



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

**Case Reference** : **LON/00AL/LSC/2014/0089**

**Property** : **Ground Floor Flat, 22 Elliscombe Road, London SE7 7PY**

**Applicant** : **Ms Marie Otigba**

**Representative** : **In person**

**Respondent** : **South London Ground Rents Limited**

**Representative** : **Mr D Mizskura – Salter Rex  
Managing Agents  
Miss D Gilbert - Counsel**

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

**Tribunal Members** : **Judge: Ms N Haria LLB (Hons)  
Professional member: Mr T Sennett  
MA FCIEH**

**Date and venue of Hearing** : **10 Alfred Place, London WC1E 7LR**

**Date of Decision** : **15 September 2014**

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**DECISION**

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**NB: The numbers in square brackets correspond to the page numbers in the bundle produced by the Respondent**

**Decisions of the Tribunal**

- (1) The Tribunal makes the determinations as set out under the various headings in this Decision
- (2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.
- (3) In respect of the costs of the proceeding the Tribunal makes an order for costs against the Applicant in the sum of £2897.30 plus VAT under Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the grounds that the Applicant behaved unreasonably in the way in which the Applicant conducted the proceedings.

**The application**

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”) as to the amount of service charges and (where applicable) administration charges payable by the Applicant in respect of the service charge years from 1994 to 2014.
2. The relevant legal provisions are set out in the Appendix to this decision.

**The hearing**

3. The Applicant appeared in person at the hearing and the Respondent was represented by Mr D Mizskura of Slater Rex Managing agents and Miss D Gilbert of Counsel.
4. Immediately prior to the hearing the Tribunal received a copy of the email dated 5 June 2014 sent by the Applicant to the Respondent’s solicitor early on the morning of the hearing setting out the Applicant’s statement of case.
5. The Applicant had failed to comply with all Directions issued at the Directions hearing, at which she was present, held on the 11 March 2014.
6. The Applicant’s application form sought a determination of the reasonableness of the service charges for the period from 1994 to 2014.

The Applicant was informed that her application would be limited to the period from 2008 to 2014 as she had become a long leaseholder in 2003 and the service charge for a period of more than six years before the date of her application are out of time.

7. The application form submitted by the Applicant did not clarify which charges were in dispute, there was a complete lack of clarity and a number of bills paid by the Applicant were included with her application but it was unclear why these bills had been included.
8. The Directions required that by the 8 April 2014 the Respondent should send to the Applicant copies of all relevant estimates and statements for the years in dispute together with all demands for payments and payments made. The Respondent complied with this direction as on the 3 April 2014 it sent all the documents save for the documents relating to 2008 and 2009 to the Applicant, and further documents were sent to the Applicant on the 12 April 2014.
9. The Applicant was required by the 29 April 2014 to produce a schedule setting out by reference to each year the items and amounts in dispute, the reasons why the amount is disputed and the amount if any the Applicant would pay for them. In addition the Applicant was required to produce a statement of case. The Applicant failed to produce a schedule of items in dispute and failed to produce a statement of case as directed and failed to seek an extension of the time for service of the documents or a variation of the Directions. On the day of the hearing the Tribunal received a copy of an email dated the same day the 5 June 2014 timed at 8:01 from the Applicant to the Respondent's solicitor setting out the Applicant's statement of case.
10. The Respondent was required by the 13 May 2014 to produce its statement of case and the Applicant was required to prepare the bundle for the hearing by the 25 May 2014. The Applicant failed to prepare a bundle for the hearing and so the Respondent was left with no choice but to prepare the bundle for the hearing and witness statements without detail of the Applicant's statement of case.
11. The start of the hearing was delayed while the Tribunal considered the bundle and the email of the 5 June 2014 and Miss Gilbert considered the contents of the email of 5 June 2014. Miss Gilbert confirmed that for the most part she should be able to address the issues raised by the Applicant but that she reserved her position in respect of costs because of the late submission of a statement of case by the Applicant.
12. The start of the hearing was further delayed to allow the parties the chance to go through and narrow the issues for the hearing. It was apparent to the Tribunal that the Applicant did not appreciate her position as a long leaseholder and had not understood the relationship between a landlord and leaseholder and their respective rights,

