



Leasehold Valuation Tribunal
Case Ref: CAM/00KF/LSC/2012/0044

Property : 224-226 Hamlet Court Road,
Westcliff-on-Sea SS0 7DE

Applicants : Stephen Mark Baker Flat 1
Eugene Mphansi Flat 2
Brenda Smith Flat 3
Jane Ainsworth Flat 4

Represented by : Mrs Sheila Ainsworth

Respondent : Westleigh Properties Limited
Represented by : Mr Ben Day-Marr, Gateway Property
Management, Managing Agents

Date of Application : 19 April 2012

Type of Application : To determine the amount of service
charges payable – Section 27A Landlord
and Tenant Act 1985 (the Act)

Date of Hearing : 17 August 2012

Date of Decision : 24 September 2012

Tribunal : Mr John Hewitt Chairman
Mr Stephen Moll FRICS
Mr David Cox JP

DECISION

Decision

1. The decision of the Tribunal is that:
 - 1.1 The service charges payable by the Applicants to the Respondent for the years 2009, 2010 and 2011 and the period 1 January to 17 August 2012 are as set out in the relevant columns of Schedule A attached to this Decision;
 - 1.2 In consequence the individual cash accounts as between each Applicant and the Respondent as at 17 August 2012 is as follows:

Flat 1 Credit balance of £1,582.60
Flat 2 Debit balance of £309.17
Flat 3 Credit balance of £733.95 and
Flat 4 Debit balance of £1,299.65
Made up as shown on Schedule B attached to this Decision;

- 1.3 An order shall be made (and is hereby made) pursuant to section 20C of the Act that none of the costs incurred by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by any of the Applicants;
- 1.4 The Tribunal requires that the Respondent shall by 4pm Thursday [] September 2012 reimburse to Mrs Sheila Ainsworth (on behalf of the Applicants) the sum of £500 fees paid to the Tribunal in connection with these proceedings.

NB Later reference in this Decision to a number in square brackets ([]) is a reference to the section and page number of the hearing file provided to us for use at the hearing.

Background

2. The development known as 224-225 Hamlet Court Road comprises two houses - a terraced house and an end of terrace house, probably originally constructed inter wars, and which have subsequently been adapted to create four self-contained flats. There is a small front garden and a small rear yard which has been adapted to provide two parking spaces. Each of the flats has been sold off on a long lease. Those leases are now vested in the Applicants. The freehold reversion is now vested in the Respondent.
3. Evidently the Applicants and the Respondent have agreed (but not yet completed) a private treaty sale/purchase of the freehold interest. There was an issue between them as to outstanding service charges and administration charges payable to the Respondent. It is to be hoped that this Decision will resolve and determine those issues so that the transaction can be completed shortly. There is plainly a very poor relationship between the parties and it will doubtless be a blessing to both when that relationship comes to an end.
4. Evidently the four leases have been granted in common form as regards matters material to the Tribunal and the applications before it. Each lease imposes an obligation on the landlord to insure the development, to carry out repairs and redecorations and to provide other services as set out in the lease.

5. Each lease imposes an obligation on the tenant to contribute to the costs and expenses incurred by the landlord in carrying out its obligations.

It appears common ground that each lessee is obliged to contribute 25% of the costs incurred.

Payment of the contributions is due within 14 days of a demand for them, which demand may be issued once the expense in question has been incurred.

There is no provision for the lessee to pay sums on account of the liability which arises. There is no provision for annual accounts and balancing debits and credits as the case may be. However, it appears from a previous application made to the Tribunal that despite the forgoing the Respondent did, certainly for a while, for its own convenience, make demands for on account sums and did prepare annual accounts for periods of 25 June to the following 24 June.

There is however a provision in the lease which entitles the Respondent to hold the sum of £600 (£150 per lessee) in a reserve fund.

6. There were no issues between the parties as to the terms of the leases or the service charge regime set out in them.

7. It is helpful to note at this point that in 2008 Ms Jane Ainsworth (Flat 4) made an application under section 27A of the Act; Case Ref: CAM/00KF/LSC/2008/0028. The Decision on that application (the First Decision) is dated 17 January 2009. A copy is in section 17 of the hearing file. The First Decision determined service charges payable for the years ending 24 June 2005, 2006, 2007 and 2008. The sums determined were less than those claimed by the Respondent. The First, Second and Third Applicants asked, as part of their current applications, that the service charges payable by them for those years should be the sums determined in the First Decision. Mr Day-Marr did not oppose that.

