

9548



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

**Case Reference** : LON/00AR/LSC/2013/0433

**Property** : 10 Rothbury House, Kings Lynn  
Drive, Romford, RM3 8BY

**Applicant** : London Borough of Havering

**Representative** : Homes for Havering- (1) Ms Jane  
Shaw Home Ownership Manager  
(2) Ms C Bailey Homeownership  
Income Officer (3) Ms Janet Reid  
Home Ownership Officer

**Respondent** : Ms Tolu Olubanjo

**Representative** : In person

**Type of Application** : For the determination of the  
reasonableness of and the liability  
to pay a service charge

**Tribunal Members** : Ms M W Daley LLB (hons)  
Ms S Coughlin MCIEH  
Mrs Walter MA

**Date and venue of  
Hearing** : 12 & 13 September 2013 at 10 Alfred  
Place, London WC1E 7LR

**Date of Decision** :

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**DECISION**

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## **Decisions of the tribunal**

- (1) The tribunal makes the determinations as set out under the various headings in this Decision, save that all sums which are determined as reasonable are subject to the Tribunal's determination at paragraph 100-102 that the demands served do not contain the statutory summary of Tenants' Rights and Obligations and the tenant is therefore entitled to withhold payment.
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (3) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court

## **The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of service charge years ending 31 March 2010,11,12 and13.
2. Proceedings were originally issued in the Basildon County Court under Two separate claims; claim nos.3XZ71617 and3XZ71618. The claim was transferred to the Tribunal, by order of District Judge Edgington on 7 June 2013. Both claims were consolidated by order of District Judge Keating on 24 June 2013.
3. The relevant legal provisions are set out in the Appendix to this decision.

## **The hearing**

4. The Applicant was represented by Ms Jane Shaw Homeownership Manager, Ms C Bailey Home Ownership Income Officer, and Ms Janet Reid Home Ownership Officer at the hearing and the Respondent, Ms Tolu Olubanjo appeared in person.
5. Immediately prior to the hearing the applicant's representative handed in further documents, namely County court claim forms.

## **The background**

6. The property which is the subject of this application is a one bedroom flat in a council block of twelve units. These blocks were part of 6 blocks of flats on an estate.
7. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.

## **The issues**

8. From a discussion with the parties at the Pre-Trial review held on 12 July 2013 the Tribunal identified the following issues to be determined:
  - (i) The actual service charged for the years ending 31 March 2010, 11, and 2012 and the estimate for the year ending 31 March 2013.
  - (ii) Whether the landlord has complied with the consultation requirements under section 20 of the 1985 Act.
  - (iii) Whether certain works are within the landlord's repairing obligations under the terms of the lease.
  - (iv) Whether the cost of certain works are reasonable and payable
  - (v) Whether the cost are payable by reason of section 20B of the 1985 Act
  - (vi) Whether the service charge demands have included the summary of Tenants Rights and obligations.

## **Service charge item & amount claimed**

9. The Tribunal asked the Applicant to provide the figure for the amount of service charges outstanding as at the date of the hearing. The total sum including major works was £1958.00.
10. The Applicant stated that one of the major issues in this case, which had caused the Respondent some confusion, was that she did not understand the constitution of the estate. In order to understand that the service charges were reasonable and payable, the Tribunal needed firstly to understand the configuration of the estate.

