

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

- Case References** : **BIR/37UF/LAC/2017/0002 and 0003**  
**BIR/37UF/LIS/2017/0015 and 0014**
- Property** : **Flats 1 & 3 and Flats 10,11,12 &14 Gardiners Court**  
**Mansfield Woodhouse, Nottinghamshire,**  
**NG19 8AW**
- Applicants** : **(1) Teresa Hooper,**  
**(2) Stephen Kelley**
- Applicants’ Representative** : **None**
- Respondent** : **Blue Property Investment Limited,**
- Respondent’s Representative** : **Blue Property Management Limited,**
- Type of Application** : **(1) Applications pursuant to s 27A Landlord and Tenant Act 1985 for a determination of liability to pay and reasonableness of service charges**  
**(2) Applications for a determination as to liability to pay an administration charge pursuant to**

**paragraph 5 of Schedule 11 of the Commonhold  
and Leasehold Reform Act 2002**

**(3) Applications pursuant to s20C Landlord and  
Tenant Act 1985 for an order declaring costs  
incurred in Applications 1 & 2 are not to be  
regarded as relevant costs in determining any  
service charge payable**

**Date of Inspection**

**And Hearing : 2 August 2017**

**Tribunal**

**: Judge P.J.Ellis  
Mr Colin Gell FRICS**

**Date of Decision**

**: 1st November 2017**

---

**DECISION**

---

© CROWN COPYRIGHT 2017

## **DECISION**

### ***Decision***

- 1. For Service Charge year 2008 the amount payable by each Applicant by way of service charge is £ 734.00 per flat.***
- 2. For Service Charge year 2009 the amount payable by each Applicant by way of service charge is £734.00 per flat.***
- 3. For Service Charge year 2010 the amount payable by each Applicant by way of service charge is £734.00 per flat.***
- 4. For Service Charge year 2011 the amount payable by each Applicant by way of service charge is £ 900.00 per flat.***
- 5. For Service Charge year 2012 the amount payable by each Applicant by way of service charge is £900.00 per flat.***
- 6. For Service Charge year 2013 the amount payable by each Applicant by way of service charge is £1011.73 per flat.***
- 7. For Service Charge year 2014 no service charge is payable to the Respondents.***
- 8. Administration charges of £765.49(Flat1), £635.73 (Flat 3) and £281.77 (Flats 10, 11, 12 and 14) are not payable.***
- 9. All or any of the costs incurred or to be incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by either of the Applicants.***

The reasons for the Tribunal's decision are set out in full below

## **BACKGROUND**

- 1. The first issue in this matter is the liability of leaseholders for service charges which exceed the annual budget prepared by the Respondent's managing agent. In the event the Tribunal determines the leaseholders are liable for the excess charges the Tribunal must consider the reasonableness or otherwise of the service charges, administration charges. There is also a request for a determination whether costs incurred by the Respondent may be added to the service charge account.**
- 2. The Applicants are the leaseholders of six flats forming part of a development of 14 flats and one retail unit known as Gardiners Court Mansfield Woodhouse Nottinghamshire. Four of the subject flats namely numbers 10,11,12 & 14 are owned**

by the first Applicant, Ms Teresa Hooper. Flat numbers 1 & 3 are owned by the second Applicant Mr Stephen Kelley.

3. The Respondent Blue Property Management of 2-3 East Circus Street Nottingham was at the material time the freeholder of Gardiners Court and the property manager. Blue Property Maintenance Limited was a company associated with the Respondent. It carried out maintenance tasks to the order of the Respondent. Its invoices are the subject of complaints by the Applicants. From time to time contractors other than Blue Property Maintenance were retained to carry out work at the Property. No complaint is made about the invoices raised by those contractors.
4. The Applicants each issued applications dated 20 March 2017 and 24 March 2017 but both received by the Tribunal on 28 March 2017 for determination of liability to pay and reasonableness of service charges under s27A of the Landlord and Tenant Act 1985. In each case the Applicants sought determinations in respect of service charge years 2008, 2009, 2010, 2011, 2012, and 2013. The Respondent ceased to act as manager of Gardiners Court on 25 April 2014. The Applicants also sought a determination for the charges incurred between 1 January and 24 April 2014.
5. The Applicants case is that demands for payment of service charges allegedly incurred by the Respondent substantially exceeded budgets prepared each year by the Respondents without consultation and therefore they are not liable for the service charges to the extent that they exceed the budget. The Respondent relies upon invoices presented by Blue Property Maintenance Limited to explain the work done and thereby justify the excess charge. There is no dispute that service charge demands were issued in time, but the dispute is whether the Respondent has satisfied the Tribunal that the evidence it adduces is sufficient to justify the excess charges. No other proceedings have been issued for the alleged sum claimed.
6. The administration charges claim arises from Respondents costs associated with alleged arrears and late payment of service charges including interest on overdue payments.
7. The Applicants application to disallow Respondent's costs of these proceedings arises from a claim for those costs incurred by the Respondent in connection with preparing for this hearing.

8. The Tribunal issued directions on 7 April 2017 for service of schedules and witness statements from both sides and for the Respondent to prepare a hearing bundle of documents. The Tribunal also directed that Gardiner Court Management Limited, the company named in the lease as freeholder, be joined as Respondent. However, upon production of satisfactory evidence of the insolvency of that company the matter has proceeded between the Applicants and Blue Property Management Limited. No issue was raised by the Applicants as to the identity of the Respondent.
9. On 4 June 2017 each of the Applicants issued further applications for a determination as to their liability to pay an administration charges in particular for the limitation of costs incurred by the Respondent in these proceedings.
10. In view of the issues in each application being substantially similar the Tribunal directed all applications be heard together.

