

11679



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

Case References : LON/00AC/2016/0187

Property : Flats A & B, 226 Station Road, Edgware,
London, HA8 7RL

Applicant : Ground Rent Trading Ltd (“the
Landlord”)

Representative : Moerans, solicitors

**Appearances for
Applicant** : Mr G Mallet, counsel

Respondent : Ms Sharon Baxter (“the Tenant”)

Representative : In person

**Appearances for
Respondent** : Ms Baxter, accompanied by her partner
Mr Andy Ellison

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

Tribunal Members : (1) Judge Amran Vance
(2) Mr M Cairns, MCIEH

**Date and venue of
Hearing** : 20 July 2016
10 Alfred Place, London WC1E 7LR

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Date of Decision : 8 August 2016

DECISION

Decision of the Tribunal

1. The tribunal makes the determinations as set out under the various headings in this Decision
2. The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985

Introduction

3. 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 Respondent in respect of the service charge years ending 28 September 2010, 2011, 2012, 2013, 2014 and 2015 inclusive.
4. Numbers in bold and in square brackets below refer to pages in the hearing bundles supplied by the Applicant.
5. The relevant legal provisions are set out in the Appendix to this decision.
6. The Applicant is the freehold owner of 226 Station Road, Edgware, Middlesex, HA8 7RL (“the Property”). Ms Baxter is the long lessee of Flats A & B situated on the first and second floors of the Property. She holds her interest in these flats under the terms of two leases both dated 30 July 1990. The lease for the first floor flat **[749]** was entered into between (1) Ansell Estates Limited and (2) Sharon Bernadette Baxter. The lease for the second floor flat **[771]** was entered into between (1) Ansell Estates Limited and (2) Peter Kain. She does not reside in either of the flats which are both sublet. She believed the Property was built in the 1930’s and informed us that entry to the two flats is by way of a wrought iron staircase at the rear of the Property.
7. The ground floor of the Property is let as commercial premises under the terms of a lease dated 7 October 2002 entered into between (1) Ansell Estates Limited and (2) Azalea Properties Limited. Ms Baxter stated that the commercial premises were originally used as a clothes shop but that in around 2007 its use was changed to a fast food takeaway restaurant.
8. The Landlord’s managing agents for the two flats has, at all material times, been Moreland Estate Property Management Limited (“Moreland”).
9. On 30 July 2015 two claims, one in respect of each of the flats, were issued by the Landlord against Ms Baxter in the County Court Business Centre under claims numbers B8QZ9D83 and B8QZ9D84. By order of Deputy District Judge Hussain sitting in the Willesden County Court dated 8 April 2016 the two claims were consolidated and transferred to this tribunal.
10. The sums claimed in each of those claims are identical and are broken down as follows:

- (i) Ground Rent - £450;
 - (ii) Buildings Insurance - for the period 27 August 2010 to 23 August 2015 - £1,904;
 - (iii) Actual service charge costs for the period 29 September 2010 to 28 August 2015 - £6,356.76; and
 - (iv) Costs sought for preparation/service of a notice under s.146 Law of Property Act 1925 - £2,147.50.
11. The tribunal has no jurisdiction to determine whether or not ground rent is payable but notes that in the County Court Claims Ms Baxter admitted that the sums claimed were payable. In her defence to the two claims she contended that:
- (i) Insurance and service charge costs should be apportioned at 1/3 each as between the two flats and the commercial unit, as opposed to being apportioned solely between the two residential flats;
 - (ii) She was not liable to pay a sum of £3,006.78 invoiced by London Borough of Barnet that she believed concerned costs of enforcement action taken by the council because of Moreland's failure to carry out works to the Property.
 - (iii) She should not have to pay the legal costs said to have been incurred in respect of preparation of a notice under s.146 Law of Property Act 1925.
12. Directions were issued by the tribunal on 5 May 2016 following which Ms Baxter filed and served a statement of case, received by the tribunal on 27 June 2016. In that Statement of Case she widened her challenge to include management costs which she argued were excessive. She also complained that in breach of the terms of her lease, Moreland had prevented her from using car parking spaces that 'belonged' to the two flats by placing a padlocked chain around those spaces.