11. The definition of the estate was set out in the fifth schedule of the lease, which stated-: The Lessors Flats Development at Kings Lynn Drive, Harold Hill in the London Borough of Havering. The Applicant's representative explained that the Kings Lynn Estate was close to an estate called the Dartfields Estate, and that both estates had block which were next to each other. The Tribunal noted from the enclosed map that the two estates were made up of a semi- circle/ "D" shaped plot of land, which was divided by a road, Kings Lynn Drive. Two of the blocks were on one side of the road and the other blocks formed the inner ring of the semi-circle. The Respondent's flat was one of the two blocks which was separated from the rest of the estate by the road.
12. The estate comprised the following blocks, Crediton House, 1-12 Ingleton House, Lincoln House, Ringwood House, and Wantage House together with the Respondent's block Rothbury House.
13. One of the first issues that the Tribunal had to determine was what constituted the estate and the building. In her witness statement, the Respondent Ms Tolu Olubanjo, stated that one of her points of discrepancy was that the Dartfields estate comprised 150 houses and flats, and that the estate was situated close to Kings' Lynn Drive Estate. The King's Lynn Drive estate comprised 72 flats.
14. The Respondent further stated that the building in which her premises was situated comprised 1-12 Rothbury House, each house was then subdivided into six flats.
15. In reply the Applicant stated that -: "*... The building was described in the sixth schedule of the lease as the block of flats known as flats numbered 1-12 Rothbury House*". The reply explained that a computer program used by the Applicant ( from 2004) known as Anite defined the blocks held by the Applicant according to the entrances, therefore, a property with two entrances was known as block 1-6 ( one door entrance) and block 7-12 ( the other door entrance).
16. The Home ownership team then undertook an exercise to bring Anite in line with the lease descriptions, as a result of this the description of the block was updated on the Applicant's systems in accordance with the lease description to show the block as comprising 1-12 Rothbury House, one block and one building.

### **The tribunal's decision**

17. The Tribunal on examining the lease determined that the correct interpretation of the block was that put forward by the Applicant. In accordance with the Applicant's explanation where the service charge statement showed a block charge for any of the properties, in 1-12

Rothbury, then the charge was payable by all of the leaseholders in the premises in accordance with the provisions of the lease.

18. The service charges for the premises were made up of the following heads of charge -:

- (i) Grounds Maintenance
- (ii) CCTV Services
- (iii) Cleaning Services
- (iv) Day to Day Repairs-Block
- (v) Door Entry Maintenance
- (vi) Neighbourhood Warden
- (vii) Administration
- (viii) Communal/Satellite TV Aerial
- (ix) Annual Insurance Premium
- (x) Major works

19. The Charges were grouped into three heads of charges the Estate Cost that were described as “... *Costs that are divided evenly between the number of flats on your estate.*” Block Costs- “... *Costs that are divided evenly between the numbers of flats in your block*” and Property Costs-“*Costs that are charged to your individual property.*”

#### *The Grounds maintenance*

20. The first service charge in issue was the Grounds Maintenance in the sum of £481.20 for 2009-10. The Respondent objected to the charges on the grounds that the apportionment included costs that should be apportioned to the Dartfields Estate and that Rothbury House was subsidising the cost for leaseholders on the Dartfields Estate.

21. The Tribunal considered the service charges for the year 1/04/09 to 31/03/2010, in so doing the Tribunal decided that where a particular head of charge raised a general principle that was applicable to the same charge for further years, then

the Tribunal would consider all of the issues under that heading, and apply its findings for all of the years in issue. The Tribunal noted that within the bundle there were service charges which dated back from 2003 where the ground's maintenance cost was £187.32 for the block and the Respondent's share was £32.22.

22. The Tribunal were informed that the actual system used by the Applicant was that the finance section provided information on the total cost for ground maintenance paid by the Applicants in the year in question to establish the cost of ground maintenance per square metre. This information was used to establish the total cost for both the (adjoining) Dartfields Estate and the Kings Lynn Estate. This was then divided by the total number of properties on both estates and then multiplied by the number of flats in each block to get the block cost; this was then divided by each flat to establish the Respondent's share. This method of apportionment was used for each of the years in question.
23. The Tribunal noted that in respect of the green areas of the estate the block of the grass/park land areas were on the Dartfields Estate. In addition the tribunal asked about the provisions in the lease which dealt with the obligation to pay Estate Maintenance charges.
24. In answer the Applicant stated that the total amount of the charges amounted to 1/3 of the total cost of the grounds maintenance.
25. The Applicant's referred to clause 3 of the fourth Schedule of the lease which stated:- "*... The cost of keeping Access Ways the Garden Areas and the Dustbin and Drying Areas in good repair and condition.*" The cost were payable in accordance with clause 2 (2) of the lease which stated:- (2) *Contribute and pay so far as permitted by law a rateable or due proportion to be determined by the Lessors or in default of agreement by arbitration in manner provided by Clause 5(2) of the costs expenses outgoings and matters mentioned in the Fourth Schedule hereto (hereinafter called "the service charge")*.

### **The tribunal's decision**

26. The tribunal determines that the amount payable in respect of grounds maintenance is reasonable and payable for each of the years in issue.