It is also helpful to note that two of the members of the Tribunal which determined the First Decision, Mr Hewitt and Mr Cox, also sit on the present Tribunal. Finally to note, that at the time of the First Decision the Respondent's managing agents were BLR. That appointment was terminated and on 29 May 2009 Gateway Property Management Limited were appointed as managing agents, a post they continue to hold.

Inspection and hearing

8. On the morning of 17 August 2012 the Tribunal had the benefit of an inspection of the development and its very modest common parts. Present were Mrs Sheila Ainsworth and two of the Applicants. Mr Day-Marr and a colleague attended on behalf of the Respondent.
9. At the hearing the Applicants were represented by Mrs Ainsworth. The Respondent was represented by Mr Day-Marr.

10. The issues were clarified and dealt with as set out below. It may be noted that whilst the application form did not expressly mention the service charges to date for 2012 both parties were anxious that we determine them. There were only two items. Management fees at £400 which were not in dispute and Insurance which was in dispute but to which the same arguments applied as those to be raised about insurance in prior years. Thus with the consent of the parties we determined the amount of the insurance premium for 2012.

The issues

Gardening 2009

11. The Respondent claimed the sum of £322. Mr Day Marr relied upon a series of invoices [5/10 to 5/20] which spanned the period June to December 2008. The invoices were issued by Lawncare Garden Services to BLR. The invoices asserted a fortnightly visit. Mr Day-Marr had no other information about the sums claimed.
12. Mrs Ainsworth submitted that no gardening services were provided at all over this period and she was supported in this by Mr Smith and two of the Applicants present.
13. The hearing of the First Decision took place on 11 December 2008. On that date the Tribunal which determined the First Decision made an inspection of the premises. Paragraph 15 of the First Decision makes reference to the inspection in these terms:

"We noted that externally the building was in a very poor and neglected condition. The paintwork was peeling and in many places the underlying woodwork was in need of urgent attention. The front garden was seen to be unkempt and the footpath and boundary walls were badly cracked and broken."

We preferred the evidence given on behalf of the Applicants which struck a chord with Mr Hewitt and Mr Cox and which reflects what the Tribunal on the First Decision noted in December 2008. We were satisfied that gardening services had been provided as claimed. We find that the sum claimed is not payable by the Applicants.

Repairs and Renewals

2010 £407 2011 £300

14. The claim for £407 in 2010 was not challenged. The claim for £300 in 2011 was not in fact a repair or renewal but the claim for the cost of a health and safety risk assessment. This was undertaken in-house by Gateway. Evidently no such risk assessment or report thereon had been supplied by BLR on the handover in March 2009 and Mr Day-Marr said it was considered prudent that such an assessment be undertaken. Mr Day-Marr asserted that a report had been prepared and issued but he did not have a copy with him. Mr Day-Marr was unable to give any convincing explanation as to why the report had not

been provided or summarised for the Applicants at the time that was received. We are of the view that it is good estate management practice that a risk assessment report should be summarised for lessees, especially if it raised concerns or made recommendations. In the present case it appears the report was simply filed and no action taken on it. Inevitably this does raise the question as to the value and purpose of commissioning the report in the first place.

15. The Applicants had no knowledge of the report or when or how it had been prepared. It was submitted that Gateway did not have a key to the street door and thus the technician who wrote the report could not have gained access to the common parts. However we find that it is perfectly possible that one of the occupiers had provided access. Two of the flats are sublet as investments and of the other two the lessees are not at home all day and thus would not be aware of who may have visited during the daytime.
16. Despite being critical of Gateway's treatment of the report once it had been prepared for them, we find, on balance, that the report was commissioned and prepared and that it was reasonable to commission it. The common parts of the development are very modest comprising a short entrance hall way (behind the street door) leading to a short flight of stairs to the upper floor and two flat entrance doors. There is no landing or furniture. There are two light bulbs hanging from fittings, but no lampshades. In these circumstances we were far from persuaded that £300 was a reasonable fee for the report. Drawing on our accumulated experience and expertise in these matters we conclude that a reasonable fee for such a report for the subject premises would be no more than £200.

