



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

Case reference : **CAM/31UE/LIS/2019/0033**

Property : **Flat 11, 27 Upper Bond Street, Hinckley,
Leicestershire LE10 1WA**

Applicants : **1. Tarja Moss
2. Adrian Moss**

Respondent : **Diamond Red Limited**

Type of application : **Liability to pay service charges**

Tribunal members : **Judge Ruth Wayte
Judge David Wyatt**

Date of decision : **9 April 2020**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the service charges payable by the Applicants:
- a. for 2015, are in the sum of £87.05 (covered by the £216.96 paid by the Applicants on completion of the Lease);
 - b. for 2016, are in the sum of £430.99 (which, after deduction of the balance of the £216.96 paid by the Applicants on completion of the Lease, leaves a payable balance of £301.08); and
 - c. for 2017, are in the sum of £646.94.

- (2) The tribunal orders that any costs incurred by the Respondent in connection with these proceedings in this tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.
- (3) These determinations are explained in detail below.

The application

1. The Applicants seek a determination pursuant to Section 27A of the Landlord and Tenant Act 1985 (the “**1985 Act**”) as to the amount of service charges payable by them.
2. The relevant legal provisions are set out in the Appendix to this decision.

The background

3. The Applicants hold a long Lease of the Property which requires the Respondent landlord to provide services and the Applicant leaseholders to contribute towards their costs by way of a variable service charge. The specific provisions of the Lease are referred to below.
4. Based on the details provided by the parties in their bundles:
 - (i) the Building at 27 Upper Bond Street, Hinckley, Leicestershire was converted (apparently in about 2015) from an office building into 25 or 26 flats; and
 - (ii) the Property is a two-bedroom first-floor flat (No. 11) in that Building.
5. The case management directions given by the tribunal on 16 January 2020 directed that this application was to be determined based on the papers to be produced by the parties in their bundles, without a hearing, unless by 17 February 2020 either party made a written request to be heard before a determination was made.
6. Neither party did so. The Applicants had in their application already consented to a determination of this matter on paper, without the need for a hearing.
7. Pursuant to the directions, both parties lodged their bundles of the documents they wished the tribunal to consider when determining this application.
8. Accordingly, this decision is based on the documents so provided.

The issues

9. The application by the Applicants does not identify the specific details of the dispute, only that the sum of £1,385.64 is in dispute.
10. The correspondence produced in the bundles demonstrates that this sum was demanded by the Respondent and paid by the Applicants under protest in respect of service charges demanded for the period from 10 September 2015 until 31 December 2017.
11. Accordingly, based on the documents produced by the parties, the relevant issues for determination are the payability of service charges in respect of the period from 10 September 2015 until 31 December 2017 and in particular:
 - (i) the effect of Section 20B of the 1985 Act in relation to these service charges; and
 - (ii) the allegations made by the Applicants that the Respondent failed to give service charge certificate(s), and failed to make accounts, receipts and records available on inspection, as required by the Lease.
12. The Applicants further allege in their statement of case that the Respondent failed to provide a summary of the relevant costs pursuant to their request under Section 21 of the 1985 Act, and failed to provide a summary of insurance cover pursuant to their request under Section 30A of, and paragraph 2 of the Schedule to, the 1985 Act. Neither of these provisions are within the jurisdiction of the tribunal and they do not affect the payability of service charges under Section 27A of the 1985 Act.
13. Having considered all the documents provided, the tribunal has made determinations of the relevant issues as set out below after summaries of the relevant provisions of the Lease and the correspondence.

The Lease

14. The Lease was granted by the Respondent to the Applicants on 10 September 2015 and has a remaining unexpired term of about 120 years.
15. Under the terms of the Lease:
 - (i) the “*Development*” includes the Building, the Property and the other flats (1-12 and 14-26); and
 - (ii) the service charge year (“*Financial Year*”) is the calendar year.

