

S39



FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference : CAM/12UE/LBC/2013/0004

Property : 14, Field Close, Alconbury, Huntingdon
PE28 4EL

Applicant : Luminus Homes of Huntingdonshire
Housing Partnership Limited

Respondent : Philippa Mary Dawn Poloczek

Date of Application : 23rd May 2013

Type of Application : Application for a determination whether a
breach of a covenant or condition in a lease
has occurred (Section 168 (4) Commonhold
and Leasehold Reform Act 2002)

Application for a determination that the amount of
a service charge claimed by the Applicant is
payable by the Respondent (Section 81 Housing
Act 1996 as amended)

Date of Decision : 6th January 2014

Tribunal : Judge John R Morris
Mr David S Brown FRICS, MCI Arb

DECISION

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Decision

The Tribunal determines that the service charges have not been paid in accordance with the lease and the amount owing to the Applicants is £1,263.02.

The Tribunal finds that Ground rent for the years ended 31st March 2010, 2011, 2012 and 2013 has not been paid and therefore a breach of covenant has occurred.

Reasons

Introduction

1. The Application is for determination that the Respondent is in breach of a covenant or condition in a lease between the parties (Section 168 (4) Commonhold and Leasehold Reform Act 2002) and for a determination that the Respondent is in breach of a covenant or condition in a lease relating to the payment of a service charge (Section 81 Housing Act 1996 as amended)
2. The covenants in which the Respondent is said to be in breach relate to non-payment of the ground rent, service charge and failure to maintain the sinking fund at the appropriate level and are listed as being Clause 2 (ii) (iii), Clause 4 Part 1 (a) (b), Clause 4 (ii) (iii) and Part II Paragraph 9(a) of the Schedule.
3. The Tribunal considered this case suitable for a determination on the basis of the papers (the application, statements of case and representations) lodged or to be lodged without the need for a hearing. The Tribunal gave notice that a determination will be made on or after the 12th August 2013. It was made clear that if either party wanted an oral hearing then this would be arranged. No request for an oral hearing was received.

The Law

4. Section 81 of the Housing Act 1996 states:
 - (1) *A landlord may not, in relation to premises let as a dwelling, exercise a right of re-entry or forfeiture for failure to pay a service charge unless the amount of the service charge—*
 - (a) *is agreed or admitted by the tenant, or*
 - (b) *has been the subject of determination by a court or by an arbitral tribunal in proceedings pursuant to an arbitration agreement (within the meaning of Part I of the Arbitration Act 1996).*
 - (2) *Where the amount is the subject of determination, the landlord may not exercise any such right of re-entry or forfeiture until after the end of the period of 14 days beginning with the day after that on which the decision of the court or arbitral tribunal is given.*
 - (3) *For the purposes of this section the amount of a service charge shall be taken to be determined when the decision of the court or arbitral tribunal is given, notwithstanding the possibility of an appeal or other legal challenge to the decision.*
 - (4) *The reference in subsection (1) to premises let as a dwelling does not include premises let on—*
 - (a) *a tenancy to which Part II of the Landlord and Tenant Act 1954 applies (business tenancies),*
 - (b) *a tenancy of an agricultural holding within the meaning of the Agricultural Holdings Act 1986 in relation to which that Act applies, or*