### **Reasons for the tribunal's decision**

27. The Tribunal noted that the lease did not provide for any definite method of apportioning the charges, the relevant clause in the lease refers to "*a rateable or due proportion to be determined by the Lessors or in default of agreement by arbitration.*"
28. The Tribunal also noted that the Respondent, although unhappy about the basis of the charges, had not provided an alternative method of apportionment or any comparable evidence of the cost of grounds maintenance or indeed complained about the quality of the work undertaken.
29. The Respondent had simply asserted that there was a possibility that the Leaseholders of Kings Lynn Drive Estate were subsidising the Dartfields estate, and an issue as to whether she was obliged to contribute the grounds maintenance for the benefit of the Dartfields estate.
30. The Tribunal noted that the definition of estate was loosely defined and also included access ways. The Applicant (a local authority) has a particular way of managing its finances which does not permit for a more targeted breakdown of the cost, however the Tribunal are satisfied that the cost has been reasonable incurred. The Tribunal noted that both estates join and have no natural boundary, the Tribunal finds that the Applicant's approach of taking the total cost of the ground maintenance and dividing the cost by the number of properties is not an unreasonable method to take.
31. Based on the Tribunal's knowledge and experience of such costs the Tribunal determines that the method of apportionment is reasonable and that the cost incurred is payable. The sum of £7.58 for the period 2009/10 £6.92 for the period 2010/11 and £8.02 for the period 2011/12 is reasonable and payable.

### *Service charges for CCTV-Cameras*

32. The annual cost payable by the block for this service was £1635.60 for the period 1/04/2009 to 31/03/2010, the Respondent's share being £136.30. For 1/04/2010 to 31/03/2011 the cost payable was £1557.24, the Respondent's share being £129.77. For 1/04/2011 to 31/03/2012 the block cost was £1014.24. The cost for the CCTV cameras was included in the 2007 service charges (having been

installed in 2006) and had been an item for each of the intervening years in question.

33. The Applicant's representative informed the Tribunal that the cost of the camera was allocated in this way. If the estate benefitted from CCTV cameras then the leaseholder contributed towards the cost. Across the borough there were 279 cameras which were monitored by a central control unit. There were 3500 properties which benefitted from the provision of CCTV cameras. The King's Lynn estate was stated as benefitting from three cameras one of which was situated in a car park and the other was on the adjacent council offices, this camera was said to overlook Crediton House across the Kings Lynn Estate towards the Dartfield Estate. The Applicant's representatives were unsure where the third camera was located.
34. The cameras were described as tilt and zoom cameras which increased their coverage. The Tribunal were shown photographs of these cameras and a copy of a letter dated 18 March 2010 sent by the Applicant to the Respondent, which described two cameras which provided 360 degree coverage.
35. The total cost of the service was calculated and then divided by the number of properties which benefitted from the service.
36. The Tribunal asked for details of the lease provisions which enabled the Applicant to provide, and make a charge for this service.
37. The Tribunal were informed that paragraph 7 of the Third Schedule allows Homes for Havering the discretion to install CCTV if we deem "*... it desirable so to do for the more efficient conduct and management of the building*".
38. The Tribunal were informed that Paragraph 9 of the Fourth Schedule allows for the recoverability of the CCTV service as an estate cost rather than as a block cost as the service benefits the estate as a whole.
39. The Respondent in her reply and in her oral evidence disputed that the CCTV was provided for the benefit of the estate. Ms Olubanjo also stated that there had been no consultation concerning the provision of these services. Further the Respondent noted that one of the cameras was positioned in such a way as to see directly into the Council staff car park, and to cover the accessway from the car park to the council offices. Given this, it appeared to the Respondent that any benefit derived from these cameras was purely for the Applicant's benefit.

