10237

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

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| **Case Reference** | : | **CHI/21UC/LSC/2013/0143** |
| **Property** | : | **51 Orvis Court, Midway Quay, Eastbourne, East Sussex BN23 5DF** |
| **Applicant** | : | **Peter and Jane Walters** |
| **Representative** | : | **In person** |
| **Respondent** | : | **The Boardwalk Management (Sovereign Harbour) Limited** |
| **Representative** | : | **Mr John Grimes (of Fell Reynolds, managing agents)** |
| **Type of Application** | : | **Sections 20C and 27A Landlord and Tenant Act 1985 (service charges) and Schedule 11 Commonhold and Leasehold Reform Act 2002 (administration charges)** |
| **Tribunal Members** | : | **Judge E Morrison (Chairman)<br>Mr N I Robinson FRICS (Surveyor Member)<br>Ms J Morris (Lay Member)** |
| **Date of consideration** | : | **9 April 2014** |
| **Date of decision** | : | **14 April 2014** |

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**DECISION**

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## The Applications

1. Under an application dated 19 November 2013 the Applicant lessees applied under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for a determination of their liability to pay certain costs as service charges. Under a further application dated 3 December 2013 they applied under Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("Schedule 11") for a determination of their liability to pay those same costs as administration charges. The Respondent to both applications is the management company for the Sovereign Harbour development, which includes Orvis Court.

2. The Tribunal also had before it an application under section 20C of the Act that the Respondent's costs of these proceedings should not be recoverable through future service charges.

3. The Applicants also requested that the Tribunal order the Respondents to pay their costs and to reimburse the application fee.

4. The Respondent requested a costs order against the Applicants.

## Summary of Decision

5. In respect of the disputed legal costs of £600.00, this sum is payable by the Applicants subject to a revised demand being made for the cost as an administration charge.

6. In respect of the Respondent's proposed charges for works to the 7th floor entry door and carpet, these are not recoverable as an administration charge from the Applicants. However, the reasonable cost of certain minor works to the door/lock could be recovered through the service charge from all lessees at Orvis Court.

7. No order is made under s 20C of the 1985 Act.

8. No order is made for costs against either party or for reimbursement of the application fee.

## The Lease and Management Agreement

9. The Tribunal had before it a copy of the lease for Flat 51 Orvis Court and was told that leases for the other flats in the block were in similar form. The lease is dated 18 May 2007, and is for a term of 125 years at a yearly ground rent of £50 for the first 25 years and rising thereafter. It is a tripartite lease between Redrow Homes (the lessor), the Respondent management company (the Manager), and the Applicant lessees.

10. The relevant provisions in the lease may be summarised as follows:

(a) The lessee covenants to pay the Manager 0.7% of a service charge relating to the Sovereign Harbour estate generally, and 3.6% of a service charge relating to Orvis Court in particular (clause 3.1 and Seventh Schedule);

(b) The Manager is responsible for maintaining the estate generally and the common parts within Orvis Court (Sixth Schedule). These common parts include the entrance halls, passages, landings and staircases (Second Schedule). The Manager's costs are recovered through the service charge from all lessees.

(c) The lessee, (together with all others having the same right, which will include all other lessees of Orvis Court and their visitors) has the right "to go pass and re-pass at all times and for the purpose of access to and egress from the Demised Premises only .... over and along the passageways corridors landings and staircases ... within the Block" (Fourth Schedule, para 5).

(d) The Eighth Schedule sets out the lessee's covenants, all of which are enforceable by the lessor and the Manager.

- "To make good any damage to any part of the Development caused by any act ... of any occupant or person using the Demised Premises" (Part One, para. 14)

- "Not to cut maim or injure nor to make any breach in any part of the structure of the Demised Premises ... nor without the previous consent in writing of the Manager or its agents to make any alteration or additions whatsoever to the plan design or elevation of the Demised Premises not to make any openings therein ..." (Part One , para. 22)

- "On making application for any such consent as aforesaid to submit to the Manager or its agents such plans blocks plans elevations and specifications as they shall require and to pay the reasonable and proper legal and surveyors fees of the Manager in connection with any such application and to carry out any work authorised only in accordance with such plans block plans elevations and specifications as they shall approve in writing making use of good sound and substantial materials all of which shall be subject to inspection and approval by them" (Part One, para. 23)

- Not to obstruct or permit to be obstructed at any time any lift entrances stairways or any openings of whatsoever nature on the Development (Part Two, para. 7) (this covenant is also enforceable by the other lessees in the block).

