



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

Case reference	:	LON/00BG/LSC/2017/0413
Property	:	7 Bridge House Quay, Jamestown Harbour, London E14 9WQ
Applicant	:	Mulberry Management Limited
Representative	:	Mr Yaaser Vanderman of Counsel
Respondent	:	Mr N. Moore
Representative	:	In person
Type of application	:	Liability to pay annual service charges and administration fees (Section 27A and 20C Landlord and Tenant Act 1985, and Schedule 11 Commonhold and Leasehold Reform Act 2002)
Tribunal members	:	Judge Lancelot Robson Mr M C Taylor FRICS Mrs J. Hawkins BSc MSc
Date and Venue of Hearing	:	22nd February 2018 10 Alfred Place, London WC1E 7LR
Date of decision	:	15th April 2018

DECISION

Decision Summary

(1) The amount of service charge claimed in this application, as claimed by the Applicant at the start of the hearing, is £4,079.55 (after giving credit for a rebate on an item for painting) (Section 27A)

- (2) The sum of £4,079.55 is reasonable and payable by the Respondent.
- (3) The sum for administration costs (being legal fees relating to a previous claim) claimed by the Applicant are £9,945.20 (Schedule 11)
- (4) The sum of £9,945.20 is reasonable and payable by the Respondent.
- (5) Both sums due shall be paid by the Respondent within 21 days of the date of this decision.
- (6) The Tribunal declined to make an order limiting the landlord's costs under Section 20C of the Landlord and Tenant Act 1985
- (7) The Tribunal makes the other determinations as set out under the various headings in this decision.
- (8) This case shall now be referred back to the County Court at Central London to decide upon costs in the County Court action and any other outstanding matters not within the Tribunal's jurisdiction.

Application

1. The Applicant seeks a determination (relating to items a) and b) below) pursuant to Section 27A of the Landlord and Tenant Act 1985, and pursuant to Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (relating to item c) below) relating to the reasonableness of demands made;
 - a) in respect of service charges payable in the year commencing 1st November 2015, and
 - b) estimated service charges payable payable in the year commencing 1st November 2016
 - c) administration charges payable in respect of 7 invoices totalling £9,945.20 for legal services paid by the Applicant for collecting service charges previously found payable by the County Court pursuant to an order dated 27th June 2016,
 - all pursuant to the terms of a lease (the Lease) dated 6th August 1985.
2. This case was referred to the Tribunal by an order of District Judge Avent dated 26th September 2017 in the County Court at Central London in case no D47YX679.
3. The Tribunal gave Directions on 30th November 2017 (amended on 7th December 2017) for this hearing. These Directions clarified that the Respondent's extensive Counterclaim in the County Court case was not a matter to be decided by this Tribunal.
4. The Applicant made a formal statement of case dated 15th January 2018 with relevant documents annexed, supplemented with oral evidence and

submissions made at the hearing. Mr C. Hawkes, of Mountpoint Ltd the managing agent, Mr A Mahrous, and Mr R. Bowden-Browne made witness statements. Mr Mahrous and Mr Bowden-Browne did not attend the hearing. Mr Moore objected to their statements as he was unable to cross-examine them. The Tribunal noted his comments, and indicated that it would take these comments into account when considering the statements. Mr Hawkes attended and was examined by Mr Moore at considerable length.

5. Extracts from the relevant legislation are attached as Appendix 1 below.

Hearing

6. At the start of the hearing Mr Moore asked about the possibility of a further hearing day, and also about costs. The Tribunal indicated that from the papers, it considered the issues and the actual costs before the Tribunal could be dealt with by the end of the day. Also it was not prepared to consider the service charges from 2003 to date, as shown in the Scott Schedule in the bundle, because only the items mentioned at paragraph 1 above had been referred by the Court. Any other matters would have to be the subject of a separate application. The Tribunal explained how a Section 20C application could be made, and the requirements for a Rule 13 application.
7. Mr Moore then stated that his case entirely related to the management, not to the amount of individual cost items claimed by the Applicant. He did not accept that any management charge was appropriate for the years 2015 and 2016, as the management performance was so poor.
8. Mr Vanderman confirmed that the amount his clients were seeking in respect of service charges had been reduced from £4,729.82 to £4,079.55 due to a rebate due to tenants in respect of the external painting in 2016. The Respondent had referred to this matter in his case, but the rebate had not been calculated at the time the County Court proceedings had been issued. On 10th November 2017, the Applicant's legal representatives had advised the Respondent of the rebate, and that it would be used to reduce the outstanding debt.