### **The Property**

11. The Tribunal inspected Gardiners Court on 2 August 2017 in the presence of the Applicants and a key holder employed by the current managers. It found Gardiners Court was primarily a development constructed in or before 2005 of stone blocks with a tiled roof although the original building is of stone. The development was constructed on the site of older retail premises and adjoining yards with frontage on High Street. It comprises of two blocks of two and three storey buildings each comprising one and two bedroom flats. The original retail unit and associated outbuildings were refurbished and incorporated in the development as two more blocks of flats. The entire development comprised 14 flats and one retail unit. The residential unit is subject to a lease in identical terms. The lease of the retail unit was not relevant save for the requirement to contribute to management charges.
12. The four flats owned by Teresa Hooper were in the refurbished block adjoining the retail unit and identified as block A on the lease plan.
13. The two flats owned by Stephen Kelley were in a new block on the east side of the plot and identified as block D on the lease plan.
14. The Tribunal was shown the common parts of the interior of each block but it was not necessary to inspect the interior of any flat. Access to each flat is by an exterior door way and staircase with iron bannister and railings. The stairways and landings are

narrow with little space other than for the stairs and access landings for each upper floor flat.

15. Vehicular access to the development is from High Street through locked gates. Pedestrian access is through an old iron gate alongside the retail unit. There is a common paved yard between the four apartment blocks. Car parking is provided in bays below blocks A and B and also on the western side of the paved yard. Each flat has a parking space as part of the demise.
16. The Tribunal observed four CCTV cameras installed around the development but neither the Applicants nor the new manager could say who monitored the images. At the hearing the Tribunal asked the Respondent who monitored the images. Mr Evans on behalf of the Respondent was unable to say but expressed the opinion that if still live the cameras are recording a loop which is held on recording equipment fixed to a cabinet in the development
17. Mail boxes for each flat are fixed to an exterior wall under an archway linking blocks C & D. Refuse bins are located in the pedestrian passageway behind the old iron gate and at suitable places in the development.

### **The Lease**

18. Leases of the flats are for 999 years with effect from various dates in 2005. Commencement dates are not relevant.
19. The Tribunal was shown one lease between Mansfield Developments Limited the Landlord, Pelican Properties Limited the Tenant and Gardiner Properties the intended Landlord. Pelican Properties is the first named Applicant's company. The parties agreed the terms of the lease held by the second and all other lessees were in substantially the same terms as the lease disclosed. There was no dispute between the parties over the meaning and effect of the terms of lease. Accordingly, the Tribunal proceeded on the basis that the terms of the lease disclosed was the lease governing the relationship between the parties.
20. In November 2008 Gardiner Management Company Limited was dissolved. Blue Property Investment Limited became the freeholder and appointed Blue Property Management Limited as its agent.

21. The leaseholder's covenants to pay the service charge are set out in clause 2.1 of the lease, paragraph 22 of the fourth schedule and the seventh schedule. Clause 1 of the seventh schedule provides

*(a) "The Service Charge in respect of each year shall be calculated according to the aggregate cost to the Company (landlord) during such year of*

*(1) complying with the Company's covenants contained in the sixth schedule and*

*(2) transferring to a reserve fund for future anticipated maintenance such sums in each year as the Company shall think necessary"*

*(b) The Company's records shall be so maintained as to identify those expenses incurred in connection with the facilities available for the benefit of the flat and the Service Charge payable hereunder shall be calculated by dividing such cost equally between the number of flats served by each facility."*

22. Clause 4 of the seventh schedule requires the landlord to ascertain and certify as soon as practical after the expiration of each calendar year ..... *"the amount of the actual Service Charge for the preceding twelve months and the amount standing to the credit of the reserve fund and shall serve on the Tenant a copy of such certificate (which shall be binding on the Company and the Tenant) and any balance remaining to be paid by the Tenant after giving credit for the interim payments paid by the Tenant in respect of such year shall be paid by the Tenant within fourteen days of such certificate...."* The landlord is also to supply the leaseholder on request with details and figures showing how the service charge and the amount of the reserve fund have been calculated.

23. By clause 6 of the seventh schedule *"any sum unpaid more than fourteen days after the date upon which it becomes due shall bear interest from the date it was due to the date of payment at the rate of 5% above the base lending rate of the Royal Bank of Scotland plc from time to time"*.

24. The landlords' costs of complying with its covenants include at paragraph 2(a)

*"all fees.....payable to any solicitor accountant surveyor agent or architect employed.....in connection with any question arising on the maintenance or management of (the property)...."*

## The Hearing and the Parties' Submissions

25. The hearing took place at the Nottingham Justice Centre on 2 August 2017.

Applicants attended in person. Mr Peter Evans assisted by Mr Pennington both of Blue Property Management attended on behalf of the Respondent. They were accompanied by Mr Stephen Southall who gave evidence on behalf of the Respondent. Mr Evans presented paginated bundles of documents as the hearing commenced. The bundles should have been prepared and lodged not less than 14 days before the hearing in accordance with the Directions of 7 April 2017. However, as the bundles contained all relevant documents the Tribunal admitted them for use by the parties after giving the Applicants an opportunity to satisfy themselves the bundles contained all documents they intended to refer to.

26. The parties had prepared detailed submissions setting out the items of charge in dispute on the part of the Applicants and an explanation of the charge by the Respondents. In summary the Applicants submissions were that in each year under review the service charge exceeded the budget for that year without adequate explanation or justification notwithstanding their requests.