- (c) *a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995.*
 - (5) *In this section "service charge" means a service charge within the meaning of section 18(1) of the Landlord and Tenant Act 1985, other than one excluded from that section by section 27 of that Act (rent of dwelling registered and not entered as variable).*
 - (6) *Nothing in this section affects the exercise of a right of re-entry or forfeiture on other grounds.*
5. Section 18 of the Landlord and Tenant Act 1985
- (1) *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent-*
 - (a) *which is payable directly or indirectly for services, repairs, maintenance, improvement or insurance or the landlord's costs of management, and*
 - (b) *the whole or part of which varies or may vary according to the relevant costs*
 - (2) *The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.*
 - (3) *for this purpose*
 - (a) *costs includes overheads and*
 - (b) *costs are relevant costs in relation to a service charge whether they are incurred or to be incurred in the period for which the service charge is payable or in an earlier period*
6. Section 27A of the Landlord and Tenant Act 1985
- (1) *An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-*
 - (a) *the person by whom it is payable,*
 - (b) *the person to whom it is payable,*
 - (c) *the amount which is payable,*
 - (d) *the date at or by which it is payable, and*
 - (e) *the manner in which it is payable.*
 - (2) *Subsection (1) applies whether or not any payment has been made.*
 - (3) *An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-*
 - (a) *the person by whom it would be payable,*

- (b) *the person to whom it would be payable,*
 - (c) *the amount which would be payable,*
 - (d) *the date at or by which it would be payable, and*
 - (e) *the manner in which it would be payable.*
- (4) *No application under subsection (1) or (3) may be made in respect of a matter which –*
- (a) *has been agreed or admitted by the tenant,*
 - (b) *has been or is to be referred to arbitration pursuant to a post arbitration agreement to which the tenant was a party*
 - (c) *has been the subject of a determination by a court*
- (5) *But the tenant is not to be taken to have agreed or admitted nay matter by reason only of having made any payment*
7. Section 168 of the Commonhold and Leasehold Reform Act 2002 states:
- (1) *A Landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c20) (restriction of forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless (2) is satisfied.*
- (2) *This subsection is satisfied if it has been finally determined on an application under subsection (4) that the breach has occurred or the tenant has admitted the breach*

Documents

8. Documents received are:
- Application Form
 - Copy of the Lease dated 16th January 1989 between Huntingdonshire District Council (1) and Mr and Mrs RM Holland (2)
 - Statements of Account for the years ending 31st March 2001 to 2012
 - A copy of the Land Registry Entry Number CB105074 for the Absolute Leasehold title of the Property.
 - A copy of the Transfer of the Absolute Freehold title from Huntingdonshire District Council (1) to Huntingdonshire Housing Partnership Limited (2) of the Property registered under Title Number CB235644
 - Applicant's Statement of Case
 - Copies of the Estimated and Actual Service Charge Statements for Leasehold premises pursuant to Housing Act 1985 for the years ending 31st March 2001 to 2012
 - Copies of the Landlord's Statements of Account for the Tenant's Account
 - Correspondence with the Mortgagee

The Lease

9. The Lease dated 16th January 1989 is between Huntingdonshire District Council (1) and Mr and Mrs RM Holland (2) the Property is demised for term of 125 years form the 16th January 1989 at a rent of £10.00 per annum. The relevant clauses regarding the ground rent are:

Clause 1

AND ALSO in consideration of the rent ...the Lessor hereby demises unto the Lessee [the property]

Clause 2(ii)

To pay the said yearly rent hereinbefore reserved and made payable at the times and in the manner aforesaid without any deduction

10. The relevant clauses regarding the service charge are:

Clause 2(iii)

To pay and discharge all rates taxes duties charges assessments impositions and outgoings whatsoever whether parliamentary parochial local or of any other description which now are or during the term hereby granted shall be payable imposed or charged or assessed upon or payable out of or in respect of the Demised Premises or any part thereof or the owner of the occupier thereof

Clause 3(ii)

*The Lessor hereby covenants... [to]
Observe and perform the covenants and other matters set out in the Schedule hereto*

Clause 4(i)

The Lessee shall contribute to and shall keep the Lessor indemnified from and against a proportionate part of the amount incurred by the Lessor in respect of all costs charges and expenses (including any value added tax or impost payable by the Lessor incurred by the Lessor in complying with the covenants on its part contained in Clause 3(ii) hereof such proportionate part to be the proportion part to be calculated as follows:

(a) The proportion which the net rateable value of the Demised Premises bears to the aggregate net rateable value of the flats and garages forming part of the development

