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

Case Reference : CHI/OOMR/LIS/2013/0051

Property : Flat 6 Windsor Mansions, 62 Grove Road South,  
Southsea, Hampshire PO5 3RA

Applicant : Rajesh Kumar Khosla (the Landlord)

Representative : Anup Khosla

Respondent : Marianna Beecham

Representative : --

Type of Application: Transfer from Portsmouth County Court for  
determination as to reasonableness of service  
charges pursuant to Sections 19 and 27A Landlord  
and Tenant Act 1985

Tribunal Members : Judge P.J. Barber Chairman  
Mr P.D. Turner-Powell FRICS Valuer Member

Date and venue of Hearing : 17<sup>th</sup> July 2013 Tribunal Offices, 1<sup>st</sup> Floor,  
Midland House, 1 Market  
Avenue, Chichester. West  
Sussex PO19 1JU

Date of Decision: 24th July 2013

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**DECISION**

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### Decision

(1) The Tribunal determines in accordance with the provisions of Sections 19 and 27A Landlord and Tenant Act 1985 (“the 1985 Act”) that the following are the reasonable sums payable by the Respondent to the Applicant for service charges and insurance in each of the service charge years shown :-

2008/09	£	Nil
2009/10	£	Nil
2010/11	£	816.54
2011/12	£	702.70
2012/13	£	38.57

(2) Accordingly the Tribunal determines that the total sum payable by the Respondent to the Applicant for service charges and insurance for the service charge years 2008-2012 is £ 1557.81

### Reasons

#### INTRODUCTION

1. This is a matter transferred to the Tribunal by Order of District Judge Cawood on 25 February 2013 in proceedings before Portsmouth County Court under Claim Number 2QZ28027 for determination of the reasonable service charges payable by the Respondent. The total amount claimed is £2,995.98 comprising the following sums for each of the relevant service charge years :-

	Service Charges	Insurance
2008/09	£ 78.57	£195.00
2009/10	£ 78.57	£195.00
2010/11	£ 804.37	£113.91
2011/12	£ 1177.04	£123.09 & £125.00 Admin Fee
2012/13	£ 105.43	
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	£2243.98	£752.00

The claim in the County Court proceedings also includes other sums by way of interest and court costs with which the Tribunal is not concerned. The claim relates to service charges in respect of Flat 6 Windsor Mansions, 62 Grove Road South, Southsea, Hampshire PO5 3RA (“the Flat”). Directions were issued by the Tribunal on 15<sup>th</sup> April 2013, inter alia requiring the Applicant to serve a statement of case setting out the detail of the alleged breaches, together with an indexed and paginated bundle of all the documents upon which the Applicant seeks to rely in support of its case and further requiring the Respondent, if she wished to oppose the application, to serve a statement in response together with a bundle similarly indexed. The Flat is a second floor flat demised by a Lease dated 26 November 1986 (“the Lease”). A copy of the Lease was produced to the Tribunal; the Lease contains the following provisions requiring the tenant to pay one-fourteenth part of the Agreed Proportion of the outgoings for the Block. The “Agreed Proportion” is

80% equating to the portion of the Block which is residential. The landlord's maintenance obligations in regard to the Block are principally contained in the Fourth Schedule of the Lease.

### **INSPECTION**

2. The Tribunal's inspection took place in the presence of the applicant Mr Khosla and his son Mr Anup Khosla; the Respondent Mrs Beecham was also present.
3. The Flat is a second floor flat; Windsor Mansions consists of a block of 14 flats and 5 shops collectively known as 1-14 Windsor Mansions ("the Block") arranged over four floors at the front, but reducing in height towards the rear, and dating from or about the Edwardian era. The Block is located on the corner of Elm Grove and Grove Road South. There is a pitched roof largely concealed behind ornate parapets. The shops are all at ground floor level and the entrance to the residential flats is obtained via a key pad entry system, by a door fronting on to Grove Road South.
4. The main communal front door leads to a single flight of stairs which then branches off at first floor level, to the flats located at various levels and locations within the Block. The Tribunal inspected the inside of the Flat and also, at the request of Mrs Beecham, Flat 2. There were indications of water ingress damage which had been repaired in part but in some cases appeared to have further failed. No access to the roof was possible. There was a small rear yard.