obligations and duties under the Lease. Since the Applicant was unrepresented the Tribunal considered it to be in the interests of justice to allow the Applicant the opportunity to seek free advice from a representative of LEASE. The Applicant having taken advice from a representative of LEASE confirmed she was in a position to proceed. The Applicant confirmed that having taken advice from LEASE all the issues detailed in her email of the 5 June were still outstanding except the matters under paragraph 1 of her email and she was no longer seeking a variation of the lease. The hearing eventually commenced at 12:05.

### **The background**

13. The property which is the subject of this application is a one bedroom flat on the ground floor of a Victorian house (“the Property”). The building comprises two flats.
14. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
15. The Applicant 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 leasehold title is registered at the H M Land Registry under Title Number TGL216988. The lease is dated 28 February 2003 made between Finlay Estates Limited (1) and Marie Terese Otigba(2) for a term of 125 years from 25 December 2002(“the Lease”). The specific provisions of the Lease will be referred to below, where appropriate.
16. The freehold title to 22 Elliscombe Road is registered at the H M Land Registry under Title Number SGL213784.

### **The issues**

17. At the start of the hearing the parties identified the relevant issues for determination to be the payability and/or reasonableness of service charges for year 2008/9 to 2013/14.
18. The Applicant challenged the payment of £30 per year for ground rent in respect of all the years in question on the basis that she considered the £30 to be too much.
19. The Applicant alleges that the service charges are fictitious as the jobs have never been carried out.

20. The Applicant wants the opportunity to sign off every service charge account.

### **Matters Agreed**

21. During the course of the hearing the Applicant was provided with copies of the Certificates of Insurance and the Schedules and accepted that it was the Respondent's obligation to insure and that the sums paid in respect of the insurance were reasonably incurred and were reasonable.
22. Although the Applicant initially accepted that the sum of £300 plus VAT in respect of the management fee was reasonable, after the break for lunch she retracted this admission.
23. The Applicant accepted the accountancy fee in the sum of £110.00 was reasonable.
24. The Applicant was informed that the Tribunal had no jurisdiction to make a determination in respect of the ground rent.
25. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

### **The Lease**

26. The service charge provision is contained in Clause 4.4 of the Lease under which the Applicant covenants as follows:

“Pay the Maintenance Service Charges at the times and in the manner provided in the Fifth Schedule hereto all such Charges to be recoverable in default as rent in arrears”.

27. The Fifth Schedule provides the following definitions:

“the Total Maintenance Expenditure” shall comprise the total expenditure incurred by the Lessor in any Accounting Period in carrying out its obligations specified in Clauses 6.2 6.3 and 6.4. The Lessor basically covenants under Clause 6.2 of the Lease to keep in good repair and condition the Building and the Common Parts. Under Clause 6.3 the Lessor covenants to insure the Building. Clause 6.4 permits the Lessor to employ managing agents, Chartered Accountants, surveyors, builders architects engineers tradesmen or other professional parties as necessary or desirable for the proper maintenance and administration of the Building.

“the Interim Maintenance Charge” means such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Lessor or its Managing Agents specify in their discretion to be a fair and reasonable interim payment.

“the Further Interim Maintenance Charge” means such sum to be paid by the Lessee from time to time pursuant to Clause 4 of this Schedule.

28. Clause 4 of the Fifth Schedule provides that where the costs to the Lessor of performing its obligations under the Lease (to the extent that the costs are recoverable from the Lessee) exceed the Interim Maintenance Charge during the Accounting Period the Lessor is entitled to require payment of a further Maintenance Charge up to 125% of the deficiency.
29. Clause 3 of the Fifth Schedule provides that the Interim Maintenance Charge is payable by equal payments in advance on the first of April and the first of October in every year or on such other dates as the Lessor notifies in writing.
30. The Fifth Schedule also makes provision for a balancing charge and the provision of a Certificate in relation to the Service Charge as soon as practicable after the end of each Accounting Period.
31. The Applicant’s Service Charge proportion is 50% of the total service charge and is specified in the particulars to the Lease.