16. By clause 2.3 of the Lease, the Lease is granted with the leaseholder covenanting to pay as rent:
- (i) the “*Insurance Rent*”, which is defined as a fair and reasonable proportion determined by the landlord of the cost of any premia inclusive of IPT expended by the landlord, after any discount or commission allowed to the landlord, and any fees and other expenses that the landlord reasonably incurs, in insuring the Development.
- Accordingly, by Section 27A of the 1985 Act, the appropriate proportion is to be determined by the tribunal if the parties do not agree it. The Applicants do not appear to have challenged the proportion the Respondent landlord has adopted, of 1/26th, and on the information provided by the parties the tribunal determines that this is the appropriate proportion for the purposes of this application; and
- (ii) the “*Service Charge*”, which is defined as 1/26th of the cost to the landlord of providing the “*Services*”, which are defined as the services to be provided by the landlord, set out in Schedule 7.
17. In Schedule 4 to the Lease, the leaseholder covenants more specifically to pay:
- (i) the Insurance Rent demanded in accordance with the following provisions; and
 - (ii) the estimated Service Charge in advance on 1 January in each year, with provision for balancing payments from the leaseholder, or credit against future instalments of the estimated Service Charge, if the estimate is less, or more, than the actual Service Charge.
18. Schedule 4 further provides that the leaseholder’s obligations shall in 2015 be limited to an apportioned part of the relevant estimated and actual Service Charge, calculated on a daily basis for the period from 10 September until 31 December 2015.
19. In Schedule 6 of the Lease, in relation to insurance, the landlord covenants to:
- (i) insure the Development;
 - (ii) serve notice on the leaseholder of the insurance premium costs, the date the gross premium is payable to the insurers and the

Insurance Rent payable by the leaseholder, how this has been calculated and the date it is payable; and

- (iii) at the request of the leaseholder, supply a copy of the insurance policy and schedule and a copy of the receipt for the current year's premium.
20. In Schedule 6 to the Lease, in relation to other service charges, the landlord covenants to:
- (i) subject to the leaseholder paying the Service Charge, provide the Services;
 - (ii) before or as soon as possible after the start of each service charge year, send the leaseholder an estimate of the costs of the Services and the Service Charge for that service charge year;
 - (iii) as soon as reasonably practicable after the end of each service charge year, send the leaseholder a certificate showing the Service Charge for that service charge year. Such certificate shall be in accordance with the service charge accounts prepared by the landlord's independent accountants; and
 - (iv) to keep accounts, records and receipts relating to the Service Charges incurred by the landlord and permit the leaseholder, on giving reasonable notice, to inspect them by appointment.
21. By Schedule 6, if any cost is omitted from the calculation of the Service Charge in any service charge year, the landlord may include it in any following service charge year. Schedule 6 also seeks to provide that otherwise, and except in case of manifest error, the service charge certificate shall be conclusive as to all matters of fact to which it refers; by Section 27A of the 1985 Act, this provision is void.
22. Schedule 7 to the Lease sets out the usual range of Services, including:
- (i) repairing, maintaining, cleaning and lighting of the common parts and service media;
 - (ii) managing the Development; and
 - (iii) calculating and setting aside annually such sum as the Landlord (whose decision is said to be final) considers desirable (and which setting aside is said to be deemed an item of expenditure actually incurred) to provide a reserve fund for periodically recurring items of expenditure whether or not of a capital nature and to provide for anticipated expenditure in respect of the relevant

Services. Again, by Section 27A of the 1985 Act, it will be for the tribunal to determine the relevant sum if it is not agreed by the parties.