40. In respect of the third camera this was installed by the police as a result of the police finding out that one of the tenants had a link to terrorism.
41. In her witness statement, the Respondent stated that -:  
*"...When my flat was broken into in Dec 2008 due to the intruder getting in on the Havering Council abandoned {Scaffold} the council never provided any info or mentioned that there was any CCTV and refused to pay for the smashed glass in the door and refused to let me make a claim on the building insurance..."*
42. The Respondent considered that she did not benefit from the costs associated with the CCTV camera.
43. The applicant's representatives conceded that the method of allocation of the costs did not take into account the level of coverage a particular block or flat had. If there were any cameras at all covering the estate then the property was charged. They were on the process of considering a fairer method of apportionment.
44. At the hearing the Tribunal gave directions that the Applicant should provide ( amongst other things) further information concerning the third CCTV camera within 14 days of the hearing. The Applicant's Home Ownership Manager provided the following information in her letter dated 29.09.2013 -:  
*"...There is no deduction made for the Chippenham Road Offices. The Cameras rotate 360 degrees and are more frequently trained on the flats, often only pointed at the offices on request if there is a problem As the Chippenham Road car park is also used as a footpath/shortcut, the camera is safeguarding the area and people living in those flat. The camera linked to Credition House was installed 5 years ago... A sign would not have to be placed directly where the camera is situated but in the vicinity to alert people that they are entering an area covered by CCTV. The signage placed around Chippenham Road and Kings Lynn Drive would cover this camera..."*

### **The tribunal's decision**

45. The tribunal determines that the cost of the CCTV is payable save that the block contribution ought to be reduced by 35%. This should be deducted from the outstanding service charges for the period 2007 onward.

## Reasons for the tribunal's decision

The Tribunal have determined that the Applicant and the Applicant's staff derives a benefit from the CCTV for which they ought to make a contribution, as the existence of the camera and the location of the signage affords them a degree of security to their cars and additional personal protection. The Tribunal have accordingly determined that the Applicant ought to pay a contribution towards the provision of CCTV.

### *Service charges for Cleaning Services*

46. The Applicant's representative explained that the charges for the cleaning were apportioned in a similar way to the grounds maintenance in that the Applicant calculated the cost of the external cleaning services for the two estates, and apportioned the cost using the same formula as was used for the ground maintenance, which involved dividing the total cost by the amount of properties on the estate.
47. The caretaking and cleaning services formula was also based on the number of hours spent on both estates that were carried out for the years in question.
48. The Tribunal asked for details of the work undertaken. The Tribunal were informed that the internal cleaning involved cleaning the stairwells and the entrance to the blocks and wiping down surfaces and removing cobwebs, this took approximately twenty minutes per entrance. The work was carried out fortnightly.
49. The internal cleaning service charge was based on the number of entrances cleaned for each block. The finance department then calculated the total cost of the service and produced an hourly rate which was then applied to the number of hours spent.
50. The Respondent objected to the charges on the basis that the breakdown of the services provided for external cleaning included costs which were for services provided on the Dartfield Estate as well as those provided for the Kings Lynn Estate, given this the Respondent questioned whether she was being required to contribute towards the cost of the Dartfields Estate.
51. It was also noted that the cost of the cleaning had increased during the period in issue from approximately £36.00 per annum to £84.52 for the period 2012/13.

52. The Applicant's representatives stated that the reason for this was that previously there was an error in the 2011/12 period in that the figure was too low. The estimate was £1014.72 whilst the actual was £2074.68, this was due to the use of agency staff and as a result the salary cost went up considerably. In their further representations (29.09.2013), the Applicant's also cited the increase in non-staffing cost such as Vehicle insurance, refuse collection and vehicle leasing and rentals.
53. The Respondent also objected to the cost of the mobile warden and the way in which the charges are apportioned. The Tribunal were informed that the cost of the warden services was payable in accordance with the terms of the lease, and that the lease enabled the landlord to provide the services where the services were for the proper and convenient management of the estate.
54. The Applicant informed the Tribunal that the services provided were that of the mobile warden, rather than a static warden based at one block. The warden went around the estates and acted as the eyes for the Applicant in dealing with any disrepair and other matters.
55. In their written response, the applicant stated of the mobile warden services that -: *" This charge is calculated from spread sheets provided to us by the Community Wardens detailing which blocks/estates they have been called to during the year and the time spent there. A time in minutes for each month is totalled and apportioned to the number of properties in the block"*. The hourly rate for 2008/09- £18.24, 2009/10- £24.64, 2010/11 -£23.79 2011/12- £23.44, 2012/13-£21.32.