Or

(b) by some other method which the Lessor in its absolute discretion considers is a fair and reasonable alternative to the method referred to in Clause 4(i) (a) herein

Clause 4(ii)

The Lessee shall pay to the Lessor in advance on account of the Lessee's obligation under the last preceding sub-clause such proportionate part as specified in the preceding sub-clause on the first day of April and October each year (or such other dates as the Lessor shall from time to time notify the Lessee in writing thereof) and in respect of the period from the date hereof to the first of those days a proportionate part thereof

Clause 4(iii)

To pay the Lessor such other sums as may be specified in part II of the said Schedule as being payable by the lessee to the Lessor or the managing agents as appropriate such written demand being made therefore by the Lessor and such demand may be made in advance in accordance with Clause 4(ii) thereof

Part I of the Schedule

This sets out the Lessor's obligations to maintain, decorate and insure the Development

Part II of the Schedule Paragraph 5

If an so long as the Lessor does not employ managing agents in respect of the Development it shall be entitled to add a sum not exceeding Fifteen per centum to any of the items referred to in Part I of this Schedule in respect of its establishment charges

Part II of the Schedule Paragraph 6

The Lessor shall on the first day of January in each year or as soon thereafter as possible in respect of the year commencing the First day of April next following estimate the costs of observing and performing the matters contained in Part I of this Schedule and upon such estimate being made the same shall be certified by the Lessor's director of Finance from time to time and the Lessor shall thereupon advise the lessee of the contribution payable by the Lessee pursuant to Clause 4(i) hereof

Part II of the Schedule Paragraph 7

So soon after the year ending on the Thirty-first day of March the Lessor shall draw up accounts in respect of the sums expended by the Lessor in observing and performing the covenants contained in Part I of this Schedule insofar as the estimate prepared pursuant to paragraph 6 of part II of the Schedule hereof either exceeds or falls short of the actual sum expended by the Lessor and the Lessor shall make the appropriate adjustment in preparing the estimate on the first day of January next following

11. The relevant paragraph of Part II of the Schedule regarding the sinking fund is:

Part II Paragraph 9

The Lessor shall in preparing the estimate pursuant to paragraph 6 hereof s far as it considers it practicable equalise the amount from year to year of its costs and expenses incurred in carrying out its obligations under Part I of this Schedule by including in such estimates a sum of money to be placed in a fund (in this case called the 'sinking fund') and in subsequent years expanding such part of parts of the sinking fund as it considers reasonable by way of provision for depreciation or for future expenses liabilities or payment whether certain or contingent and whether obligatory or discretionary

Background

12. The Applicant in its written Statement of Case said that it had sent Annual Accounts to the Respondent for the years ending 31st March 2001 to 2005, when the Property was assigned to the Respondent but had not received any response until 22nd August 2005. The Respondent telephoned to say that the she was remortgaging the Property and paid £2,000 off the arrears which were then reduced to £702.96. She agreed to pay the remaining amount and future payments by standing order. Statements of Account were sent for 2006

and 2007 and the Respondent made payments of £60.00 per month between 16th April 2006 and 26th September 2007. A Statement of Account was sent for 2008 and reminder letters were sent on 1st October 2007 and 2008 when payments ceased.