11. By a Management Agreement dated 8 August 2008, between Redrow Homes, the Respondent management company and Fell Reynolds, the Respondent appointed Fell Reynolds as managing agents for the Sovereign Harbour estate for an initial term of 8 years. Redrow authorised Fell Reynolds to collect rents and serve certain notices on its behalf, and agreed not to assume the obligations of the Respondent save in certain specified circumstances.

## Procedural Background and Evidence

12. The Tribunal issued Directions dated 18 December 2013 stating that it intended to determine the matter on the basis of written representations only and without an oral hearing if neither party objected. In accordance with the Directions, the Applicants provided a written statement of case with supporting documentation, the Respondent (through Mr Grimes of Fell Reynolds) provided its statement of case, also with supporting documentation, and the Applicants then submitted a reply. There being no request for an oral hearing, the matter was determined on the papers, following an inspection of the property.

## The Inspection

13. The Tribunal inspected Orvis Court on the morning of 9 April 2014, accompanied by Mr Walters and Mr Grimes. It was agreed with the parties that there were just the two issues to see: the seventh floor common part fire door set and the altered living room window within Flat 51, also on the seventh floor.

14. Access was gained to the seventh floor via the lift and it was noted that the seventh floor can only be accessed by lift by using a key switch fitted within the lift. All other floors could be reached by simply pressing the appropriate lift call button. On the seventh floor, the lift exits into a lobby serving the three flats on that floor. The fire door set which is the subject of dispute separates this lobby from the fire escape staircase which runs from the roof (as a means of escape from the upper floor of Flat 51 as well as roof access for maintenance) down to the car park level. The fire door set was noted to be an unequal pair of doors with the smaller door normally secured shut with recessed bolts into the floor and top of the door frame but openable when required to move furniture etc. A timber threshold had been fitted under the door, which provided a break between the original staircase carpet and the replacement carpet provided to the lift lobby. The Tribunal's attention was drawn to a number of other similar doors in the block which had exactly the same recessed bolts fitted, and where a gap could be seen under the doors and there was no wooden threshold.

15. The final point with regard to the seventh floor fire doors was that a Codelock mechanical push button lock had been fitted. It was noted that this was fitted to a good standard but that the latch mechanism

had been removed to disable the lock, leaving a hole in the leading edge of the main door. The effect of this lock, when operational, was to allow residents of the seventh floor to escape the lift lobby to the fire escape staircase by turning a handle internally, but anyone on the staircase side of the door would need to input a code number to access the lobby, thus increasing security for the seventh floor residents. At the beginning of the inspection, Mr Walters had drawn attention to a similar push button lock fitted to a car park level bin store.

16. Mr Walters then took the Tribunal into his flat, with Mr Grimes waiting outside. He pointed out that the main entrance to the flat comprised an unequal pair of doors similar to the fire door set previously mentioned. He advised that they were provided to all the penthouse flats whereas the other flats in the building were provided with single doors. The Tribunal went on to the terrace outside the window under discussion. The window has now been replaced and is now almost full room height from floor level internally. Mr Walters explained that originally there was a standard window with section of wall beneath. This wall was clad externally with cedar and internally with plasterboard, all to match the walling externally & internally either side. The wall itself was, like the walling either side, of lightweight timber construction with a breathable waterproof membrane and insulation internally. It was noted that the penthouse is of a different design externally to the remainder of the block below although similar to the equivalent penthouse situated on Fiador Court opposite but it appeared that there would very few, if any, positions from where the difference between the two blocks could be seen.