### **The tribunal's decision**

56. The tribunal determines that the cost of the internal and external cleaning and the mobile warden services is reasonable and payable. The Tribunal noted that the services provided were basic, and limited to a cursory cleaning of the common parts, however the services also included estate cleaning, collection of bulk refuse and graffiti removal.
57. The hourly staff rate for the cleaning for 2008/09 was £17.80 and for 2012/13 the rate was £23.87. The Tribunal consider that the Applicants have disclosed a reasonable basis for their charge, save for the charges in 2011/12. The Tribunal noted that although the cost had increased considerably there had been no corresponding increase in the services. Accordingly the Tribunal consider that the cost of this service should not exceed £75.00 per leaseholder.

58. The Tribunal noted that the cost of the provision of the mobile warden was payable in accordance with the terms of the lease, and that the lease allows some discretion on behalf of the landlord in incurring costs for the proper and convenient management of the estate.

### **Reasons for the tribunal's decision**

59. The Tribunal noted that although the Respondent was objecting to the charges, she had not objected to the rate charged nor set out any alternative figures to support her contention that the method of apportionment was unfair. Accordingly the Tribunal having looked at the sums charged and in so doing, has used its knowledge and experience of alternative charges and has determined that the service charges for the cleaning and mobile caretaking are reasonable and payable.

### *Day to Day Repairs*

60. The Applicant's representative explained that the Applicants were in partnership with Morrison's Builders (a large firm) and that the builders carried out minor day to day repairs such as unblocking drains and changing light bulbs.
61. The Applicant's in their statement set out that the Applicant sends out a list of repairs carried out to the block at regular intervals during the year. The list was accompanied by a query sheet for the leaseholders to complete. The management company then investigated any queries raised with the maintenance team.
62. The Applicant's noted that -: *We have followed this process since 2006/07 and up to the end of 2012/13 a total of 8 queries have been raised by all leaseholders against repairs to the block 1-12 Rothbury House. Mrs Olubanjo has had ample opportunity to query any repairs but has not done so until now...*
63. The Tribunal were informed that repairs were generated by tenants and leaseholders contacting the Applicant's contact centre to complain that their flat/ block was in disrepair. The repairs were then allocated. Once the repair had been carried out a percentage of the repairs was then checked. This was approximately 10% of the jobs.
64. The Applicant representative noted that the main basis for the Respondent's queries appeared to be the fact that there was a discrepancy concerning the name of the block.
65. The Respondent had gone through each of the repairs in turn and had noted her queries on each of the items of repair carried out

over the period in question. Of the items queried a number related to the Respondent's assessment of the Applicant's ( as an organisation) credibility. However there were some concerns which were raised concerning the accuracy of billing and whether the query related to Rothbury House, as the Respondent had queried the make-up of Rothbury House. In particular, Job No 2581988 (2007/08) which related to three doors to the bin stall area where the Respondent alleges that there is only one. ( Respondent's share £18.23)

66. The Respondent also queried job number 2388456, (2007/2008) this Job related to re-fixing a fence panel. The Respondent noted that this referred to flower beds, and that there were no flower beds at Rothbury House.

67. The Respondent also queried the cost of the replacement of and the re-stringing of 2 of the washing lines in the sum of £90.00 (job no 3290547); in this case the Respondent queried the reasonableness and payability of this item. This repair was repeated in 2012/13 at a cost of £68.84.

68. In answer to a query from the Tribunal concerning the repairs, it was noted that there was an admin charge on each of the repairs; this was 18.85% of each of the jobs. The Applicant stated that this was to pay for the costs related to the contact centre, surveyors and the admin staff.

### **The tribunal's decision**

69. The Tribunal noted that the major query concerned the discrepancy between the heading used of 1-6 Rothbury House, and 1-12 Rothbury House, to which the Tribunal have referred to above, save for this the items related to minor day to day repairs. Although the Respondent doubted the veracity of the repairs, the Respondent did not provide any significant reason for her questioning the veracity of the repairs.

70. The Tribunal also noted that other than the cost of the washing lines, the Respondent did not query the reasonableness of the cost of the repair. Accordingly the Tribunal have had to use its knowledge and experience to determine whether the type and nature of repairs was reasonable and payable.

71. The Tribunal noted that the cost of the line repairs appeared to be higher in the earlier years than later on, accordingly we consider that this cost should be capped at £70.00.