13. On 27th October 2008 letter was received from Mortgagee's Solicitor stating that possession proceedings were being taken for non-payment of mortgage. Subsequently informed on 7th December 2009 that Property was sub-let and possession had not taken place.
14. Statements of Account sent on 1st April 2010, 2011 and 2012 with related reminders on 1st October for each year without response.
15. From 23rd November 2012 Applicant instructed debt collection. The Applicant visited the Property on the 5th and 6th March 2013 and hand delivered a letter regarding court action. The sub tenant of the Property gave the landlady's name as the Respondent. The Applicant then sought to trace the Respondent without success.
16. The Applicant has corresponded with mortgagees on 20th June 2013 informing them that an Application had been made to the Tribunal with a view to forfeiture of the Lease.
17. The Applicant now seeks a determination under section 81 of the Housing Act 1996 as to the reasonableness and payability of the service charges for the years ending 31st March 2002 to 2012 and a determination under section 168 of the Commonhold and Leasehold Reform Act 2002 that a breach has occurred namely non-payment of the ground rent.
18. The Applicant made representations and provided a hearing bundle as set out in the section headed Documents Received, above. No representations have been received from the Respondent.
19. Under section 81 of the Housing Act 1996 the Tribunal must determine whether the Service Charge is reasonable and payable. The Tribunal therefore examined the evidence submitted to it by the Applicant as if an application was made under section 18 and 27A of the Landlord and Tenant Act 1985.

Accounts

20. The Applicant provided the itemised statement of the estimated cost of the service charge and the service charge accounts relating to the Property, which itemised the actual costs for the years ending 31st March 2001 to 2012.
21. The Tribunal noted that the Applicant had sought to *equalise the amount from year to year* by its estimated a service charge for the Property for the years ending 31st March 2001 to 2009. The service charge monies collected on account are held in an interest earning trust account. The amount allocated for "Annual Contribution to the flats Maintenance Fund" in the Estimated Account includes the amount needed for "Repairs" and "Decoration" both in the long and short term. The Actual Account itemises the actual expenditure

for these items. The amount held in the Sinking Fund is the "Annual Contribution to the flats Maintenance Fund" less the cost for that year paid for "Repairs and Decorations".

22. This means of creating a Sinking Fund was altered in 2009. The Applicant stated in the Statement of Case as follows:

The Applicant made changes to the accounting system in 2009 in line with best practice, to enable more accurate record keeping and fully separating the administration of the sinking fund charges. The primary system was worked on estimations and the new system on actual. The accounts of all Leaseholders were rationalised at this point and debits and credits as applicable, were made on the new account.

The Tribunal therefore considered the years ending 31st March 2001 to 2009 separately from the years ending 31st March 2010 to 2012.

23. The Tribunal considered the accounting procedure and found that it did not follow the Lease provisions. On or after 1st January each year the Lessor should prepare an estimate for the next financial year, beginning the following 1st April and advise the Lessee of the contribution. Therefore the estimate prepared in January 2006 is for year ending 31st March 2007.
24. On or after 31st March each year, the Lessor is to draw up an account of the actual expenditure and shall carry forward any credit or debit balance to the estimate for 1st January the following year. So, on 31st March 2006 any balance from year ending 31st March 2006 is carried forward to the estimate done on 1st January 2007 which is for year ending 31st March 2008. However, the system of carry forward did not appear to have been done. In addition the Ground rent of £10.00 per annum has been included as a cost in the service charges of the years ending 31st March 2010, 2011 and 2012. This is not a service charge item and should be kept separate.
25. The Tribunal carefully considered the accounts provided but had some difficulty in identifying precisely how the outstanding service charge of sum of £1,463.89 was calculated. The Applicant provided further information in respect of the accounts for the year ending 31st March 2009 to 2012 by way of explanation.
26. Following the provision of this additional information the Tribunal considered divided the years into two groups and two sub-groups as follows:
1. Years ending 31st March 2001 to 2007
 2. Years ending 31st March 2008 to 2012
 - a) Years ending 31st March 2008 to 2009
 - b) Years ending 31st March 2010 to 2012

Years ending 31st March 2001 to 2007

27. The Tribunal noted that the Respondent had paid a lump sum of £2,000.00 on 6th October 2005 when the arrears of service charges and ground rent were £2,702.96 as follows:

Service Charges

2002	£430.41
2003	£526.02
2004	£537.38
2005	£577.70
2006	£591.45
Total	£2,662.96

Ground rent

2003 to 2006 4 years @ £10.00 per annum £40.00

Overall total £2,702.95

28. The lump sum paid covers the Service Charge, Contribution to the Sinking Fund and Ground Rent for the period 2002 to 2004 and part of 2005 (£111.51).
29. The Respondent made 19 monthly payments of £60.00 totalling £1,140.00 from 26th April 2006 to the 26th September 2007, which met the outstanding Service Charge and Sinking Fund Contributions and Ground Rent as follows:
- Service Charges
- | | |
|------|---------------------|
| 2005 | £466.55 Outstanding |
| 2006 | £591.45 |
- Ground rent
- 2003 to 2006 2 years @ £10.00 per annum £20.00
- Overall total £1,078.00
- Leaving £62.00 towards the Ground rent and Service Charge for year ending 31st March 2007

Decision in respect of years ending 31st March 2001 to 2007

30. The Respondent has paid and has not challenged the Service Charges for the period from the year ending 31st March 2002 to the 31st March 2006. Therefore the Tribunal finds that the Respondent has agreed these and therefore the Tribunal does not have jurisdiction to make a determination in respect of this period pursuant to s 81. It can only make a determination pursuant section 81 of the Housing Act 1996 in respect of the year ending 31st March 2007 to 31st March 2012. The Tribunal has no jurisdiction to consider the payment of ground rent other than in relation to make a determination under section 168 of Commonhold and Leasehold Reform Act 2002, which is dealt with below.

Years ending 31st March 2008 to 2009

31. The Tribunal noted the accounts for the years ending 31st March 2008 to 2009, which were a transition period between the old and new accounting system as identified by the Applicant.

Decision in respect of the Years ending 31st March 2008 to 2009

32. The Tribunal found that after the changes to the accounting system in year ending 31st March 2009 the Respondent had a surplus in the sinking fund of £76.17 and owed a service charge of £190.46 being the payment due on

account 1st April 2009 for the estimate for the year ending 31st March 2010 and £10.00 ground rent. The ground rent and service charge Total £200.46 as noted in the table below.

Years ending 31st March 2008 to 2009

33. The following table sets out what the Applicant calculates as being the amount outstanding and owed by the Respondent. It identifies the estimated service charge, which includes the ground rent and also shows the amount by which the actual cost exceeds the estimate together with the accruing deficit balance. The Tribunal has added columns identifying the ground rent, which should be shown separately, the actual service charge and the accruing balances.

Year ending 31 st March	Estimated 1 st April year prior including Ground Rent	Re-conciliation with Actual cost	Balance	Ground Rent	Actual less Ground Rent	Balance Actual
	£	£	£		£	£
2010	200.46		200.46			
		109.37	309.83	10.00	299.83	299.83
2011	220.36		530.19			
		87.24	617.43	10.00	297.60	597.43
2012	234.33		851.76			
		67.70	919.46	10.00	292.03	889.45
2013	287.25		1206.71			
		72.01	1278.72	10.00	349.26	1,238.72
2014	257.18		1535.90			1,495.90
Total				40.00		1,495.90

34. The Tribunal considered the reasonableness of the cost of the individual items of the service charge in order to make a determination under section 81 of the Housing Act 1996. It was noted that in respect of the year ending 31st March 2007 to 31st March 2012 Insurance, Repairs and Redecoration and Administration were items for each year. Community Electricity and Door Entry System were only items in the years ending 31st March 2010 to 2012.

Insurance

35. The insurance premiums do not appear to be excessive and there was no evidence before the Tribunal to indicate that they were unreasonable. The Tribunal therefore found that they are payable.

Repairs and Decoration (year ending 1st March 2007 to 2012)

36. The repairs and decorations were identified as follows:

Service Charge Year	Works Carried out	Total Annual Cost
2007/ 2008	Attend to remove dumped goods in communal area Attend to communal door Attend to annual door entry system	£131.07
2008/ 2009	None	
2009/ 2010	Attend to broken external stopcock Attend to door entry system	£47.78
2010/ 2011	Attend to faulty door entry	£42.51
2011/ 2012	Attend to guttering Attend to main entry door	£75.84

37. The Tribunal found that the works were carried out in relation to the exterior of the Property not demised and the Common Parts. The work itemised was that which might be expected to be carried out and the cost appeared to be reasonable.