Insurance

17. By way of history at the time of the First Decision the Respondent arranged insurance through a broker, Towergate. At the hearing of the First Decision evidence was given by a Mr Moore, a deputy managing director of Towergate. The gist of his evidence was that Towergate received a commission from the insurer with whom the business was placed and Towergate shared that commission with the Respondent. He refused to give details of the sharing arrangements claiming the information was 'commercially sensitive'. To whom it was sensitive was not made clear. In the light of that and because the Tribunal which determined the First Decision considered that the premiums claimed were unreasonably high, that Tribunal reduced the sum payable for insurance to 75% of the sums claimed.
18. The gist of the case for the Applicants on insurance was that the sums claimed are far too high and that a much lower premium could have been achieved. To support their case they produced a number of quotes for new business they had obtained from several brokers. These may be found in section 12 of the hearing file. The sums quoted are in the range £510 to £758. Mrs Ainsworth submitted that the

development was a small residential block and it should have been insured as such and not treated as a commercial arrangement and insured on a commercial portfolio basis.

19. For 2009 the sum claimed for insurance was £1,156. The insurance had been effected through Towergate. The premium allegedly paid and stated on the insurance certificate was £1,447.97 [5/21]. Mr Day-Marr told us that Gateway had no responsibility for insurance. He had no knowledge as to how the sum claimed of £1,156 had been arrived and he had no instructions from the Respondent about it.
20. As a matter of arithmetic the sum of £1,156 claimed is just shy of 75% of £1,447.97. It is speculation but it may be that the Respondent voluntarily applied a 25% reduction to the sum stated on the insurance certificate.
21. From 2010 onwards the Respondent engaged new brokers, Lorica. A witness statement by Mr Carlo Marelli of Lorica is at [7/102] In the event Mr Marelli was unable to attend the hearing. Mr Nigel Thomas Amos attended on his behalf. Mr Amos told us that he had read the files and Mr Marelli's witness statement and he adopted it as his own evidence. Although Mr Amos had only joined Lorica in August 2012 he said that he had been employed in the insurance industry for a number of years and was familiar with buildings insurance underwritten on a portfolio or estate basis.
22. Mr Amos summarised for us the benefits to a property investor with a portfolio effecting insurance on an estate or portfolio basis rather than on a property by property basis. These benefits included ease of management, breadth and extent of cover offered particularly as regards subsidence and historical claims and the absence of the need to give specific information as to the nature and character of the actual occupiers of each property covered.
23. Mr Amos explained that the portfolio buildings insurance market was specialist and sophisticated with relatively few insurers willing to underwrite such business. He said the market could also be volatile from year to year and a range of factors will determine whether a particular insurer would bid for the business and at what price for that year. For ease of comparison it is often common practice in the industry for brokers and insurers to quote business on the basis of so many pence per £1,000 sum assured. The aggregate of the sum insured for each building within the portfolio would be ascertained and a rate for £1,000 sum insured will be quoted. When business had been agreed the broker would issue a certificate for each property within the portfolio, noting the sum insured for that property and specifying a premium based on the agreed rate per £1,000 sum assured. The Towergate certificate for 2009 is at [5/21] and the Lorica certificates are at:

2010	[5/35]	£1,263.84
2011	[5/53]	£1,298.00
2012	[7/106]	£1,380.11

24. Mr Amos told us that the usual practice in the industry and within Lorica was that each year bids would be invited from insurers who write this type of business, the bids would be compared and recommendations made to the client. Mr Amos' experience was that portfolio insurance tended to be more expensive than insurance on a single property insured on an ad hoc basis. He said there were a number of reasons for this including the wider range of cover and risk on offer and that the market was generally small with relatively few insurers willing to write such policies.
25. Following a short adjournment in which Mr Amos consulted with colleagues in his office by telephone, Mr Amos told that the bids (pence per £1,000 sum insured) received by Lorica for the years in question were as follows:

Insurer	2010	2011	2012
AXA	£0.271	£0.248	£0.255
Aviva	£0.31	£0.32	£0.275
NIG	£no bid	£0.22*	£0.25*
Aegus	£0.26	£0.251	£0.265
Allianz	declined to bid in all years		
Zurich	declined to bid in all years		

In each of the three years the business was placed with Aegus. Mr Amos said that the two NIG bids* were not like for like and the excess amounts specified by NIG were greater than those offered by Aegus which, taken overall, made the NIG bids less attractive than those on offer from Aegus.

Mr Amos told us that Lorica received a commission from the insurer, Aegus, in accordance with normal industry practice and that it did not share that commission with the Respondent or anyone connected with the Respondent.