The correspondence

23. By invoice dated 26 June 2018, the Respondent's agents (who had then apparently only recently been appointed, or agreed to be appointed) demanded from the Applicants specified sums for ground rent plus:
 - (i) service charges for the period from 10 September 2015 to 31 December 2017 in the sum of £1,602.60, less £216.96 paid for estimated service charges on completion of the Lease, a balance of £1,385.64; and
 - (ii) estimated service charges for the period from 1 January 2018 to 31 December 2018 in the sum of £753.00.
24. The budget produced by the Respondent's agents at the same time indicated that the 2018 figure was based on a budget of £19,574, including £3,000 for insurance, £3,000 as a management fee, £1,050 for electricity charges, £3,000 for lift maintenance, £864 for site maintenance, £2,496 for fortnightly internal cleaning, £1,764 for external window cleaning and £2,000 for general repairs including a fire risk assessment. The budget also proposed an additional payment which would equate to about £3,250 for the reserve fund.
25. By letter dated 20 July 2018, the Applicants informed the Respondent that they disputed the service charges from 10 September 2015 and asked the Respondent to revisit these taking into consideration Section 20B of the 1985 Act. At the same time, the Applicants sent separate letters requesting a summary of insurance cover, under paragraph 2 of the Schedule to the 1985 Act, and a written summary of the relevant costs incurred, under Section 21 of the 1985 Act.
26. It appears that the Respondent did not revisit the service charges at that time, or provide the requested summaries. Instead, by letter dated 26 June 2019, the Respondent sent a letter before action to the Applicants, threatening forfeiture proceedings and other claims if £1,385.64 was not paid.
27. By letter dated 13 July 2019, the Applicants sent the Respondent a cheque for £1,385.64 for the disputed service charges under protest, referring to their unanswered letters from July 2018.
28. In September 2019, the Respondent sent relevant documentation to the Applicants, including insurance policy schedules, cleaning invoices, service charge accounts and other invoices. The Respondent followed

this up by letter dated 16 October 2019 noting that information had been provided and that it would shortly be cashing the cheque provided. The Respondent confirms that it cashed the cheque in October 2019.

29. The Applicants then made their application to the tribunal in December 2019. The tribunal issued case management directions on 16 January 2020.
30. On 5 February 2020, the Respondent wrote to the Applicants, saying that they had revisited the service charges (as requested by the Applicants in July 2018) and, taking into consideration Section 20B of the 1985 Act, omitted all invoices to December 2016. The Respondent enclosed “accounts” for 2017 showing total costs of £19,691 and calculated that 1/26th of this sum would equate to £757.35. The Respondent said that, if the Applicants agreed this, they would refund the “2016 payments”. The Applicants indicate that the Respondent also provided further copy documents in February 2020, as produced in the bundles.
31. The list of “expenditure” enclosed with this letter from the Respondent referred to costs for 2017 as £2,846 for insurance, £3,000 for management fees for the landlord itself, £1,414 for electricity charges, £7,104 for lift repairs and maintenance, £50 for drain maintenance, £229 for a BT telephone line for the lift, £1,200 for regular maintenance, £1,848 for cleaning/tipping and £2,000 as a reserve fund contribution.

Service charges for 2015

Insurance Rent

32. The bundles include evidence of a reasonably incurred property insurance premium and IPT of £2,650 for the period from 10 September 2015 to 9 September 2016. Apportioned on a daily basis for the period from 10 September to 31 December 2015, this would be £813.15.
33. Accordingly, under the Lease, the Insurance Rent payable by the Applicants for 2015 would be 1/26th of this sum, £31.28.

Service Charge

34. The only other costs shown to have been incurred in respect of 2015 are:
 - (i) costs of £300 for work on the lift and stair lift;
 - (ii) a management fee of £750 for the landlord itself, invoiced on 1 December 2017. This appears to have been based on the subsequent annual management fees of £3,000, apportioned to three months from October to December 2015. Even bearing in

mind the fact that the landlord did not seem familiar with the operation of service charge arrangements before it appointed a managing agent in 2018, based on the information provided by the parties this annual figure is (at an annual rate of about £115 per flat) reasonable and the landlord's apportioned figure is less than the fee would have been if apportioned on a daily basis; and

- (iii) electricity costs, invoiced on 11 December 2017, apparently for the entire period from July 2015 to 9 December 2017 at £6,315.20, which the Respondent apparently paid by instalments in December 2017 and January 2018.

On a pro-rata basis, this would be £2,584.13 per year, but may be weighted by higher initial charges from the property conversion works; the tribunal notes that the figure claimed by the Respondent for 2017 was £1,414, which apportioned pro rata would be about £400 for the period from completion of the Lease in September until December 2015. This would be a reasonable cost to incur.

- 35. Based on the information provided and in the absence of any other challenge from the Applicants in relation to the quality of the services provided, the tribunal determines that these Service Charge costs were reasonably incurred in the total sum of £1,450 (£300 lift work plus £750 management costs and £400 electricity costs), of which the Applicants' 1/26th share would be £55.77.