Applicant's case

9. The Applicant's submissions were:
Clause 3(A) of the Lease (briefly) provided for the Respondent to pay:
 - a) 4.26% of the estimated costs and expenses incurred by the Managers contained in
 - (i) the Fourth Schedule
 - (ii) all obligations entered into for the benefit of the Residents
 - (iii) creating reserves to meet the Managers' future liabilities as they deemed necessary or desirable
 - b) an equal share per dwelling with all other dwellings on the Estate and the Annex Lands of the costs of;
 - (i) the management and administration of the Managers

- (ii) managing insuring maintaining upholding repairing cleansing and renewing the Amenity Lands on the Estate or the Annexed Lands
- (iii) complying with all obligations entered into pursuant to para. 3 of the Fourth Schedule

....

- (v) for the performance and observance of all obligations for the benefit of of the Residents
- (vi) creating reserves to meet future liabilities
- (v) such other expenses as the Manager may incur in the exercise of any Objects set out in the Memorandum of Association of the Managers.

Clause 6(iii) obliged the Respondent to pay the Applicant "... all expenses it may incur in collecting arrears of service charge payable by the Lessee ... or enforcing any obligation of the Lessee whether or not proceedings are taken and whatever the outcome of those proceedings"

10. The legal fees of £9,945.20 were payable under Para 5. Schedule 11 of the Commonhold and Leasehold Reform Act 2002, as they were expenses incurred in collecting arrears of the service charge or alternatively in enforcing the Defendant's obligation to pay administration charges. The Respondent had not objected to the amount of any of these fees.

12. The service charges of £4,079.55 were payable under clause 27A of the Landlord and Tenant act 1985. The only items in issue were the management charges.

13. Cain v London Borough of Islington L & TR 13 (UT) was authority for the proposition that the Respondent could not raise matters prior to the service charge year 2013, as he had paid the charges. The effect of this was that the actual amount in dispute was £552 if calculated from 2013, or £186 if calculated from 2015.

14. Management Fees - the service charge was reasonably incurred. Reasonableness was considered in Regent Management Ltd v Jones [2010] UKUT 369(LC). The question was whether the approach taken was within a reasonable range of responses. Also the Respondent was required to establish a prima facie case that the service charge expenditure was not reasonably incurred, see Yorkbrook Investments v Batten (1986) 18 HLR 25 (CA) 35. Further, even if the Tribunal found that some reduction should be made, it should be on the basis of a small percentage reduction. For example, in Kullar and Prior Place Residents Association v Kingsoak Homes Ltd 2013 UKUT 15 (LC) a 10% reduction was applied for failure to deal with problems at a block properly.

15. Dealing with the individual items raised by the Respondent;

- a) fire risk - the assessment was carried out annually by Mr Hawkes. The last one was done in December 2017, and the matter was raised in this case only on 13th December 2017. The managing agents acted reasonably in requesting occupiers not to store items in the communal areas. The wooden cupboard complained of had been removed within days of becoming aware of the complaint, and again it had only been

raised in this application on 13th December 2017. The managing agents had immediately requested the pram be removed on becoming aware of it. The wiring and electrics had been regularly checked, and again this complaint had only been raised on 13th December 2017. It was acknowledged that the wiring documents were not in the Consumer Unit cupboard