26. Mr Amos also gave an explanation as to history of Terrorism Cover. Whilst it is commonly shown or quoted for separately it is a usual and integral part of most buildings insurance policies. Further he explained that it was industry standard for such policies to include employers liability cover, this was not separately charged for. An insured with no employees would not be able to ask for this cover to be removed from the policy to obtain a lower premium. Mr Amos also explained how the DAS Home Assistance cover worked and the benefits of it.
27. We found Mr Amos' evidence compelling and helpful. His evidence struck a chord with the experience and expertise of the members of the

Tribunal. Furthermore he was not cross-examined on his explanation of the annual bid processes.

28. The obligation on the Respondent with regard to insurance is in the following terms:

"5(3)(a) To insure to the full value thereof the demised premises in an insurance office of repute against loss or damage by fire and all other normal comprehensive risks and such other risks as in the opinion of the Lessor are necessary to be insured against ("the insured risks")

(b) ...

(c) Whenever required by the Lessee and at the Lessee's cost to provide a duplicate of the policy or policies of the said insurance and to produce the receipt for the last premium for the same"

29. There was no dispute that the business was placed with insurers of repute. We accept Mr Amos' evidence that the risks insured against fall well within the definition of 'insured risks' used in the lease. The fact is that the Respondent is a substantial property investor, particularly in the ground rent residential sector, and that it does have a significant portfolio. We can well understand that effecting buildings insurance on a portfolio basis is a significant advantage to the Respondent and avoids a good deal of management that would be entailed otherwise.

30. In arranging insurance the landlord is required to act reasonably. Some insurers offer portfolio cover in the normal course of their business and some investors purchase such cover in the normal course of their business. The fact is that the Respondent is a commercial investor in the residential property sector. Portfolio insurance is available to such investors in the normal course of business. We can understand that there are several reasons why it is an attractive business arrangement for such investors. The lease imposes an obligation to place insurance with an office of repute. The cover effected must fall within the definition of 'insured risks'. The lease does not impose any further or other contractual obligations on the landlord.

31. We note that in *Berrycroft Management Co Limited v Sinclair Gardens Investments (Kensington) Limited* [1997] 1 EGLR 47 the leases of a block of flats entitled the landlord to nominate 'insurers of repute' to be used by a management company for insuring the block. The freehold changed hands. The new landlord nominated a different insurer whose premiums were higher than the current insurer. The court held that the landlord was entitled to nominate new insurers even if their premiums were higher. The court declined to imply additional limitations on the landlord's choice. The court held that provided the new insurance was

arranged in the normal course with reputable insurers, it could not be challenged. The court also held that the costs incurred were not unreasonably incurred even though the premiums were higher than some alternative insurers would charge. That principle was also held in *Havenridge v Boston Dyers Limited* [1994] 2 EGLR 73 in which the judge held the test was whether the landlord had procured insurance in the normal course of business. If he had, it did not matter that a lower premium could have been obtained elsewhere. It was not incumbent on the landlord to 'shop around'.

32. On the evidence we are satisfied that as regards the years 2010, 2011 and 2012 it was reasonable for the Respondent to effect insurance on a portfolio basis, that it did so in the normal of course of business, that it engaged experienced brokers, those brokers sought competitive bids from a range of insurers in the market and that it was reasonable for the business to be placed with Aegus. The sums claimed are payable by the Applicants.
33. For avoidance of doubt we should mention that for 2010 the premium paid for the development was £1,263.84. When Mr Day-Marr restated the accounts he gave credit of £374.24 in respect of an adjustment for 2008 and so he reduced the sum claimed to £890. We did not consider that this was the correct way to deal with the credit. We have put the gross sum into the service charge account. Apart from the fact that this is correct accounting practice it also enables parties to compare costs year on year on a more reliable basis. The credit adjustment is more properly entered on the cash accounts. Thus it can be seen that the credit adjustment $£374.24 \div 4 = £93.56$ per Applicant is shown as one of the credits on the cash accounts on Schedule B.
34. As regards the insurance for 2009 Mr Day-Marr was unable to assist us as to how the sum claimed was arrived at. We have already mentioned that it may be that the Respondent discounted the actual sum incurred to accord with the spirit of the First Decision. Given the imperfect materials before us we can but approach the matter on a broad brush basis and drawing on our accumulated expertise. In doing so we find that insurance at £1,156 for 2009 sits well with the sums found by the Tribunal which decided the First Decision and determined the sums payable for insurance for prior years and it also sits well with the premiums achieved by Lorica for the years 2100, 2011 and 2012. For these reasons we find that a cost of insurance of £1,156 in 2010 was reasonably incurred and was reasonable in amount. It is payable by the Applicants

Management Fees

35. In the main these were hotly contested. The gist of the case for the Applicants was that no management was provided such that nothing should be paid.

