

IN THE UPPER TRIBUNAL (LANDS CHAMBER)



**Neutral Citation Number: [2019] UKUT 373 (LC)
Case No: LRX/27/2019**

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

***LANDLORD AND TENANT – SERVICE CHARGES – CONSTRUCTION OF LEASE – WHETHER
WINDOWS PART OF THE STRUCTURE OF THE BUILDING - REASONABLENESS OF
CHARGES***

**IN THE MATTER OF AN APPEAL AGAINST A DECISION OF THE
FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)**

BETWEEN:

KRIS SEO BEE TAY

Appellant

- and -

**HOLDING & MANAGEMENT (SOLITAIRE)
LIMITED**

Respondent

**Re: Flat 12 Bellamy's Court,
Abbotshade Road,
London,
SE16 5RF**

Elizabeth Cooke, Upper Tribunal Judge

Determination on written representations

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The following cases are referred to in this decision:

Arnold v Britain [2015] UKSC 36

Holding and Management Ltd v Property Holding and Investment Trust plc [1990] 1 EGLR 65

Ibrahim v Dovecote Reversions Ltd [2001] 2 EGLR 46

Irvine v Moran [1991] 1 EGLR 261

Nogueira and others v The Lord Mayor and Citizens of Westminster LON/00BK/LSC/2012/0095

Patrick v Marley Estates Management Limited [2007] EWCA Civ 1176

Sheffield City Council v Oliver LRX/146/2007

The Holiday House Fellowship v Viscount Hereford [1959] 1 All ER 433

Introduction

1. The respondent, Holding & Management (Solitaire) Limited, is the freeholder of Bellamy's Court, which is one block in a complex of 141 flats and houses known as Princes Riverside. On 8 March 2018 it commenced proceedings in the county court against Ms Kris Seo Bee Tay, the appellant, who holds a long lease of flat 12, Bellamy's Court. It sought an order for the payment of £7,034.26 in respect of unpaid service charges, together with a declaration that those charges were due and payable. On 2 May 2018 the county court made an order transferring the matter to the First-tier Tribunal (the FTT) to determine the reasonableness and payability of the charges. On 30 November 2018 the FTT decided that those charges were reasonable and payable, and it is from that decision that the appellant appeals.

2. The appeal has been determined under the Tribunal's written representations procedure. Submissions on behalf of the respondent have been drafted by Mr Paul Sweeney of counsel, to whom I am grateful; the appellant has not been legally represented but has done a great deal of legal research and her submissions have been impressive.

3. The parties have provided the Tribunal with voluminous bundles comprising, I think, all the papers from the county court and the FTT proceedings. In the paragraphs that follow I set out the relevant provisions of the lease; I summarise the FTT's decision; I then turn to the appellant's eight grounds of appeal, which I address in three groups namely those that refer to the construction of the lease, those that relate to the reasonableness of the charges, and then the remaining grounds.

The lease of flat 12

4. The lease is for a term of 999 years, dated 13 May 1996. It has four parties, because it makes provision for transfer from the developer to the intended freeholder; after some re-shuffling it is for practical purposes now a two-party lease. The respondent is the lessor, referred to in the lease as the Company, and the appellant became the tenant by assignment in 2009.

5. The demised premises, referred to in the lease as "the Flat", are defined in the First Schedule as "all those rooms on the third floor of the Block and edged red on the Plan annexed hereto"; paragraph 2 says:

"The flat includes (for the purpose of obligation as well as grant):

(a) the internal plastered coverings and plaster work of the walls bounding the Flat and the doors and the door frames and glass but not the windows and window frames fitted in such walls and

(b) the plastered coverings and plaster works of the walls and partitions lying within the Flat and the doors and the doors and door frames fitted in such walls and partitions ...

...[together with further matters such as floors, ceilings and conduits which are not relevant to this appeal]

but excludes

... (b) any of the main timbers and joists of the Block or any of the walls or partitions therein (whether internal or external) except such of the plastered surfaces thereof and the doors and door frames fitted therein as are expressly included.”

6. It is therefore clear that the doors and door-frames both in “the walls bounding the flat” and in the walls within the Flat belong to the lessee. That appears to include the glass in the doors in the external walls. The exclusion paragraph makes it clear that while the lessee holds the plastered surfaces of the walls, the walls themselves are not demised; but the doors in those walls are excluded from the exclusion. The drafting is inelegant but the demise of the doors is unambiguous. The windows and window frames do not belong to the Lessee.