Communal Electricity (year ending 1st March 2010 to 2012)

38. The account did not itemise the works that were actually carried out but in relation to the communal electricity or the cost of supply but it was noted that the item included the cost of lighting, the door entry system other than the service contract and aerials where applicable. The Respondent has not challenged the costs and there is no reason for the Tribunal to find that the costs have not been incurred. Therefore in the absence of evidence to the contrary the Tribunal finds the cost reasonable.

Door Entry System (year ending 1st March 2010 to 2012)

39. It appears that a door entry system maintenance contract has been entered into. Such agreements do not cover the vandalism or wilful damage and therefore additional costs to attend to faulty door entry systems still may occur in the charge for repairs. The Respondent has not challenged the costs and there is no reason for the Tribunal to find that the costs have not been incurred. Therefore in the absence of evidence to the contrary the Tribunal finds the cost reasonable.

Administration

40. The Tribunal found that paragraph 5 of Part II of the Schedule to the Lease only permits a management charge not exceeding 15% of the cost of any of the items referred to in Part I of the Schedule to the Lease. The Accounts showed an amount for Administration, which comprised management fees and staffing. The Tribunal took the view that both costs should be classified as Management Fees under the Lease and therefore the sum charged would be in excess of the 15% except for the year ending 31st March 2009. The Tribunal directed the Applicant to make representations on this point.

41. The Applicant stated that the costs of administration included "Staffing Costs" which covered a wide range of management and equipment costs but not to staff wages. It is intended that this item in future will be re-named Equipment and Running costs in order to ensure complete clarity to all parties. The items that are charged under this heading are as follows:

- ◆ Office space
- ◆ Office furniture
- ◆ Electricity supply and use
- ◆ Stationary – paper, envelopes, files file hangers etc
- ◆ Equipment such as fax machine, printers etc
- ◆ Building and contents insurance
- ◆ Staff training
- ◆ Telephone equipment, charges and line, including Internet access
- ◆ Postage
- ◆ Business rates

These are taken as a percentage of the whole and divided equally between the 400+ leasehold properties the Luminus Homes currently manages.

42. It was conceded that whilst these are legitimate business expenses in the management and maintenance in the remit of a managing agent and would reasonably fall into the term "management costs", the items and services quoted in Part 1 of the Schedule of the Lease are unequivocal. However, it was submitted that the above may be a legitimate chargeable expense under the Lease under the Applicant's duty to abide by the Lessor's covenant in clause 4(1) in that charges are payable by the Lessee for all reasonable costs and expenses incurred in fulfilling that duty. These costs were said to be an integral part of the Lessor's duty to provide a service and to manage the leasehold properties, in line with the duty in the Lease.

43. However, in view of the tribunal's findings in the case of *Luminus Homes v Hafiaz*, a decision reached after this case was entered for consideration, the Applicant stated that is was prepared to remove the charge for the "Staffing Costs" element from the overall amount i.e. £57.97 for each of 4 years, a total of £231.88. The Applicant added that this still left a substantial amount owing to Luminus Homes of £1,304.02, which is clear breach of the Lessee's covenant to pay these charges, with the last payment being made in 2007.

44. The Tribunal accepted the Applicant's removal of the £57.97 charge of Staffing costs for the last 4 years.

Decision in respect of the Years ending 31st March 2010 to 2013

45. The Tribunal determined that taking into account the Management Fee agreed by the Applicant the service charges for the years ending 31st March 2010 to 2013 as set out in the table below are reasonable and payable by the Respondent to the Applicant when lawfully demanded.