72. The Tribunal did not go through the minor repairs item by item at the hearing, accordingly the Tribunal noted that there were

issues raised concerning the validity of the jobs referred to above. The Applicant should re-check these jobs and respond to the Respondent as to why these jobs are considered to relate to the premises. The Applicant should confirm the basis upon which they are payable. If the Applicant cannot confirm these items within 28 days the sum should be re credited to the respondent's account.

73. The Tribunal have found that the on costs to the minor repairs, the Admin charge, should be capped to no more than 10%, the Tribunal noted that some of the items that are paid for under the heading of admin on cost should be included in the general management charges.

*Door Entry – Annual cost of maintaining system*

74. The Respondent queried why this was being charged on an annual basis, and whether this item was properly a repair.

75. The Applicant stated that this was the cost of the maintenance contract for the door, and that the cost to the Respondent was her share of the maintenance contract. This enabled work to be undertaken as necessary to the door.

76. The Tribunal noted that it was not unusual for landlord's who had an intercom system to have a maintenance contract. Given this the tribunal (in the absence of any alternative cost put forward by the Respondent) had to use its knowledge and experience to determine whether the costs for this item set out in the demand by the Applicant were reasonable and payable. The Tribunal determined that the sum claimed for door maintenance throughout the period in issue was reasonable and payable.

*Management fee- Administration fee*

77. The cost of this for 2010-11 was £229.48, for 2011/12 this was £221.58 and for 2012/13 the cost was £229.48.

78. The Applicant's representative stated that this was for the cost of the Home Ownership team and also included elements of other teams. The Applicants considered that it was fair and reasonable that the cost of this be divided by the number of units.

79. The Tribunal were informed that the management fee included paying for the cost of the home ownership team. This team included 4 officers, plus the cost of two income recovery officers and two income recovery officers.

**80.** The services that were provided included the cost of the tenancy and neighbourhood services, dealing with the cleaning and surveying and the boundary issues. The cost of resident participation including the leaseholder focus group and keeping the leaseholders up to date.

**81.** The Applicant's representative noted that the issue of the management fee had been dealt with by the Tribunal in a previous Application LON/00AR/LSC/2008/0242, and although some of the charges were disallowed this was because the property was found not to be on an estate.

**82.** The Tribunal find that the management charges were reasonable and payable. However the Tribunal noted that the Applicant had chosen to include an element of the management charge on the cost of the day to day repairs. The Tribunal noted that the implications of this, was that an element of management was paid for on each repair. Given this the Tribunal consider it reasonable to reduce the cost of the overall management fee for each of the years in question to reflect the fact that some of the management cost is included in the overall cost of repairs, and to take into account failings in management (in relation to serving compliant demands and effectively deal with insurance claims set out below). The Tribunal determines that this reduction shall be 5%.

#### *Communal aerial charges*

**83.** These charges were set out for each of the years in issue. For 2006/07 the charges were £61.36, For 2007/2008£65.00. For 2008/09 the charges were £66.56, for 2009/10 the charges were £70.20, for 2010/11, for each of 2011/12 and 2012/13 the charges were£64.80.

**84.** The provision in relation to Aerials was in the 9<sup>th</sup> clause of schedule 8 of the lease, which states:- " 9. *The right (subject to the Lessee contributing and paying his proper share of the cost of erection maintenance and running of the television aerial hereinafter referred to such share to be determined by the Lessors) to connect a television set in the demised premises with any aerial erected by or on behalf of the Lessors Provided That nothing herein contained shall oblige the Lessors to erect such aerial.*"

**85.** The Applicant's in their reply to the Respondent's statement stated that the charges for the aerial were provided by the finance team, and their calculations were based on the invoices provided to them by the service provider Cablecom ( now known as MDTV).

**86.** The Applicant stated that :- "... *In the past the residents had been given the option of having an aerial socket installed in their flats*

*that would be connected to a communal aerial for the block. Once the socket was installed it was added in to the maintenance contract between LBH and Cablecom... and an annual maintenance charge became payable. The socket became part of the fixtures and fittings of the flat and was in place when Mrs Olubanjo purchased the flat on the open market and the cost was shown on the service charge statement...*

**87.** Ms Olubanjo objected to the charges, in her evidence before the Tribunal, the Respondent stated that the aerial had never worked properly off the landlord's satellite dish. Ms Olubanjo had plugged the aerial in and the picture had gone fuzzy. She had also noted that wires had been cut.