36. Mr Day-Marr gave evidence and accepted that whilst little management work was undertaken some work was done which he summarised and which struck a chord with the Tribunal. Mr Day-Marr said that small blocks such as the subject block were unattractive to many managing agents, some of whom imposed a minimum fee of £1,000 on each block under management.
37. For 2009 the unit fee was £150 (incl of VAT). This was BLR's fee. We find that such a fee was reasonably incurred and reasonable in amount. It sits well with the range of fees determined by the previous Tribunal. It is payable by the Applicants.
38. For 2010 the account period is five quarters. Mr Day-Marr said the fee was based on an annual unit fee of £235 (£195 + VAT) which he said was Gateway's minimum fee. Mr Day-Marr relied upon the menu of services at [14/332] which he said sets out the nature of the work covered by the unit fee.

The Applicants suggested that no more than £145 should be allowed.

39. We have no doubt that when the fees were negotiated between the Respondent and Gateway both will have been aware that this development would entail minimal management. Virtually no services such as gardening, window cleaning, common parts cleaning are undertaken. This was partly a mutually acceptable arrangement because it appears that in the past the Applicants, or some of them, were reluctant to allow such services to be provided and saw off contractors who were sent along or denied access to them. Thus we find that it was unreasonable for the Respondent to have engaged Gateway at a unit rate applicable to a full range of services when it was clear that no such range of services would be rendered. We have little doubt that the size of the Respondent's portfolio gave it an edge when negotiating unit fee levels for developments requiring little management.
40. Against the foregoing we find that it was unreasonable for the Respondent to have incurred unit fees greater than:

2010 £150 (incl of VAT). This equates to £750 for the 5 quarter period

2011 £160 (incl of VAT). This equates to £600 for the 4 quarter period
41. There was no dispute about the claim of £400 for the period to 1 January to 17 August 2012.

Reserve Fund

42. We simply record that although the lease provided for a reserve fund of £600, none of the Applicants has ever contributed to it and no such fund is held or operated by the Respondent. Mr Day-Marr conceded

that for present purposes the claim to sums for the reserve fund may be ignored. If any sums were now paid into such a fund they would be returnable to the Applicants upon the acquisition of the freehold title.

Building Works Admin Fees

43. For 2009 the fee claimed is £345. Evidently it was claimed by BLR. Mr Day-Marr had no information about it at all. He speculated that it might have had a connection with proposed major works but he did not know. We were not persuaded that the fee was expended, was reasonably incurred or that it was reasonable in amount. We find that it is not payable by the Applicants.
44. For 2010 the fee claimed is £705 and for 2011 the fee claimed is £273. Mr Day-Marr was unable to give any satisfactory explanation as to how this fee was arrived at or how it had been calculated.
45. He said it was connected with proposed major works. At one point Mr Day-Marr appeared to suggest that it might have been 5% of the proposed contract price but the maths did not add up. He then suggested that there was a practice of apportioning such fees over a period and the apportionments would vary depending upon who was preparing the year end accounts and how much they wanted to include in any given year.
46. Mr Day-Marr appeared to suggest that the major works did not go ahead due to the failure of the Applicants to make payments on account of the costs, although he readily acknowledged that the leases do not oblige the lessees to do so. The clear obligation on the landlord to keep the development in repair is not in any way conditional upon the lessees paying or agreeing to pay sums on account. Mr Day-Marr initially said that a contract had been let for the major works and was withdrawn. Mrs Ainsworth said that she had spoken with the preferred contractor who had told her that no such contract had been placed with them. Mr Day-Marr then conceded that he was not too aware of the legal definition of letting a contract in the sense of a legally binding contract and it may have been that the contractor was simply informed that the contract was to be let to him. Whatever the truth of this particular issue, it does not impact on the reasonableness or otherwise of the fees claimed.
47. We find that Mr Day-Marr's explanations of what these fees relate to and how they have been ascertained is wholly unacceptable, unrealistic and unprofessional. We cannot believe that a reputable managing agent would have such a woolly approach to professional fees relating to a substantial major works project. We were not persuaded that the fees were expended, were reasonably incurred or that they are reasonable in amount. We find they are not payable by the Applicants.

Legal Fees

48. In the restated accounts prepared by Mr Day-Marr he has given a credit in connection with legal fees. He was unable to explain to what this related. It may have been something historical connected with BLR, but in a way this rather reflects poorly that Gateway are unable to explain entries on accounts prepared by them and which (see later) were allegedly reviewed by external accountants.