Decision in respect of the Years ending 31st March 2010 to 2013

45. The Tribunal determined that taking into account the Management Fee agreed by the Applicant the service charges for the years ending 31st March 2010 to 2013 as set out in the table below are reasonable and payable by the Respondent to the Applicant when lawfully demanded.

Service charges for the years ending 31 st March 2010 to 2013						
Year ending 31 st March	Actual Communal Electricity	Actual Door Entry	Actual Insurance	Actual Repairs and Decoration	Agreed Mgt Charge	Total Actual
	£	£	£	£	£	£
2010	96.53	33.55	53.73	47.78	10.27	241.86
2011	86.90	39.42	58.56	42.51	12.24	239.63
2012	34.91	40.41	61.20	75.84	21.70	234.06
2013	34.94	40.26	64.39	123.53	28.18	291.29
Total						1,006.84

46. The following table sets out what the Tribunal calculates as being the amount outstanding and owed by the Respondent. It identifies the estimated service charge, which includes the ground rent and also shows the amount by which the actual cost exceeds the estimate together with the accruing deficit balance. The Tribunal has added columns identifying the ground rent, which should be shown separately, and the actual service charge adjusted to take account of the agreed Management Fee following the further representations by the Applicant and the accruing balances.

Year ending 31 st March	Estimate to be paid 1 st April year prior Including Ground Rent	Re-conciliation with Actual cost	Balance with Ground Rent	Ground Rent	Actual with agreed Mgt fee & without Ground Rent	Balance without Ground Rent
	£	£	£		£	£
2010	200.46		200.46			
		109.37	309.83	10.00	241.86	241.86
2011	220.36		530.19			
		87.24	617.43	10.00	239.63	481.49
2012	234.33		851.76			
		67.70	919.46	10.00	234.06	715.55
2013	287.25		1,206.71			
		72.01	1,278.72	10.00	291.29	1,006.84
2014	257.18		1,535.90			
Less Staffing		-231.88	1,304.02			

Total				40.00		1,264.02
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Sinking Fund

47. In preparing the estimate the Lessor can, as far as it considers it to be practicable, include a sum for a sinking fund. The accounts up to the year ending 31st March 2009 appeared to allocate arbitrary figures for contributions to the sinking fund (which is wrongly called Maintenance Fund in some years). As mentioned earlier this was probably with a view to equalising the amount from year to year and building up an amount for any capital works in the future. However a sinking fund contribution must be a reasonable sum and must be based on a proper estimate of future expenditure. This approach changed from year ending 31st March 2009. In further representations the Applicant revised the amount outstanding for the sinking fund and found that due to an error of duplication the sinking fund is £26.49 in credit.

Decision Summary

48. The Respondent has paid and has not challenged the Service Charges for the period from the year ending 31st March 2002 to the 31st March 2006 and for the years 31st March 2007 to the 31st March 2009. Therefore the Tribunal finds that the Respondent has agreed these and therefore the Tribunal does not have jurisdiction to make a determination in respect of this period pursuant to s 81 of the Housing Act 1996.
49. The Tribunal determines that the service charges incurred for the for the years ending 31st March 2010 to 2013 and to be incurred for the for the years ending 31st March 2014 are reasonable and the Respondent has not paid the service charges to the Applicant in accordance with the lease and the amount owing to the Applicant is £1,264.02. There is no evidence that a demand has been served which includes the summary of tenant's rights and obligations and the amount is not payable unless or until this has been served in respect of each demand.
50. No amount is payable by the Respondent to the Applicant for the sinking fund.
51. The Tribunal finds that the Ground Rent was paid late for the years 2002-2007 and so a breach of covenant has occurred in respect of all those years and has not been paid for the 5 years ending 31st March 2008 to 2012. Therefore the Tribunal determines that pursuant to Section 168 (4) Commonhold and Leasehold Reform Act 2002 the Respondent is in breach of a covenant of the Lease.

Judge JR Morris

Date: 6th January 2014