### **THE LAW**

5. Section 19(1) of the 1985 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 or works are of a reasonable standard;*

*and the amount payable shall be limited accordingly."*

Section 20 of the 1985 Act provides that :

*(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either –*

*(a) complied with in relation to the works or agreement, or*

*(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.*

.....

*(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount-*

*(a) an amount prescribed by, or determined in accordance with, the regulations, and*

*(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.*

*(6) where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.*

The “appropriate amount” prescribed by Regulation 6 of The Service Charges (Consultation Requirements) (England) Regulations No. 1987 of 2003, is £250.00.

Section 20B of the 1985 Act provides as follows :

*(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant then (subject to subsection (2)) the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred*

*(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.*

Sub-Sections 21B (1) to (3) of the 1985 Act provide that :

*(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges*

*(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations*

*(3) A tenant may withhold payment of a service charge which has been demanded from him if sub-section (1) is not complied with in relation to the demand*

The relevant regulations referred to in Section 21B(2) of the 1985 Act are the Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 S.I. No. 2007/1257

Sub-Sections 27A (1), (2) and (3) of the 1985 Act provide that :

*“(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 cost, 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.

“Service Charges” are defined in Section 18 of the 1985 Act as follows

(1) In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent-

- (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements, insurance, or the landlord’s costs of management, and
- (b) the whole of part of which varies or may vary according to the relevant costs

18(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose-

- (a) “costs” includes overheads, and
- (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

## **HEARING & REPRESENTATIONS**

10. The hearing was attended by both parties; Mr Anup Khosla made representations in the matter on behalf of his father; Mrs Beecham represented herself.
11. Mr Khosla and Mrs Beecham made their submissions in respect of each of the service charge and insurance years in question as follows :-

2008/09

Cleaning Common Parts	750.00
Administration Fees	350.00
Insurance	195.00

The Applicant was unable to produce any invoices for the cost of cleaning common parts; the work had been carried out by Mr and Mrs Holmes, the lessees of Flat 8 and they had been paid for this work by the issue of simple credit notes against their own service charge accounts. The cleaning costs were £750.00. In respect of the administration fees of £350.00, Mr Khosla submitted that there were no invoices but the cost equated to £25.00 per flat per year and was reasonable. Mr Khosla further submitted that the insurance charge of £195.00 comprised a one-

fourteenth part of the annual premium being £130.43 plus an admin fee of £64.57; the policy was in respect of the whole of the Block including the shops. Mrs Beecham submitted that it was unfair that admin fees should be charged not only under the service charge heading, but also for insurance. No copy of the policy had been produced and she said she had had to obtain her own cover in case the landlord's policy did not cover buy to let arrangements; Mrs Beecham's flat is let to tenants. Mrs Beecham submitted that no summary of tenant rights had accompanied the demands for the 2008/09 service charges and Mr Khosla accepted that this was indeed the case. Mrs Beecham submitted that in any event she should not be liable to pay service charge costs for this service charge year, in circumstances where such costs were incurred more than 18 months before any lawful demand for payment.

#### 2009/10

Cleaning common parts	750.00
Administration Fees	350.00
Insurance	195.00

The position in regard to cleaning, service charges and insurance was broadly the same as in 2008/09 and the same comments and submissions as above were made by the parties.