#### **Service charge for the year 2008/2009**

32. The Tribunal heard from Miss Gilbert that Salter Rex took over the management of the Property in May 2009. The Tribunal was informed that Salter Rex had no evidence in relation to the service charges prior to their appointment except a copy of the statement of account [208] (“the Tenant account Summary”) which was handed over to Salter Rex when they took over the management. The Tenant account Summary showed an outstanding balance of £3002.83, the amount in respect of service charge and administration charges was £2252.83 and this included £630.56 for insurance [210].
33. The Tribunal was informed by Miss Gilbert that Newservice (Number 1) Limited who was the freehold owner of the 22 Elliscombe Road went into liquidation and their administrators appointed Salter Rex as Managing Agents on the 1 May 2009, the current freeholder South London Ground Rents (the Respondent) acquired the freehold title to 22 Elliscombe Road in April 2013.

#### **The Tribunal’s decision**

34. The Tribunal determines that the amount payable in respect of the period 2008/2009 is as follow:

<b>Item</b>	<b>Amount £</b>
Excess service charge	134.46
Interim service charge	157.22
Management fee	205.63
Insurance for the period 24 June 2006 – 23 June 2008	612.93
<b>Total</b>	<b>1110.24</b>
<b>Amount payable by Applicant</b>	<b>555.12</b>

35. The following amounts are disallowed:

<b>Item</b>	<b>Amount £</b>
Administration charges	1855.52
Non payment of Insurance premium charges	17.63
<b>Total</b>	<b>1873.15</b>

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

36. The sum claimed relates to the historic service charges for the period prior to the appointment of Salter Rex as managing agent. There were no certified accounts or service charge demands produced. The only evidence of the amounts charged and claimed is a copy of the Tenant account Summary [208].

37. The Tribunal considered whether the charges claimed amounted to “administration charges” within the meaning of paragraph 1 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Respondent relies on the provisions of Clause 3.8 of the Lease which requires the Lessee “...to pay to the Lessor as arrears of rent all costs charges and expenses including Solicitors’ Counsels’ and Surveyors’ costs and fees at any time during the said term incurred by the Lessor in or in contemplation of any proceedings in respect of this Lease under Sections 146 and 147 of the Law of Property Act 1925 or any re-enactment or modification thereof ...such costs charges and expenses as aforesaid to be payable notwithstanding that forfeiture is avoided otherwise than relief granted by the Court.” This Clause permits the Lessor to charge an administration charge provided it is incurred in or in contemplation of forfeiture proceedings.
38. It appears from the Tenant account Summary [209] that the charges relate to the non payment of service charge and the non payment of insurance premium, the Respondent did not contend that forfeiture proceedings had been contemplated or instigated or that the charges claimed are incidental to the preparation and service of a s.146 notice. Accordingly the Tribunal did not allow these charges.
39. As to the burden of proof the Tribunal is guided by the principles expresses in the case of Yorkbrook Investments Ltd v Batten [1985] 2EGLR 100, and followed in the Lands Tribunal case Schilling v Canary Riverside Development PTD Ltd LRX/26/2005 which gives support for the fact that it is for the leaseholders as Applicants to make a prima facie case of unreasonableness. At paragraph 15 of the Lands Tribunal decision Judge Rich QC states:
- “... if the landlord is seeking a declaration that a service charge is payable he must show not only that the costs was incurred but also that it was reasonably incurred to provide services or works of a reasonable standard and if the tenant seeks a declaration to the opposite effect, he must show that either the cost or the standard was unreasonable. In discharging that burden the observations of Wood J in the Yorkbrook case makes clear the necessity for the LVT to ensure that the parties know the case which each has to meet and for the evidential burden to require the tenant to provide a prima facie case of unreasonable cost or standard*
40. In this case it is the Applicant who has the burden of proof to show that the sums incurred were not reasonably incurred and that the amounts charged are unreasonable. For the period in question the Applicant did not claim that service charges were unreasonable or that a particular service was not provided or that the costs were unreasonable except in relation to the management fees. Accordingly the Tribunal finds the sums charged in respect of the excess and interim service charge to be reasonable and payable.