## The Law and Jurisdiction

17. The relevant parts of the provisions in the 1985 Act are as follows:

***18. Meaning of "service charge" and "relevant costs".***

*(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.*

***20C. Limitation of service charges: costs of proceedings.***

*(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court , residential property tribunal or leasehold valuation tribunal, or the First-tier Tribunal or the Upper*

*Tribunal , or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.*

*(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.*

***27A. Liability to pay service charges: jurisdiction***

*(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.*

18. The relevant provisions of Schedule 11 are as follows:

***Para 1. Meaning of "administration charge"***

*(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—*
*(a) for or in connection with the grant of approvals under his lease, or applications for such approvals, ... or*
*(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.*

***Para 2. Reasonableness of administration charges***

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

***Para 4. Notices in connection with administration charges***

*(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.*
*(2) The appropriate national authority 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 an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.*

*(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.*

***Para 5. Liability to pay administration charges***

*(1) An application may be made to the appropriate 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.*

19. Under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the Tribunal has the power to make an order in respect of costs against a person who has acted unreasonably in bringing, defending or conducting the proceedings. It also has a general discretion whether to make an order for reimbursement of tribunal fees.

## The Disputed Charge for Legal Costs

20. On 15 September 2011 Fell Reynolds, on behalf of the Respondent, issued an invoice to the Applicants re-charging them for a bill they had received in that amount from Geoffrey Bryant & Co LLP, solicitors, dated 15 July 2011. Fell Reynolds' invoice described this as a "service charge" and appears to have been accompanied by the statutory Summary of Rights and Obligations which has to be sent out with any service charge demand.

21. The Applicants contend that the charge was unreasonably incurred and is in any event excessive and that they should not have to pay it.

22. The factual background leading up to the instruction of Geoffrey Bryant has been set out in very great detail in the parties' submissions and can be summarised as follows. The Applicants' new apartment suffered from significant problems with water ingress, which were addressed by Redrow and its contractors Ardmore over a considerable period of time. The Applicants' half-length lounge window needed to be replaced, and they decided they would prefer it to be replaced with a full length window to take better advantage of the view. In February 2010 the Applicants wrote to Redrow seeking its consent. In July 2010 Redrow stated it had no objection. The Applicants obtained planning consent and approval under the building regulations from Eastbourne Borough Council. On 4 August 2010 the Respondent wrote to Mr Walters informing him that he needed to apply to the Respondent for consent

and referring him to paras. 22 and 23 of Part One of the Eighth Schedule of the lease.

23. On 17 August, the Applicants' solicitors Lawson Lewis wrote to Fell Reynolds requesting consent, and asking what plans and specifications would need to be provided. Not all the correspondence has been put in evidence, but it appears that no plans etc. had yet been provided by the Applicants when the Respondent's Board met to consider the request on 29 September 2010. On 18 October Fell Reynolds wrote to Lawson Lewis stating this and that the Board would wish to seek technical advice. An indemnity to cover the "reasonable costs" of obtaining such advice was requested. A further board meeting took place on 24 November 2010, by which time the plans and specifications had been provided. Following this meeting the chairman of the Board wrote to Mr Walters stating that the Board wished to obtain an independent professional opinion and requesting Mr Walter's written agreement "to pay any reasonable fees". A later letter from Fell Reynolds dated 16 December 2010 stated that they could deal with the surveying aspects in- house but that "an indemnity" in respect of professional fees and any legal aspects was required. This was repeated in a letter of 17 January 2011 to Lawson Lewis.

24. Lawson Lewis took the reference to legal fees to refer to the costs of a variation to the lease, which they said was unnecessary. In a letter of 16 February 2011 they suggested the surveying aspects should be dealt with by Fell Reynolds' own surveyor. At no point in time did the Applicants confirm they would be responsible for any surveying or legal costs incurred by the Respondent in connection with the application for consent to fit the new window. The Respondent did not proceed with the instruction of a surveyor and neither granted nor refused consent.

25. By April 2011 scaffolding was erected at Orvis Court in connection with the remedial works. The Respondent instructed Geoffrey Bryant and that instruction resulted in their writing to Lawson Lewis on 19 April 2011. The letter set out the Respondent's concerns that the Applicants might take advantage of the scaffolding to fit the new window without having obtained consent. It explained in detail why the Respondent wished to obtain professional technical advice on the proposed new window. It referred to para. 23 of Part One of the Eighth Schedule in the lease and requested an undertaking that the Applicants would be responsible for the fees referred to in that paragraph. It also asked for an undertaking that the new window would not be fitted without the Respondent's consent.