7. The lessee covenants at clause 3 to perform the covenants set out in the Third Schedule, which include at paragraph 1 an obligation to pay the rent and the service charge. The latter is defined in clause 1 of the lease as the proportion appropriate to the flat of the Annual Maintenance Provision for each Maintenance Year. The Maintenance Year is defined as the twelve month period ending on 30th June each year.

8. The “Annual Maintenance Provision” is defined in paragraph 2 of the Fourth Schedule as a sum comprising the estimated expenditure in the coming year for the purposes mentioned in Part I of the Fifth Schedule (being the schedule that sets out the landlord’s maintenance and repairing obligations), together with a contribution towards a reserve fund to cover matters set out in Part I of the Fifth Schedule that are not going to arise every year such as external decoration.

9. The Third Schedule also includes a covenant (at paragraph 4(a)) to keep the Flat clean etc and “as occasion requires thoroughly to clean all windows” and not to “paint or otherwise interfere with the outside surfaces of the front door of the Flat or of the windows and window frames.” So although the front door belongs to the lessee (as noted above), she is not to paint it or do anything to the outside surface of the front door or of the windows.

10. The landlord covenants at clause 4 to provide the services specified in the Fifth Schedule. The Fifth Schedule is divided into two parts. Part I sets out the “Purposes for which the Service Charge is to be applied”. Part II comprises the covenants for which a separate charge, the Estate Charge, is to be applied; it is not relevant to this appeal. The paragraphs in Part I that are relevant to this appeal are the following:

“1(a) As often as may in the opinion of the Company be necessary to prepare (sic) and decorate in appropriate colours with good quality materials and in a workmanlike manner all the outside rendering wood and metalwork the entrance halls staircases and passages of the Block usually decorated.

(b) To keep the interior and exterior walls and ceilings and floors of the Block and the whole of the structure roof foundations and main drains boundary walls and fences of the Block (but excluding such parts thereof as are included in the Flat by virtue of the definition contained in Part I of the First Schedule and the corresponding parts of all other flats in the Block) in good repair and condition.”

11. Pausing there, I make two observations whose relevance will become clear later. One is that paragraph 1(b) unambiguously provides that the service charge cannot be used to pay for the repair of anything included in the demise of the Flat. The other is that the landlord’s obligations under Part I of the Fifth Schedule are co-extensive with its right to charge the cost to the service charge; if the covenant is in the Schedule, so that the landlord has to do the work, then it is entitled to charge for it, but there is no provision for it to charge for any other work. Therefore any work done on part of the demised flat is outside the obligation in the Fifth Schedule and cannot be charged for.

12. Paragraph 12 of the Fifth Schedule requires the landlord

“To carry out all repairs to any other part of the Block for which the Company may be liable and to provide and supply such other services for the benefit of the Lessee and the other tenants of the flats in the Block and to carry out such other repairs and such improvements works additions and to defray such other costs (including the modernisation of paint and machinery) as the Company shall consider necessary to maintain the Block as a block of good class residential flats or otherwise desirable in the general interest of the lessees.”

13. Paragraph 12 therefore requires the landlord to carry out work on the rest of the Block; it does not create obligations in respect of anything demised to the lessee.

The FTT’s decision

14. The proceedings in the FTT arose by virtue of the transfer of proceedings from the county court, because the appellant in response to the action to recover arrears of service charge disputed their payability and reasonableness.

15. The FTT in its decision said that the services charges in dispute amounted to £7,034.26 for the period from 1 January 2016 to 30 June 2018. It said that the appellant held a long lease of a flat in Bellamy Court, and that her lease requires the landlord to provide services and the tenant to contribute towards their cost by way of a variable service charge. That is the only factual background given by the FTT. At paragraph 9 it set out the issues between the parties as agreed at the case management hearing on 29 May 2018, as follows:

“The issues that [the lessee] raises for the reasons that the payment is not due can be outlined as follows:

a. [The landlord] is not entitled to incur reserve fund expenditure in respect of the replacement of the door, door frames, windows, window frames and glass at Flat 12 Bellamys Court.

b. That the replacement of the door, windows, frames and glass do not fall within the remit of Part 1 of the Fifth Schedule to the Lease by virtue of either paragraphs [1(b)]¹ and/or paragraph 12.

c. And/or that the costs incurred for the replacements were unreasonably incurred contrary to s19 Landlord and Tenant Act 1985.”