#### 2010/11

Cleaning common parts	750.00
Fire Alarm System	4924.36
Fire Risk assessment	250.00
Emergency Lighting	1499.99
Fire Alarm maintenance	223.25
Common parts maintenance	2188.64
Exterior Repairs	1075.00
Admin Fees	350.00

The position in regard to cleaning of common parts and admin fees was the same as for 2008/09 and 2009/10. Mr Khosla submitted that a new fire alarm system had been installed at a cost of £4924.36; the cost of the work was such as to require consultation with tenants by the Landlord pursuant to the provisions of Section 20 of the 1985 Act. Mr Khosla referred to first and second stage consultation notices, respectively at Pages 74/5 and 79 of his bundle. Mrs Beecham pointed out that the first notice referred to other works apart from the fire alarm; Mr Khosla submitted that these works had been included in the notice as a precaution, but in the event the cost had not exceeded the statutory amount above which consultation was required. Mrs Beecham submitted that the Section 20 consultation carried out was defective, particularly as no period for observations had been allowed or referred to in the second stage notice. Mrs Beecham also felt aggrieved that the first notice had provided for inspection by tenants of a full description of the works, at the landlord's address in Middlesex, some considerable distance from the Flat. In regard to the fire risk assessment no copy of the report was available. In relation to emergency lighting, Mr Khosla referred to

the invoice and certificate of installation. Mr Khosla said that the fire alarm maintenance occurred under a contractual arrangement with two inspections per year; the cost was £223.25. Mr Khosla submitted that the item for common parts maintenance related mainly to the installation of safety glass. The item for exterior repairs was undertaken on an emergency basis when a sandstone block from the parapet area of the roof fell to the ground and had to be repaired promptly. The same comments as for previous years applied in respect of the Admin Fees. With regard to insurance the amount charged this year reflected only one-fourteenth part of the premium and no admin fee was charged. Mrs Beecham accepted that for this year, a summary of tenant rights had been included with the demand although questioned why demands were not issued half-yearly as stipulated in Clause 2(a) of the Lease.

2011/12

Cleaning common parts	750.00
Fire Alarm maintenance	408.66
Common parts maintenance	2025.00
Exterior repairs	11864.00
Admin Fees	1400.00
Postage & printing	30.89

Mr Khosla submitted that the same comments as previously made, applied in respect of cleaning; he added that the fire alarm maintenance cost comprised of two invoices at Pages 107 & 108 of his bundle. The common parts maintenance work had related to a time clock and internal window repairs. Mr Khosla said that the exterior repairs related to various scaffolding related works; Mrs Beecham suggested that the three lots of scaffolding and works detailed at Pages 101-106 of the Applicant`s bundle were in reality one set of works, the cost of which exceeded the Section 20 consultation threshold and for which consultation should have occurred, but had not been carried out. Mr Khosla submitted that the admin fees had been higher during this year as a result of more work having been carried out, requiring greater organisation and/or supervision; Mrs Beecham said she considered the sum of £1400.00 to be exorbitant, but Mr Khosla suggested that the amount was still reasonable since the charges currently been charged by the new managing agent exceeded £200.00 each per flat per year. Mr Khosla added that the item for postage simply reflected additional costs of postage, copying and key cutting. Mrs Beecham again questioned the absence of half yearly service charge demands and pointed out that no annual budget was provided by the Applicant to the tenants. In regard to insurance the position was the same in principle as for 2010/11. Mrs Beecham accepted that the demand for this year had included the required statement of tenant rights.

2012/13

Fire Alarm maintenance	170.00
Legal Fees	936.00
Admin Fees	350.00
Postage	20.00

The demand related only to 2 days; namely 29 February 2012 and 1<sup>st</sup> March 2012. Mr Khosla exhibited invoices in respect of fire alarm maintenance. In regard to legal fees, Mr Khosla asserted that such fees were on an apportioned basis and definitely related to legal work pursuing service charge arrears, but he was unable to produce any invoices. On Admin fees, Mr Khosla said that the £350.00 reflected the same rates as had applied in 2008/09 and was reasonable. Mrs Beecham submitted that a £350.00 admin charge for 2 days was unreasonable in any event.

### **CONSIDERATION**

12. The tribunal, have taken into account all the oral evidence and those case papers to which we have been specifically referred and the submissions of the parties.
13. The Tribunal considered the position for each of the relevant service charge years as follows :-

#### 2008/09 & 2009/10

The Applicant accepted that no summary of tenant rights and obligations, as required by Section 21B of the 1985 Act, had accompanied either of the demands for these two years and accordingly the tenant is entitled to withhold payment. Accordingly the liability of the Respondent for service charges and insurance in respect of these years is nil.