26. The Respondent's concerns turned out to be well-founded. In early May the new window was fitted by Redrow's contractors. On 4 May 2011 Lawson Lewis wrote to Fell Reynolds withdrawing the application for consent. This resulted in a further letter being sent by Geoffrey Bryant to Lawson Lewis on 12 May (which was not in evidence).

27. Against this background, the Applicants say they should not have to pay Geoffrey Bryant's bill. They have general and specific criticisms about various actions taken by the Respondent and Fell Reynolds which they consider were intended to thwart their plans. They say that Redrow had given permission. They say that Fell Reynolds did not need to use a surveyor or solicitor because they had the necessary skills in house. They state they never agreed to pay any of these costs, that in any event the bill is excessive, no breakdown of the fees has been provided, and that an expensive solicitor in Windsor was used instead of a local one.

28. The Respondent states that Redrow's permission is irrelevant as the lease required the Respondent's consent, and under the Management Agreement Redrow could not usurp that function. Reliance is placed on para. 23 of Part One of the Eighth Schedule of the lease. Geoffrey Bryant's letter of 19 April 2011 was intended to seek compliance with the provisions of the lease.

Determination

29. The first matter to decide is whether this cost is a service charge or an administration charge. Although described as a service charge in the invoice, the Tribunal has no doubt that it is an administration charge, as it falls squarely within para 1(1) (a) of Schedule 11. It arises under a specific clause in the lease which is discrete from the service charge provisions, and it is on this clause alone that the Respondent relies.

30. That Redrow did not object to the new window is irrelevant. Under the lease, consent had to be obtained from the Respondent. Geoffrey Bryant's fees were clearly incurred in connection with the application for that consent. Such fees, if reasonable, are specifically recoverable under para. 23. The question is whether the Respondent acted reasonably in incurring those costs when it did and, if so, whether the amount is reasonable. In answering that question, other unrelated actions taken by the Respondent or Fell Reynolds as regards the Applicants' proposed window are not relevant.

31. The Tribunal is satisfied that, having regard to the position in which the Respondent found itself, the Respondent acted reasonably in instructing Geoffrey Bryant in April 2011. Prior to this, the Respondent had also acted reasonably in stating that it wished to obtain professional technical/surveying advice on the Applicants' proposal. The new window involved cutting into the structure of the building in a very exposed position. The Applicants were proposing to use a third party contractor (Velmar). At a minimum, there was a need to ensure that all detailing including waterproofing would be undertaken properly to protect against water ingress into Flat 51 and the flat below. It would also have been reasonable to instruct the surveyor to attend during the works when the opening-up took place. It was the Respondent's choice as to whether they wished to undertake this work

in-house or to use an outside professional. As it was, they were content to let Mr Walters decide this but either way, Mr Walters would have been responsible for the reasonable costs of the surveyor under para. 23. He did not confirm his agreement to cover any costs at all. A stalemate position was reached. Although the Respondent could have adopted a more bullish approach and simply instructed a surveyor, made its decision on the application, and billed the Applicants afterwards, it cannot be said that it was unreasonable for them to seek agreement on the costs first, to protect their position. By April, there was a legitimate concern, borne out by subsequent events, that that Applicants would proceed with the work without consent, in breach of the lease. In those circumstances it was clearly reasonable to seek legal advice and instruct solicitors.

32. Geoffrey Bryant's bill is for £500.00 + VAT. No breakdown of time has been provided and the fee-earner's hourly rate is unknown. However it plain that, before sending the letter of 19 April 2011, the solicitor would have had to obtain instructions on the background, consider the Lease in detail, advise, draft the letter and obtain approval before it was sent. A second letter was sent on 12 May. Between the two letters there must have been further consultation between solicitor and client. There is no requirement that the Respondent should shop around for a cheap solicitor or use a solicitor local to Eastbourne. On the face of it the sum charged of £500.00 + VAT does not appear unreasonable in light of the work undertaken and the amount is therefore upheld.