- b) Post boxes - there were secure personal internal boxes existing within the Respondent's building, and there was no obligation to install such boxes externally. The Applicant had acted reasonably in assessing the viability of the Respondent's proposal and rejecting it following advice from a technician of the Institute of Fire Engineers. Also no other occupiers had requested a new arrangement.
- c) AGM minutes - the Respondent had never been charged for the preparation of such minutes, so he could not withhold his service charge on this basis. There was no obligation to provide the minutes within a certain timeframe. The allegations of falsifying them made by the Respondent were denied. The Applicant had at all times acted reasonably.
- d) Sinking Fund breakdown (Cyclical forecasts) - the Respondent receives the audited accounts for each service charge year together with a reserves schedule. The Respondent apparently wants to see the detailed calculations of each reserve requirement prepared and presented to the Board of the Applicant as part of its budget discussions. The Respondent has already been sent the reserve schedule as part of the AGM pack. It was the Applicant's policy not to disclose the detailed calculations to non-board members. This did not affect the Respondent's rights to apply under Section 22 of the Act, nor was it a breach of the Lease. The Respondent's complaint seemed irrelevant.
- e) Issues surrounding the painting contract - the Respondent was apparently relying upon the alleged delay in commencing the current round of redecoration as a breach of contract. Following completion of the last painting works in 2010, a retention was held by the Applicant until 15th December 2011. The Applicant started the process for the current round of work in early 2016. Prior to the work, the agent went through the Section 20 consultation process. The agent and the Applicant were disappointed with the tenders received, which seemed too high. The contract administrator was instructed to start the process again. As a result of the second round of tendering, the Applicant saved the (leasehold) owners approximately £116,000. The Respondent benefited from this saving. If there had been any breach by the Applicant in this situation, the Applicant denied that the Respondent had suffered any loss as a result. The Respondent described the state of the external decoration of his property as dire, which the Applicant refuted. The Respondent had produced no evidence to substantiate his point. It was denied that the Applicant delayed in responding the Respondent's request to remedy any issues. They were remedied to the extent allowed by the Respondent.

- f) Scaffolding - the Respondent relied on the agent's failure to have the scaffolding alarmed in 2016, and alleged that the failure amounted to malice by the agent directed at the Respondent. The Applicant denied that not alarming the scaffolding amounted to malice generally, or towards the Respondent in particular. There was no evidence to substantiate the Respondent's point. The Applicant accepted that the scaffolding for the 2010 work may have been alarmed, but that matter was at the discretion of the scaffolding company. It was not a term of the contract between the Applicant and/or the agent and the scaffolding company. The agent had sent reminders to the leaseholders advising them to close their windows.
- g) Builder's Hut - the hut was placed on the communal land while the painting was being done in 2016. The hut was tucked away in an under-cover area which was used to provide facilities for the workmen. It was removed on completion of the works. The Applicant did not understand the relevance of this issue to the Respondent's liability to pay the management portion of the service charge.
- h) Footbridge grilles - the galvanised grilles were attached to a pedestrian footbridge and were not painted in 2016. The matter was discussed with the Respondent in 2010. The Applicant denied that the footbridge was ugly, or that it was detrimental to the estate, or that it reduced the value of the Respondent's flat. There was no evidence to substantiate the Respondent's point.
- i) Parking permit scheme - the Respondent alleged delay in implementing the scheme and the Applicant's failure to enforce it. Para 3(iv) of the Fourth Schedule to the Lease allowed the Applicant to make rules relating to the Amenity Land, in its sole discretion. It was not an obligation. There were good reasons for the delay in implementing the scheme, as a legal challenge had been made to it. The Applicant denied that it had failed to enforce the scheme, but had acted reasonably in its enforcement.
- j) Internal communal lights - The Applicant had acted reasonably when it discovered the light outside the Respondent's property had not been replaced. The oversight was made by the electrician, and he had made a written statement to that effect (in the bundle). There was no malice on the part of the Applicant.
- k) Entryphone - The Applicant agreed that there had been issues surrounding the Respondent's answerphone in 2013. When these had been advised, the Applicant had instructed Greywood to rectify the matter. Greywood rectified the fault to the Respondent's handset, and invoiced for the work. Later, the entryphone system for the whole block had been replaced. The Respondent's account of an argument between a Director of Mountpoint and Greywood was denied. The Applicant could not see how such an alleged argument would have advanced the Respondent's case of malice. Malice was denied.

