



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

**Case Reference** : **LON/00AZ/LSC/2016/0264**

**Property** : **First Floor Flat, 21 Manor Mount,  
Forest Hill, London SE23 3PY**

**Applicant** : **Manor Mount (Freehold) Limited  
Walker**

**Representative** : **Mr J. Wragg of Counsel**

**Respondent** : **Ms Yvonne Ameyaw**

**Representative** : **In person**

**Type of Application** : **Application under s.27A of the  
Landlord and Tenant Act 1985**

**Tribunal Members** : **Judge W Hansen (chairman)  
Mr S Mason FRICS FCI Arb  
Mrs L Walter**

**Date and venue of  
Hearing** : **22 - 23 May 2017 at 10 Alfred Place,  
London WC1E 7LR**

**Date of Decision** : **15 June 2017**

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**DECISION**

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## Decision of the Tribunal

- (1) The Tribunal determines that the Respondent is not liable to pay any sums by way of service charge (including insurance) for 2007 to 2010 inclusive.
- (2) The Respondent is liable to pay 20% of (£330 + £1212) = £308.40 for 2011.
- (3) The Respondent is liable to pay 20% of (£605 + £1230) = £367.00 for 2012.
- (4) The Respondent is liable to pay 20% of (£704+ £1300) = £400.80 for 2013.
- (5) The Respondent is liable to pay 20% of £17,027 (£183+ £396 + £640 + £150 + £14500 + £964 + £18 + £150 + £26) = £3,405.40 for 2014.
- (6) The Respondent is liable to pay 20% of £3,659.75 (£196 + £1042.80 + £24.95 + £396 +£500 + £1500) = £731.95 - £129 (20% of £645) = £602.95 for 2015.
- (7) The Respondent has made payments totalling £882.95 (£1282.95 (total) - £400 attributable to ground rent) towards service charge during the period from 2007 to 2015 for which credit must be given.
- (8) The Respondent's net liability for service charge for the period 2007-2015 is therefore £5,084.55 (£308.40 + £367.00 + £400.80 + £3,405.40 + £602.95) - £882.95 = £4,201.60.
- (9) The Tribunal additionally determines that the Applicant is liable to pay £210 for administration charges.

(10) For the avoidance of doubt, nothing in this determination is intended to fetter the discretion of the county court in relation to county court interest or costs and the question of whether the Applicant can recover contractual costs from the Respondent pursuant to the lease is to be determined by the Court or another Tribunal.

### **The Application**

1. The Applicant is the freehold owner of 21 Manor Mount, Forest Hill, London ("the Property"). It purchased the freehold of the Property in October 2007. The Respondent is the tenant of the first floor flat ("the Flat"). The Property is a late Victorian semi-detached property now converted into 4 flats.
2. This is an application by the Applicant for a determination of the Respondent's liability to pay and the reasonableness of service charges alleged to be due in respect of the years 2007-2015. The amount of service charge claimed is £5,736.25. There is also a claim for administration charges of £210.00. The relevant legal provisions of the Landlord and Tenant Act 1985 ("the 1985 Act") are set out in the Appendix to this decision.
3. There are three bundles of documents before the Court. References to the main bundle (pp.1-343) shall be in the form MB/Page number. References to the Applicant's bundle of disclosure documents (pp.1-94) shall be in the form DD/Page number. References to the Respondent's bundle (pp.1-181) shall be in the form RB/Page number. It is regrettable that the papers have come before us in this way. Both parties were under a duty to cooperate and we should have had one bundle, not three. We say no more, other than to note that it has meant a lot of time has been wasted skipping between bundles and it has made our task much more difficult than it should have been.