Given that it is credit item it was questioned but not challenged by the Applicants.

Accountancy fees

49. These are claimed at £94 for 2010 and £96 for 2011. Mr Day-Marr was unable to explain how these sums had been arrived at. Evidently Gateway has a close relationship with an accountancy firm, Ventos, and may even share office accommodation with them. Gateway has a preference to be able to say that accounts have been approved by an accountancy firm and so appears to have an arrangement with Ventos whereby this is done under some form of global fee basis. Apparently Gateway then re-charges sums to individual block service charge accounts as someone sees fit. Mr Day-Marr said that the accountants would not have invoiced on a block by block basis and he did not know how the system of re-charges worked.
50. Mr Day-Marr said that it was necessary that accounts were prepared and it was not unreasonable for the Respondent to incur the cost. Mr Day-Marr sought refuge in the Fourth Schedule to the lease which governs service charge expenditure, paragraph 8 of which is in these terms:

"The proper management and collection expenses incurred by the Lessor and its agents in respect of the management of the building and adjoining land used in common as aforesaid."

51. Mr Day-Marr acknowledged that Gateway would have to keep and maintain some accounts so that it could pass them to the accountants for verification. Mr Day-Marr's attention was drawn to the menu of services provided by Gateway and which are covered by the annual unit fee [14/333]. The second paragraph sets out a number of accounting functions including:

"... preparing year end service charge accounts..."

Mr Day-Marr suggested that an error must have been made and that if the accountancy fee was not recoverable separately they would have to increase the unit fee to compensate.

52. Mr Day-Marr accepted that the subject leases do not provide for payments on account, do not provide for annual accounts to be prepared, let alone for such accounts to be verified or certified. Mr

Day-Marr was unable to give us any credible explanation as why the Respondent reasonably incurred this expense.

53. We were not satisfied that the Respondent had incurred the accountancy fees claimed. From what little Mr Day-Marr was able to tell us it appears that the arrangement is one solely between Gateway and the accountants. We find that the fees claimed were not expended or incurred by the Respondent. Even if they had been we would have found that it was not reasonable to incur such fees. There is no contractual obligation on the Respondent to have any accounts prepared let alone to have accounts externally verified or certified. It is plainly part of Gateway's obligation to prepare demands for sums claimed and to prepare service charge accounts (where necessary) and the cost of it so doing is plainly covered by its unit fee. No additional charge is justifiable. We find that the sums claimed are not payable by the Applicants.

Bank Charges

54. £25 was claimed for 2010 and £24 was claimed for 2011. Mr Day-Marr was unable to say how these sums had been arrived. He did not know to which bank account(s) they referred. Mr Day-Marr said that Gateway maintained a number of bank accounts and incurred bank charges directly in connection with the services provided to its clients. Gateway sought to recoup these bank charges and evidently re-charged them to service charge accounts on a rather random basis. As with the accountancy fees Mr Day-Marr sought refuge in paragraph 8 of the Fourth Schedule to the lease.
55. There is no evidence before us upon which we can rely with any confidence that these charges claimed have been expended by or incurred by the Respondent. Gateway, as a business, handles large sums of money and doubtless effects many banking transactions on a daily basis. It thus requires to maintain bank accounts and inevitably will pay bank charges. It seems to us that such charges are normal and standard overheads and costs associated with the running of a managing agents business. Such costs fall to be considered alongside, rent and rates for office accommodation, staff wages, stationery, office equipment and the like. We find that such are not within the ambit of paragraph 8 of the Fourth Schedule to the lease. Reference there to costs incurred by the lessor or its agents is a reference, not to the general or usual costs of running the agents office but to specific costs which may be incurred in management and the collection expenses. Such costs might include legal fees if lawyers are engaged or court fees if proceedings are issued, or the costs of other professionals properly engaged to advise on some aspect of the management of the development and the adjoining land. Accordingly We find the sums claimed are not payable by the Applicants.