Lease Provisions

13. Both parties agreed that the material terms of the two leases ("the Leases") are identical. The relevant terms can be summarised as follows:
- (i) By clause 29 the Tenant covenants to pay to the Landlord the Interim Charge and Service Charge in the manner provided in the Sixth Schedule;
 - (ii) Under clause 1.3 of the Sixth Schedule the Service Charge is defined as being a "fair proportion of the Total Service Cost" attributable to the Property.
 - (iii) By clause 1.2 of the Sixth Schedule the Total Service Cost is defined as meaning the aggregate amount in each Accounting Period reasonably and properly: incurred by or on behalf of the Landlord in carrying out its obligations under clause 2 of the Fourth Schedule; incurred in connection with any matters referred to in the Fifth Schedule; and considered appropriate by the Landlord as a reserve towards future costs. Also

included is provision for the Landlord to seek a management charge of 12.5% of the Total Service Cost if it does not employ managing agents.

- (iv) Clause 2 of the Fourth Schedule obliges the Landlord to keep the Property insured against loss of damage by any of the Insured Risks.
 - (v) The matters specified in the Fifth Schedule include the cost of cleaning, lighting, repairing and maintaining the structure and the internal common parts of the Property and service conduits not forming part of the demise to the Tenant. Also included are the costs of engaging agents to manage the Property and the payment of rates, taxes and other impositions assessed, charged or imposed on or in respect of the Property.
 - (vi) Under clause 2 of the Third Schedule the Tenant covenants to pay, amongst other matters, all rates, taxes and other impositions payable, charged or assessed in respect of the demised flat or, in the absence of a direct assessment on the flat, a fair proportion of any such sum payable by the Landlord.
 - (vii) The Accounting Period is defined as a year commencing on the first day of January or such other period as the Landlord shall from time to time decide. The Applicant's practice is to treat the service charge year as commencing on the first day of January each year.
- 14.** Under clause 7 the Tenant covenants to pay to the Landlord "*all proper costs charges and expenses (including solicitors' costs and architects' and surveyor's fees) incurred by the Lessor for the purposes of or incidental to the preparation service or enforcement (whether by proceedings or otherwise*" of any notice under Section 146 or 147 of the Law of Property Act 1925....".

Inspection

- 15.** No party requested that the tribunal inspect the Property and the tribunal did not consider this to be necessary or proportionate.

The Hearing, Decision and Reasons

- 16.** Ms Baxter represented herself at the hearing. Mr Mallet attended on behalf of the Applicant. Nobody from the Applicant company or from Moreland were in attendance.
- 17.** At the start of the hearing Mr Mallet provided the tribunal with a copy of the lease of the commercial premises in the Building. The tribunal provided the parties with a complete copy of an earlier decision of this tribunal (when it was the Leasehold Valuation Tribunal) dated 10 January 2012 (the "2012 LVT Proceedings") (**LON/00AC/HED/2011/0001**). The first two pages of that decision had been attached to Ms Baxter's statement of case [**721**].
- 18.** The tribunal's directions of 5 May 2016 did not provide for the exchange of witness statements and none were provided by the parties. It appears, however, that the

Applicant was nonetheless alive to the possibility of adducing oral evidence. At paragraph 8(b) of Mr Mallet's skeleton it is stated that the Applicant had decided not to adduce evidence as to whether or not the service charges claimed had been reasonably incurred because the Respondent had not alleged that those charges were unreasonable.