Analysis of the relevant terms of the Lease and the Applicants' allegations

- 36. Accordingly, the relevant service charge sums for 2015 are £87.05, comprised of:

- (i) the Insurance Rent of £31.28; and
- (ii) the Service Charge of £55.77.

- 37. Section 20B of the 1985 Act is applied below in respect of the 2016 and 2017 service charge years. Because the total service charge sums of £87.05 for 2015 are within the estimated service charges of £216.96 collected on account on completion of the Lease (as recorded in the invoice dated 26 June 2018 from the Respondent's agents), Section 20B of the 1985 Act is not engaged in relation to the 2015 service charge year.

- 38. The Applicants allege that the Respondent failed to make accounts, receipts and records available on inspection, as required by the Lease, but the Respondent is not obliged under the Lease to do so unless the Applicants give notice requesting this. They have not done so. The Applicants have disputed the service charges and, under the 1985 Act,

requested a summary of the relevant charges and a summary of the insurance cover. Very belatedly, the Respondent has provided them with details and copies of the relevant invoices, some in September 2019 and some it seems in February 2020 in response to this application.

39. The Respondent has produced service charge accounts for the entire period from September 2015 to 31 December 2017, which appear to have been produced by accountants.
40. As the Applicants allege, the Respondent does not appear to have produced the Insurance Rent notice(s) or the Service Charge certificate(s) required by the Lease. It may accordingly be in breach of the provisions of Schedule 6 to the Lease, save to the extent that it has now provided, or provides, the requisite documentation.
41. However, properly construed, the relevant provisions of the Lease as summarised above, subject to the operation of Section 27A of the 1985 Act as explained above, are a primary covenant by the Applicants to pay:
 - (i) the Insurance Rent, defined as the determined proportion of the insurance costs incurred by the Respondent; and
 - (ii) the Service Charge, defined as the fixed 1/26th proportion of the costs to the Respondent of providing the Services as set out in Schedule 7.
42. Now that the requisite cost information has been provided and the tribunal has determined the insurance costs proportion and other relevant matters, the Applicants are liable under the Lease to pay the relevant sums despite the failure by the Respondent to provide the Insurance Rent notice(s) and Service Charge certificate(s) required by Schedule 6 to the Lease.

Conclusion

43. Accordingly, the tribunal determines that the service charges payable by the Applicants in respect of the 2015 service charge year are in the sum of £87.05, comprised of:
 - (i) the Insurance Rent of £31.28; and
 - (ii) the Service Charge of £55.77.
44. These sums are covered by the £216.96 paid for estimated service charges on completion of the Lease.

Service charges for 2016

Insurance Rent

45. The bundles include evidence of reasonably incurred property insurance premia and IPT of:
- (i) £2,650 for the period from 10 September 2015 to 9 September 2016, as outlined above. Apportioned on a daily basis for the period from 1 January to 9 September 2016, this would be £1,836.85; and
 - (ii) £2,573.25 for the period from 10 September 2016 to 9 September 2017. Apportioned on a daily basis for the period from 10 September to 31 December 2016, this would be £789.60.
46. Accordingly, under the Lease, the Insurance Rent payable by the Applicants for 2016 would be 1/26th of these sums (£1,836.85 plus £789.60), which is £101.02.
47. Again, this is covered by the £216.96 paid for estimated service charges on completion of the Lease. The balance remaining from that £216.96, after payment of the actual service charges of £87.05 for 2015 and the Insurance Rent for 2016 of £101.02, is £28.89.

Service Charge

48. The documents demonstrate that:
- (i) the first demand for payment of the relevant service charges was the invoice dated 26 June 2018, which would ordinarily be deemed served on about 28 June 2018; and
 - (ii) there was no prior notice to the Applicants that the relevant costs had been incurred and that the Applicants would subsequently be required under the terms of the Lease to contribute to them by the payment of a service charge.
49. Accordingly, applying Section 20B of the 1985 Act, the Applicants are (except in relation to the payment on completion of the Lease) not liable to pay so much of the service charge as reflects any relevant costs incurred before about 28 December 2016.
50. The documents indicate that all the relevant costs for 2016 were incurred before this date, and accordingly any service charge which reflects them is not payable, except in relation to the payment on completion of the Lease and the following costs incurred later:

