondent. It was also questionable that any insurance had been arranged. As noted below the collection of service charges appeared not to be in accordance with the legislation.
94. The Tribunal therefore determined that a nominal charge of £1,620, which equates to £60.00 per unit was a reasonable management charge.

Summary

95. The Tribunal did the best it could, based upon such evidence as it had and the knowledge and experience of its members to assess a reasonable service charge for such services as had been provided.
96. The summary of the service charge determined to be reasonable for the years in issue is as set out in the table below.

Service Charge for the year ending 28th February						
	2013	2014	2015	2016	2017	2018
	£	£	£	£	£	£
Utilities	750.00	750.00	750.00	750.00	750.00	750.00
Building Insurance	0	0	3,571.00	3,410.00	0	0
Cleaning	300.00	300.00	300.00	300.00	300.00	300.00
Repairs and Maintenance	1,500.00	1,500.00	1,500.00	1,500.00	1,500.00	2,000.00
Accountancy Fee	0	0	480.00	480.00	0	0
Management Fee	1,620.00	1,620.00	1,620.00	1,620.00	1,620.00	1,620.00
Total Service Charge	4,170.00	4,170.00	8,221.00	8,060.00	4,170.00	4,670.00
Applicant's Share	154.44	154.44	304.48	298.51	154.44	172.96

Payability of the Service Charge

97. The Tribunal considered the evidence and submissions of the Applicant with regard to the demands for the service charge.
98. In the absence of evidence to the contrary the Tribunal found that no Summary of Rights and Obligations had accompanied the Service Charge Demands required under the Service Charges (Summary of Rights and Obligations (England) Regulations 2007 (SI 2007/1257)). Therefore, the Service Charges were not payable by the Applicant until a Service Charge demand was served with the Summary and the Service Charges properly demanded.

Administration Charges

99. The Respondent provided no submissions that the Lease authorised Administration Charges for late payment of either service charges or ground rent. The tribunal noted paragraph 23 of the fourth Schedule of the Lease which allowed the Landlord to charge an individual tenant costs where action was taken in contemplation of any proceedings under s146 of the Law of Property Act 1925. The Tribunal found that there was no indication that the Administration Charges were in contemplation of such proceedings.
100. Even if the Administration Charges had come within paragraph 23 the Respondent provided no justification for the amount of the Administration Charges claimed, for either the Service Charges or the Ground Rent. The charges appeared wholly arbitrary and therefore in the absence of evidence to the contrary the Tribunal determined that the amount of the Administration Charges was unreasonable.
101. The Tribunal also found that the demand for the Ground Rent did not comply with prescribed form under section 166 of the Commonhold and Leasehold Reform Act 2002 and regulation 2 and Schedule of the Landlord and Tenant (Notice of Rent) (England) Regulations 2004 SI 2004 No 3096. The time given for payment must be not less than 30 days and no more than 60 days whereas the Respondent had required payment within 14 days.
102. Therefore, due to the defective demands the Administration Charges levied for non-payment of the Ground Rent Charges were determined to be unreasonable.
103. In addition, the Tribunal had found that the Service Charges were not payable by the Applicant until a Service Charge demand was served with the Summary of Rights and Obligations (Summary of Rights and Obligations (England) Regulations 2007 (SI 2007/1257)). As the Service Charges were not payable due to the defective demands the Administration Charges levied for non-payment of the Service Charges were determined to be unreasonable. Although, the defective service of the Service Charge demands may be remedied by service of the demand with appropriate accompanying documents, nevertheless, since the Administration Charge demand is based upon a defective Service Charge demand, the Administration Charges are not

reasonable and so not payable even if subsequently demanded with the accompanying documents.

Application under Section 20C Landlord and tenant Act 1985

104. The Applicant applied for an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant.
105. The Respondent had failed to provide accounts and supporting documents for the years in issue which could have prevented this matter from coming before the Tribunal. This failure was compounded by the Respondent's failure to comply with Directions. Indeed, the tribunal was of the opinion that the Respondent had not incurred any costs in respect of these proceedings.
106. Therefore, the Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant.

