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

Case Reference : CHI/00MW/LIC/2013/0074

Property : Flat 4, Eden Lodge, Easthill Road, Ryde, Isle of Wight PO33 1LU

Applicant : Mr M Brady & Mrs A S J Brady (the Tenant)

Representative : ---

Respondent : Waterglen Limited / Regis Group Services Limited  
(the Landlord) c/o  
Countrywide Estate Management

Representative : Mr Maxwell Green

Type of Applications: (1) Application for determination as to reasonableness of service charges pursuant to Sections 19 and 27A Landlord and Tenant Act 1985  
(2) Application for determination as to liability to pay an administration charge pursuant to Schedule 11 Commonhold and Leasehold Reform Act 2002

Tribunal Members : Judge P.J. Barber Chairman  
Mr P D Turner-Powell FRICS Valuer Member

Date and venue of Hearing : 18<sup>th</sup> November 2013 Court No. 3, Isle of Wight Combined Courts, 1 Quay Street, Newport, Isle of Wight PO30 5YT

Date of Decision: 28th November 2013

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**DECISION**

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### Decision

- (1) The Tribunal determines in accordance with the provisions of Sections 19 and 27A Landlord and Tenant Act 1985 (“the 1985 Act”) that the following amounts included in service charges for the Flat in the following years are not reasonable and are not payable by the Applicant :-

#### 2008

£51.38 (being £411.03 x 12.5%)

#### 2009

No deduction for this year

#### 2010

£53.75 (being £430.00 x 12.5%)

#### 2011

£145.75 (being £1,166.00 x 12.5%)

#### 2012

£136.21 (being £1,089.70 x 12.5%)

- (2) The Tribunal determines in accordance with the provisions of Schedule 11 Commonhold and Leasehold Reform Act 2002 that the administration fee of £57.88 is not reasonable and not payable.
- (3) In regard to the application in respect of costs made by the Applicant pursuant to Section 20C of the 1985 Act, the Tribunal declines to make any order.

### Reasons

#### INTRODUCTION

1. These are two applications made (1) pursuant to Sections 27A and 19 of the 1985 Act and dated 18<sup>th</sup> June 2013 for determination of the reasonable service charges payable by the Applicants to the Respondent; and (2) pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) and dated 11<sup>th</sup> July 2013 for determination of the reasonable administration charges payable by the Applicants to the Respondent. The applications addressed issues arising over the period 2008 to 2012.
2. The claim relates to service and administration charges in respect of Flat 4, Eden Lodge, Easthill Road, Ryde, Isle of Wight PO33 1LU (“the Flat”). The Flat is a two bedroom ground floor flat in a converted former single house. Directions were

issued by the Tribunal on 12<sup>th</sup> July 2013 and, following a case management conference, further directions were issued on 2<sup>nd</sup> August 2013, inter alia requiring each of the Applicants and the Respondent to serve a bundle of all the documents upon which they respectively seek to rely in support of their case, and further requiring the Applicants to serve a reply, in regard to the Respondent`s bundle, identifying items which are agreed.

3. Eden Lodge was constructed in or about the late 18<sup>th</sup> or early 19<sup>th</sup> century probably originally as a single villa, but subsequently converted into 8 flats. The Flat was demised by an Underlease dated 26<sup>th</sup> January 1990 (“the Underlease”) and the service charge year is defined in the Underlease as being the “Accounting Period” from 1<sup>st</sup> January to 31<sup>st</sup> December. The Underlease defines the tenant`s share of service charges for the block as being 12.5%.
4. The elements of service charge identified at the case management conference held on 2<sup>nd</sup> August 2013 as being in issue are for the years 2008; 2009; 2010; 2011 and 2012 and are as follows :-
  - Management Fees
  - Electricity (Only as to the £1,057 charge in 2008 & £350.13 credit in 2009)
  - Fire Alarm
  - Cleaning
  - Fire Extinguishers
  - General Maintenance
  - General repairs & maintenance
  - Gardening
  - Out of hours service (Only as to the £115.20 charge in 2012)
  - Insurance Valuation Fee
  - Professional fees (Only as to the £505.36 charge in 2012)
5. The only element of administration charges in dispute and identified at the case management conference, is an invoice for £57.88 in respect of a charge for obtaining Land Registry Entries.
6. Countrywide Estate Management (“Countrywide”) is the current managing agent, having been appointed in or about October 2008; Wood Management Limited was identified as the managing agent for the first three quarters of 2008. The Tribunal was advised that there is no longer an intermediate leasehold interest and that the freeholder / landlord is Waterglen Limited, being a subsidiary of Regis Group Services Limited.