41. In respect of the management fee the Applicant stated that a fee of £50 per annum would be more reasonable on the basis of research that she had undertaken on the internet. The Applicant had not obtained quotes on a like for like basis as to the level of fees charged. The Applicant did not produce any copies of the internet research on which she relied to form her view of a reasonable management fee. Accordingly the Tribunal gave little weight to the Applicant's view as to the fees.
42. The Tribunal had no evidence from the parties as to the nature and level of the management service provided prior to the appointment of Salter Rex but it was accepted by both parties that at the very least the building was insured.
43. The Tribunal heard from Mr Mizskura of Slater Rex as to the management service provided by them after they took over the management. Mr Mizskura stated that they charge a minimum fee of between £250- £300 plus VAT for a basic management service. He stated that he considered that the Property required a basic management service with a low level of involvement due to the nature of the Property. He stated that the basic management service provided by Salter Rex would include the preparation of information for auditors, the provision of accounts, liaising with the leaseholders, providing an out of hours telephone help line, arranging for repairs, arranging for arrears to be chased and insuring the building. He stated that he could not comment on the service provided by the previous managing agent. The parties accepted that judging by the information on the Tenant account Summary it would seem that the managing agents would not have provided more than a basic service.
44. The parties did not submit any evidence as to the level of management fees in 2008/2009 for properties similar to the Property. The Tribunal was persuaded that since the Property is a one bedroom flat on the ground floor of a Victorian house comprising two flats, a basic management service with a low level of involvement would be reasonable and appropriate. On the basis of the fees quoted by Mr Mizskura the Tribunal considered a management fee of £205.63 [78] to be reasonable.

**Service charge for the year 2009/2010**

45.

<b>Item</b>	<b>Amount £</b>
Accountancy	100.00

Insurance Building	915.62
Insurance Terrorism	101.08
Management fee	587.50
<b>Total</b>	<b>1704.20</b>
<b>Amount payable by Applicant</b>	<b>852.10</b>

### **The Tribunal's decision**

46. The Tribunal determines that the amount payable in respect of the management fee is £293.75.

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

47. The Respondent produced the certified service charge accounts for year ending 31 March 2010 [47-52]. The breakdown of the service charge [52] shows that in addition to the accountancy fee and the insurance the only other charge relates to the management fee. The Applicant had accepted the accountancy fee of £100, the insurance of £915.62 and the terrorism insurance of £101.08.
48. The Applicant did initially accept the fee was reasonable but subsequently retracted this on the basis that the fee was disproportionate as there are only two units in the block. The Applicant accepted that since Salter Rex had been appointed she had been receiving annual accounts and she stated that "...they had been a bit cooperative". The Applicant relied on the submission made in respect of the previous year (detailed at paragraph 41) and stated that this applied to all years.
49. The Tribunal heard from Mr Mizskura of Slater Rex that they charged between £250 - £300 plus VAT per unit as a basic management fee. On the basis of a standard management service being provided to include the services described above at paragraph 42 above the Tribunal finds the management fee of £587.50 for the building to be reasonable, this equates to a fee of £293.75 per unit.

### **Service charge for the year 2010/2011**

50.