33. However, by virtue of Para. 4 of Schedule 11 of the 2002 Act, the sum of £600.00 will only become due for payment by the Applicants once a revised demand has been issued which correctly refers to the charge as an administration charge, and is accompanied by the Summary of Rights and Obligations appropriate for such charges.

**The Proposed Charges for the Door and Carpet**

34. On 18 October 2013 Fell Reynolds wrote to Mr Walters asking him to fit a new fire door to the 7th floor corridor to match the original, to remove the timber threshold, and to replace the carpet around the door. The letter stated that if Mr Walters did not do so, the Respondent would get this work done at a cost of £852.00 + Vat for the door and £705.00 + VAT for the carpet, and Mr Walters would be required to cover these costs. The Applicants contend they have no liability to pay these amounts. The Respondent has not yet carried out the work.

35. Again, there is a somewhat convoluted factual background. The Applicants say that when they purchased their flat in 2007, Redrow promised them enhanced security features, including a key lock to the lift to the 7th floor, and an additional lock on the fire door set leading from the 7th floor stairway into the lift lobby that serves the 3 flats on that floor. These features were not mentioned in the contractual documentation but after moving in, a key lock in the lift was eventually fitted. In 2009 Fell Reynolds obtained quotes for magnetic door locks

costing several hundred pounds. There is no evidence as to why these quotes were not accepted or acted upon, but nothing was done until late 2010. At that time the Applicants paid about £60.00 for a much simpler mechanical push-button lock, and got it fitted on the fire door by one of Ardmore's contractors. No express permission for this lock was sought or obtained from the Respondent. In June 2011 Fell Reynolds discovered the lock and asked the Applicants to deactivate it. This was done, but following a security incident in the block in October 2012 it was re-activated. The Applicants say that Fell Reynolds approved this at the time and were given the code, but Fell Reynolds disagree. On 23 November 2012 Fell Reynolds wrote to the Applicants stating that the lock was in breach of para. 7 of Part Two of the Eighth Schedule of the lease, by which the lessee covenants not to obstruct any openings in the block. In December 2012 Fell Reynolds deactivated the lock by removing the latch, leaving a hole in the leading edge of the door which is visible only when the door is open.

36. The Respondent says that the lock must be removed and that as this will leave a large hole in a fire door that cannot be made good, a new door is needed. The Respondent also contends that when the lock was fitted, the wooden threshold was fitted underneath the door by cutting out carpet, a smoke protection barrier removed, and a drop bolt fitted at the bottom of the adjoining half-leaf door in the door set. The Respondent wants the threshold and bolt removed, and the carpet reinstated. The Applicants' position is that they did nothing other than get the lock fitted. All the fire-door sets had drop bolts fitted, and while only this fire door set had a threshold, this had been provided when the carpeting to the lift lobby was damaged by the developer's contractors and needed replacement. This last point was confirmed by a letter from flooring contractors stating that they fitted the threshold at the same time as fitting a new carpet in 2008 i.e. before the lock was installed. The Applicants also deny removing any smoke protection barrier, and point out that no other similar fire door sets have such a barrier.

37. The Applicants ask the Tribunal to order reinstatement of the lock. They state they had implied permission from both Redrow and the Respondent when the lock was originally fitted in 2010. On 24 January 2013, Redrow wrote to the Applicants granting permission for a keypad but also stating that "should an emergency service damage the stairwell door the [Respondent] would seek recovery for any repair to the communal asset". After this application was issued, Redrow wrote to Fell Reynolds on 13 December 2013 stating that "Subject to the relevant authorities approving the alterations, our position remains that additional security should be installed as part of an enhanced specification for the penthouses and would not be in breach of the lease".

Determination

38. No demand has yet been issued by the Respondent in respect of these charges. In its written submission, Fell Reynolds describes them as "administration costs". The Tribunal only has jurisdiction to make a determination if they are an administration charge or a service charge.

39. To be an administration charge, the costs must not only fall under para 1 of Schedule 11, but also they must be payable under the lease. Even if the Respondent is correct in stating that they are charges in connection with a breach or alleged breach of the lease (obstructing an opening) and thus fall under para. 1(1)(d) of Schedule 11, the Respondent has not identified any provision in the lease which expressly or impliedly authorises the recovery of costs such as this as an administration charge payable by the lessee. Nor can the Tribunal identify any such provision. If there is no such provision, there can be no recovery as an administration charge. The remedy provided by the general law for a breach of covenant that has caused financial loss is to sue for damages. That is a remedy available in the county court, but not in the Tribunal.