27. The excess over budget for the years in review is set out in the table as follows.

<b>YEAR</b>	<b>BUDGET</b>	<b>ACTUAL</b>	<b>EXCESS</b>
2008	11010.00	14749.00	3739.00
2009	11010.00	12138.00	1128.00
2010	11010.00	14290.00	3280.00
2011	13112.50	19719.00	6606.50
2012	13112.50	22230.00	9117.50
2013	13112.50	21639.00	8526.50
2014	4725.00	7249.00	2524.00



28. Full particulars of the excess charges are set out in schedules prepared by the Applicants and annexed to this decision in Schedule 1. The page numbers appearing in the top right corner of each page are from the pagination of the Respondent's bundle.
29. In so far as the administration charge is concerned the Applicants deny that it is reasonable for the Respondent to make any claim for such charges or costs of these proceedings having regard to the way in which it has administered the management of the estate.
30. Although the parties relied on their written submissions the Tribunal examined some of the disputed items in order to understand the respective positions. The Tribunal has had regard to the evidence given at the oral hearing and the written submissions of the parties in preparing this decision.
31. The Applicants were suspicious of invoices rendered in support of the service charge excess. Typically invoices for work done were rendered by the Respondents associated maintenance company Blue Property Maintenance Limited of the same address as the Respondent. Moreover the invoices were often rendered on the same date typically at the end of the calendar year without giving the date of the work done. The Applicants suggested the two companies were in fact one entity lacking separate PAYE registrations with HMRC. Also obligatory information such as a VAT number was missing from their invoices. The Applicants also contended the Respondents had failed to consult with the tenants in connection with undertaking qualifying works.
32. The Applicants accepted that often work of the type referred to in the invoices was undertaken but in view of the invoicing procedures adopted by the Respondent and its maintenance company they contended it was impossible to know when work had occurred and whether the charge was reasonable. Accordingly they denied they should be responsible for the excess charges as it was not possible to say those charges were additional to the budget. Examples selected by the Applicants from the schedules they prepared were cleaning charges of common parts. It appeared to them that the sums charged were excessive. The charges included hire of trailers to remove waste and tipping charges.

33. Other items selected were time spent on repair to the keypad controlling the entry gates. The charges for replacing light bulbs in the common parts were too high. In 2010 there were several claims for the costs of false fire alarms which could have been avoided by better management of the alarms themselves. Also and in particular all invoices for work done by the maintenance company were rendered on 1 December 2010 without specifying the date of the work.
34. Other complaints relating to the work were that in 2012 landscaping charges were budgeted but then charged again as an item of excess charges. The CCTV cameras were installed in 2013 at a cost of over £2000 without consultation with the leaseholders. It was accepted the cost fell below the consultation limit but in view of the size of the expense and the intrusion of CCTV cameras the leaseholders should have been consulted. In 2014 shortly before termination of the responsibility for management the Respondent incurred painting charges which ought to have awaited the appointment of the new managers.
35. There were problems with fly tipping and vandalism affecting the common parts but the Respondents did not consult with the Applicants regarding the problems and failed to respond to complaints and requests for information. Had the Respondents consulted with the Applicants then it should have been possible to agree figures for the budgets.
36. In answer the Respondent through Mr Evans explained that budgets were prepared by a member of staff employed in the Respondents office relying on previous years' budgets and adopting the same figures. The reduction in budget after 2010 was because the costs associated with the retail unit were omitted from calculations affecting the residential flats. Mr Evans also denied any of the charges incurred whether for contractors or works generally were subject to the consultation requirements.
37. In view of the passage of time the Respondents could not give specific information on all claims. Mr Evans relied upon the evidence of Mr Steve Southall who was an employee of Blue Property Maintenance and chiefly responsible for the maintenance of Gardiners Court. He gave evidence that typically he attended Gardiners Court once a week for two and a half hours or more. Clearing rubbish required his attention in the earlier years because of the amount of it that accumulated. He hired

trailers and equipment he considered appropriate and made arrangements to take away the rubbish to local tips thereby avoiding higher charges by the local authority.

38. Replacing light bulbs and resetting fire alarms was carried out by him and occasional took longer than expected. The light bulbs were more expensive than normal domestic bulbs.
39. Mr Southall carried out or arranged for minor repairs to gates and a wall in good time as far as he was concerned.
40. Mr Evans explained that Blue Property Maintenance Limited was a separate company with its own PAYE revenue reference number. It was registered for VAT on 1 September 2008. He was asked by the Tribunal to explain why invoices were typically rendered late without information identifying when the work was carried out and whether late submission of invoices caused cash management problems for Blue Property Maintenance. He was not aware that rendering invoices late or all on one day caused any problems for the financing of the company because it carried out maintenance work at other properties but he did not give any evidence of which properties were so maintained.
41. In so far as the specific items referred to by the Applicants the Respondents acted as they thought in the best interests of the residents. Mr Evans said that painting was undertaken as the Respondent was responsible for the state of Gardiners Court until termination of the contract. CCTV was installed because of concerns about vandalism. In 2010 the fire brigade had complained about the number of false alarms and threatened to withdraw response. There had been problems with vandalism affecting the entry gate and until resolved the estate was badly affected by fly tipping and accumulation of rubbish.
42. Mr Evans denied that the Respondent had failed to answer queries from leaseholders but accepted the budgeting was inadequate.
43. The claim for administration charges was not clearly formulated. By a statement of 18 May 2017 the Respondent asserted the leaseholder is required to pay all fees and charges incidental to the preparation and serving of any notice under section 146 of the Law of Property Act 1925 and the administration charges are the early stages of the forfeiture process.