<b>Item</b>	<b>Amount £</b>
Accountancy	110.00
Insurance Building	711.07
Insurance Terrorism	78.50
Management fee	600.00
<b>Total</b>	<b>1499.57</b>
<b>Amount payable by Applicant</b>	<b>749.79</b>

**The Tribunal's decision**

51. The Tribunal determines that the amount payable by the Applicant in respect of the management fee is £300.

**Reasons for the Tribunal's decision**

52. The Respondent produced the certified service charge accounts for the year ending 31 March 2011 [53-54]. The submissions made by the parties in relation to the 2009/2010 applied equally to this year. The Applicant accepted the charges for the Insurance and accountancy fees. The Tribunal's reasons for the decision are the same as detailed at paragraphs 48 and 49 above. The Tribunal considered a slight uplift on the previous year's management fee to be considered reasonable.

**Service charge for the year 2011/2012**

53.

<b>Item</b>	<b>Amount £</b>
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Accountancy	120.00
Building Repairs	360.00
Insurance Building	614.01
Insurance Terrorism	79.25
Management fee	612.00
<b>Total</b>	<b>1785.26</b>
<b>Amount payable by Applicant</b>	<b>892.63</b>

### **The Tribunal's decision**

54. The Tribunal finds that the sum of £360.00 in respect of building repairs to be reasonable. The Applicant is liable to pay £180.00 in respect of the Building repairs. The Tribunal finds the sum of £612.00 in respect of the management fee to be reasonable and the Applicant is liable to pay £306.00 in respect of the management fee.

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

55. The Respondent produced the certified service charge accounts for the year ending 31 March 2012 [58-62]. The submissions made by the parties in relation to the management fees for 2009/2010 applied equally to this year. The Applicant accepted the charges for the Insurance and accountancy fees. The Tribunal's reasons for the decision in relation to the management fee are the same as detailed at paragraphs 48 and 49 above. The Tribunal considered a slight uplift on the previous year's management fee to be considered reasonable.
56. The Applicant did not accept the charges in relation to the building repairs. The Respondent had produced an invoice in support of the building repairs [94]. The invoice described the works as gutter clearance works. The Applicant stated that she did not accept the works had been carried out. She stated that she telephoned the number given on the invoice and was redirected to another number which did not connect. She also stated that there was no way the builders could have gained access to undertake the works as she was away doing contract

work at the time and the back gate was locked by a chain so there was no way the contractor could have gained access to the garden.

57. Miss Gilbert stated that her instructions are that the gutter clearance was undertaken in January 2012, she could not explain why the telephone number did not connect, she stated that the company is registered at Companies House, all the registration details as well as a postal and email address are on the invoice. She referred to the stamp on the invoice, which she stated was a stamp indicating the invoice was paid by Slater Rex on the 6 February 2012.
58. The Applicant stated she had not undertaken a search at Companies House but maintained that the invoice was a fictitious invoice. She stated that the works should not have been necessary as in August 2012 she had arranged for works to be carried to the gutters at a cost of £480.00. The Applicant produced an invoice in support [95]. The invoice refers to works being carried out as per a previous estimate, but the Applicant did not produce a copy of the estimate. The invoice also states that "...under further inspection the Ogee Cast Guttering was not made of Cast but was Asbestos, however we have carried out the work at no extra cost." There was no other indication on the invoice or any other document as to the actual works undertaken. The Applicant stated that water was coming into the bedroom by the back window as the gutter had fallen down. She stated that she had mentioned it to her insurance company and the tenant of the first floor flat. She thought that her first port of call was her insurance company. She confirmed that she had not informed the Respondent or Salter Rex.
59. Miss Gilbert stated that as the Applicant had not informed the Respondent about the need for the gutter works, they could not have been aware of the problem. Miss Gilbert stated that Salter Rex had provided a 24 hour Repair line, this was not an emergency situation and so the Applicant had time to inform the Respondent or Slater Rex. Miss Gilbert argued that no deduction should be made for these works as there is no information as to what work had been undertaken by the contractor appointed by the Applicant.
60. The Lease sets out the obligations and responsibilities of the parties. It was apparent throughout the proceedings that the Applicant had not appreciated that the rights and obligations of a leaseholder and landlord stem from the Lease. The Applicant admitted that when she acquired the leasehold interest in the Property she had not been advised or informed as to the contents of the Lease or her obligations under the Lease. The Applicant also admitted that since her purchase and since commencing these proceedings she had not taken any legal advice on the Lease.
61. The Tribunal accept that the Applicant did not appreciate that repairs of this nature fell to the Landlord. The Tribunal does not consider it