General matters

56. Mrs Ainsworth raised a general matter arising from the First Decision. Paragraph 1.2 of that Decision stated that a sum of £534.69 would be payable by Ms Ainsworth upon the service of a demand for the same compliant with s47 Landlord and Tenant Act 1987 (LTA 1987).
57. Evidently a demand for that sum was made, but it was not compliant with section 47. Ms Ainsworth did not pay the demand. An approach was then made to Ms Ainsworth's mortgagees and (rightly or wrongly) they paid the demand. Ms Ainsworth contends that the bank was wrong to pay the demand and she is in dispute with the bank about it. Ms Ainsworth also contends that it was wrong for a non-compliant demand to have been issued and it was wrong for the Respondent's agents to have approached her mortgagees. Ms Ainsworth sought an order that the Tribunal require the Respondent to return the sum of £534.69 to the bank. She also contended that it was not now possible for the Respondent to issue a compliant demand for that sum by virtue of the eighteen month rule set out in section 20B(1) of the Landlord and Tenant Act 1985.
58. This application raises two principle points. The first is that the Tribunal does not have the jurisdiction to require the Respondent to repay the money to the bank. Moreover, if such repayment was made a corresponding debit entry would be made on the cash account thus increasing the sum now payable by Ms Ainsworth to the Respondent.
59. The second point is the interaction of section 47 LTA 1987 and section 20B of the 1985 Act.
60. Section 47 LTA simply deems that the sum demanded in a non-compliant demand shall be treated as not being due from the tenant, at any time before the required information is furnished to the tenant. We consider this means that upon that information being furnished the sum demanded then becomes payable.
61. The thrust of section 20B of the 1985 Act is to try to ensure that tenants are given timely notice of service charges payable by them and that very late claims do not come out of the blue. In the present case it is quite clear from the First Decision what service charges were payable by Ms Ainsworth so that there is no question of a demand for them coming out of the blue. The service charges were determined as payable by her. Ms Ainsworth could quite properly have paid those sums without waiting for the demand because she was aware of the amount payable. Equally it was quite open to Ms Ainsworth's bank to pay those sums on her behalf if it chose to do so. If the bank paid that sum contrary to an obligation it owed to Ms Ainsworth, that it a private matter as between Ms Ainsworth and the bank.
62. By section 20B(2) the eighteen month rule provided for in section 20B(1) does not apply if within that period the tenant is notified that costs had been incurred and will be payable. It seems to us that the

First Decision clearly notifies Ms Ainsworth that costs had been incurred and were payable by her. Further the demand she received will again have notified her that the sums claimed will be payable. The fact that such demand may not have been compliant with section 47 does not affect the fact that there was a notification that sums had been incurred and were claimed. It seems us that there is no reason in principle why a non-compliant demand cannot amount to an effective notification for the purposes of section 20B(2).

The Schedules

63. At the conclusion of the hearing we notified the parties of the thrust of the decisions we had arrived at in relation to the service charges in dispute. We were aware that the parties are keen to have the sums payable determined so that they can complete the transaction for the transfer of the freehold. Given that the accounts had been restated with numerous credit entries, we were also keen that the cash accounts were accurate and agreed by both parties. Accordingly the Schedules were sent to both parties with an invitation to make comments on the accuracy of Schedule B.
- By letter dated 23 August 2012 Mr Day-Marr confirmed that the calculations set out in the Schedule B are arithmetically correct and agree with the cash accounts provided in the hearing file.
- By letter also dated 23 August 2012 Mrs Ainsworth confirmed agreement to Schedule B but (correctly) drew attention to a minor arithmetical error in the amount of the 2008 Insurance credit which had stated the amount of the credit to each Applicant as being £93.46 instead of £93.56. This error has been corrected on the Schedule B attached to this Decision.

The section 20C application

64. Mr Day-Marr told us that the Respondent had no intention of putting any costs incurred in connection with these proceedings through the service charge account.
65. For the avoidance of doubt and in accordance with good practice we have therefore made an appropriate order pursuant to section 20C.

Reimbursement of fees

66. Mrs Ainsworth made an application that the Tribunal require the Respondent to reimburse fees of £500 paid in connection with these proceedings.
67. Mr Day-Marr opposed the application. He submitted that the Respondent will bear its costs of the proceedings and not seek to put them through the service charge account and therefore it was fair for the Applicants to bear their costs of the proceedings including the fees paid to the Tribunal.
68. We reject Mr Day-Marr's submission. The Applicants will have incurred costs of the proceedings including substantial copying and

stationery charges. In addition it is plain that Mrs Ainsworth has put in a considerable amount of time and effort in preparing and presenting the Applicants' case and doubtless this will have been at a cost to Mrs Ainsworth and the Applicants. The Tribunal has no jurisdiction to make an award of such costs.