## **INSPECTION**

7. The Tribunal's inspection took place in the presence of the Applicants, Mr and Mrs Brady. Mr Green, Mr Butler and Mr Aghabala attended for the Respondent.
8. The building in which the Flat is located is a semi-detached former single house, with dressed stone elevations and coin edging details, under a pitched and slate covered roof. The original front door now serves only Flat 3; Flats 1 & 2 are at basement level with their own entrances. All the other flats, including the Flat, are accessed via a communal side entrance door which was not of a high quality. The side entrance led to a hall, stairs and landing area comprised in a later addition to the building. The door entry system was not working, resulting in the side access door not being lockable. There is a low quality basic metal staircase with worn and loose carpet covering. The entrance hall was in a generally poor condition. The Tribunal did not carry out any internal inspection of the Flat. Outside the building, there was a sideway, leading to an overgrown rear garden where a number of dead tree branches were in evidence.

## **THE LAW**

9. Section 19(1) of the 1985 Act provides that :

*“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.”*

8. Sub-Sections 27A (1), (2) and (3) of the 1985 Act provide that :

*“(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 cost, 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.

9. “Service Charges” are defined in Section 18 of the 1985 Act as follows

(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, 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

18(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.

Paragraph 2 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 provides as follows :

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

## **HEARING & REPRESENTATIONS**

10. The hearing was attended by the Applicants and Mr Green, a paralegal appointed to represent Countrywide; also in attendance for the Respondent were Ms Simpson, Mr Butler and Mr Aghabala.

11. The Tribunal referred to the matters in dispute, as determined at the case management hearing held on 2<sup>nd</sup> August 2013 and the parties were reminded as to the purpose of the hearing today. Accordingly the Tribunal invited the parties to make their respective submissions in order for each of the years 2008 to 2012.

### **12. 2008**

#### **Electricity**

Mr Brady submitted that the amount of £1,057.87 was excessively high and could have been lower had the Respondent put in place simple savings measures such as using economy light bulbs; Mr Green said he could offer only limited comments for 2008 given that Countrywide did not take over as managing agents until October in that year.

#### **Fire Alarm**

Mr Brady questioned the £101.47; Mr Green referred to Page 76 in his bundle and said that £55.82 was for a call out charge prior to Countrywide being appointed; he said there was no invoice available either for the £55.82 or £45.65 charges. Mr Brady said there was no reference to works to the fire alarm, shown on the log panel on the alarm box.

### Cleaning

Mr Brady asked why Biffa Waste Services had been engaged to clear waste when the local council might have done so without charge; Mr Green accepted there were no supporting invoices available for the £137.48 charges which pre-dated Countrywide`s appointment.

### Fire Extinguishers

Mr Brady accepted that there are fire extinguishers at the property, but questioned the amount of £265.60; Mr Green said that this item related to the cost of acquisition, rather than servicing of the equipment.

### General Maintenance

Mr Green said that the amount of £217.73 related to the cost of re-hanging the communal entrance door; Mr Brady said the door had not to his knowledge been replaced since 2004 and has always been of poor quality; he added that the door entry system has been broken for a very long time and consequently there is a lack of security.