16. The parties have referred to these issues as I, II and III. The FTT said at its paragraph 55 that it would decide issue II first since that would determine the answer to issue I, and that is clearly correct; if the replacement of the doors and windows was within the respondent’s obligations under the Fifth Schedule, then it could charge that cost to the reserve fund by virtue of paragraph 2 of the Fourth Schedule. Accordingly I have to review the FTT’s decisions on the three issues above. The written submissions by the appellant covered other issues, in particular the consultation process that the respondent undertook before doing the work; none of that is relevant to the review that the Tribunal is to carry out.

17. The FTT’s decision contains no further information about the factual background to these issues. Questions that spring to mind, such as “which doors?” are unanswered.

18. In the appeal bundle I have the parties’ pleadings in the county court action and in the FTT, and from that material I gather (and I say this by way of explanation but without being in a position to make any findings of fact) that the service charges for the three years from 1 January 2016 included costs to be incurred in those years in respect of the replacement of the windows of the flats in the block and the patio doors, and contributions to the reserve fund for that work. The appellant’s case in the FTT was that the respondent as landlord was not obliged to carry out any work on the patio doors because they were part of the demise, and that the landlord was not obliged under the lease to repair the windows (and therefore could not charge either item to the service charge or the reserve fund), but that if she was wrong about that then the landlord should have repaired the doors and windows and it was unreasonable to have replaced them. I take it from the material in the bundle that the only doors in issue are the patio doors (since none of the parties’ arguments appear to relate to the front door of the flat). If I have understood correctly, patio doors and windows in the rest of the block have been replaced but the appellant’s have not.

19. The respondent’s case was that it was entitled to repair the windows as part of the structure of the building pursuant to paragraph 1(b) of the Fifth Schedule, or alternatively pursuant to paragraph 12 of the Fifth Schedule; that replacement in the circumstances was a reasonable course of action; and that while it agreed that the doors of the flat belonged to the lessee, the patio doors were part of a unit with the windows and therefore it was not possible to replace the windows without also replacing the patio doors. It cited *Nogueira and others v The Lord Mayor and*

¹ It is agreed that the FTT’s reference to 19b) was a typographical error.

Citizens of Westminster LON/00BK/LSC/2012/0095 (paragraphs 19 and 20 of the FTT's decision) in support of that last point. Alternatively the patio doors were windows because they were French windows (i.e. made mostly of glass) (paragraph 18 of the FTT's decision).

Grounds 1 to 3: were service charges payable in respect of the replacement of the windows and doors?

20. The first three grounds of appeal relate to the payability of the charge in respect of the doors and windows replaced by the respondent. Ground 1 is that the FTT wrongly interpreted or applied the law on Issue II. In summary the appellant says that the FTT misconstrued the lease. Ground 2 is that the decision about issue II was procedurally defective since both parties agreed that the doors were the lessee's responsibility. The third ground is that the FTT in its paragraph 58 took into account an irrelevant consideration in determining the ownership of the doors.

21. Grounds 2 and 3 relate only to the doors. I will look at the FTT's decision about the doors first, in the light of grounds 1, 2 and 3, and then at the windows in the light of ground 1.

Was the respondent entitled to include within the service charge the replacement of the doors?

22. The issue was whether the respondent was entitled to include this cost in the Service Charge. The appellant says that the FTT therefore asked the wrong question in asking whether the respondent was responsible for the doors and windows. I disagree. It is clear from the lease that the landlord can charge to the service charge the cost of anything that is within its responsibilities under Part I of the Fifth Schedule.

23. Turning then to the doors, it has been pointed out, at paragraph 5 above, that the doors in the internal and external walls of the flat were demised to the tenant and formed part of the tenant's repairing obligation; the parties both agreed this (see in particular paragraph 20 of the respondent's counsel's skeleton argument before the FTT: "It is not disputed that the doors and door frames form part of [the] demise and the responsibility for replacing and repairing them rests with [the tenant]"). Indeed, it appears from the appellant's defence in the county court action that that was understood by the respondent's managing agent in its correspondence with the tenants about the proposed works. Nevertheless, the FTT said this at its paragraph 56:

"... the Tribunal noted that [paragraph 2(i) of the First Schedule] expressly stated, in the definition of the demise to the leaseholder, "but not the windows and window frames" similarly, 2(ii) of the lease referred to partitions lying within the Flat and the doors and door frames fitted in such walls. In respect of the exclusions, 2(b) stated that "and of the walls or partitions therein except such of the plastered surfaces thereof and doors and door frames fitted therein as are expressly included.["] The Tribunal considered that the doors and door frames fitted in such walls included all internal doors; arguably the front door was fitted within a wall which was lying within the flat, however, although this was arguable, the Tribunal rejected this interpretation as the front door was located within the common parts and as such formed a structural boundary for the flat.