- l) Dehighwayed Land - the Respondent had never been charged fees in respect of this item, and his points seemed irrelevant.
 - m) CCTV - the Applicant acted reasonably in installing CCTV around the Building to deter major and regular instances of drug-taking and other gatherings by non-residents. It was correct that a resolution to install CCTV had failed at the relevant AGM, but since then anti-social behaviour had increased by a large amount, and the Board authorised the cameras, which had been successful. The cost had been under the consultation threshold, and the demonstration of the cameras at the 2015 AGM had been well-received.
 - n) Insurance - the Agent acted reasonably in voluntarily assisting and investigating the water damage. It was ultimately for the Respondent to seek relief and enforce this against the owner living above him. If the Respondent had obtained a judgement against that owner, it was for the Respondent to enforce it.
 - o) Oil stains - The Applicant acted reasonably in seeking to remedy the presence of oil stains in the parking area caused by a resident's vehicle leaking oil in front of his garage. It was denied that the agent had delayed in notifying the vehicle owner of the leak, or in asking for the stains to be removed. The stains would have not been visible if cars were parked over them. In any event the matter had been raised with the owner a month prior to the Respondent's complaint, and the Applicant had had to arrange for a jetwash of the area, as the owner had not successfully removed the stains to the Applicant's satisfaction.
 - p) Electronic entry gates - The Respondent has never been charged a management fee for the item relating to the proposed electronic gates. It was denied that either the Applicant or the agent had been deceitful over this matter, or that any request to install the gates was illegal. Thus he could not claim a deduction from his service charge. The Applicant would be acting reasonably if it did install such gates in the future.
 - q) Bicycles - The Applicant had acted reasonably in promptly requiring occupiers to remove bicycles kept in communal areas. Bicycles are now to be kept in an under-cover area of the Estate
 - r) Plastic barriers and tape - The Applicant acted reasonably in deciding to erect two plastic barriers and choosing their location. It was agreed that occasionally they had blown over. The barriers and tape might look unsightly, but are intended to obstruct a path which led to a dangerous structure, and to effectively act as a warning. The tape complained of had now been removed. The Applicant denied that any of the items had been placed out of malice to the Respondent.
16. Generally, it was not acceptable for the other lessees to bear the legal costs of the Applicant in enforcing the Lease against another lessee. The

Applicant considered the agent's conduct to be satisfactory when dealing with the Respondent, who continuously refused to pay his service charge since 2014.

Respondent's case

17. The Respondent did not submit a statement of case as such, but relied upon comments made on the Scott Schedule, his opening statement and oral submissions.

18. On the question of the legal fees claimed, he submitted that the fees had been dismissed by the Court in 2016. Also the fees of Ms Grey were refused by the judge. The agent had not notified him of the painting rebate in 2016, and had tried to include it in the service charge being claimed in this application. The Respondent had had to pick the agent up on this point.

19. No management fees should be paid. The Respondent in his opening statement stated that he had reported the board of directors to "Action Fraud" in 2013 for fraudulent behaviour against the shareholders. Since then, Mr Hawkes would take every opportunity to avoid assisting him. He considered his behaviour to be malicious, particularly over parking issues. The Respondent's post was being stolen. His identity had been stolen on multiple occasions. £6,000 of damage had been done to his car. He had had two nervous breakdowns because of this. He had been told that the legal fees for this case would be £40,000. He believed the agent was trying to make the fees as large as possible, and he would lose his home. He had ME, which was exacerbated by stress, He had had to give up a well paid job. The reason his bundle was so large because he had to head off any lies by the other side. Mr Hawkes had made 137 deceitful statements of which 42 were outright lies. Mr Parrat's statement contained 101 misleading items. His home and future rested on what happened in this case. He needed protection from Mr Hawkes.