69. In relation to fees however the rules do give the Tribunal power to require reimbursement of all or some of the fees paid. In exercising this power it is usual to adopt the approach of what would be fair, just and reasonable as between the parties. In applying this criteria we find that it would be fair, just and reasonable to require the Respondent to reimburse the whole of the £500 fees paid. The Respondent had made several unwarranted and unjustified claims to service charges. The Respondent restated the accounts to remove some claims but still retained several unwarranted claims and persisted with them right through the hearing, which lasted the best part of a full day. We find that the Applicants had little alternative but to bring these proceedings and to incur the fees. The Respondent should therefore reimburse the fees.

The Law

70. Statutory law which we have taken into account in arriving at our decisions is set out in the Schedule below.

.....
John Hewitt
Chairman
24 September 2012

The Schedule The Relevant Law Landlord and Tenant Act 1985

Section 18(1) of the Act provides that, for the purposes of relevant parts of the Act 'service charges' 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.

Section 19(1) of the Act provides that 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 provision of services or the carrying out of works, only if the services are of a reasonable standard;
and the amount payable shall be limited accordingly.

Section 19(2) of the Act provides that 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 of subsequent charges or otherwise.

Section 20C(1) of the Act provides that 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 leasehold valuation tribunal 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.

Section 20C(3) of the Act provides that the tribunal may make such order on the application as it considers just and equitable in the circumstances.

Section 27A of the Act provides that 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.

Landlord and Tenant Act 1987

Section 47 provides that every demand for rent, service charges or administration charges must contain the following information:

- (a) the name and address of the landlord, and
- (b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

Where a demand does not contain the required information the sum demanded shall be treated for all purposes as not being due from the tenant to the landlord, until such time as the required information is furnished by the landlord by notice to the tenant.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9(1) provides that subject to paragraph (2) a Tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or any part of any fees paid by him in respect of the proceedings.

Service Charges Claimed

Schedule A

224 - 226 Hamlet Court Road

Item	2009		2010		2011		2012 (to 17.07.2012)		
	Sum Claimed	Sum determined by LVT	Sum Claimed	Sum determined by LVT	Sum Claimed	Sum determined by LVT	Sum Claimed	Sum determined by LVT	
Gardening	£ 322.00	£ -	£ -		£ -	£ -	£ -	£ -	
Repairs & Renewals	£ -		£ 407.00	£ 407.00	£ 300.00	£ 200.00	£ -	£ -	
Insurance	£ 1,156.00	£ 1,156.00	£ 890.00	£ 1,263.84	£ 1,298.00	£ 1,298.00	£ 1,380.11	£ 1,380.11	
Management Fees	£ 600.00	£ 600.00	£ 1,175.00	£ 750.00	£ 940.00	£ 640.00	£ 400.00	£ 400.00	
Reserve Fund	£ 600.00	£ -	£ 600.00	£ -	£ 600.00	£ -	£ -	£ -	
Building Works Admin Fee	£ 345.00	£ -	£ 705.00	£ -	£ 273.00	£ -	£ -	£ -	
Legal Fees	£ -		-£ 227.00	-£ 227.00	£ -				
Accountancy Fees	£ -		£ 94.00	£ -	£ 96.00	£ -	£ -	£ -	
Bank Charges	£ -		£ 25.00	£ -	£ 24.00	£ -	£ -	£ -	
Totals	£ 3,023.00	£ 1,756.00	£ 3,669.00	£ 2,193.84	£ 3,531.00	£ 2,138.00		£ 1,780.11	
25% share payable		£ 439.00		£ 548.46		£ 534.50		£ 445.03	

Share of Service Charges Payable		Flat 1	Flat 2	Flat 3	Flat 4
Period					
25.06.08 to 24.06.09 (2009)	£ 439.00				
25.06.09 to 30.09.10 (2010)	£ 548.46				
01.10.10 to 30.09.11 (2011)	£ 534.50				
01.10.11 to 17.08.12 (2012)	£ 445.03				
Total	£ 1,966.99	£ 1,966.99	£ 1,966.99	£ 1,966.99	£ 1,966.99
Less paid/credited		£ 500.00		£ 551.56	£ 573.78
		£ 348.55		£ 491.56	
		£ 491.56			
		£ 551.66			
Agreed 2009 Decision Credit		£ 1,564.26	£ 1,564.26	£ 1,564.26	£ -
2008 Insurance Adjustment (£374.24)		£ 93.56	£ 93.56	£ 93.56	£ 93.56
Totals		£ 3,549.59	£ 1,657.82	£ 2,700.94	£ 667.34
Balances		£ 1,582.60	-£309.17	£ 733.95	-£1,299.65