## Background and Procedural History

4. The Respondent has been the tenant of the Flat since May 2005. She holds under a lease dated 3 May 1989 (“the Lease”) made originally between Mr Abraham as lessor and Barnleague Limited as tenant: MB/180-212. The Lease was for a term of 125 years from 25 December 1988. The Lease provides at Clause 2 for the payment of an advance service charge, at the rate of 20% (in the case of the Respondent) of “*the general expense*” as defined, in two equal instalments at 6-monthly intervals on account of the estimated service charge with a balancing adjustment after the year end. The Lease identified the lessor’s financial year as 1 January to 31 December and the due dates for the payments of service charge as being the June and Christmas quarter days but the Lease provides that those dates are subject to change in the event that the financial year is changed. The financial year has in fact been changed to 1 May to 30 April and the result is that service charge is now payable on the March and September quarter days. There is also provision in the Lease at Clause 2(e) that expressly permits the landlord to build up a reserve fund.
5. The present application began life as a claim in the County Court for unpaid service charges (£5,736.25), ground rent (£200.00), administration charges (£210.00) and contractual costs (£655.80) in the total sum of £6,802.05; DD/86.
6. The claim was issued on 10 March 2015. A statement of account showing the breakdown of the alleged arrears is at DD/86. The first line refers to a balance brought forward of £2,686.25. The breakdown of this brought forward balance is at DD/87 from which it is apparent that the earliest item of service charge claimed relates back to 2007. The last payment made by the Respondent, according to the schedule at DD/87, was in 2012.
7. An acknowledgment of service was served on 16 March 2015 followed on 9 April 2015 by what purported to be a Defence. On 4 September 2015 District Judge Price gave standard directions for a small claims track trial, including provision for the service of witness statements.

8. The matter came on for trial in the County Court on 27 November 2015 but was unfortunately adjourned. The reasons for this are apparent from the order, the material parts of which read as follows:

*“UPON the defendant having failed to file a proper Defence or to comply with the order of 4 September 2015*

...

*IT IS ORDERED THAT:*

*The Small Claims Hearing is adjourned...*

*Unless by 4pm on 24 December 2015 the Defendant files and serves a full and complete Defence and Counterclaim setting out precisely on what grounds she disputes the service charge and ground rent demands ... [and] claims that any charges are unreasonable ... [and] pays the Claimant the sum of £1,200 including VAT being the costs summarily assessed as thrown away by today's adjournment (and amounting to unreasonable behaviour...), the Defendant shall be debarred from defending further...”*

9. On 24 December 2015 a Defence and Counterclaim was filed: MB/28-37. There followed a Reply on 20 January 2016. On 17 March 2016 the Respondent served two witness statements, one from Ms Mensah and one from Mr Griffiths: MB/ 57-62.
10. The matter came on for trial again on 18 April 2016 when it had to be adjourned again. A further unless order was made against the Respondent requiring her to serve a witness statement by 16 May 2016 setting out the facts and matters relied on in support of her Defence and Counterclaim and she was again ordered to pay costs thrown away, this time in the amount of £732.00: MB/63.
11. On 11 May 2016 the Respondent served a witness statement: MB/67-76. The version in the bundle is unsigned. On 7 June 2016 the Applicant served a further witness statement from a Mr J. Price (MB/77-86). On 6 July 2016 DJ Parfitt adjourned the trial again, this time because it had been double-listed,

and transferred the claim to this Tribunal save that he retained the Respondent's wasted costs appeal. The Applicant objected to the order for transfer and sought to set it aside. On 4 November 2016 the court refused the Respondent permission to appeal against the wasted costs order and dismissed the Applicant's application to set aside the transfer order.

12. On 26 January 2017 this Tribunal (Judge O'Sullivan) gave detailed, albeit fairly standard directions for a service charge dispute of this kind. In particular, she ordered the Respondent by 3 March 2017 to complete her part of a Scott schedule (to be provided by the Applicant) setting out the items in dispute and the reasons for the dispute together with a statement of her case and any witness statements upon which she intended to rely. Significantly, at paragraph (9) of her directions Judge O'Sullivan excluded the Respondent's counterclaim as identified in paragraph (8) of her directions (see also MB/36-37) and directed that it be tried in the County Court at the conclusion of the Tribunal proceedings: MB/151.
13. Whilst this Tribunal might have taken a different course and dealt with all the issues together at the same time, neither party has sought to appeal or set aside that direction and when we raised the idea of dealing with all the issues at this hearing, Counsel for the Applicant made it clear that he had not come prepared to deal with the counterclaim. In these circumstances, we consider that we ought to proceed as per Judge Sullivan's directions and not deal with the counterclaim.
14. On 10 April 2017 the Respondent applied to strike out the Applicant's claim. The strike out was refused as "*wholly disproportionate*" and the directions varied: MB/160. The time for the Respondent to set out her case properly was extended until 27 April 2017. The Applicant served a detailed Statement of Case on 4 May 2017 as directed: MB/162-174. The Respondent remained in significant default of the directions, having not provided any statement of case, witness statement or annotated Scott schedule identifying the matters in dispute. On 10 May 2017 an unless order was made against the Respondent requiring her Scott schedule by 12 noon on 12 May 2017. On 10 May 2017 the

Applicant provided a further witness statement of Mr Price for the purposes of these proceedings: MB/294-299. On 12 May 2017 the Respondent complied with the unless order by providing her annotated Scott Schedule. She has not provided any witness statement or statement of case but has indicated that she is relying on her Defence and Counterclaim and witness statement from the County Court proceedings.