57. The Tribunal determined that the patio doors were not within the flat, and also considered that an interpretation which enabled the landlord to be responsible for the glass but not the frame of the patio doors was not intended by the draftsman and such an interpretation would be wholly illogical and absurd.

58. Accordingly the Tribunal found that the landlord was responsible for the patio doors and the windows...”

24. It will be seen that the FTT quoted only part of paragraph 2(i), and referred to doors only in the context of paragraph 2(ii). It missed the demise of the doors in the external walls in paragraph 2(i), and it misunderstood the exclusion of doors from the exclusion.

25. Accordingly the finding made in paragraph 58, while correct as regards the windows, was not open to the FTT so far as the patio doors were concerned. The lease makes clear, and the parties both agreed, that the doors in the external walls of the flat belonged to the appellant and therefore did not form part of the respondent’s repairing obligation. Ground 1 is made out so far as the doors were concerned, as is ground 2.

26. Later in paragraph 58 the FTT added: “If the landlord had intended to demise the doors to the leaseholders, this would have potentially had the effect that the character and appearance of the building would have been within the control of the individual leaseholders.” The appellant’s ground 3 is that this was an irrelevant consideration, and indeed it was. So far as the front door is concerned it was incorrect, since we have seen that the lessee was not to paint or do anything to its external surface. Even if the FTT was right that the demise of the patio doors would cause problems with the appearance of the building, that point cannot override the clear demise of those doors in paragraph 2(i) of the First Schedule. Ground 3 is therefore also made out.

27. What the respondent argued before the FTT was that although the external doors belonged to the appellant tenant, nevertheless it was entitled (and obliged) to replace the patio doors because they formed a single unit with the windows and it was impracticable not to replace both at once. The FTT recorded this argument at its paragraphs 19 to 20 but made no decision upon it. Having found, in error, that the doors were not part of the demise the FTT no doubt took the view that it did not need to do so, but I have to address this argument so that the Tribunal can substitute its own decision about the doors.

28. The respondent relied upon the decision in *Nogueira and others v The Lord Mayor and Citizens of Westminster* LON/00BK/LSC/2012/0095. Not only does that decision have no authority, being a decision of the FTT, in any event it has no bearing on the proposition for which the respondent was arguing. In *Nogueira* the doors were not demised to the tenant, and the FTT found that the balcony doors were part of the structure of the building and fell within the landlord’s repairing obligation. It did observe that it would be unfortunate if the landlord were entitled to repair the balcony windows but had to leave the doors in a decrepit state; but its decision did not rest upon the doors and windows forming a single unit (see in particular paragraph 40). Accordingly it is not possible to find for the respondent on this basis.

29. Nor did the FTT address the argument that the patio doors were French windows. It is not clear to me that an argument to that effect would be consistent with its agreement that the patio doors were demised to the appellant. Certainly it would not seem to be realistic to describe a patio door as a window and I take the view that the FTT could not properly have made that finding.

30. Finally, the FTT made no finding on the further alternative argument that the respondent was obliged to repair the patio doors under paragraph 12 of the Fifth Schedule. I take the view that it was not, since paragraph 12 clearly refers to matters outside the demised premises, and is consistent with the proviso to paragraph 1(b) which make it clear that the landlord is not obliged to repair (and therefore cannot charge to the Service Charge) anything that falls within the demise.

31. Accordingly I conclude that the FTT's decision about the patio doors was made in error. Substituting the Tribunal's own decision, I find that the patio doors, like the front door of the flat, were demised to the appellant and were not within the landlord's repairing obligation nor therefore within its ability to charge a Service Charge or to impose a contribution to the reserve fund.

Can the respondent include within the service charge the cost of replacing the windows?

32. It was not in dispute before the FTT that the windows were not demised to the lessee. That much is unambiguously clear from paragraph 2(i) of the First Schedule. In her written submissions in support of the appeal the appellant suggests that the glass of the windows was demised to her, but that was not her position before the FTT. Paragraph 2 of the First Schedule includes in the demise "the doors and the door frames and glass but not the windows and window frames" and it seems to me clear that the glass referred to there is the glass in the doors. Otherwise the word "windows" has nothing to refer to, given the separate exclusion of the window frames. So I proceed on the basis that the windows were excluded from the demise, as did the FTT.