44. However by documents each entitled 'STATEMENT' and dated 24 April 2017 the Respondent served apparent demands for administration charges. In so far as Mr Kelley is concerned the total sum claimed in respect of his Flat 1 is £1708.55. The Statement itemises service charges and alleged excess charges for the flat from 1 September 2008 to 24 April 2017. As the Respondent alleges Mr Kelley has not paid service charges or the alleged excess charges items described as 'Arrears Admin Charges' appear on 18.04.2011, 05.05.2011, 14.11.2012, 2.04.2013, 7.05.2013 each for £50.00 in total £250. Payments made by Mr Kelley are itemised but there also appears three excess charge items. The first is dated 26.06.2014 and is for the sum of £636.55 but is described as Excess Charge for year ending 31.12.2012. The second Excess Charge item is dated 27.01.2015 for £596.14 for the year ending 31.12.2013. The third Excess Charge item is also dated 27.01.2015 for £23.01 for the period 01.01.2014 until termination of the Respondent's management on 20.04.2014. Mr Kelley disputed the liability for payment and made no further payments. The Respondent has made an interest charge of £302.67 to 18.10.2016 and a further charge of £212.82 on 24.04.2017 to that date. In neither case is the interest calculation explained.
45. For Flat 3 the total sum claimed is £1728.79. The difference between the Statements for flat 1 and flat 3 is that the interest charged on 18.10.2016 and 24.04.2017 is £313.03 and £222.70 respectively caused by different payments made by Mr Kelley in respect of each flat on 24.12.2012 and 30.05.2013.
46. The Tribunal has not checked the calculations presented by the Respondent.
47. In the case of Ms Hooper similar documents were presented to the Tribunal each entitled STATEMENT for each of the flats owned by her. The statements for flats 11,12 &14 are identical. The entries begin with an item described as Service Charge 01.01.2008 for £375.00 and conclude with interest claims on 18.10.2016 for £233.41 and on 24.04.2017 for £48.36 and conclude with a claim for £1537.47 allegedly due to the Respondents for unpaid service charges, excess charges and interest but no item is described as an administration charge.
48. The items listed in the statement for flat 10 commence with a tenant receipt on 01.12.2011 for £87.50 and conclude with the same claim for interest as with the

other flats. The total sum due is also alleged to be £1537.47 but apart from the items described as 'Interest' there are no items describing administration charges.

49. Therefore the Tribunal calculates the claims for administration charges for Mr Kelley are £765.49 in respect of flat 1 and £635.73 for flat 3. In the case of Ms Hooper the sum claimed is for interest only in the sum of £281.77 for each of her flats being £845.31. Mr Kelley denies that he is in arrears and consequently denies his liability for those charges. Ms Hooper denies liability for any interest because the Respondent failed to supply information justifying the excess charges.

50. The Respondent served a notice with the Statements summarising the Tenant's Rights and Obligations for Administration charges. The notice sets out, so far as relevant to these proceedings

*"An administration charge is an amount which may be payable by you as part of or in addition to the rent directly or indirectly*

- *For or in connection with the provision of information or documents*
  - *In respect of your failure to make any payment due under your lease or*
  - *In connection with a breach of a covenant or condition of your lease*
- If you are liable to pay an administration charge, it is only payable to the extent that it is reasonable*

### **The Respondents Claim for Costs of these proceedings**

51. The Respondents claim for costs arose from answering the Applicants claim. All the costs claimed were incurred by managing the response. The claim was for £2122.20 including attendance time of representatives at the hearing and preparation and collation of documents and submissions to the Tribunal. The Respondents made no specific claims for answering the Applicants requests for information or other administration charges other than the costs of preparing for the hearing.

52. The Applicants oppose the application.

## The Law

53. S27A and s20C of the Landlord and Tenant Act 1985 set out the relevant provisions empowering the Tribunal to make its determination of the issues between the parties. S27A(1) and (2) provides

*“(1)An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—*

*(a)the person by whom it is payable,*

*(b)the person to whom it is payable,*

*(c)the amount which is payable,*

*(d)the date at or by which it is payable, and*

*(e)the manner in which it is payable.*

*(2)Subsection (1) applies whether or not any payment has been made.”*

54.Regulation 4(1) Service Charge (Consultation etc)(England)Regulations 2003 provides that s20 of the Landlord and Tenant Act 1985

*Shall apply to a qualifying long term agreement if relevant costs incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant in respect fo that period being more than £100.*

And s20C of the Act provides in relation to costs:

*“(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 .....the First-tier 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.*

*(2)The application shall be made—*

(a).....

(b).....

*(ba) in the case of proceedings before the First-tier Tribunal, to the tribunal;*

*(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*

55. By Paragraph 1 (1) of Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 an administration charge is an amount payable by a tenant as part of or in addition to the rent which is payable directly or indirectly

(a) For or in connection with the provision of approvals under his lease or applications for such approvals

(b) For or in connection with the provision of information or documents by or on behalf of the landlord

(c) In respect of a failure by the tenant to make a payment by the due date to the landlord....

(d) In connection with a breach of a covenant or condition of the lease

### **The Decision**

56. The issue between the parties is whether or not the leaseholders are responsible for charges allegedly incurred in excess of the budget. The evidence presented to the Tribunal was not satisfactory to identify whether the alleged charges were the cause of the excess or indeed that there was any excess. A "budget" is an estimate of the costs for a year. Any overspend can only be determined at the end of a given year and must be justified within the context of the total year spend. Further, all expenditure for the year needs to be examined for reasonableness to establish the overspend.

57. The terms of the lease impose an obligation upon the Respondent to maintain records so as to identify those expenses incurred in connection with the facilities available for the benefit of the Flat and the Service Charge shall be calculated by

dividing such cost equally between the number of flats served by each facility. Attached to this decision is a schedule setting out for each year the dates of invoices which the Respondent relies upon as justification for the excess charges.