### **The Issues**

15. The issues have not been as clearly defined as they should have been. The Scott Schedule only covers the years 2010-2015 but there are other issues relating to earlier service charge years. A statement of case and witness statement from the Respondent for the purposes of these proceedings would have helped. In her directions at paragraph (10) Judge Sullivan helpfully attempted to distil what she considered to be the issues from the County Court pleadings and set them out in her order at paragraph (10) (MB/151-152). Counsel for the Applicant expressed concern at a number of points during the hearing when it appeared that the Respondent might be attempting to enlarge the list of issues to include new issues. Whilst we allowed the Respondent some leeway in addressing us generally, we made it plain that neither side was to be ambushed by new issues and we have confined our consideration to the issues as identified by Judge Sullivan based on the pleadings in the County Court and/or as set out in the Scott Schedule. This is necessary as a matter of fairness to both sides, but the principle applies with even more force to the present case given the regrettable procedural history.
16. We have approached the matter chronologically and set out below our findings for each of the years (2007-2015) in question and our conclusions as to the amounts (if any) payable by the Respondent for each year. In coming to our conclusions, we have had regard to the statements of case, the Scott Schedule, the documents in the three bundles previously referred to and the evidence of Mr Price and the Respondent. The Respondent mounted relatively few direct challenges to Mr Price's evidence but where the evidence of Mr Price

conflicted with the Respondent's evidence, we preferred the evidence of Mr Price.

17. Finally, we should note at this stage that the Applicant purported to appropriate such payments as the Respondent made between 2007 and 2012 to the earliest outstanding sums allegedly owed by the Respondent, including service charge items going back to 2007: MB/165, paragraph 5 and Table at MB/166-167. Thus it was submitted that "*the oldest sums are paid*" and "*the tribunal need not determine whether the demands are deemed (a) properly served (b) payable by reason of section 20B and/or statute barred as averred by the respondent for the years prior to March 2011*": MB/167, paragraph 6.
18. However, there is no evidence of such an appropriation prior to the Applicant's statement of case and we are satisfied that the Respondent had already appropriated such payments towards ground rent and insurance (see e.g. e-mailed dated 25 February 2014 at RB/117) and thus it was no longer open to the Applicant to appropriate these payments as it has purported to do. In any event, the mere fact of payment does not preclude a challenge to the payability and reasonableness of the sums paid: s.27A(2) of 1985 Act. It follows that the Tribunal *does* need to consider whether the Respondent is liable to pay service charge and her share of the insurance premiums for the years prior to March 2011. It is to be noted that the parties have dealt with insurance separately, rather than as just another service charge item. It is also to be noted that a number of the insurance premiums were payable in December but in fact relate to the subsequent year and have been dealt with on that basis.
19. We have considered whether the fact of the Respondent's payments and the appropriation of those payments towards the insurance means that she should be taken to have admitted for the purposes of s.27A(4) of the 1985 Act those insurance charges which she has in fact paid by reason of a course of conduct (see e.g. *Cain v Mayor and Burgesses of the London Borough of Islington* [2015] UKUT 542 (LC)), notwithstanding the defence to those claims



advanced in paragraph 18 of the Defence (MB/32). However, the Applicant advanced no case in reliance on s.27A(4) and we consider it would be unfair to rule against the Respondent on this basis in those circumstances.