**88.** The Applicant's representative referred the Tribunal to a letter written by the Applicant to the Respondent, dated 10.10 2012. In this letter the Applicant had rejected the Respondent's complaint that the aerial was not working.

### **The tribunal's decision**

**89.** The Tribunal noted that under the terms of the lease the Applicant may make a charge in relation to the provision of a communal aerial. The Tribunal noted that the provision of lease provide for a communal aerial rather than for satellite TV, and as such the satellite TV is an enhancement to the service, however the Tribunal consider that this is still permissible under the terms of the lease which provides a wide discretion for the Applicant to provide services "... *if it is desirable so to do for the more efficient conduct and management of the building...*"

#### *The Insurance Premium*

**90.** The insurance was placed under one contract for the whole of the stock. The cost of the insurance was apportioned on the basis of the number of bedrooms. The cost of the insurance was £105.80. The Applicant had entered into a long term qualifying agreement with Zurich and had notified the leaseholders.

**91.** The Respondent did not object to the cost of the insurance; however she noted that she had been prevented from claiming on the insurance in relation to broken glass in the balcony door, damage to the front entrance door and damage to the bathroom ceiling caused by water penetration from the flat above, on the grounds that she was in arrears with her service charges.

**92.** The Tribunal note, that such failure to deal with these matters as led to the Respondent having to take responsibility for these

matters, as such any losses that she has experienced, which are quantifiable may be raised as a set off to any recovery action taken by the Applicant in the county court.

### **The tribunal's decision**

**93.** The Tribunal noted that the cost of the insurance was not objected to, neither were there any alternative quotations relied upon by the leaseholder in order to establish that the cost concerned were not reasonable. Accordingly in the absence of alternative evidence, the Tribunal used its knowledge and experience of such charges to determine that the cost in the sum of £93.07- to £105.80 (in respect of 2013) is reasonable and payable.

**94.** The Tribunal noted that the stance taken by the Applicant of disallowing the Respondent's claim was wrong in principle and that there were a number of issues raised, by their refusing to put through the Respondent's claim. However the Tribunal are satisfied notwithstanding this, that the cost of the insurance is reasonable and payable. The Applicant ought, however, to reconsider the Respondent's claim.

#### *The cost of the Major works*

**95.** The Respondent also disputed the cost of the major works for replacement of windows, this work occurred in 2008. The Tribunal were provided with copies of the invoice in respect of the work, the description of the major work was, for carrying out internal decoration for the block for all areas (£2054.00), internal decorations to walls and ceiling in communal staircase (£1734.42) admin cost of £4.53, the cost payable by the Respondent were £320.23.

**96.** The scheme of work also involved replacement of windows for each of the flats, where this work had previously not been undertaken by the tenants. The Respondent's premises had already had this work carried out, as a result the Respondent's window was not replaced.

**97.** Ms Olubango in her reply stated that as a result of the Applicant not complying with section 20 of the Landlord and Tenant Act 1985, the Applicant had conceded that it was limited to claiming the statutory sum of £250.00. An invoice in the sum was served on the Respondent on 4/11/2011.

**98.** The Respondent objected to this invoice on the grounds that it had been served later than 18 months after the cost had been

incurred and as a result it was caught by section 20B of the Landlord and Tenant Act 1985.

- 99.** The Applicant's responses was contained in a letter dated 10.10 2012 in which Jane Shaw Home Ownership Manager stated on behalf of the Applicant, that the Respondent had been notified within 18 months as the first notice had been sent on 22.12 2008, whereas the second invoice merely informed the Respondent of the reduction. Given this the Respondent had been notified within 18 months.

### **The tribunal's decision**

- 100.** The Tribunal consider that the sum of £250.00 is reasonable and payable for the major works. The Tribunal have heard no evidence that the work was not carried out to a satisfactory standard and the issues that were raised concerning the consultation requirements have been dealt with by the Applicant.