58. The Tribunal finds that the budgeting process and the management of expenses was inadequate. Budgets were prepared without properly considering previous years expenses or anticipating future years requirements in the light of experience. The Tribunal was concerned by the lack of detail in the invoices supplied by Blue Property Maintenance Limited and the lack of enquiry by the Respondent's agent to identify the date of work done. By accepting invoices dated the same day for work done at different times the Respondent and the Applicants could not be sure when and whether work had been carried out.
59. The Tribunal did not find the Respondents' explanation of budgeting and control of expenses convincing. Although Blue Property Management claim to be acting in the best interests of the leaseholders the Tribunal finds there was a lack of control of expenses as appears from the practise of allowing the maintenance company to render invoices on the same day for work done over a prolonged period.
60. The meaning and effect of want of budgetary control, acceptance of late invoices and inadequate assignment of invoices to service charge years is that it is not possible for the Tribunal to decide that there had been an overspend in any of the years in question. By agreeing a budget, the parties had agreed that a certain sum would be expended each year for the benefit of the flats as provided by the lease. The anticipated expenditure was for the entire service charge period. By invoicing for a significant amount of work at the end of the service charge period it is not possible to determine the expense to the budget. Accordingly, the Tribunal is not satisfied with the evidence relied upon by the Respondent to explain the work carried out in excess of the agreed budget.
61. Moreover the relationship between the Respondent and its maintenance company was not the subject of any agreement regulating the expenses to be charged for their services. The leaseholders could not know whether the arrangement



between the Respondent and Blue Property Maintenance was in their best interests as there had been no consultation regarding their appointment.

62. In *Skelton v DBS Homes (Kings Hill) Limited* [2017] EWCA Civ 1139 Lady Justice Arden said “*For leases to which the relevant provisions of the 1985 Act apply, the landlord may only include costs in the service charge to the extent that they are reasonable (section 19(1)). This means that the costs must have been reasonably incurred and that any works or services to which they relate must be of a reasonable standard*”.

63. The Respondents accounting for works undertaken at Gardiners Court was unsatisfactory. The Applicants conceded that some of the works making up the excess charge over budget was necessary but were not satisfied the sums incurred were reasonable or that all the work was even necessary. Also from the records it was not possible to identify the extent, if any, of the excess charge.

64. For each year the Applicants have complained about the excess charge and the Respondent has submitted invoices which together account for the excess. The Applicants made submissions regarding the quality of work or they questioned the charge or the need for the work. However, the Tribunal was not satisfied that simply submitting a bundle of invoices was an explanation of the excess.

### **The Annual Excess Service Charge Claims**

#### **2008**

65. For the service charge year 2008 the Tribunal finds as follows:

- a. In 2008 thirteen invoices are the subject of the claim for excess charges. Of those invoices three are dated 29 July, two are dated 6 August, the remainder are dated 29 & 30 August, 29 September, 16, & 29 October, 13 & 29 November all in 2008 and finally 12 March 2009.
- b. Invoice number GARDV006 for £226.84 is dated 12 March 2009 and is for work between 1 December 2008 and 12 March 2009 involving removal of rubbish, replacing lamps, repairs to cupboard doors and removal of litter & furniture from the rear of 12-16. No dates of work are supplied other than

the 'from to' dates. It is impossible to know how this invoice relates to the budget excess for 2008.

- c. Of the other invoices GARDV 002 of 16 October and GARD022 of 6 August appear to duplicate at least some work as both refer to the removal of 6 TVs.
- d. Invoice numbers GARD013 and GARD019 are for general maintenance work in July 2008 but they are duplicates save for the addition of VAT.
- e. Invoice numbers GARD024, GARDV001, GARDV003 & GARDV005 are all for £176.25 and are a monthly fee for general maintenance representing an additional £1800 per annum. Each invoice is in the same terms.
- f. Invoice GARD002 is dated 29 July 2008 for work carried out to the gate entry phone system on 10 March 2008. Invoices GARD023 of 30 August 2008 and GARDV004 of 30 November 2008 are for replacing light bulbs in July & August and September to November. Both include an item for 'flats' which ought to have been individual leaseholders' responsibility. No other information was supplied about other work carried out so as to enable the Tribunal to identify the work within budget.
- g. The Tribunal does not consider the evidence supplied adequately answers the Applicants' doubts about the excess and amounts to a failing on the part of the Respondent to comply with its obligations under the lease to keep proper records. Accordingly the sum payable for service charges in the year ending 31 December 2008 is the budgeted amount of £11,010.00 for the estate and the sum payable for flats 1,3,10,11,12 & 14 is £734.00.

## **2009**

66. For the service charge year 2009 the Tribunal finds as follows:

- a. Only two invoices were presented to explain the excess. Neither is reliable.
- b. GARDV015 of 10 December 2009 is for work carried out on 10 March 2009 for two men to remove rubbish with a hired trailer. The invoice includes the trailer hire, tipping fees and hire of specialist clothing. GARDV016 of 11 December is for work undertaken on 27 January 2009.
- c. No information was supplied regarding other expenses incurred during 2009. In fact, the budget was a repeat of the previous year indicating as Mr

Evans conceded a want of care in preparation of budgets. The Tribunal is unable to conclude that the work referred to was excess.

- d. Accordingly the sum payable for service charges in the year ending 31 December 2009 is the budgeted amount of £11,010.00 for the estate and the sum payable for flats 1,3,10,11,12 & 14 is £734.00.

#### **2010**

67. For the service charge year 2010 the Tribunal finds as follows:

- a. Of the 22 invoices submitted as justification for the excess, 12 were dated 28 December 2010, 9 were dated 1 December and the remaining one was dated 17 December.
- b. The invoices of 28 December 2010 include one (invoice number 1859) for work done on 10 November 2009 which may be a misprint for March as the remaining invoices on this date appear to relate to occasional visits for small jobs at monthly intervals. However, the error does not give the Tribunal confidence in the information supplied.
- c. The invoices numbered 1827,1828,1855,1859,2438,2710,2999,3000,3087 & 3387 are for small sums at roughly monthly intervals between January and July 2010. The invoices 3388,3389 & 3390 are similar in that they describe two incidents of call out for the fire alarm in July 2010 and a visit to clear soil which had somehow accumulated between two properties also in July.
- d. The remaining invoices delivered on 1 December do not give the date of any visits or when the work the subject of the invoices was undertaken. Invoice 3519 is for the removal of rubbish and a tipping fee. Invoices 4255,4256 & 4257 are all for window cleaning on unspecified dates. The invoices numbered 3437,3569,3808 & 4124 are all in identical terms and include a description of cleaning and checking the site.
- e. The overall appearance of these invoices is that they were identified as convenient justifications for the excess. They describe routine visits on unspecified dates possibly monthly and irregular visits in the first half of the year.
- f. They do not explain how they were those charges responsible for the excess. Moreover, invoice number 4026 is for 4 new front door keys for

owners of flats 2,3,11 & 15. These fees should have been charges to the flat owners.