- (i) cleaning costs of £108, invoiced on 30 December 2016 for cleaning that month;
 - (ii) waste removal costs of £120, invoiced on 30 December 2016;
 - (iii) costs of £1,200 for testing and replacing tubes and batteries in emergency lighting and fire safety (AOV) systems, invoiced on 29 December 2016;
 - (iv) £3,000 for management fees for the landlord itself, invoiced on 1 December 2017, as described above;
 - (v) electricity costs, invoiced on 11 December 2017, as described above. Assessed on the same basis, £1,400 would be a reasonable cost to incur for 2016; and
 - (vi) £2,000 as a reserve fund contribution which appears from the accounts to have been sought for 2016, with the same amount again sought in 2017 and a corresponding reserve fund of £4,000 shown in the accounts. In view of the nature of the building and the annual service charge expenditure described, this is appropriate.
51. Based on the information provided and the absence of any other challenge from the Applicants in relation to the quality of the services provided, the tribunal determines that these costs were reasonably incurred after 28 December 2016 in the total sum of not less than £7,828, of which the Applicants' 1/26th share would be £301.08.
52. Several other relevant costs for 2016 were reasonably incurred before 28 December 2016, including £882 for regular cleaning, window cleaning and spraying the car park from January to November 2016 and drainage work costs of £470 in February 2016.
53. However, applying Section 20B of the 1985 Act, as explained above, only the first £28.89, the remaining balance of the £216.96 paid for estimated service charges on completion of the Lease, of the Applicants' 1/26th proportion of these other costs is recoverable from them.
54. Accordingly, the Service Charge figure for 2016 is £329.97, comprised of:
- (i) £301.08 for the costs incurred after 28 December 2016; and
 - (ii) £28.89 towards the costs incurred before 28 December 2016.

Conclusion

55. Please refer to the analysis above, of the terms of the Lease and the allegations made by the Applicants, which applies equally to these sums except as explained above in relation to Section 20B of the 1985 Act.
56. Accordingly, the tribunal determines that the service charges payable by the Applicants in respect of the 2016 service charge year are in the sum of £430.99, comprised of:
 - (i) the Insurance Rent of £101.02; and
 - (ii) the Service Charge of £329.97.
57. This exhausts the payment for estimated service charges of £216.96 made on completion of the Lease (which covers the service charges of £87.05 for 2015, the Insurance Rent for 2016 of £101.02 and £28.89 towards the Service Charge for 2016, as explained above), leaving a balance to pay for 2016 of £301.08.

Service charges for 2017

Insurance Rent

58. The list of 2017 expenditure which the landlord produced to accompany the actual service charge accounts refers to £2,846 for insurance costs.
59. However, the first relevant insurance schedule was issued on 8 September 2016 for the period from 10 September 2016 until 9 September 2017 with a premium and IPT of £2,573.25, as noted above in respect of the 2016 service charge year.
60. A manuscript note has been added to this schedule suggesting that it was not paid until 1 April 2017, but normal practice and the form of the insurance schedule indicates that the insurance premium and IPT would have been incurred in advance in September 2016. The Respondent is now aware of the effect of Section 20B of the 1985 Act and has not produced evidence to show that this cost was incurred later. It is more likely that it was incurred in September 2016.
61. Accordingly, applying Section 20B of the 1985 Act (and except as set out above in respect of the 2016 service charge year in view of the estimated service charge payment collected on completion), the Applicants are not liable to pay so much of the service charge as reflects the premium charged to the Respondent in this policy schedule.

62. The other relevant insurance schedule was issued on 8 September 2017 for the period from 10 September 2017 to 9 September 2018 for a premium and IPT of £2,632.13. Apportioned pro rata for the period from 10 September 2017 to 31 December 2017, this would be £807.67 and was reasonably incurred.
63. Accordingly, under the Lease, the Insurance Rent payable by the Applicants for 2017 is 1/26th of £807.67, the sum of £31.06.