reasonable for the Applicant (leaseholder) to undertake repairs which under the terms of the Lease were the responsibility of the Respondent (landlord's), without checking the provisions of the Lease, without taking advice on the Lease and without giving the Respondent an opportunity to undertake the repairs. The Applicant did not inform the Respondent or Salter Rex of the problem and went ahead with the works after having spoken to her insurance company. The Tribunal does not accept that the invoice produced by the Respondent is fraudulent or fictitious. The Applicant made allegations based on the fact that she tried to call the number on the invoice and it did not connect and without any evidence to support her view. The Applicant stated that she had no concerns about the managing agents being legitimate as she had been able to see their offices and so she knew they existed but she could not say the same for the contractors. The Applicant questioned the legitimacy of the invoice produced by the Respondent even though it includes the VAT registration and Company registration details of the contractor. The Tribunal do not consider that the Applicant has acted reasonably in making accusations and so forcing the Respondent to defend themselves. If the Applicant was correct in her view then by the same token the legitimacy of the invoice produced by her for the works undertaken in August 2012 could also be questioned as it has no such information, it simply has an address and a mobile phone number.

62. The Tribunal finds that the cost of works undertaken to be reasonable. On the basis that the Applicant has stated that there was water ingress into the Property the Tribunal finds that it was reasonable for the Respondent to undertake the repair works. The Tribunal finds that the Applicant is liable for 50% of the cost of the works in accordance with the terms of the Lease.

### **Service charge for the year 2012/2013**

63. The only item in dispute in relation to the service charge for 2012/2013 is the management fee in the sum of £624.00 for the year.

### **The Tribunal's decision**

64. The Tribunal finds the sum of £624.00 to be reasonable and the Applicant is liable to pay 50% of this sum in accordance with the provisions of the Lease.

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

65. The Respondent produced the certified service charge accounts for year ending 31 March 2013 [63-67]. The submissions made by the parties in relation to the management fees for 2009/2010 applied equally to this year. The Applicant accepted the charges for the Insurance and

accountancy fees. The Tribunal's reasons for the decision in relation to the management fee are the same as detailed at paragraphs 48 and 49 above. The Tribunal considers a slight uplift on the previous year's management fee to be reasonable.

### **Service charge for the year 2013/2014**

66. The Respondent produced the budget for this year [71]. The Tribunal considered the budget to be reasonable as it seemed to be in line with previous years. The Tribunal was a little concerned that the budget was an under estimate as there appeared to be no provision made for the cost of building insurance. This determination does not prevent an application in respect of the actual service charges for the year 2013/2014 once these are known.

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

67. At the end of the hearing, the Applicant made an application for a refund of the fees that she had paid in respect of the application and hearing<sup>1</sup>. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal does not order the Respondent to refund any fees paid by the Applicant.
68. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal does not consider it just and equitable to make an order under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

### **Costs under Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**

69. At the end of the hearing the Tribunal issued directions to the parties inviting written submissions from both parties on the question of costs. The parties were specifically directed to make submissions only in respect of the costs and not on any of the substantive issues that had already been heard.
70. The Tribunal received written submissions from the Respondent on the issue of costs. The Applicant made submissions on costs but also in direct conflict with the directions issued by the Tribunal she submitted a witness statement on the substantive matters. In the interests of finality in legal proceedings and since the hearing on these matters had been concluded and the Respondent would not have an opportunity to

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<sup>1</sup> The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

respond, the Tribunal considered only those parts of the Applicant's witness statement and her submissions which related to the issue of costs.