- g. The Tribunal was not satisfied that the evidence adduced was justification for the alleged excess charges. Accordingly, the sum payable for service charges in the year ending 31 December 2010 is the budgeted amount of £11,010.00 for the estate and the sum payable for flats 1, 3, 10, 11, 12 & 14 is £734.00.

### **2011**

68. For the service charge year 2011 the Tribunal finds as follows:

- a. All the relevant invoices were rendered on the same date 28 December 2011.
- b. They all suffer the same defect namely the lack of dates of work done save invoice number 5377 which describes work of snow clearance on 30 November and 3 December 2010. Invoice numbers 5364 preceding in number 5377 also refers to snow clearance suggesting it is for work in 2010. Invoices 5396 and 5501 also refer to snow clearance and in view of the questions regarding the accuracy of invoices 5364 & 5377 there is reason to doubt when and whether the work in the other two invoices was undertaken in 2011.
- c. Further as with all the invoices the Tribunal does not consider that simply showing invoices all dated at or near the year end is a sufficient explanation of the excess because until such time as the accounts are drawn it is not possible to identify the excess or its cause. It therefore determines the sum payable for service charge in this year is the budgeted sum of £13,112.50 and the sum payable for flats 1, 3, 10, 11, 12 & 14 is the sum calculated for the year of £900.00 as appears from the Respondents service charge calculation at documents 21-26 in the Respondent's bundle.

### **2012**

69. For the service charge year 2012 the Tribunal finds as follows:

- a. All invoices are dated 28 December 2012 although some effort was made to identify the date of work the summary schedule of invoices in excess of budget give dates inconsistent with the date of the invoices.

- b. There are further inconsistencies. Invoice number 10249 refers to replacement of roof tiles lost or damaged on 19 December 2011. The schedule of invoices refers to a date of 17 January 2012, but the invoice is dated 28 December 2012.
- c. Invoice 14941 of 28 December 2012 for the sum of £540.00 and VAT of £108.00 is for putting out of bins between 1 January 2011 and 31 December 2011.
- d. All other invoices, save number 11153 which states the date of work as 17 & 18 April 2012, give no dates of the work. Accordingly, the Tribunal regards these invoices as insufficient to identify and justify the excess. For the service charge year 2012 the sum payable is the budgeted sum of £13,112.50 and for each flat the sum payable is £900.00 as shown in the Respondent's budget calculation shown at documents 27-32 in the Respondent's bundle.

### **2013**

70. For the service charge year 2013 the Tribunal finds as follows:

- a. Invoices submitted for 2013 are all dated 28 December 2013.
- b. No dates for the work are supplied save for the final two invoices of the submission being invoice numbers 1388 & 1397. These are invoices supplied by a third party contractor R.E. Maintenance Limited for work done in connection with the fire alarm. The first for £900.00 is dated 29 September 2013. The second for £250 excess on an insurance claim for the fitting of new gate automation is dated 29 November 2013. However, the second invoice is put forward again in 2014 as part justification for the excess charge in that year.
- c. As with the earlier years the Tribunal is unable to accept any of these invoices as justification for the excess charge including the third party invoices.
- d. For service charge year 2013 the total service charge payable is the budgeted sum of £13112.50 and the sum payable for each of flats 1,3,10,11,12 &14 is £900 as appeared in the budget statement at pages 33-38 of the Respondents' bundle.

## 2014

71. The Tribunal does not consider there is any justification for the claim for part service charge in year 2014 because the lease makes no provision for part year management charges. The correct course of action for the Respondent to adopt was to submit their accounts to the new managing agents for inclusion, or otherwise, in the accounts for the year end 2014.
72. In any event and for the sake of completeness the Tribunal considers the Respondent's management becomes impossible to comprehend.
- a. Invoice 19951 dated 21 May 2014 although described as being 28 August 2013 in the summary of invoices is for paint work done by Steve Southall on 29 March 2014. Yet invoice number 19930 of 5 April 2014 is for work by 'Darren' on the same day together with work done by Steve Southall and Darren on 5 April 2014. Both invoices refer to painting internal blocks 1 & 2.
  - b. The final two invoices are for accounting work. Blue Accounting of 3 East Circus Street Nottingham charge £395.00 without vat for '*construction of Income and Expenditure Account and Balance Sheet for the Period 01.01.2014-20.04.2014*'. On 6 February 2015 David Harrison a Chartered Accountant rendered an invoice for £36.00 inclusive of vat '*to accountancy work for the period ended 20 April 2014*' having earlier rendered an account for the sum of £150 on 5 January 2015 for '*accounts accreditation for the period ended 20 April 2014*' without further particulars. The address of Mr Harrison is also East Circus Street Nottingham albeit on the 4<sup>th</sup> Floor. There is no mention of calculating an excess charge in either invoice.
  - c. At the hearing Mr Evans submitted that his company retained responsibility for the management of the property until formal termination of the contract. The lease required painting by the landlord and he decided to discharge the obligation before handover. In those circumstances the Tribunal would have expected all painting charges to be within the budget. Other invoices are for '*general maintenance*' or light bulbs. The budget

made provision for cleaning and general maintenance as with all previous years.