#### 2007

20. There is a sum claimed by way of general service charge for this year in the sum of £75.00 due on 25 December 2007 together with a claim for £139.44, being the Respondent's 20% share of the insurance (£697.21): MB/166 & 276. The insurance premium in fact relates to 2008 and was paid in 2008 and will be dealt under that year for that reason and the reasons previously explained in paragraph 18. No demand for service charges for 2007 has been produced. The Applicant relies on evidence from other tenants to the effect that they have "*always received demands*": see w/s of Ms Cornwall at MB/49, paragraph 2. However, Ms Cornwall then refers to the period when the current managing agents were in post, i.e. from 2013, and the period when Whiston, the previous agents, were in post, i.e. from August 2010: RB/56. However, we are here concerned with an earlier period when there were no agents and the property was being self-managed by the new freeholder. Mr Wragg submitted that the complaint was not that no demands were made, but rather than no valid demands were made: MB/295, paras 5-6. We are not persuaded by this submission. The Defence at para 18.3(i) contends that "*the Claimant failed to issue timely demands for ground rent and service charge payments and/or to serve notice that costs have been incurred*" and at (ii) reliance was placed on section 20B of the 1985 Act: MB/31. It was further submitted by the Applicant, in reliance on *Gilje v. Charlgrove Securities Ltd* [2003] EWHC 1284 (Ch), that section 20B was not applicable because we were here concerned only with on account charges. Section 20B has no effect where payments on account have been made in respect of service charges and the actual expenditure by the lessor does not exceed the payments on account, such that there is no need for any further demand to be made of the tenant and no such demand is made: see *Gilje* at [20]. That is not this case. The Respondent made no payment on account at this time: MB/166. There is no evidence that the Respondent made any payments between November 2007

and May 2011: MB/166. On the evidence available to us, we consider that s.20B is applicable and we are not persuaded that any demand for these sums was served within the section 20B(1) limitation period of 18 months. Nor are we persuaded that there was any other relevant notification in writing sufficient to satisfy s.20B(2). We therefore determine that the Respondent is not liable to pay anything by way of service charge for 2007.

#### 2008

21. A sum of £75.00 by way of service charge is claimed for 2008. There is also the above-mentioned insurance premium of £697.21 to consider. We repeat our observations under paragraph 20 above and determine that the Respondent is not liable to pay anything by way of service charge for 2008.

#### 2009

22. A sum of £153.52 by way of service charge is claimed for 2009 together with insurance of £948.25. We repeat our observations under paragraph 20 above and determine that the Respondent is not liable to pay anything by way of service charge for 2009.

23. We now turn to the Scott Schedule, beginning as it does in 2010.

#### 2010

24. The Scott schedule for 2010 (MB/314) claims £948 for insurance and £100 for professional fees. We are satisfied that the sum of £948 was expended on insurance (MB/277). We are not persuaded by the claim for £100. The fact that it is referred to in the accounts for the y/e 30 April 2010 (DD/80) is not, without more, sufficient evidence that it was a reasonable charge, in circumstances when we know that there were no managing agents in post at this time; Whiston were only appointed in August 2010. In any event, we have seen no demand for either sum. We repeat our observations under paragraph 20 above and determine that the Respondent is not liable to pay anything by way of service charge for 2010.

2011

25. The Scott Schedule for 2011 (MB/315-6) claims £330 for agent's management charges, £1212 for insurance, sundries of £100 and accountancy fees of £120. We are satisfied that a sum of £1,212 was expended on insurance (DD/81), although this does not marry up precisely with the renewal notice: MB/279. A sum of £244.00 has been claimed from the Respondent: MB/166. Again, this does exactly reflect 20% of the charge, although it is very close. Although the Respondent made much of these apparent discrepancies, these points do not trouble us.
26. For 2012 we therefore consider the following charges reasonable and payable. We are satisfied that the sum of £1,212 is payable. There is no evidence to suggest that the premium is in any way unreasonable. We also find that the Respondent is liable to pay the sum of £330 for agent's management charges. There were now agents in post, there is evidence of meaningful activity on their part and this is a reasonable charge.
27. We do not allow the claims for £100 (sundries) and £120 (accountancy), there being no documentary evidence to prove them. We also take the view that the accounts prepared and certified are not actually proper service charge accounts and are not sufficient without more to justify these charges.
28. The Respondent made a number of payments in 2011 consistent with demands having been made. We are satisfied that these sums were demanded in time (see DD/6 and w/s of Mr Marshall, the proprietor of Whiston, at paragraphs 2-3, MB/53) and that there is no limitation defence of any kind whether under the 1985 Act or the Limitation Act 1980. The evidence of the other tenants is also persuasive in relation to this later period. The Respondent is therefore liable to pay 20% of (£330 + £1212) = £308.40 for 2011.