71. The Respondent relied on the contractual duty under the Lease pursuant to clauses 3.2, 3.8 and 6.4.3 under which the Applicant covenants to pay costs incurred by the Respondent.
72. The Tribunal having considered the provisions of the Lease and finds that the costs of defending these proceedings do not fall within the provisions of clauses 3.2, 3.8 and 6.4.3 of the Lease.
73. Clause 3.2 is a covenant by the leaseholder to pay outgoings such as rates and taxes charged or imposed on the demised premises. The costs incurred in defending these proceeding cannot be considered to be outgoings charged or imposed on the demised property.
74. Clause 3.8 is a covenant by the leaseholder to pay all costs and expenses including Solicitors' Counsels' and Surveyors' costs and fees incurred by the landlord in or in contemplation of any forfeiture proceedings. The Respondent has not indicated that it intends to commence forfeiture proceedings. In any event these proceedings were initiated by the Applicant and not the Respondent and so the costs incurred in defending these proceeding and cannot be costs incurred in or in contemplation of any forfeiture proceedings.
75. Clause 6.4.3 of the Lease entitles the Landlord to employ surveyors builders architects engineers tradesmen accountants and other professionals as is necessary or desirable for the proper maintenance and administration of the Building and thus recover the costs incurred by way of a service charge. The Tribunal finds that in the absence of clear and unambiguous wording in the Lease the provisions of Clause 6.4.3 do not extend to cover legal costs so that they are not recoverable as part of the service charge.
76. The Respondent made an application for costs under Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 on the basis that:
  - (i) The Applicant behaved unreasonably in the way in which the Applicant conducted the proceedings,
  - (ii) The Applicant failed to comply with directions,
  - (iii) The Applicant failed to raise with the Respondent or the Respondents managing agents her concerns, which had they been raised could have negated the need for proceedings to be issued.



77. The Respondent submitted that by not complying with the directions and not offering an explanation for the non compliance or requesting a variation to the directions, by not responding promptly or at all to a number of letters sent by the Respondent, the Applicant's actions in issuing the proceedings and subsequent to the issue, were frivolous, vexatious, disruptive or otherwise unreasonable in connection with the entire proceedings such that the Tribunal would be justified in making an order for costs.
78. The Applicant disputed the application for costs as she stated that she had tried on several occasions to obtain information from the Respondent and the previous freeholder. The Insurance documents and receipts were only received by the Applicant on the day of the hearing. The Applicant is of the view that if she had not made the application to the Tribunal the Respondent would have delayed in trying to resolve her claims. The Applicant is of the view that she should be compensated for all the works that she has provided receipts for, as well as 4 years of insurance and punitive damages should be awarded against the Respondent for deliberately withholding information and the stress caused to her by not communicating or informing her that they are responsible for repairs and her court fees.
79. The Applicant has not paid any service charge for many years even though her main dispute was related to the level of management fees. The Tribunal does not consider the Applicant's actions in withholding payment of any service charge to be reasonable. The Applicant did not understand the obligations and relationship of landlord and tenant under the Lease, but she failed to seek advice when she acquired the leasehold interest, when she undertook repairs and before she commenced proceedings and even when she was urged to do so at the Case Management Conference ("CMC"). The relationship between landlord and leaseholder can be complicated and it is not reasonable for a leaseholder who to simply ignore the provisions of her Lease.
80. The Tribunal accepts that the Applicant had failed in her attempts to obtain information from the Respondent and felt that she had no option but to bring the matter before the Tribunal. The Tribunal consider that she had good reason to make an application to the Tribunal but her application was unclear, she was directed to produce a schedule setting out clearly in relation to each service charge year, the item and amount in dispute, the reasons why the amount is disputed and the amount that she would pay for that item. She failed to produce a schedule and at the hearing she blamed the lack of information from the Respondent's and stated that this prevented her from putting together a schedule. The Tribunal do not accept that this is a good enough reason to fail to produce a schedule with some of the information required, as the Applicant issued the application against the Respondent she should at least be able to identify what issues she required the Tribunal to determine. It is not reasonable for an

Applicant to send an email at 8:01 on the day of the hearing to the Respondent's solicitor setting out her case.