20. Dealing with the other points in the order used above;
a) Fire risk - There had been fire safety issues in his block for many years. He had finally commissioned his own Fire Risk Assessment in October 2017. It had highlighted that a pram left in the communal area for 18 months was a fire hazard. This proved that the agents did not regularly inspect the blocks. It was a breach of the agent's Code of Conduct. Only after notifying the agent was the pram removed. He should not have to inform the agents of such things. A wooden cupboard had been left in the communal parts for almost 15 years. It was only moved in December 2017. There were no wiring inspection documents held in the consumer unit cupboard.

b) Post boxes - in 2011, the Respondent reported that his mail was being stolen and that a secure individual external letterbox was required for each resident. The agent initially did nothing, but in 2013 it decided to refuse the request, even though 2 other residents reported stolen mail to Mr Moore. The agent argued that the lighting was too poor, and then later that the external boxes would be a fire hazard. The Respondent had had to endure much inconvenience and attempts at fraud using his name. This problem remained ongoing. His fire expert considered that it would be safe to fit external boxes.

c) AGM minutes - the agent refused to send out the minutes directly after the meetings, and usually waited for eleven months before sending them. Most people could not remember them, which allowed the agent to write them as he saw fit. The agendas were prepared by him, not the board. The agent did not know how to write minutes and had admitted he would happily falsify them. The Respondent had complained about the minutes for 2008 and 2009 in 2013.

d) Sinking Fund Cyclical forecasts - All shareholders were previously given a detailed annual breakdown of the cyclical elements of the sinking fund when the Respondent had been a Director of the Applicant. The agent had stopped doing this without explanation. The Respondent had made multiple verbal and written requests for them without result. He was concerned that the sinking fund might be inadequate and an additional one-off payment would have to be made. He had wanted these documents well in advance of the hearing to have a forensic accountant examine them. He feared that some money from the fund had been "spirited away".

e) Painting of the Building - the painters had missed some of the areas of the Respondent's balcony and splashed paint on it. Multiple attempts were made by the painters to clean up, but the Respondent then got tired of writing to the agent asking them to do their job. Eventually the agent wrote saying the clean-up work had been done, when it had not. The Respondent got a decorator to clean it up at his expense.

f) Scaffolding - The scaffolding for painting the building had been alarmed in 2010, but not in 2016. The Respondent had pointed out it was a safety issue with a risk of burglary. The agent stated that there was no requirement to do so. The Respondent's neighbour had then surprised a burglar who had got in to his flat via the scaffolding. The neighbour had been attacked. Then the scaffolding had been removed before checking that the snagging works had been done, and had to be re-erected. The scaffolding on a nearby building on the estate had been fully alarmed.

g) Builders' hut - a temporary hut was placed adjacent to the Respondent's property in 2016. It was unsightly and in place for over a year. It made the estate look shabby and uncared for.

h) Footbridge - the bridge had been painted a vile colour in 2010. It was light grey instead of dark grey. The Respondent's lounge looked directly out at the bridge. The mesh grilles on the footbridge on the estate had not been painted in 2016, leaving a two tone colour, which was even more ridiculous and ugly than ever. The agent had refused to comment on why the grilles were not removed and powder coated to match the rest of the bridge. The bridge was hugely prominent and ugly. It was a clear detriment to the estate and was devaluing it.

i) Parking Permit scheme - An AGM in 2012 had voted to implement a parking scheme at the Respondent's request. Nothing happened for nine months, then the agent gave notice that the scheme would come into

operation in about a month. However later the agent stated that it had been agreed that the scheme be delayed. This was deceitful, since there had been no vote to delay it. No reason was given for going against the wishes of all the other shareholders on the estate, except that one shareholder had requested the delay. The scheme was then delayed until June 2017. However the agent was not issuing penalty notices for parking which caused the Respondent problems, but he believed that notices were being issued elsewhere on the Estate. As a result the Respondent had scraped his car against his garage because the angle of entry was too great due to inconsiderate parking. He intended to counterclaim for the damage. He considered his right to unrestricted access to his garage had been infringed.

j) Internal communal lights - there had been problems over a number of years with blown light bulbs. In 2013, all the light fittings in the block except the one outside the Respondent's flat, had been changed. Multiple excuses for this omission were made. It was a long time before it was fixed. It was an example of malicious behaviour by the agent. Light bulbs failed again in 2015 and 2017 but nothing was done until the Respondent reported it. The agent was not checking the estate or the contractors' work.