- d. Therefore subject to the remarks in paragraph 71, the Tribunal makes the same conclusion that the invoices submitted do not justify the excess charge allegedly incurred by the Respondent. The sum payable if not included in the service charge invoices submitted by the successor managing agent is the budgeted sum which is £14,187.50 for the estate for the full year as appears in documents 39-44 in the Respondent's bundle which also states the sum payable by the Applicants for each flat is £974.00. As the Respondents' engagement was terminated on 25 April 2014 the rateable proportion for the period from 25 December 2013 to the date of termination (121 days) for the estate is £4703.25. The Respondents proposed a budget sum per flat for the year of £900.00. Therefore, a rateable proportion per flat of 121 days would be £298.37. However, as there is no provision in the lease for service charges for part of a year the Applicants are not liable to the Respondents for the sums claimed or any sums for service charges in this year.

73. This is an unusual case which has caused the Tribunal to consider the parties respective contentions very carefully. After reviewing the parties submissions and all the documents disclosed it has come to the conclusion that the excess charges are not justified by the documents and evidence submitted by the Respondent.

74. The Respondent has not explained how the budgeted costs were incurred and how the excess was calculated. It was under an obligation set out in the lease to maintain records that enabled the leaseholders to identify what sums were spent for the benefit of the flats. It failed to do so. Accordingly, the Tribunal determines that the excess service charge claimed by the Respondents for each of the years 2008, 2009, 2010, 2011, 2012, 2013 and 2014 is not payable by the Applicants.

75. There is a dispute between the parties whether or not all service charges have been paid. Mr Kelley asserts he has paid all sums due and Ms Hooper admits to withholding service charge contributions for three years on the grounds that they are unreasonable as described in this decision. The Tribunal expects the parties to now agree on the sums payable and repayable as accounts are redrawn on the basis of this decision.

## **Administration Charges**

76. The Tribunal is not satisfied that it is reasonable to impose administration charges because its failure to maintain records and to properly identify those expenses incurred so as to give the Applicants information they are entitled to see under the terms of the lease. Ms Hooper has admitted withholding payment of service charges but asserts her reason for doing so was that it was not possible to understand how the excess service charge was calculated. The Respondent asserts information was given to answer her questions but as appears in this decision the Tribunal was not satisfied with its explanations. Failure to give an adequate explanation is a breach of the terms of the lease and therefore the Tribunal considers it is unreasonable to impose administration charges.
77. Mr Kelley denies he is in arrears of payment. The same want of adequate information applies in his case and for the same reason the Tribunal determines it is unreasonable to impose administration charges upon him.

## **Costs**

78. The Respondents claim costs to be added to the service charge and the Applicants request a determination under s20(C) of the Landlord and Tenant Act 1985. The Respondents have not used solicitors or other professionals in the conduct of this matter. Although the Tribunal recognises the Respondents have had to prepare for this hearing it has not satisfied the Tribunal that it is entitled to impose a charge in excess of the budget. Accordingly it is not just and equitable to add those costs to the service charges. The Applicants are entitled to an order that all of the costs incurred or to be incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable.

## **APPEAL**

79. If either of the parties is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such application must be received within 28 days after these written reasons have been sent to them rule 52 of The Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013).





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

**Case References** : **BIR/37UF/LAC/2017/0002 and 0003  
BIR/37UF/LIS/2017/0015 and 0014**

**Property** : **Flats 1 & 3 and Flats 10, 11, 12 &14 Gardiners  
Court, Mansfield Woodhouse,  
Nottinghamshire, NG19 8AW**

**Applicants** : **(1) Teresa Hooper  
(2) Stephen Kelley**

**Respondent** : **Blue Property Investment Limited**

---

**SCHEDULE TO DECISION**

---

## Invoices over budget for the year ending 31/12/2008

Date	Ref	Value	Page Reference
29/07/08	GARD012	800.00	A - Part Invoice
28/07/08	Gard013	150.00	B
28/07/08	Gard019	176.25	C
06/08/08	GARD021	294.60	D
08/08/08	GARD022	431.44	E
29/08/08	Gard024	176.25	F
30/08/08	GARD023	126.21	G
29/09/08	Gardv001	176.25	H
18/10/08	GARDV/002	656.20	I
29/10/08	GardV003	176.25	J
13/11/08	GARDV/004	112.37	K
29/11/08	Gardv005	176.25	L
12/03/09	GARDV/006	229.84	M

Deficit for Accounts Total £3,738.00

## Invoices over budget for the year ending 31/12/2009

Date	Ref	Value	Page Reference
10/12/2008	GARDV015	375.46	N - Part
11/12/2008	GARDV010	762.65	O

Deficit in Accounts Total £1,128.00

## Invoices over budget for the year ending 31/12/2010

Date	Ref	Value	Page Reference
28/12/2010	1827	£188.83	P
28/12/2010	1828	£32.30	Q
28/12/2010	1865	£62.84	R
28/12/2010	1850	£31.63	S
28/12/2010	2430	£76.29	T
28/12/2010	2710	£62.88	U
28/12/2010	2888	£289.63	V
28/12/2010	3000	£368.38	W
28/12/2010	3087	£208.01	X
28/12/2010	3387	£141.00	Y
28/12/2010	4028	£70.60	Z
01/12/2010	3388	£190.76	AA
01/12/2010	3389	£144.63	AB
01/12/2010	3390	£235.00	AC
01/12/2010	3519	£170.38	AD
01/12/2010	4255	£105.75	AE
01/12/2010	4256	£105.75	AF
01/12/2010	3437	£176.25	AG
01/12/2010	3688	£176.25	AH
01/12/2010	3808	£176.25	AI
17/12/2010	4267	£105.75	AJ
28/12/2010	4124	£176.25	AK