### General Repairs & Maintenance

Mr Green referred to the £570.53 charges; he said they comprised £219.78 "to replace glass in front door" as detailed at Page 76 of his bundle. Mr Green said that the balance being £350.75, related to charges for jetting drains at the property and he referred to invoices at Pages 122-123 of his bundle. Mr Brady accepted that the drain work may have taken place, but said that the cost might have been reduced had there been more effective management control exercised by Countrywide.

### Management Charges

Mr Green said that the previous managing agents Woods, had charged at £411.25 per quarter for the first three quarters of 2008; Countrywide then charged £125.00 + VAT per month during the final quarter of 2008. Mr Brady said that had the management been more effective, then money could have been saved, for example on the drainage costs. Mr Green submitted that the Applicants had been in arrears on their service charges on a long term basis; he said this made it difficult to manage the property, since expenditure depended upon payment of service charges in advance as required by the Underlease. Mr Green added that although some arrears have been paid by the Applicants` mortgagee, there are still some arrears outstanding on the account for the Flat.

## **14. 2009**

### Electricity

There was a credit of £350.13 for this year; Mr Green explained that this credit sum occurred as a result of accruals in the accounts following Countrywide`s taking over as managing agents in late 2008. Mr Brady said it was illogical for a sum in excess of £1,000 to be included for electricity charges in 2008 only for this to be followed by a credit in the following year.

### Fire Alarm

Mr Brady said he does not dispute the £229.65 charge

### Gardening

Mr Brady said he does not dispute the £20 charge.

### General Repairs & Maintenance

Mr Green said that the invoices for the £118.99 were at Pages 160-161 of his bundle; Mr Brady said these invoices related to grass cutting, boarding up broken windows and glazing the front door and he could not recall this happening. Mr Brady advised the Tribunal that he and his wife had purchased the Flat in 2004 and occupied it as a main residence, but only until 2007 and since then they have used the Flat intermittently as a holiday home.

### Management Fees

Mr Green said that £1,725.00 was not an unreasonable annual amount for managing 8 flats. Mr Brady submitted that the management was ineffective, remote and too expensive; Mr Green accepted that Countrywide do not have a local office on the Isle of Wight. Mr Brady said the service was poor, with few visits being made to the property by Countrywide.

### Insurance Valuation fee

Mr Brady said he was amazed at the £862.50 fee which he regarded as excessive. Mr Green said the report had been commissioned direct by Waterglen Limited and was exhibited at Pages 167-176 of his bundle; he regarded the cost as legitimate and reasonable.

## **15. 2010**

### Fire Alarm

Mr Brady said he does not dispute the £42.36 charge.

### Electricity

Mr Brady said in regard to the £142.70 that his comments were broadly the same as for electricity costs in 2008; had Countrywide fitted energy saving light bulbs then, he said the costs would be less.

### Management Fees

Mr Brady said his comments on these were much the same as for previous years and his main concern was a lack of service and what he regarded as being excessive and disproportionate management costs.

### General Repairs & Maintenance

Mr Green referred to the invoices at Pages 212-214 of his bundle; Mr Brady said these invoices related to work to the door entry system which had not, so far as he was aware, taken place; similarly he said that the electrical related works referred to within the £446.90 could not have been carried out so cheaply if they had been done at all. Mr Green said that the relevant contractor N&K had been used for various work and were in the view of Countrywide, competent.

### Cleaning

Mr Green said the invoices for the £610 charges were at Pages 206-208 of his bundle. Mr Brady disputed that any deep cleaning could have occurred and certainly did not accept that carpet had been removed and treads washed as

suggested in the estimate at Page 210 of the Respondent`s bundle. Mr Green said cleaning had taken place, but that owing to a lack of funds through non payment of service charges, such service had had to be made intermittent and for part only of the year as funds allowed.

#### Insurance Valuation fee

Mr Brady questioned why a further charge of £893 had arisen; Mr Green said that this item was actually a charge for a stock condition report included at Pages 217-228 of his bundle. Mr Green said this report was necessary in order properly to plan for required works of repair at the block once funds were available.