Application for Costs

107. The Applicant made an application under Rule 13 of the Tribunals Procedure (First Tier Tribunal) Property Chamber) Rules 2013 for costs on the basis that the Respondent had acted unreasonably and/or for reimbursement of fees.
108. The Tribunal applied the three-stage test in *Willow Court Management Company (1985) Limited v Mrs Ratna Alexander; Ms Shelley Sinclair v 231 Sussex Gardens Right to Manage Limited; Mr Raymond Henry Stone v 54 Hogarth Road, London SW5 Management Limited* [2016] UKUT 290 (LC), LRX/90/2015, LRX/99/2015, LRX/88/2015 considering:
 - (i) Whether the Applicant had acted unreasonably, applying an objective standard;
 - (ii) If unreasonable conduct is found, whether an order for costs should be made or not;
 - (iii) If so, what should the terms of the order be?
109. The Tribunal also took into account the meaning of "unreasonable" in *Ridehalgh v Horsefield* [1994] Ch. 205 which dealt with a wasted costs order, the principles of which we consider apply in this case:

"Unreasonable" means what it has been understood to mean in this context for at least half a century. The expression aptly describes conduct which is vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive. But conduct cannot be described as unreasonable simply because it leads in the event to an unsuccessful result or because other more cautious legal representatives would have acted differently. The acid test is whether the conduct permits of a reasonable explanation. If so, the course adopted may be regarded as

optimistic and as reflecting on a practitioner's judgement, but it is not unreasonable.

110. The Tribunal considered whether the Respondent had acted unreasonably. It found that it had in failing to comply with any of the Tribunal's Directions. However, it did not consider that an order for costs should be made. The Tribunal did not consider that the Applicant had incurred much by way of costs in preparing his case and any copying costs would have had to be incurred whether the Respondent had complied with Directions or not.
111. The reimbursement of the Application and Hearing Fees are not reliant upon reasonableness. The Tribunal was of the opinion that if the Respondent had produced accounts and supporting documents as required under the Lease then the Applicant would probably not have applied to the Tribunal. Therefore, the Tribunal orders the Respondent reimburse the Applicant the sum of £300.00 Tribunal Fees (£100.00 Application Fee and £200.00 Hearing Fee) within 30 days of the date of receipt of this Decision.

Judge JR Morris

ANNEX - RIGHTS OF APPEAL

- i. 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.
- ii. 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.
- iii. 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.
- iv. 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.

Appendix of Relevant Law

The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.

Section 18 Landlord and Tenant Act 1985

- (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, improvement 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 of which the service charge is payable.*
- (3) *for this purpose*
 - (a) *costs include 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 period*

Section 19 Landlord and Tenant Act 1985

- (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 provision 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 21B Notice to accompany demands for service charges

- (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 withholds 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) *Regulations under subsection (2) may make different provision for different purposes.*
- (6) *Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.*

Section 27A Landlord and Tenant Act 1985

- (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 arbitration agreement to which the tenant was a party*
 - (c) *has been the subject of a determination by a court*
- (5) *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*

Schedule 11 Commonhold and Leasehold Reform Act 2002

- 1. *Meaning of “administration charge”*
 - (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.*

2. *Reasonableness of administration charges*

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

- (1) *Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—*
 - (a) *any administration charge specified in the lease is unreasonable, or*
 - (b) *any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.*
- (2) *If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.*
- (3) *The variation specified in the order may be—*
 - (a) *the variation specified in the application, or*
 - (b) *such other variation as the tribunal thinks fit.*
- (4) *The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.*
- (5) *The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.*
- (6) *Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.*

5 *Liability to pay administration charges*

- (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).*

20C Limitation of service charges: costs of proceedings

- (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 First-tier 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 the 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;*
 - (ba) *in the case of proceedings before the First-tier Tribunal, to the 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 the 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.*

Rule 13 of the Tribunals Procedure (First Tier Tribunal) Property Chamber) Rules 2013

The Tribunal may make an order in respect of costs only-

- (b) *if a person has acted unreasonably in bringing, defending or conducting proceedings*