#### 2010/11

The Tribunal considers that the amounts claimed for cleaning, fire risk assessment, emergency lighting work, fire alarm maintenance, exterior repairs and admin fees are not of an unreasonable amount. However in regard to the works relating to installation of the fire alarm, the Tribunal is of the view that the Applicant failed properly to comply with Section 20 consultation procedures by not, for example, allowing a period for observations in the second stage notice; accordingly the costs which may be recovered through the service charge shall be limited to £3500.00 (being the threshold sum of £250.00 per tenant, multiplied by the number of flats in the block). The Tribunal takes the view that admin fees may be recovered as service charges pursuant to the provision in Clause 2(a)(ii) of the Lease as being incidental to the carrying out of the obligations described in Clause 2(a)(ii)(3). Consequently the reasonable service charges for the Block for this period are :-

Cleaning	750.00
Fire Alarm System	3500.00
Fire Risk Assessment	250.00
Emergency Lighting	1499.99
Fire Alarm maintenance	223.25
Common parts maintenance	2188.64
Exterior repairs	1075.00
Admin Fees	350.00
<b>TOTAL</b>	<b>9836.88</b>



Accordingly the one-fourteenth part payable by the Respondent shall be £702.63 together with £113.91 for insurance, making a total of £816.54.

2011/12

The Tribunal considers that the amounts claimed for cleaning, fire alarm maintenance, common parts maintenance, admin fees and postage are not of an unreasonable amount. However in regard to exterior repairs the Tribunal notes that the invoices at Pages 102, 104 and 106 of the Applicant`s bundle, were all issued by the same contractor over a period of less than two months and the last such invoice refers to work carried out not only to all gutters, but also to the front of the Block. The invoices for scaffolding at Pages 101, 103 and 105 relate on the face of it, to three separate scaffolding structures, respectively at the rear, front and side of the Block, the Tribunal is persuaded that in reality all six invoices represent a single continuum or programme of work, exceeding the threshold for which Section 20 consultation should have occurred. Accordingly the amount recoverable shall be limited to £3500. charged for the Block. Consequently the reasonable charges for the Block for this period are :-

Cleaning	750.00
Fire Alarm maintenance	408.66
Common parts maintenance	2025.00
Exterior repairs	3500.00
Admin fees	1400.00
Postage & printing	30.89
TOTAL	8114.55

Accordingly the one-fourteenth part payable by the Respondent shall be £579.61 together with £123.09 for insurance, making a total of £702.70.

2012/13

The Tribunal considers that the amounts claimed for fire alarm maintenance, admin fees and postage are not of an unreasonable amount. However since the Applicant could produce no invoice or clear evidence in regard to the item claimed for legal fees, the Tribunal disallows that item. Consequently the reasonable charges for the Block for this period are :-

Fire Alarm maintenance	170.00
Legal Fees	Nil
Admin Fees	350.00
Postage	20.00
TOTAL	540.00

Accordingly the one-fourteenth part payable by the Respondent shall be £38.57.

14. For the avoidance of doubt the Tribunal considers that there is no provision in the Lease allowing for the Late Payment Administration Fee of £125.00 claimed by the Applicant in regard to insurance and accordingly that sum is disallowed.
15. In regard to the Respondent`s concerns about the landlord not providing details of insurance, nor billing for service charges on a half yearly basis, nor producing

annual budgets, the Tribunal has taken such concerns into account; however it would have been open to the Respondent formally to obtain details of the insurance at the time. Similarly the Tribunal is of the view that the landlord's failure to issue half yearly service charge demands and/or annual budgets may be regrettable, but such failure does not have a material bearing on the decision otherwise reached.

16. We made our decisions accordingly.

Judge P J Barber (Chairman)

A member of the Tribunal  
appointed by the Lord Chancellor

Appeals :

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.