2012

29. The Scott Schedule for 2012 (MB/317-8) claims £605 for agent's management charges, £1230 for insurance, and accountancy fees of £140.
30. For 2012 we consider the following charges reasonable and payable. We are satisfied that £1,230 was expended on insurance (MB/280 and DD/82) and is payable. There is no evidence to suggest that the premium is in any way unreasonable. We are satisfied that the £605 for agent's management charges is also payable. There were now agents in post, there is evidence of meaningful activity on their part and this is a reasonable charge. We do not allow the claim for £140 (accountancy) and repeat our observations under paragraph 27 above. There is no limitation defence. We repeat our observations under paragraph 28. The Respondent is therefore liable to pay 20% of (£605 + £1,230) = £367.00 for 2012.

2013

31. The Scott Schedule for 2013 (MB/319-320) claims £704 for agent's management charges, £1,300 for insurance, sundries of £14, accountancy fees of £150 and bank charges of £54.
32. For 2013 we consider the following charges reasonable and payable. We are satisfied that £1,300 was expended on insurance (MB/281 and DD/84) and is payable. There is no evidence to suggest that the premium is in any way unreasonable. We are satisfied that the £704 for agent's management charges is also payable. There were now agents in post, there is evidence of meaningful activity on their part and this is a reasonable charge. We do not allow the claim for £13 (sundries), £150 (accountancy) or £54 (bank charges) and repeat our observations under paragraph 27 above. There is no limitation defence. We repeat our observations under paragraph 28. The Respondent is therefore liable to pay 20% of (£704+ £1,300) = £400.80 for 2013.

2014

33. The Scott Schedule for 2014 (MB/321-323) claims £183 for Whiston's management charges, £396 for Southside's charges (Southside took over the management during the course of 2013), £640 for repairs and maintenance, £150 being the excess payable following an insurance claim, £14,500 in respect of the budgeted cost of anticipated major works, £964 for insurance, sundries of £18, accountancy fees of £150 and bank charges of £26.
34. For 2014 we consider the following charges reasonable and payable. We allow the sum of £579 for management for the same reasons as previously given. Southside seem to have been particularly dutiful managing agents. We allow the sum of £640 for repairs and maintenance, having regard to the detailed schedule of expenditure provided at DD/3. We allow the claim for £150 in respect of the excess, having regard to the comments in the Scott Schedule and the schedule at DD/3. We allow the claim for insurance in the sum of £964: MB/282. We do also, on this occasion, allow the claim for accountancy in the sum of £150 and the other small items as per the schedule as there is some supporting evidence provided by Southside: see e.g. DD/3.
35. As to the major works item of £14,500, it is to be recalled that a demand was made for the Respondent's share before the works had actually started, as is the Applicant's entitlement under Lease. We propose to deal with all the disputes in relation to that item, including as to the quality of works, at this point, as the parties have done in the Scott Schedule, although logically it might have been thought more appropriate to deal with the quality of the works after they had been completed.
36. It is as well to recall at this stage the process that led to the demand for a contribution to the major works, what was actually demanded from the Respondent and the basis of that demand. The new managing agents, Southside, inspected the Property in or about July 2013 and a site inspection report was compiled: MB/253-259. The total budgeted cost in the inspection report was £15,000. That included a provision for internal decorations (£2,500), "*subject to funds*", which were not ultimately carried out: MB/256. A specification was then prepared for exterior decoration and repairs:

MB/260-266. On 5 July 2013 the agents sent out a Stage 1 consultation notice to all leaseholders: MB/274. This invited observations within 30 days as required. We have not been taken to any observations submitted within the consultation period. The agents then went out to tender and obtained estimates for the works in accordance with Stage 2 of the consultation requirements. The lowest price estimate was £12,795 from IMB Construction. On 15 August 2013 the agents sent out a notice in accordance with Stage 3 of the consultation requirements. No relevant observations were made, although there was a complaint at this time by the Respondent about "mice infestation". In due course IMB was appointed as the lowest price contractor. There was therefore no need for a Stage 4 notice: see Service Charge (Consultation etc) (England) Regulations 2003, Sch 4, Part 2, paragraph 13(2). The works were not actually undertaken in 2013 as originally anticipated. On 6 November 2013 Mr Price informed the lessees by email that the works had been postponed until 2014 and that in view of this he proposed "*to allow each of the contractors to review their tender if required*". He told the Tribunal that none did and IMB undertook the work in the summer of 2014. The final cost was £1,060 higher than the original estimate due to additional timber repairs, additional access and tree surgery, which the Respondent requested. The final invoice was for £13,855: MB/311.