k) Entryphone - The Respondent had reported problems with his answerphone in 2013. The agent's contractor confirmed it was not working and that the system was old and past repair. The agent then stated that the system had been fixed, and asked the Respondent not to call the contractor as it "muddied the communications". The Respondent called him anyway to find out the truth, which was that he had reported that the Respondent did need a new system installed. The contractor called the agent and they had a row.

l) De-highwayed land - in 2013 the agent wanted to convert an area of "dehighwayed land" into a car park. The agent claimed that a straw poll in 1999 had been in favour of turning the land into a car park, but the Respondent had eventually been successful in obtaining a vote defeating the proposal in 2013. The issue had resurfaced on a number of occasions, and the Respondent believed that the agent had ignored or misrepresented meeting minutes to suggest that approval had been obtained. The Respondent believed he had thwarted some fraudulent purpose.

m) CCTV - the shareholders had voted against a proposal to install CCTV at the 2010 AGM. The Board of Directors decided in 2016 to install CCTV directly against the wishes of the shareholders. It was a binding vote.

n) Insurance - the Respondent had notified an insurance claim in December 2016, as water had escaped from the flat above. The agent dragged his heels in replying and then went out of his way to prove that the Respondent was at fault, rather than the upstairs flat. Then he said that the issue had nothing to do with him. The Respondent now had a judgement against the upstairs flat owner, which he was enforcing. The agent had been deceitful.

o) Oil stains - A tenant's vehicle had leaked oil in 2016 outside that tenant's garage and on a guest parking space. Nothing had been done about it

for 3 months until the Respondent complained. Multiple requests had been made to have the mess cleaned up. Several half hearted attempts had been made to clean the areas. The agent had apparently given up trying to clean the areas. The tiles now needed a professional cleaner, but the agent had refused to comment on why the stains were still there one year later. The stains were in a prominent position in the estate, were an eyesore, and were devaluing the Respondent's property. There were photographs in the bundle.

p) Electronic entry gates - a meeting was held in 2015 to discuss installation of entry gates to the estate. The document sent out for a postal vote stated that the gates had to be on the border of the estate. In 2017, the agent unilaterally decided to move the gates forward when asking for planning permission, and thus they were not on estate land. The location change was made without the shareholders' permission and directly against their wishes. The installation was illegal. The agent had stated in the planning application that the estate had a residents' association. However the Applicant had refused to recognise it.

q) Bicycles - the agent had stated on multiple occasions that the storage of bicycles in communal areas was unacceptable, but had done nothing to enforce it. Bikes had been stored adjacent to the Respondent's flat for months. When asked about this the agent had suggested that he was thinking of making such areas available for storage. The agent seemed to do the exact opposite of anything the Respondent mentioned. The estate was looking cluttered and uncared for.

r) Plastic barriers and tape - the tape had been put up as a warning by the painters in 2016 around chain posts opposite the Respondent's property. It was over a year before the agent removed it after the Respondent's request. The tape made the estate look cheap. A blue plastic barrier was being stored in an undercover area, and then erected on the dock gate opposite the red barrier in the view of the Respondent's flat to no purpose after the Respondent mentioned it. It was pure spite and malice.

Decision

21. The Tribunal considered the evidence and submissions. Dealing with the Applicant's legal authorities, it decided that the Applicant's view of Cain v London Borough of Islington (supra) was not quite correct. That case did not decide that mere payment of a demand was a bar to disputing the sum payable, as Counsel seemed to suggest. However the Tribunal concurred with the view expressed in Yorkbrook Investments v Batten (supra) and that it was appropriate to consider the whole of the management function and that normally only a modest reduction should be made for an error in carrying out part of that function.