81. The Applicant attended the CMC and the Respondent was represented at the conference. Directions were issued and the parties were offered mediation. The conduct of the Applicant since the CMC has not been reasonable.
82. For the reasons given above the Tribunal finds that the Applicant acted unreasonably in the way in which she conducted the proceedings and so the Tribunal makes an order for costs against the Applicant in the sum of £2897.30 plus VAT under Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
83. The Respondent's solicitor produced a Statement of Costs and claimed a total of £4,285.96. The Tribunal assessed the costs as follows:
  - (i) The Tribunal allowed the hourly rates claimed as the Tribunal considers the rates to be reasonable for a firm of Solicitors based in London.
  - (ii) The Tribunal considered the charge for 1.50 hours in relation to telephone charges at £165.00 to be slightly excessive and allowed 1 hour at a charge of £110.00.
  - (iii) In relation to the work done on documents the Tribunal disallowed the sum of £217.00 as there was no witness statement before the Tribunal for this hearing.
  - (iv) The Tribunal did not allow the sum of £120.00 Court fees as the fees for these proceedings had been paid by the Applicant.
  - (v) The Tribunal did not allow the sum of £400.00 as previous Counsel's fees as the Tribunal did not consider it proportionate or reasonable to incur two sets of Counsels fees in this matter.

**Name:** N Haria

**Date:** 15 September 2014

## **Appendix of relevant legislation**

### **Landlord and Tenant Act 1985 (as amended)**

#### **Section 18**

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

#### **Section 19**

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

#### **Section 27A**

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

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

## **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

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

### **Section 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.

## **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 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.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate 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).

**The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013**

**Rule 13: Orders for costs, reimbursement of fees and interest on costs**

- (1) The Tribunal may make an order in respect of costs only—
  - (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
  - (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
    - (i) an agricultural land and drainage case,

- (ii) a residential property case, or
- (iii) a leasehold case; or
- (c) in a land registration case.

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

(3) The Tribunal may make an order under this rule on an application or on its own initiative.

(4) A person making an application for an order for costs—

(a) must, unless the application is made orally at a hearing, send or deliver an application to the Tribunal and to the person against whom the order is sought to be made; and

(b) may send or deliver together with the application a schedule of the costs claimed in sufficient detail to allow summary assessment of such costs by the Tribunal.

(5) An application for an order for costs may be made at any time during the proceedings but must be made within 28 days after the date on which the Tribunal sends—

(a) a decision notice recording the decision which finally disposes of all issues in the proceedings; or

(b) notice of consent to a withdrawal under rule 22 (withdrawal) which ends the proceedings.

(6) The Tribunal may not make an order for costs against a person (the “paying person”) without first giving that person an opportunity to make representations.

(7) The amount of costs to be paid under an order under this rule may be determined by—

(a) summary assessment by the Tribunal;

(b) agreement of a specified sum by the paying person and the person entitled to receive the costs (the “receiving person”);

(c) detailed assessment of the whole or a specified part of the costs (including the costs of the assessment) incurred by the receiving person by the Tribunal or, if it so directs, on an application to a county court; and such assessment is to be on the standard basis or, if specified in the costs order, on the indemnity basis.

(8) The Civil Procedure Rules 1998(a), section 74 (interest on judgment debts, etc) of the County Courts Act 1984(b) and the County Court (Interest on Judgment Debts) Order 1991(c) shall apply, with necessary modifications, to a detailed assessment carried out under paragraph (7)(c) as if the proceedings in the Tribunal had been proceedings in a court to which the Civil Procedure Rules 1998 apply.



(9) The Tribunal may order an amount to be paid on account before the costs or expenses are assessed.