Service Charge – lift repairs

64. The list of 2017 expenditure also refers to £7,104 for lift repairs. Based on the invoices (the Respondent has not provided further details about the works and the Applicants have made no complaints about them), this represented one set of works, with the relevant invoices both referring to the same quotation reference and appearing to be for advance and completion payments rather than separate works, and would have been qualifying works for the purposes of Section 20 of the 1985 Act because in the circumstances, particularly when the building conversion had only been completed two years earlier, they are significant or substantial.
65. Since it appears that the consultation requirements have not been complied with and there has been no application for dispensation with those requirements, the Applicants' contribution towards these lift repair costs, which would otherwise have been £273.23, will be limited to £250, which is the "appropriate amount" under the Service Charges (Consultation Requirements) (England) Regulations 2003 for the purposes of Section 20 of the 1985 Act.

Service Charge – other costs

66. The list of 2017 expenditure also refers to the following sums:
- (i) £3,000 for management fees for the landlord itself, invoiced on 1 December 2017, as explained above;
 - (ii) £1,414 for electricity charges. The invoice in December 2017 for these charges is described above and this figure was reasonably incurred;
 - (iii) £50 for drain maintenance and £229 for a BT telephone line for the lift. Copies of the corresponding invoices have been produced;
 - (iv) £1,200 for maintenance. The corresponding invoice in 2017 is for testing of emergency lighting and AOV systems, as described above for 2016;

- (v) £1,848 for cleaning/tipping. The Respondent has produced monthly invoices for general fortnightly cleaning at £108 per month except for three invoices at £216 for window cleaning in addition to general cleaning, a total of £1,620 (the other sums sought by the Respondent under this heading relate to 2016 and are dealt with above); and
 - (vi) £2,000 as a reserve fund contribution. As noted above, in view of the nature of the building and the annual service charge expenditure described, this is appropriate.
67. Based on the information provided and the absence of any challenge from the Applicants in relation to the quality of the services provided, the tribunal determines that these other costs for 2017 were reasonably incurred in the total sum of £9,513, of which the Applicants' 1/26th share would be £365.88.
68. Accordingly, the Service Charge figure for 2017 is £615.88, comprised of:
- (i) £250 in respect of the lift repair works; and
 - (ii) £365.88 in respect of the other costs.
69. Please refer to the analysis above, of the terms of the Lease and the allegations made by the Applicants, which applies equally to these sums except as set out above.
70. Accordingly, the tribunal determines that the service charges payable by the Applicants in respect of the 2017 service charge year are in the sum of £646.94, comprised of:
- (i) the Insurance Rent of £31.06; and
 - (ii) the Service Charge of £615.88.

Application under s.20C and para.5A

71. The Applicants applied for an order under section 20C of the 1985 Act and an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the “**2002 Act**”).
72. As to the application for an order under Section 20C of the 1985 Act, it is not clear whether the Respondent intends to seek to recover any costs incurred in connection with these proceedings through the service charge. Considering the determinations above and the correspondence between the parties, where:

- (i) each party could have taken a more constructive approach;
- (ii) the Respondent says that cost information took time to obtain but did not operate the service charge arrangements efficiently, pursued the service charges without providing the requisite information and made a sensible offer only in February 2020, after this application had been made; and
- (iii) the Applicants have failed to beat that offer from the Respondent but it appears that they will as a result of this determination be entitled to a credit of £437.62 (presumably to be carried forward for 2018 or subsequent service charge instalments in accordance with paragraph 2.3 of Schedule 4 to the Lease) from the £1,385.64 which they paid on account last year,

the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with these proceedings before the tribunal through the service charge, if there are any such costs.

- 73. For the same reasons, the tribunal does not order the Respondent to reimburse the application fee (or any other costs) paid by the Applicants.
- 74. The tribunal does not make an order under paragraph 5A of Schedule 11 to the 2002 Act, because it has not been informed of any particular administration charge in respect of costs incurred by the landlord in these proceedings before this tribunal. It appears that no such charge is likely to be made.
- 75. However, if the Respondent sought to claim such an administration charge from the Applicants, the Applicants may apply in writing for such an order and, on the information currently available, the tribunal would be likely to make such an order, so that the Respondent may not recover from the Applicants such administration charge in respect of such litigation costs.

Name: Judge David Wyatt Date: 9 April 2020

Rights of appeal

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

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

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

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

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

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

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

- (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (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 of an application under subsection (1) or (3).

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of

service charges) to relevant costs incurred on carrying out the works or under the agreement.

- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
 - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
 - (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under

the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.