### **16. 2011**

#### Cleaning

Mr Green referred to the statement at Page 245 of his bundle which indicated costs of £1,840 for cleaning. Mr Brady said that he was not aware of any significant cleaning having been carried out in this year. Mr Green said that cleaning had again been intermittent owing to non payment of service charges but the invoices related to the period January to May 2011 and that the work had been done then.

#### Electricity

Mr Brady made the same comments as for previous years in regard to the charge of £210.00.

#### Fire Alarm

Similarly Mr Brady`s comments were as for previous years.

#### Gardening

Mr Brady referred to the various photographs of the grounds shown in his bundle although accepted that these were all undated. Mr Brady referred to the tree branches in the garden observable during the inspection; Mr Green said the invoice which referred to "remove waste" did not necessarily refer to the tree branches, but separate rubbish removal.

#### General Repairs & Maintenance

Mr Green referred to the invoices at Pages 266-267 of his bundle. Mr Brady said that the references to raking mortar joints and cleaning waste from open window were unclear and Mr Green was unable to clarify further, nor offer additional evidence on the point.

#### Management Fees

Mr Brady made the same comments as in previous years.

#### Professional (Administration) Fee

Mr Green said that this fee of £57.88 was part of the costs incurred generally by Countrywide for updating their records for a number of buildings which they manage and was chargeable under Clause 5(4)(l) of the Underlease.

### **17. 2012**

#### General Repairs & Maintenance

Mr Green accepted that £800 had been included in the £995 figure in error. Mr Brady challenged the remaining £195 on the basis that the work referred to in the



invoice at Page 306 of the Respondent`s bundle referred to a new toilet ball cock, which he said could not be a shared or common expense.

#### Management Fees

Mr Brady made the same comments as previously, observing that the management charges were gradually increasing. Mr Green said the increase in this year had been the first for some time.

#### Out of hours

Mr Green said that the invoice for £115.20 at Page 308 of the Respondent`s bundle reflected a contractual out of hours emergency call service arranged by Countrywide with Cunningham Lindsay for all their properties. Mr Green said that all tenants had been sent details of the service but Mr Brady seemed uncertain as to whether he had received them.

#### Professional Fees

Mr Green said that the charges of £505.36 form part only of Daniells Harrison surveyor`s costs for preparation of specifications and tender documents in anticipation of major repairs, not yet carried out or scheduled owing to lack of funds. Mr Brady said he failed to see why Daniells Harrison had been instructed at all if there were no funds available. Mr Green said the work was not wasted in that the repairs will eventually need to be carried out when funds allow.

#### Cleaning

Mr Green referred to costs of £990 and the invoices at Pages 300-304 of his bundle. Mr Brady was of the same opinion as in regard to previous years – that very little cleaning had actually been carried out. Mr Green said that once again the work had had to be intermittent for part of the year only, owing to limited funds availability.

### **CONSIDERATION**

18. The Tribunal have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of the parties.
19. In respect of each of the years concerned, the Tribunal considered the position as follows :-

#### **2008**

The Tribunal noted the Applicants` complaint about electricity costs but the Respondent is under no specific obligation to use cheaper or more economical light bulbs and in any event there was an off-setting credit made in 2009. In regard to the fire alarm, no invoice was provided for the £55.82 and accordingly this sum will be disallowed. In regard to the £137.48 for cleaning, there were no invoices provided and no clear reason why Biffa Waste had been engaged in lieu of local authority waste collection provision; this sum will be disallowed. The Tribunal noted the position regarding purchase of fire extinguishers which was not clearly contradicted by Mr Brady. In regard to general maintenance at £217.73, this included rehangng the entrance door; Mr Brady was certain that the door had not

been replaced since 2004 and that the locking mechanism had been broken for many years. In these circumstances this sum will be disallowed. In regard to general repairs & maintenance, the Tribunal noted that £219.78 related to replacing glass in the front door and £350.75 to drainage rodding works; these items will be allowed since no specific evidence to the contrary had been introduced. In regard to management costs, the Tribunal is of the view, using its general knowledge and experience that the costs were not excessively high and clearly some work had been undertaken; accordingly these will be allowed.