Insofar as the Respondent alleges that the sum demanded is caught by section 20B of the Landlord and Tenant Act 1985, that is that the sum has been demanded outside the time period of 18 months, then the Tribunal refer to exact wording in section 20B (2) which states: *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.*

- 101.** The Tribunal consider that the Respondent was notified within the period of 18 months and that such notice was given by letter dated 22.12 2008, even though the sum was subsequently reduced, this letter dealt with the cost of the major work accordingly the sum of £250.00 is reasonable and payable.

*Whether the service charge demands have included the summary of Tenants Rights and obligations in accordance with the 2007 regulations.*

- 102.** The Respondent raised as an issue the fact that the demands did not comply with the requirements of s.21B of the Landlord and Tenant Act 1985 and Regulation 3 of the Service Charge (Summary of Rights and obligations) Regulation 2007

- 103.** The Tribunal examined the wording set out on the demands, and noticed that the demand contained a précis of only some aspects of the *Summary of Rights*. The exact wording and the safeguards referred to in the regulation had not been complied with in the demand served by the Applicant. The Applicant admitted that this was the form of

summary which they had sent out with all their demands for several years and at the present time, however they considered that it did comply with the legal requirements.

**104.** The Tribunal determined that in order for the Respondent to have an obligation to pay the charges, the sum had to be payable in accordance with the law. As a result the sum due although demanded was not payable until such time as it had been demanded in compliance with the law. Accordingly there is no obligation on the Respondent to pay the demands until they are correctly demanded.

**105.** The Tribunal noted that the Respondent in her statement submitted that as the cost had not been correctly demanded then they were caught by section 20B. For reasons that have already been stated above, the Applicant has notified the Respondent ( by way of the flawed demands) that the cost has been incurred, accordingly the Respondent has been notified that the sums are due for the 2009/10, 2010/11, 2011/12, and 2012/13 service charges.

**106.** Insofar as the Tribunal have determined that the sums are reasonable, then on the sums being demanded with the correct Summary of Rights and Obligations they will be payable.

#### **Application under s.20C and refund of fees**

**107.** At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above which includes the Tribunal's determination that the service charges are not payable until such time as the landlord has complied with the Service Charges(Summary of Rights and Obligations Regulations 2007, 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 Applicant may not pass any of its costs incurred, in connection with the proceedings before the tribunal through the service charge.

#### **The next steps**

**108.** The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the County Court.

**Name:** Ms M W Daley

**Date:** 19.12.2013

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985**

#### **Section 18**

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

#### **Section 19**

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

#### **Section 27A**

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

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

## **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) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

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

### **S21A Withholding of service charges**

- (1) A tenant may withhold payment of a service charge if—
- (a) the landlord has not supplied a document to him by the time by which he is required to supply it under section 21, or
  - (b) the form or content of a document which the landlord has supplied to him under that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under subsection (4) of that section.
- (2) The maximum amount which the tenant may withhold is an amount equal to the aggregate of—
- (a) the service charges paid by him in the accounting period to which the document concerned would or does relate, and
  - (b) so much of the aggregate amount required to be dealt with in the statement of account for that accounting period by section 21(1)(c)(i) as stood to his credit.
- (3) An amount may not be withheld under this section—
- (a) in a case within paragraph (a) of subsection (1), after the document concerned has been supplied to the tenant by the landlord, or
  - (b) in a case within paragraph (b) of that subsection, after a document conforming exactly or substantially with the

requirements prescribed by regulations under section 21(4) has  
been supplied to the tenant by the

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- landlord by way of replacement of the one previously supplied.
- (4) If, on an application made by the landlord to a leasehold valuation tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.
  - (5) Where a tenant withholds a service charge under this section, any provisions of the tenancy 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.[...] [FN1]

[FN1] ss.21-21A substituted for s.21 by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 152

#### **S21B 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.[...] [FN1]

[FN1] added by Commonhold and Leasehold Reform Act (2002 c.15), Pt 2 c 5 s 153

#### **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.

### **Leasehold Valuation Tribunals (Fees)(England) Regulations 2003**

#### **Regulation 9**

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

### **Commonhold and Leasehold Reform Act 2002**

#### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.
- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

**Schedule 11, paragraph 2**

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

**Schedule 11, paragraph 5**

- (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,

- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or
  - (b) on particular evidence,
- of any question which may be the subject matter of an application under sub-paragraph (1).

**Schedule 12, paragraph 10**

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
  - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
  - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.