37. Southside's budget for 2013-14 made provision for a "total budget" of £14,000: DD/1. Significantly, it is to be noted that of that sum, £5,500 was to come from "Reserves". This left a balance of £8,500 to be funded by a major works contribution from the tenants. On this basis, the sum of £1,700, being 20% (the Respondent's percentage) of £8,500, was demanded from the Respondent which we consider entirely reasonable. In fact, the final sum payable was £13,855 which explains the credit in the accounts for the following year of £645 (£14,500 - £13,855).
38. The Respondent raises a number of challenges to the major works in the Scott Schedule. In particular, she makes 6 points: 1) she contends that "*the amount apportioned to the first floor flat*" was unreasonable; 2) she contends that the work was not done to a reasonable standard; 3) she contends that the total cost was "*wholly unreasonable and a direct result of unreasonable delays by*

*the Applicant in meeting its obligations under the terms of the lease to maintain the property*"; 4) she contends that there was improper consultation; 5) she contends that the Applicant "*failed in its duty to maintain an adequate reserve fund*" and 6) she contends that "*there is a reserve fund of £1,700 on account for the first floor flat which has not been accounted for*".

39. As to 1) above, there is no merit in this contention. The Lease specifies her share as 20%. We cannot go behind that. The Respondent contended that the percentage should be reduced but this is an impossible argument.
40. As to 2) above, we reject this contention. We have been provided with a large number of photos of the property showing "*pre-works observations*" and "*post-works observations*": MB/267-273. Some of the copy photos in the bundle were poor copies and we therefore inspected the originals which were very clear and fully vindicated Mr Price's evidence, which we accept, that "*there is a huge difference these works have provided the development and are likely to have increased the cost of these flats*": MB/298. Mr Price signed off the concluded works and approved them and we are satisfied that he would not have done this if the works had not been completed to a reasonable standard. We are entirely satisfied that they were. We would also note, as Mr Price did in his witness statement at MB/298 (para 23) that "*no report has been provided by a qualified surveyor to support [the Respondent's] statements*". Belatedly, the Respondent provided us with some photographs of her own (RB/127A and following) but we are not persuaded by any of these taken in isolation without any explanation or narrative.
41. As to 3) above, this was a form of historic neglect argument, the suggestion apparently being that a "stitch in time" in 2006/7 would have saved the cost of nine in 2013/14: see e.g. *Continental Property Ventures Inc v. White* [2006] 1 EGLR 85. Unfortunately, the Respondent's case was based largely on assertion rather than evidence. It is not enough to point to lower quotes from 2006 (RB/47), as the Respondent did, and contend that this shows that the cost of the major works in 2014 was unreasonably high and had increased due to historic neglect. There was no expert evidence to support the Respondent's case, although Judge Sullivan's directions had permitted expert evidence and

suggested that it might be necessary (MB/152, paragraph (12)), and in the absence of proper supporting evidence, we reject the Respondent “stitch in time” argument.

42. As to 4) above, the main thrust of the Respondent’s complaint was that the Applicant had failed to have regard to her observations: MB/34. We have already observed that no observations were in fact submitted during the initial consultation period but following the postponement of the works, the Respondent did make observations about the front door and the Applicant clearly had regard to them: see e.g. letter dated 22 July 2014 at RB/145. The obligation is only to have regard to the observations, it is not to do that which any particular lessee demands. The Respondent wanted the front door replaced rather than refurbished. Mr Price explained why the Applicant was unwilling to replace the front door in the above-mentioned letter dated 22 July 2014. There is no merit in this complaint. We are satisfied that the Applicant fully complied with its obligations under the 2003 Regulations previously referred to.
43. As to 5), we reject this submission. The question of how much to demand by way of a contribution to reserves is a matter of discretion for the landlord: see Clause 2(e) of Lease: MB/185. In fact, a reserve fund of £5,500 had been built up for works budgeted to cost £14,000-odd. This is entirely reasonable.
44. As to 6), we reject this contention. The Respondent relied on the document at MB/228 to suggest that she had a personal reserve fund of £1,781.12. We have already referred in paragraph 37 above to the documents at DD/1 which show a contribution to the major works from reserves of £5,500. We note DD/5 is to the same effect. We are entirely satisfied, as Mr Price confirmed in evidence, that there was *one* reserve fund for the benefit of *all* the lessees and that there was no separate fund belonging to the Respondent.
45. It follows from the above that we reject any challenge to the major works.
46. The Respondent is therefore liable to pay for 2014 20% of £17,027 (DD/84) made up of £183+ £396 + £640 + £150 + £14500 + £964 + £18 + £150 + £26 = £3,405.40.