19. Mr Mallet confirmed that the insurance, service charge, and legal costs claimed in each of the two county court claims were as follows:

Year	Insurance	Management Fees	Fire Risk fees	Other
2010	£357.90	£125.00 (part-year)	£0.00	£0.00
2011	£250.00	£373.43	£0.00	£4,844.26 (plumbing works)
2012	£383.70	£250.00	£87.50	£0.00
2013	£383.70	£250.00	£87.50	£0.00
2014	£405.91	£250.00	£87.50	£0.00
2015		£125.00 (part-year)		£2,147.50 (legal costs)

20. At the start of the hearing the tribunal asked Ms Baxter if she was still challenging the apportionment of the insurance costs now that she had been provided with a copy of the lease for the commercial premises which, Mr Mallet explained, was let on a full repairing and insuring lease. She confirmed that she was not and nor was she challenging the amount of the insurance costs or contending that they had been unreasonably incurred.
21. As to the apportionment of the managing agent's fees she agreed that given that there were no common parts shared between the flats and the commercial unit that it was fair for these to be apportioned exclusively to the two flats. She maintained that they were excessive in amount.
22. The invoices included in the bundle in respect of fire risk fees [460-463] indicate that these relate to the provision of a 'responsible person' for the purposes of the Regulatory Reform (Fire Safety) Order 2005 ("the 2005 Order"). The tribunal was unclear as to why the Applicant considered these costs were recoverable in addition to the usual management fees but as Ms Baxter made no specific challenge to these costs in her defence to the County Court claims or in her statement of case they were not considered by the tribunal. Mr Mallet was without instructions to address any challenge.
23. With regard to the legal costs of £2,147.50 Mr Mallet conceded that these were not recoverable as administration charges (as defined by paragraph 1(1) of the Commonhold and Leasehold Reform Act 2002) nor through the service charge. He confirmed that it was the Applicants' intention to recover these costs from Ms Baxter within the County Court claims on the basis that she was contractually

obliged to pay these costs under clause 7 of the Leases. It appears to us that this concession was correctly made as: (a) the sums in question appear, from the description given in the county court claim to relate to costs incurred in the preparation and issue of those proceedings; and (b) there was no evidence before us to indicate that the costs in question would be payable under clause 7 of the Leases as there was no evidence that they concerned the preparation, service, or enforcement of a Section 146 or 147 notice. No copy of such a notice was included in the hearing bundle. Nor was there any correspondence relating to the preparation or service of such a notice.

24. As a result of this narrowing of the issues, the only matters requiring determination by the tribunal were whether the costs of the managing agent's fees, and the costs of the plumbing works in the sum of £4,844.26, were payable by Ms Baxter.

Management Fees

The Respondent's Case

25. Ms Baxter explained that before the Applicant acquired its freehold interest in the Property, the previous freeholder, Ansell Estates Limited, did not charge her for management fees. She accepted that the Applicant was entitled to do so under the terms of the Leases but believed the sums demanded by Moreland of £250 per annum per flat [437-457] were excessive for the service provided. She suggested that based on her experience of owing other leasehold properties the sum of £100 per flat would be a reasonable amount for her to pay.
26. She was also dissatisfied by the way in which Moreland had dealt with an insurance claim that she had submitted in following an incident of water penetration in October 2011 from the bathroom of the second floor flat into the first floor flat below. At the time Ms Baxter wished to claim on the buildings insurance policy taken out by the Applicant to cover the cost of works to the ceiling of the first floor flat. However, in an email exchange on 10 October 2011 [742-3] Moreland informed her that "*...unfortunately as there is a large amount of service charges outstanding on both your accounts you will not be able to put a claim in until these amounts are settled*". Ms Baxter therefore paid for the necessary works herself.
27. She also objected to Moreland's stance, as stated in that email exchange [743] that "*As policyholder we will not authorise the payment until you pay for your insurance. It's as simple as that*". Her position was that she had a legitimate dispute over the unreasonable level of service charges and legal costs demanded by the Applicant and that Moreland's refusal to allow her to pursue a claim was wholly inappropriate and unreasonable.
28. Further, when she had attempted to make part payment towards the service charges demanded her cheques had been returned to her uncashed. A cheque in the sum of £1,600 had been returned on 27 April 2009 [718] by Property Debt Collection Unit and one for £800 [717] was returned on 14 January 2014 by Moreland. On both occasions Ms Baxter was told that only full payment of the sum said to be outstanding would be accepted.