40. In addition, even if the proposed costs could be classed as an administration charge, the costs have not yet been incurred and so payment cannot be due. There is no equivalent of section 27(A)(3) of the 1985 Act for administrative charges which have not yet been incurred. Accordingly the Tribunal makes no determination that these proposed costs are payable as an administration charge.

41. However, the Tribunal considers that some modest costs relating to the fire door set may be recovered from all the lessees at Orvis Court through the service charge. The Respondent's maintenance obligations extend to repairing and renewing the common parts in the block. In the view of the Tribunal it is not reasonable for the Respondent to remove the lock entirely and incur the expense of a new door. There is no reason why, even if deactivated, the lock cannot remain in situ. If the lock is not removed, there is no reasonable need for the door to be replaced. If the lock is to remain in place but deactivated the only repair needed is either the fitting of a cover plate over or the filling of the hole where the latch has been removed, or refitting the latch in the hole but disabling it. Another reasonable alternative (subject to checks being made to ensure compliance with fire and other regulations) would be for the lock to be fully reinstated and activated, and the code given to all lessees in the block and to those others, such as cleaners and contractors, who need access. While this alternative would add to the management burden and could result in damage to the lock if, for example, the emergency services needed to break it to gain access, it would afford the Applicants and other occupants of the 7th floor with additional security, while also ensuring that access to the corridor was not obstructed, in breach of the lease, to those who might lawfully require access. The Tribunal can see why those living on the 7th floor, as opposed to those on other floors, might reasonably desire additional security as their front doors, being double doors, are potentially not as

substantial as the single front doors on the other flats. The Tribunal did not consider that this lock being allowed to remain would create a precedent for the other floors in the block. They do not have the benefit of the lift key switch so cannot achieve the same level of security.

42. Accordingly the Tribunal determines under section 27(A)(3) of the 1985 Act that the reasonable cost of carrying out the limited work described in the previous paragraph could be recovered through the service charge from the lessees at Orvis Court. However no costs for removal of the wooden sill or replacement of the carpet are sanctioned, as there is simply no discernible need for this work to be carried out. Insofar as it is relevant, the Tribunal also accepts the Applicants' evidence that they were not responsible for installation of the threshold or the drop bolts, or the removal of any fire protection.

43. This determination leaves open the issues of whether the Applicants are legally entitled to the amenity of a door lock (a matter between them and Redrow), or whether the fitting of the lock is a breach of the lease entitling the Respondent to damages. These are matters within the remit of the county court, not the Tribunal. It is to be hoped that the suggestion made in para. 41 may assist in reaching a satisfactory resolution and avoid further expense to both sides.

**Applications under section 20C of the 1985 Act , and for costs and fees.**

44. In deciding whether to make an order under section 20C a Tribunal must consider what is just and equitable in the circumstances. The circumstances include the conduct of the parties and the outcome of the proceedings.

45. This is a case where the parties' positions had become entrenched. In those circumstances it was reasonable for the applications to be made. It was also reasonable for the Respondent to oppose the applications. There were arguments to be made on both sides. In relation to the legal costs of £600.00 the Respondent has been the substantially successful party. In relation to the door/lock, it is fair to say that neither party has got quite what it hoped for. A section 20C order can interfere with contractual rights and therefore should not be made lightly. For all these reasons the Tribunal does not think it appropriate to make an order under section 20C limiting recovery of the Respondent's costs in these proceedings through the future service charge. It must be emphasised, however, that we are not making any determination as to the reasonableness of such a charge, nor making any finding as to whether the Respondent is in fact entitled to recover those costs through the service charge under the terms of the lease.

46. As the Tribunal does not find that either party has acted unreasonably in relation to the proceedings, no costs order under Rule 13 is made, and no order is made for reimbursement of the Tribunal fees paid by the Applicants.

Dated: 14 April 2014

**Judge E Morrison (Chairman)**

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.