Deficit for Accounts Total £3,281.00

## Invoices over budget for the year ending 31/12/2011

Date	Ref	Value	Page Reference
28/12/2011	6161	£83.20	AL
28/12/2011	6162	£361.03	AM
28/12/2011	6164	£82.28	AN
28/12/2011	6218	£211.60	AO
28/12/2011	6260	£164.60	AP
28/12/2011	6325	£68.74	AQ
28/12/2011	6341	£287.79	AR
28/12/2011	6360	£352.50	AS
28/12/2011	6362	£381.32	AT
28/12/2011	6364	£248.75	AU
28/12/2011	6377	£358.38	AV
28/12/2011	6392	£164.60	AW
28/12/2011	6398	£123.38	AX
28/12/2011	6501	£411.26	AY
28/12/2011	6601	£271.31	AZ
28/12/2011	6140	£399.46	BA
28/12/2011	6148	£743.48	BB
28/12/2011	7692	£380.00	BC
28/12/2011	7897	£288.00	BD
28/12/2011	7703	£84.00	BE
28/12/2011	7708	£206.70	BF
28/12/2011	7718	£294.00	BG
28/12/2011	8333	£72.00	BH
28/12/2011	8335	£218.00	BI
28/12/2011	8982	£98.00	BJ
28/12/2011	9010	£88.00	BK
28/12/2011	10332	£123.00	BL

Deficit for Accounts Total £6,608.00

## Invoices over budget for the year ending 31/12/2012

Date	Ref	Value	Page Reference
11/01/2012	9874	407.31	BL
17/01/2012	10249	1,110.30	BM
23/01/2012	10050	257.86	BN
26/01/2012	9568	216.00	BO
31/01/2012	10123	120.00	BP
23/02/2012	10131	122.35	BQ
03/03/2012	11187	492.00	BR
16/04/2012	10782	98.00	BS
17/04/2012	11153	808.00	BT
10/05/2012	11416	300.00	BU
31/05/2012	14941	848.00	BV
14/12/2012	1402AV289	96.00	BW
17/12/2012	4981	526.60	BX
28/12/2012	11430	60.00	BY
28/12/2012	11946	240.00	BZ
28/12/2012	11947	108.00	CA
28/12/2012	11958	82.18	CB
28/12/2012	12218	98.00	CC
28/12/2012	12221	98.00	CD
28/12/2012	12222	144.00	CE
28/12/2012	12284	48.00	CF
28/12/2012	12304	22.80	CG
28/12/2012	12580	215.00	CH
28/12/2012	12681	900.60	CI
28/12/2012	12848	324.00	CJ
28/12/2012	14142	804.00	CK
28/12/2012	14379	48.00	CL
28/12/2012	14822	88.00	CM
28/12/2012	18802	214.80	CN
31/12/2012	14942	648.00	CO

Deficit for Accounts Total £9,117.00

Invoices over budget for the year ending 31/12/2013

Date	Ref	Yates	Page Reference CP - Ref
28/12/2013	14769	146.28	
28/12/2013	14770	91.251	C3
28/12/2013	14771	64.00	C8
28/12/2013	14772	166.00	C5
28/12/2013	14773	63.00	C7
28/12/2013	14774	54.00	C1
28/12/2013	14775	54.00	C4
28/12/2013	14776	54.00	C6
28/12/2013	14777	54.00	C2
28/12/2013	14778	61.00	C7
28/12/2013	14779	151.92	C2
28/12/2013	14780	868.42	C2
28/12/2013	14781	183.83	DA
28/12/2013	14782	290.85	DB
28/12/2013	14783	250.06	DC
28/12/2013	14784	163.72	DD
28/12/2013	14785	272.56	DE
28/12/2013	14786	131.85	DF
28/12/2013	14787	288.63	DG
28/12/2013	14788	328.00	DH
28/12/2013	14789	167.10	DI
28/12/2013	14790	766.00	DJ
28/12/2013	14791	208.00	DK
28/12/2013	14792	108.59	DL
28/12/2013	14793	72.00	DM
28/12/2013	14794	87.89	DN
28/12/2013	14795	642.50	DO
28/12/2013	14796	71.17	DP
28/12/2013	14797	171.53	DQ
28/12/2013	14798	112.10	DR
28/12/2013	14799	210.80	DS
28/12/2013	14800	96.00	DT
28/12/2013	14801	174.00	DU
28/12/2013	14802	601.80	DV
28/12/2013	14803	175.00	DW
28/12/2013	14804	28.00	DX
28/12/2013	14805	2,400.00	DY
28/12/2013	14806	42.00	DZ
28/12/2013	14807	43.54	EA
28/12/2013	14808	13.65	EB
28/12/2013	14809	216.00	EC
28/12/2013	14810	14.00	ED
28/12/2013	14811	13.88	EE
28/12/2013	14812	290.00	EF
28/12/2013	14813	13.87	EG

Deficit for Assembly Total 57,606.00

## Invoices over budget for the year ending 31/12/2014

Date	Ref	Value	Page Reference
28/08/2013	16961	181.22	DX
29/11/2013	1307	250	DY
30/01/2014	18377	143.91	DZ
06/02/2014	18513	42	EA
11/02/2014	18449	126	EB
11/02/2014	19436	156.4	EC
13/03/2014	18285	42	ED
21/03/2014	18281	89.04	EE
22/03/2014	18080	388.83	EF
05/04/2014	19930	893.19	EG
10/04/2014	19941	72	EH
12/04/2014	20322	227.51	EI
06/01/2016	82752	150	EJ
21/01/2016	518	398	EK
05/02/2016	92786	38	EH

Deficit for Accounts Total £2,873.00