The Applicant's Case

29. Mr Mallet submitted that the management fees were reasonable in amount. He explained that the management service provided involved: sending out four quarterly service charge demands, an example of which was at [423]; preparing an annual accounts certificate, an example of which was at [730]; arranging for the Property to be insured and providing a responsible person for the purposes of the 2005 Order. He believed that members of staff were on hand to deal with complaints or emergency calls but could not refer us to any evidence of that. No management agreement between the Applicant and Moreland was included in the hearing bundle and Mr Mallet stated that he had not seen one.
30. As to the attempted insurance claim he submitted that the Applicant was entitled to refuse to process a claim when Ms Baxter had not paid her service charge and, in any event, she still retained the right to pursue a claim with the insurers. He also submitted that the Applicant had no option but to refuse to accept part payment of service charges because there was a serious risk that this would amount to a waiver by the Applicant of its right to forfeit the Leases of the two flats from Ms Baxter.

Decision and Reasons

31. Applying our knowledge and experience as an expert tribunal we consider that management fees in the sum of £250 per annum per flat are at the very top end of the range of what can be considered reasonable for a building of this nature. It is clear that the management function is a very limited one. The only communal areas identified in the leases are the stairway and landings together with a narrow path in the yard leading to a hard standing area for cars. None of these communal areas are shared with the commercial unit on the ground floor. The service charge costs demanded in the last five service charge years, as identified in the table above, do not suggest the need for substantial management services.
32. Despite this, in the absence of cheaper quotes from Ms Baxter from alternative managing agents, or other persuasive evidence that the costs demanded are excessive, we do not consider, except for the 2012 service charge year which we deal with below, that there is adequate evidence that these costs have been unreasonably incurred. Ms Baxter mentioned that she owned a flat opposite the Property where she only had to pay about £350 per annum for insurance by way of service charge but that cannot be seen as a useful comparable as no management fees are payable. Ms Baxter's key complaint was that very little management was actually required to this Property. Whilst we agree that the management function is limited the evidence indicates that a management service is provided. Insurance has to be arranged, service charge demands have to be prepared and issued and an annual accounts certificate produced. We determine that, apart from the 2012 service charge year he management fees claimed are payable by Ms Baxter and that the costs have been reasonably incurred.
33. However, there appears to be no justifiable explanation for Moreland refusing to process Ms Baxter's claim on the buildings insurance following the October 2011 leak. The Applicant included the Royal Institution of Chartered Surveyors ("RICS")

Service Charge Residential Management Code (2nd Edition) (the “Code”) in the hearing bundle [481-562]. This Code has been approved by the Secretary of State and, as stated in its forward, is “*designed to promote desirable practices in relation to ... the management of residential property...*”. It is accorded the greatest of respect by this tribunal. Section 15 of that Code concerns insurance. At paragraph 15.6 it states that a landlord should process a claim on the insurance “promptly”. Further, a tenant should be kept informed on the progress of a claim or provided with sufficient details to be able to pursue the matter himself if he is dissatisfied (para. 15.7). Insurers should be notified of claims at the earliest opportunity and a managing agent should be aware that tenants have a right to notify insurers of possible claims (para. 15.14).

34. There appears to have been a complete failure by Moreland to comply with the Section 15 of the Code. Instead of processing the requested claim promptly it refused to do so. In our view such refusal was inappropriate and contrary to the Code. We do not accept that Moreland were entitled to adopt that position because Ms Baxter was in arrears with service charge payments. There is nothing in the Code to suggest that the obligation to process an insurance claim promptly is dependent on a lessee’s service charge payments being up to date. Nor is there any provision in the Leases to that effect. No legal authority supporting this submission was referred to us by Mr Mallet. Further we note Ms Baxter’s attempts to make payments which could have been allocated to insurance cover. We consider this to be clear evidence of poor management by Moreland which justifies a reduction of 20% in the 2012 management agent’s fees.
35. We suggested that such a reduction may be appropriate to Mr Mallet at the hearing. His response was it was not as Ms Baxter could still pursue an insurance claim. Even if that submission was correct, which we have serious doubts about given the passage of time, it does not absolve the managing agents from its responsibility to process such claims promptly.
36. We are not persuaded by Mr Mallet’s submission that there was a serious risk that accepting part payment of service charges from Ms Baxter would amount to a waiver by the Applicant of its right to forfeit the leases of the two flats. It is trite law that presentation of a cheque which includes a sum due in respect of rent for a period prior to a right to forfeit having arisen amounts to waiver by the landlord of the relevant breach. This is because by presenting that cheque the landlord is acting in way that is consistent only with the continued existence of the lease.
37. However, where a breach of covenant, which gives a right of re-entry, is a continuing breach, there is a continually recurring cause of forfeiture. Acceptance of rent is only a waiver of the right to forfeit up to the date when the rent was due (see *Coward v Gregory* (1866) LR 2 CP 153; *Farimani v Gates* [1984] 2 EGLR 66, CA). Where the waiver has been caused by acceptance of rent, a landlord can forfeit the day after the rent has been accepted, provided that the breach is continuing. Here, the Applicant has not suggested that Ms Baxter has breached the terms of her Leases other than