33. The appellant's case before the FTT was that the landlord was obliged to redecorate the windows, by paragraph 1(a) the Fifth Schedule, but not to repair them; the respondent argued that the windows were part of the structure of the building and fell within the repairing obligation in paragraph 1(b) of the Fifth Schedule (quoted at paragraph 5 above).

34. The FTT recorded the arguments of the parties, and then appears to have assumed at its paragraph 60 that the windows were part of the structure, without making any decision to that effect. It added, without discussion, that paragraph 12 of the Fifth Schedule would also entitle the respondent to repair the windows.

35. Whether windows are part of the structure of a building is a question that has been the subject of judicial determination before, and it is a matter of construction in each case. In construing a lease, its clear terms are not to be manipulated in order to turn a bad bargain into a good one (*Arnold v Britton* [2015] UKSC 36, and if this lease really does not include an obligation to repair the windows despite its very long term, then that is that. But in *Irvine v Moran*

[1991] 1 EGLR 261 Mr Recorder Thayne Forbes QC sitting as a deputy judge of the High Court said that “structure” is not limited to load-bearing elements, but consists of “those elements of the overall dwelling house which give it its essential appearance, stability and shape.” In that case the windows were part of the structure. In *Ibrahim v Dovecote Reversions Ltd* [2001] 2 EGLR 46 Rimer J took the same approach.

36. The appellant refers to two cases where the opposite conclusion was reached. But in *Patrick v Marley Estates Management Limited* [2007] EWCA Civ 1176 the windows were demised to the lessee (see paragraphs 9 and 28). The context, and the evidence of the parties’ intentions in using the word “structure” was therefore wholly different. The same applies to *Sheffield City Council v Oliver* LRX/146/2007. *The Holiday House Fellowship v Viscount Hereford* [1959] 1 All ER 433 is of no assistance because the issue there was whether windows could be regarded as part of the walls of the building, which is a different question.

37. In construing a lease one is trying to ascertain the intentions of the parties to it (*Arnold v Britton* [2105] UKSC 36 at para 25). It is highly unlikely that the parties intended that in the course of a 999-year lease no-one would be obliged to repair the windows, and that is a relevant point to bear in mind when construing the words of paragraph 1(b) of the Fifth Schedule. Despite the FTT’s cursory treatment of the point, I think there can be no doubt that that paragraph required the landlord to repair the windows. I do wonder whether the word “prepare” in paragraph 1(a) is a misprint for “repair”, but the respondent has not argued that. I agree that in the absence of any express covenant to keep the windows in repair, they must be regarded as part of the structure of the block and must fall within the obligation in paragraph 1(b) of the Fifth Schedule.

38. In the alternative the respondent says that paragraph 12 of that Schedule obliges the landlord to repair the windows. In the light of the conclusion I have reached about the scope of the obligation to repair the “structure” in paragraph 1(b) I do not need to reach a conclusion about paragraph 12, but if it were necessary to do so I would conclude that the obligation to do everything the landlord considers necessary “to maintain the Block as a block of good class residential flats or otherwise desirable in the general interest of the lessees” would include repairing the windows if (implausibly) there were no other obligation to do so. But there is. The appellant refers to the findings of the Court of Appeal in relation to a similar clause in *Holding and Management Ltd v Property Holding and Investment Trust plc* [1990] 1 EGLR 65, where it was said that the similar clause did not relate to maintenance of the structure and exterior of the building. But in that case, as here, there was a separate obligation to repair the structure and exterior of the building. So paragraph 12, in this case, makes no difference to my conclusion.

39. Accordingly I conclude that the FTT was right to decide that the respondent was obliged to repair the windows, and entitled to charge the cost to the service charge and the reserve fund.

Grounds 4 and 5: were the charges, if payable, reasonable?

40. These grounds take us to the third of the issues that the FTT set out to decide (see paragraph 15 above). The assertion that replacement does not amount to repair is a familiar one, and the

answer depends upon the facts of the case. It is well-established that it may be proper to replace windows and other components because there comes a point when repair is no longer practicable. At the extreme end of the scale, when window frames have rotted and are falling off their hinges then repair will mean replacement; at the other end of the scale where a coat of paint is all that is needed then replacement is not within the obligation to repair. In the middle of the scale is a disputed area, and among the reasons for replacement rather than repair may be the fact that the lifespan of the windows is such that there comes a time when it is best to replace wood, whether with wood or with another material such as PVC. That was the case here. The respondent did not contend that the windows were at the end of their useful life or that only replacement would do; but there was evidence that only replacement was going to solve a condensation problem.