### **2009**

In regard to electricity, the credit of £350.13 was reasonable. Mr Brady accepted the fire alarm and gardening items and in regard to general repairs & maintenance, he had simply been of the view that this was a repeat of charges in an earlier year but offered little clear or convincing evidence; accordingly these will be allowed. On management fees, the Tribunal takes the same view as for 2008. The insurance valuation report is considered necessary and not unreasonable.

### **2010**

The Fire Alarm item was agreed by Mr Brady. The Tribunal takes the view that the charges for electricity and management are not unreasonable. On general repairs & maintenance, Mr Brady had offered little clear evidence; however the item of £90.00 for checked door entry system will be disallowed since the door was not locking at the inspection and Mr Brady had said it had not been so for a number of years. In regard to the £610.00 for cleaning, the Tribunal notes the reference to deep cleaning of the stairs, removal of carpets and cleaning of treads; the inspection had however revealed the stairs and carpets to be in a poor and worn condition generally, and inconsistent with such a relatively recent thorough cleaning having occurred; accordingly £340.00 being the cost of the deep clean referred to in the estimate on Page 210 of the Respondent's bundle, will be disallowed. The Tribunal takes the view that the stock condition report was reasonably necessary and it will be allowed.

### **2011**

In regard to the £1,840.00 claimed for cleaning, the inspection although after the period when this work was claimed to have taken place, nevertheless disclosed a generally poor standard of cleanliness inconsistent with the costs claimed. The sum of £270.00 allowed for cleaning in 2010, being a charge for 3 cleans @ £90.00. Mr Green had said that the cleaning in 2011 had only occurred from January to March, twice monthly owing to lack of funds; accordingly 10 x £90.00 will be allowed for 2011, being a sum of £900.00; the remaining £940.00 as claimed, will be disallowed. The amounts claimed for electricity, fire alarm, management and gardening are all considered reasonable and will be allowed. In regard to general repairs & maintenance, the £226.00 claimed is disallowed given the lack of clarity in the invoices at Pages 266-7 of the Respondent's bundle and the fact that the Respondent had been unable to clarify them. The administration fee of £57.88 will be disallowed since no clear or persuasive reason was offered by Mr Green as to why these had to be incurred, apart from providing Countrywide with general information about the leases, which ought to have been available from the previous agents as part of the usual hand-over process.

### **2012**

Electricity, management fees and out of hours service provision are all considered by the Tribunal to be not unreasonable and will be allowed. In regard to the £995.00 claimed for general repairs & maintenance, Mr Green admitted that £800.00 had been included in error and the remaining £195.00 appeared to relate to repairs to a toilet inside a flat, rather than being work to any communal areas; accordingly the £995.00 is disallowed. In regard to professional fees, most of the £505.36 appeared to be a partial payment in regard to Daniells Harrison`s fees for preparing a specification and tender documentation for planned repairs and these appeared to be reasonably necessary; however the £4.70 postage item at Page 323 of the Respondent`s bundle is a minor disbursement which ought reasonably to have formed part of, or been subsumed within Countrywide`s general management charges, rather than being separately billed. Accordingly the £4.70 is disallowed. Finally, in regard to cleaning, the Tribunal will allow charges of £900.00 as being reasonable on the same basis as for 2011; the excess as claimed of £90.00 is however, disallowed.

20. In regard to the application in respect of the landlord`s costs of these proceedings under Section 20C of the 1985 Act, the Tribunal is of the view that whilst a limited number of items claimed by way of service charges has been disallowed, the majority have been allowed and accordingly no order should be made such as to disallow inclusion of any of the costs in the service charge.

21. We made our decisions accordingly.

Judge P J Barber

A member of the Tribunal appointed by the Lord Chancellor

Appeals :

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.