through non-payment of rent, or service charge reserved as rent. The Applicant's position appears to be that Ms Baxter is in continuing breach of the terms of her lease. If so, there would be a continually recurring cause of forfeiture available to the Applicant, irrespective of whether or not it had accepted the part-payments tendered.

38. Even if we are wrong in that conclusion, the County Court claims issued by the Applicant were proceedings for arrears of rent and service charge and not for possession on the grounds of forfeiture. In our view commencing such proceedings, which are continuing, was a clear recognition by the Applicant of the continuance of the Applicants' tenancies that would, in any event, have operated as a waiver of the right to forfeit for arrears of rent due prior to issue of those proceedings (see *Re a Debtor (No 13A-10-1995) [1996] 1 All ER 691*).

Plumbing works £4,844.26

39. This sum comprises half of the sum of £9,588.51 demanded by London Borough of Barnet ("Barnet Council") from the Applicant in an invoice dated 19 September 2011 [478]. The Applicant's position was that the whole of the sum of £9,588.51 was payable by Ms Baxter (apportioned equally between the two flats). The invoice records that the sum demanded comprised:

- (i) £6,681.73 for the costs of works in default carried out at the addresses of the two flats in order to provide a new water supply; and
- (ii) £3,006.78 for a "Rechargeable Works Administration Charge".

The Respondent's Case

40. In her statement of case [714] Ms Baxter argues that she had no obligation to contribute towards the £3,006.78 Rechargeable Works Administration Charge referred to in the invoice as these costs would not have been incurred if the Applicant had carried out the plumbing works without Barnet Council having to take him to Court. This reference to Court proceedings is a reference to the 2012 LVT Proceedings.
41. The 2012 LVT Proceedings concerned an appeal brought by the Applicant under Part 3 of Schedule 3 to the Housing Act 2004 in which it sought to appeal the demand for payment of £9,588.51. The appeal was brought by the Applicant against (1) Barnet Council and (2) Ms Baxter.
42. Ms Baxter attached two pages of the LVT's decision to her Statement of Case [720-721] in support of her contention that the sum of £3,006.78 related to the costs of enforcement action which she believed should be borne by the Applicant alone.

43. She also argued that she should only have to pay a 2/3 contribution towards the remaining sum of £6,681.73 referred to in the Barnet Council's invoice, as 1/3 should be borne by the commercial unit.
44. The factual background to the 2012 LVT Proceedings is set out in its decision. The LVT recorded that:
- (i) On 17 June 2011 Barnet Council served an Improvement Notice (the "First Improvement Notice") on Ms Baxter which identified the presence of category 1 hazards and which required her to carry out *"an investigation to ascertain the primary cause of the intermittent water supply. Investigate the provision of mains supply to the property, considering the requirements of the commercial premises to the ground floor and first and second floor flats A and B. Leave the property with an adequate and continuous supply of cold wholesome drinking water and hot and cold water to the kitchen and bathroom, i.e. sink, washing machine, wash hand basin and bath and/or shower, on completion of works"*;
 - (ii) The First Improvement Notice was revoked on 17 June 2010 and a fresh notice dated 23 July 2010, in the same terms, was served on the Applicant (the "Second Improvement Notice").
 - (iii) The Second Improvement Notice which was not appealed by the Applicant;
 - (iv) As the Applicant failed to carry out the works specified in the Second Improvement Notice these were carried out by Barnet Council who, on 23 September 2011, issued a demand requiring the Applicant to pay the sum of £9,688.51 which the LVT states was made up of *"£6,681.73 in relation to the works and a charge of £3,006.78 in respect of administration costs and other expenses incurred in having to take enforcement action"*. It was this demand that the Applicant sought to appeal in the 2012 LVT Proceedings.
45. Ms Baxter informed us that the LVT's account of the factual background was accurate and that it accorded with her recollection. She believed at the time, and still believed, that the water supply problem resulted from the conversion of the restaurant from a clothes shop into a fast food restaurant and not because of any problem in her two flats.