41. Ground 4 is that the FTT failed to take account of relevant evidence in determining that the charges were reasonable. I am now considering only the replacement of the windows, because I have decided that the replacement of the doors was outwith the respondent's repairing obligations and not chargeable to the service charge or the reserve fund.

42. The appellant says that the FTT mis-stated the conclusions of the respondent's expert evidence in saying that it concluded that windows had "failed"; that the FTT did not give proper consideration to her expert's conclusions about the expected life span of the windows, and disregarded her evidence about the condition of the windows and doors before replacement.

43. Whilst I accept that the FTT's decision was very much inclined to summary rather than to detailed analysis, I find that on this point it did give proper consideration to the evidence before it. It was not purporting to quote from the respondent's expert's report when it said that windows had "failed"; it did refer to the appellant's expert's points on lifespan (paragraph 44); and it was mindful of both parties' evidence on the condition of the windows (paragraph 38). In essence this ground of appeal is a disagreement with the FTT's findings of fact about reasonableness, and the FTT's findings were justified on the evidence. This ground of appeal fails.

44. Ground 5 is that "the FTT wrongly interpreted/applied the relevant law on Issue (III)". Much of what is said on this ground duplicates what has been said under ground 1, in particular about whether the windows were part of the structure paragraphs 26 and 27 of the grounds), and I need not revisit that. The appellant asserts at paragraph 25 of her grounds that even if the charges are contractually recoverable they must be reasonable, which is correct. If I have understood correctly, the substance of this ground is that the respondent sought to justify its choice to replace the windows by the fact that the majority of the lessees approved of the works, and the FTT at paragraph 63 appeared to agree with this.

45. What the FTT said at paragraph 63 was that it found that the windows were in need of repair, and that the replacement was not an improvement, but that if it was wrong about that then it found "that the consultation by the Landlord with the leaseholders was appropriate and that the landlord carried out the work with the majority of the leaseholders' approval."

46. I agree that the quoted words do not dispose of Issue III and are not relevant to it. But the words that precede them, which I have just summarised, and the words that follow in paragraph 64 make it clear that the FTT's primary finding was that the work was reasonable. Paragraph 64 reads:

“The Tribunal determines that the decision by the landlord to carry out the replacement of the windows rather than a piecemeal repairs (sic) was within the realms of reasonable responses by the landlord.”

47. That is a proper determination of Issue III, and I have already found, above, that it was based on a proper consideration of the evidence.

48. Accordingly Grounds 4 and 5 are not made out and the FTT's decision that the replacement of the windows was reasonable is affirmed.

The remaining grounds

49. I can deal very briefly with the remaining grounds of appeal, none of which succeeds. By ground 6 the appellant seeks to challenge comments made by the FTT at paragraph 65 about the proportions in which payment was made. As the respondent points out in its written submissions, this was not part of the dispute between the parties. Indeed I do not think that the appellant had sought to persuade the FTT that it was. By the eighth ground the appellant says that the FTT made no determination about issue I, namely whether the respondent was entitled to charge to the reserve fund expenditure in respect of the doors and windows. But it did, at paragraph 66; its determination followed from the appellant's concession, recorded at paragraph 47 of the FTT's decision, that the provisions of the lease meant that if expenditure could be recovered by the service charge, the cost of it could also be claimed from the reserve fund – and as I have already observed that is what the lease plainly provides, so the concession was correct. Accordingly the decision on issue I followed from its decision on issue II, and the FTT's brief statement to that effect at paragraph 66 was perfectly adequate. By the final ground of appeal the appellant says that her appeal raises issues of wide importance because of the respondent's plans to carry out work on other blocks in the estate. In the circumstances there is nothing I need to say about that.

Conclusion

50. In conclusion, the appeal succeeds only as far as concerns the work done on the patio doors. As to the rest of the work, the service charge – including the charge to the reserve fund - was reasonable and payable.

51. It is not possible for the Tribunal now to determine the amount that was reasonable and payable, because it does not have before it the necessary material to make an apportionment possible. Accordingly the matter is remitted to the FTT for a determination on that point, although I hope that the parties will be able to reach an agreement without further litigation.

A handwritten signature in black ink, appearing to read 'E Cooke', enclosed within a faint rectangular border.

Upper Tribunal Judge Elizabeth Cooke

10 December 2019