It had listened carefully to the evidence and submissions at the hearing. On balance, it found the Respondent's case generally to be rich in assertion, but poorly evidenced. There were some matters that the Tribunal, with the benefit of hindsight, might have handled differently, but the management could not be fairly described as unreasonable. Standing back from the multiplicity of details in the dispute, the Tribunal decided that whatever the agent's

shortcomings, the estate was being successfully managed at a very modest cost to the leaseholders and at a modest fee. For example, the total annual expenditure shown in the 2016 accounts (the latest available) for 73 units was £328,158 with a management fee of £13,042 (or about £176 per unit), with reserves held totalling £332,428. Maintenance and repair work was being done. Rents and service charges were being collected. Unusual issues were being addressed, (such as parking permits and entry gates) and solutions found. The estate had many unique and expensive features. The Tribunal considered that an annual bill of less than £4,500 per unit to include insurance and management, and a significant part of a cyclical repairs bill represented good value to the leaseholders. The Respondent did not challenge the substantive costs, but only the management costs, apparently because he considered that the agent was victimising him, and not dealing with matters in the way that the Respondent thought was proper. In effect, while the Respondent may not agree with the Tribunal's view, he seemed to be trying to continue to manage the estate as he himself might have done in the past when he was chairman of the Board of Directors. The Respondent offered no evidence as to comparative management costs in the area. Likewise he offered no objectively verifiable evidence as to how his property value might have been adversely affected. The Tribunal was not satisfied on the balance of probabilities that any reduction in the managing agent's fees was appropriate. It decided that the management had been done to a reasonable standard and at a reasonable cost. Thus the service charge demand for 2016 was reasonably demanded, and the estimated service charge for 2017 was also reasonably demanded.

22. The Tribunal, after considering the details of the relevant invoices further decided that the administration fees, being the legal fees relating to the County court case decided on 27th June 2016. were also reasonable and payable under the terms of the Lease Section 6(iii). Contrary to the Respondent's submissions, the Tribunal decided on the factual evidence submitted that the County Court had not ruled upon those fees, and there was no question of double charging.

Costs – Section 20C and Rule 13

23. The Respondent made a Section 20c application at the hearing. He refuted the Applicant's argument that the amount actually in issue was only about £300. The amount in question was not his argument. He wanted someone to hear what had been going on on his estate. The managing agent was unfit.

24. Mr Vanderman strongly urged the Tribunal not to make an order. The Respondent's case was almost vexatious. It was overstated. The amount in dispute was in fact about £300. The Applicant had been faced with 4 lever arch files and had had to bring 4 people to the hearing.

25. The Tribunal considered the evidence. It noted that the Respondent had made it clear at the Directions hearing that he was not prepared to compromise. Many matters he raised related to items for which he not had

been charged, or were incapable of remedy in a Section 27A application. While the Respondent might reasonably assert that he was a lay person, the Applicant's costs incurred due to the Respondent's lack of knowledge, still had to be paid by someone. The Tribunal considered that the Applicant had acted properly, and had done all that might reasonably be expected of a landlord to keep costs down. It was also clear that the Respondent had developed a strong personal dislike of Mr Hawkes, and that this issue was at the root of much of the Respondent's case. He was convinced that the Applicant was victimising him, and had produced a great deal of largely irrelevant evidence to try and support his view. The Tribunal decided that there was little evidence to support the Respondent's view, and a considerable amount of evidence to the contrary. The Tribunal had decided the substantive case almost entirely in the the Applicant's favour. The Tribunal declined to make a Section 20C Order and thus the Applicant was entitled to its costs of this application in accordance with the Lease. For completeness, the Tribunal notes that the costs incurred in relation to the County Court case remain a matter for the County Court in due course.

26. The Tribunal now orders that this case be returned to the County Court to deal with outstanding issues in the County Court case.

Tribunal Judge: Lancelot Robson

Dated: 15th April 2018

Appendix 1

Landlord & Tenant Act 1985

Section 18

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

Section 19

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

Section 21B

- (1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.
- (2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
- (3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.
- (5) and (6)....

Section 27A

- (1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.

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

Section 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 leasehold valuation 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 a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation 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

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

Regulations 13(1) - (3)

- costs
- 13.-(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 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.
- to
- by
- (2) The Tribunal may make an order requiring a party to reimburse any other party the whole or part of the amount of any fee paid the other party which has not been remitted by the Lord Chancellor.
- or
- (3) The Tribunal may make an order under this rule on application on its own initiative.
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