The Applicant's Case

46. Mr Mallet's position was that the plumbing works pertained only to the two residential flats and that Ms Baxter was contractually obliged to reimburse the Applicant for the entirety of these costs by virtue of her obligations at clauses 2 and 8 of the Fifth Schedule of the Leases which refers to those items which fall within the service charge payable by her.

47. Clause 2 of the Fifth Schedule refers to “*all existing and future rates taxes duties assessments charges impositions and outgoings... which from time to time shall be assessed charged imposed or payable on or in respect of the Building...*”.
48. Clause 8 refers to “*the provision and supply of such services for the benefit of the Tenant or the other tenants of the Building and the carrying out such other repairs and improvements works and additions and the defraying of such other costs (including the modernisation or replacement of plant and machinery) as the Lessor shall reasonably consider appropriate or otherwise desirable in the general interests of the tenants or any of them*”.
49. In his submission it was clear from the wording of Barnet Council’s invoice that the only works carried out by the Council were to the two flats, indicating that the water problem emanated from those flats. There was, he submitted, no evidence that any works were carried out to the Building. He accepted that the sum of £3,006.78 concerned the Council’s costs of enforcement but that contended that these were still recoverable in full from Ms Baxter under Clause 2 of the Fifth Schedule. He also submitted that it was possible that some of the enforcement costs had been incurred in preparing the First and Second Improvement notices.

Decision and Reasons

50. We agree with Mr Mallet that the costs specified in Barnet Council’s invoice dated 19 September 2011 are costs that fall within the definition of service charge costs as specified in the Leases by virtue of clauses 2 and 5 of the Fifth Schedule.
51. However, by virtue of section 19(1)(a) of the 1985 Act service charge costs are only be taken into account in determining the amount of a service charge payable for a period to the extent that they were reasonably incurred.
52. In our view it is clear from the LVT’s decision that the enforcement action taken by Barnet Council was only necessary because of the Applicant’s failure to carry out the works specified in the Second Improvement Notice. The LVT records the case advanced by Barnet Council was that “*following the [Second] Improvement Notice a notice under the Housing Act 2004 Schedule 3 was served which stated that as the Appellant had failed to comply with the [Second] Improvement Notice [Barnet Council] would be taking action to carry out the required works. No response was received from the Appellant to that notice. It was not until the demand for payment of the cost of the works was served that an appeal was lodged*”.
53. In light of the evidence tendered by Barnet Council in the 2012 LVT Proceedings it is our determination that the enforcement costs of £3,006.78 whilst amounting to costs incurred by the Applicant are costs that were unreasonably incurred for the purposes of section 19(1)(a) and that they are therefore not payable by Ms Baxter. It appears that these costs could have been avoided altogether if the Applicant had carried out the works specified in the Second Improvement Notice in a timely manner. In that respect we note that the LVT accepted the evidence of Ms Baxter

and Barnet Council that the works required by the Second Improvement Notice fell outside Ms Baxter's demise and that they were not her responsibility.