2015

47. The Scott Schedule for 2015 (MB/324-325) claims £196 for accounting and banking, £1042.80 for insurance, two sums of £24.95 and £25.00 for maintenance, £396 for management, £500 contribution to reserves, £15,355 for major works, £1675 for Southside's fees for overseeing the major works, £645 for "*provision for future maintenance and major works*", sundries of £36 and a further accountancy charge of £200.
48. For 2015 we consider the following charges reasonable and payable. We allow £196 for accounting and banking which we consider reasonable: DD/5. We allow £1042.80 for insurance: MB/283. We allow one sum of £24.95 for maintenance: DD/5. We allow £396 for management. We allow nothing further for major works for obvious reasons. The Respondent is only liable to pay once for this item and this was a charge in the previous year. There is in fact a small credit due to her because the previous year's charge assumed a total cost of £14,500 whereas the final cost was £13,855. There is therefore a credit due to the Respondent of £129.00 (20% of £645). We allow the sum of £500 as a contribution to reserves, as it is now necessary to start building up reserves again after spending them on the major works. We allow £1,500 for agent's professional fees relating to the major works. We do not allow any of the other items claimed as amounting to duplication and/or by reason of the lack of supporting evidence.
49. The Respondent is therefore liable to pay for 2015 20% of ( $£196 + £1042.80 + £24.95 + £396 + £500 + £1500$ ) - £129 = £602.95.
50. Finally, we find that as per the schedule at MB/166-167 the Respondent has paid the Applicant the sum of £1,282.95 between November 2007 and September 2014. We reject her contention that she has paid a further £400. There is no evidence of this. At the end of the hearing she invited the Tribunal to consider bank statements which she proposed to send in after the hearing. Given the history of the matter, we declined her request. Such statements should have been in one of the three bundles. Of the payments which we find were made, totalling £1,282.95, £400 related to ground rent. The Respondent

is therefore entitled to a credit of £882.95 (£1,282.95 - £400) in respect of her liability for service charge as determined by this Tribunal.

#### Administration charges

51. The administration charges claimed are £60 and £150. The first charge relates to steps taken by Southside in 2014 when preparing the case to be sent to a debt collection agency called Property Debt Collection Limited (“PDC”). The second charge relates to charges levied by PDC in 2014 in connection with their attempts to collect the unpaid service charges. There are a number of letters in the bundle from PDC (MB/284-293) that evidence their attempts to collect the unpaid service charges from the Respondent, including letters to the mortgagee at pp.290-291. The Applicant’s statement of case at paragraphs 35-43 explains how these two charges arose. We are satisfied that these charges were incurred in contemplation of possible forfeiture proceedings: see e.g. paragraph 7 of the Particulars of Claim (MB/5). Having regard to the terms of the Lease, in particular Clause 2(14)(a) thereof, our finding that there were as at the date of these charges substantial arrears of service charge due from the Respondent and the fact that the Respondent’s last payment had been in 2012, the Tribunal is satisfied that it was reasonable at this stage for the agent to refer the matter to a debt collection company in a final effort to collect the debt without recourse to legal proceedings and that the charges levied were reasonable and are payable.

#### Costs

52. No other applications or issues relating to costs were raised by either party at the hearing. We therefore proceed on the basis that the claim made by the Applicant in its Particulars of Claim for contractual costs under the terms of the Lease is a matter for the County Court or another Tribunal in due course, in the event that that claim is quantified and pursued and then challenged by the Applicant: see e.g. *Barrett v. Robinson* [2014] UKUT 0322.

**Name:** Judge W Hansen

**Date:** 15 June 2017

## Appendix of relevant legislation

### Landlord and Tenant Act 1985 (as amended)

#### Section 18

- (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 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 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.

#### Section 19

- (1) 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 provisions 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.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### Section 20

- (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) [the appropriate tribunal].

- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—
  - (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (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.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined

### **Section 20B**

- (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.

### **Section 21B**

- (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 subsection (1) is not complied with in relation to the demand.
- (4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

### **Section 27A**

- (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.
- (3) An application may also be made to the appropriate 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-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or

- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

**Commonhold and Leasehold Reform Act 2002**

**Schedule 11**

5(1) An application may be made to a leasehold valuation tribunal for a determination whether an administration 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.