54. Turning to the costs of the works themselves, in the sum of £6,681.73, we accept Ms Baxter's submission that the appropriate apportionment of these costs is for her to pay a 2/3 contribution. By virtue of Clause 1.3 of the Sixth Schedule Ms Baxter's obligation is to pay a "fair proportion of the Total Service Cost" attributable to the Property. In our view a fair proportion of the sum of £6,681.73 would be a 2/3 apportionment because the evidence indicates that: (a) the water problem was not caused by a problem in the residential flats but was one that was identified when the restaurant was converted from a clothes shop into a fast food restaurant; and (b) the resulting works included works to the internal parts of the Property outside of Ms Baxter's control. We accept Ms Baxter's oral evidence to this effect which is also corroborated in the contents of the LVT decision.
55. At paragraph 27 of its decision the LVT refers to expert evidence provided by Ms Baxter from Hadleigh Plumbing Services dated 15 January 2008 which stated that "*the restaurant and the two flats are served by a single lead supply*". The LVT also records that the Applicant failed to provide any evidence to support its claim that the works all fell within the demise of the residential flats and had provided no expert evidence to rebut the evidence provided by Ms Baxter and Barnet Council. Barnet Council's case was that the water problem affected the entire building, not just the two residential flats, and that it was caused by the use of water by the parts of the Property outside Ms Baxter's control, necessitating works to the internal parts of the Property outside of Ms Baxter's control.
56. Mr Mallet suggests that it is clear from Barnet Council's invoice that the only works carried out by Barnet Council were to the two flats. We do not consider that such an inference can be drawn from the wording of the invoice without corroborative evidence, of which there is none. On the contrary, Barnet's Council's position, as advanced at the LVT, was that works were required to the parts of the Property outside of Ms Baxter's control. Nor is there any evidence to support Mr Mallet's submission that the water problem which necessitated these works emanated from Ms Baxter's flats. The contrary appears to be the case in light of the evidence presented by Barnet Council and Ms Baxter to the LVT.

Application under Section 20C

57. The Respondent sought an order under section 20C of the Landlord & Tenant Act 1985 Act that none of the costs of the Applicant incurred in connection with these proceedings should be regarded as relevant costs in determining the amount of service charge payable by the Applicants.
58. This application was not opposed by Mr Mallet. His position was that the Applicant intended to seek its legal costs within the County Court claims. We would have made one anyway. As such, 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.

59. Having heard the submissions from the parties and taking into account the determinations above (and the degree to which the Applicant has been successful in its Applications) we would have made such an order in any event, even if it had been opposed by Mr Mallet.
60. We consider that Moreland's conduct in refusing to accept any part payment of service charges and refusal to process Ms Baxter's insurance claim has unreasonably contributed to a worsening in the landlord and tenant relationship with Ms Baxter.

Conclusion

61. The tribunal's determinations above are therefore that all the sums set out in the table at paragraph 19 above are payable in full by Ms Baxter in respect of both sets of proceedings except that:
- (i) The amount that it is reasonable for her to pay for the 2012 management fees is £200 per flat;
 - (ii) The amount that it is reasonable for her to pay for the plumbing works is £2,227.24 per flat;
 - (iii) She is not liable to pay legal costs of £2,147.50 either as an administration charge or as a service charge cost.
62. We note Ms Baxter's complaint that Moreland has prevented her from using the car parking spaces adjacent to the Property. However, whilst clause 7 of the First Schedule to the Leases grants her a *right* to park a vehicle on the hard standing for cars identified on the respective lease plans, these areas are not *demised* to her. If Ms Baxter is correct in her contention that she has been deprived of the use of these car parking spaces then she may wish to seek advice as to the appropriate legal remedy. The issue is not relevant to the question this tribunal has to determine, namely whether the service charges demanded in the County Court Claims are payable by Ms Baxter and whether such costs have been reasonably incurred. There is nothing to suggest that any service charge costs have been incurred, or demanded from her, in relation to the two car parking spaces.

The next steps

63. As the Tribunal has no jurisdiction over ground rent or county court costs this matter should now be returned to the Willesden County Court.

Amran Vance

Date: 8 August 2016

ANNEX 1- RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

ANNEX 2

APPENDIX OF RELEVANT LEGISLATION

Landlord and Tenant Act 1985

Section 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.
- (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 -

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- (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 – Limitation of service charges: reasonableness

- (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 – Liability to pay service charges: jurisdiction

- (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.