



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

**Case reference** : LON/00AY/LSC/2018/0232

**Property** : 49A Leigham Court Road, London,  
SW16 2NF

**Applicant** : (1) Dr Shuzhi Zhou and Dr Luke  
Blaxill (Flat 7);  
(2) Matthew Woodhouse and  
Eleanour Clarke (Flat 3);  
(3) James Blakeborough (Flat 2);  
(4) Stephen Creaturo and  
Geraldine Creaturo (Flats 5 and 6)

**Representative** : Dr Blaxill and Dr Zhou

**Respondent** : Masterworks Investment  
Consortium Limited

**Representative** : Mr Harvey-Hunter (GH Property  
Management Services Limited, the  
managing agents)

**Type of application** : For the determination of the  
reasonableness of and the liability  
to pay a service charge

**Tribunal Members** : Judge Robert Latham  
Mr Andrew Lewicki FRICS

**Venue and Date of  
Hearing** : 10 Alfred Place, London WC1E 7LR  
on 12 November 2018.

**Date of decision** : 21 December 2018

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**DECISION**

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## **Decisions of the Tribunal**

- (1) The Tribunal makes the following determinations in respect of the advance service charge demanded for 2018:
  - (a) Cleaning (£1,560) and Grounds Maintenance (£600) are reduced to a total of £960 of which £700 relates to Cleaning and £260 to Grounds Maintenance;
  - (ii) General Repairs and maintenance are reduced from £3,800 to £1,000;
  - (iii) £4,250 is reduced from the Sinking Fund for major projects;
  - (iv) The surplus of £3,844.28 from 2017 should be carried forward as a credit to the 2018 service charge account.
- (2) The Tribunal is satisfied that the lease permits the landlord to establish a reserve/sinking fund.
- (3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.
- (4) The Tribunal determines that the Respondent shall pay the Applicants £300 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

### **The Application**

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of the advance service charge charges payable for the service charge years 2018. Dr Shuzhi Zhou and Dr Luke Blaxill (Flat 7) are the "lead Applicants".
2. There are seven flats at 49A Leigham Court Road. The following tenants are party to this application:
  - (1) James Blakeborough (Flat 2). He occupies a two bedroom flat on the ground floor.
  - (2) Matthew Woodhouse and Eleanor Clarke (Flat 3). They occupy a one-bedroom flat on the ground floor.
  - (3) Stephen Creaturo and Geraldine Creaturo (Flats 5 and 6). These are two one-bedroom flats on the first floor. They are occupied by the son and daughter of the lessees.

(4) Dr Shuzhi Zhou and Dr Luke Blaxill (Flat 7). They occupy a three bedroom flat on the second floor.

The lessees of Flats 1 and 4 are not parties to this application. Both these flats are on the ground floor and have respectively two and one bedrooms.

3. On 10 August 2018, the Tribunal issued Directions.

(i) The Respondent has disclosed the service charge budgets for the years 2016, 2017 and 2018 and the accounts for 2016 and 2017, together with a large number of invoices and other documents;

(ii) The Respondent has filed two witness statements from James Harvey-Hunter, dated 30 August and 8 October. Mr Harvey-Hunter is the operations Director of GH Property Management Services Limited ("GH"), the managing agents.

(iii) The Applicants have provided two witness statements from Dr Luke Blaxill and Dr Shuzhi Zhou, dated 24 September and 15 October.

(iv) The Applicants have filed a Bundle of Documents.

4. The relevant legal provisions are set out in the Appendix to this decision.

### **The Hearing**

5. The Applicants were represented by Dr Luke Blaxill and Dr Shuzhi Zhou, both of whom gave evidence in support of their statements. Dr Blaxill is a lecturer in political history. Dr Zhou is a business development manager.

6. The Respondent was represented by Mr Harvey-Hunter. He was accompanied by Ms Blackmore, the Property Manager and Ms Lye, who is responsible for service charges and debt recovery. Mr Harvey-Hunter was in a difficult position. He had not prepared the service charge budget for 2018 which was subject to challenge. This had rather been prepared by Mr Liam O'Sullivan, the Managing Director of GH, and Ms Blackmore. He declined to call Ms Blackmore to give evidence.

7. There was initially an unnecessary level of antagonism between the parties. Mr Harvey-Hunter seemed unduly defensive. As the hearing progressed, it became apparent that the landlord, managing agents and the tenants have a common interest in ensuring that the premises are maintained to a high standard, but at reasonable expenses. As it became increasingly apparent that Mr Harvey-Hunter was unable to justify the budget that was under challenge, the Tribunal urged the

parties to look to the future. At the end of the hearing we granted a short adjournment and we endorse the roadmap which they agreed. Had there been greater transparency in the preparation of the budget, it is probable that this application would not have been necessary.

8. The drafting of the lease leaves much to be desired. We are required to determine how the lease should be construed, particularly with regard to the landlord's ability to maintain a reserve or a sinking fund.

### **The Background**

9. 49 Leigham Court Road was constructed in 1865. The building has a number of fine period features. It used to be the Streatham Constitutional Club ("the Club").
10. There are now three elements to the building: (i) 49 Leigham Court Road is a one storey construction to the left of the building which has now been retained as a smaller unit for the Club; (ii) 49A Leigham Court Road is the main part of the building which has been converted into seven flats; (iii) 49B Leigham Court Road to the righthand side of the building, is a three-bedroom house.
11. On 12 May 2009, the Respondent acquired the freehold and on the same date granted a 999-year lease of 49 at a peppercorn rent to the Streatham Constitutional Club Limited. Five car parking spaces are allocated to the Club. The Tribunal was told that Club now has a number of bedsits.
12. In about 2016, 49A was converted into seven self-contained flats. The conversion was carried out by the Respondent. Long leases were granted in respect of all the flats between March 2016 and September 2017. All the leases are for terms of 125 years from 1 January 2016. Each lease includes a parking space.
13. The lead Applicants occupy Flat 7 pursuant to a lease dated 11 April 2016. The property was initially managed by Mileshead Properties Limited ("Mileshead"). In a letter dated 10 June 2016 (at p.57), Mileshead describe themselves as "independently run real estate company". The lead Applicants told us that Mileshead had the same directors as the Respondent. Whilst it is open to a landlord to employ a linked company to manage premises, it must be ready to establish that services are being provided to a satisfactory standard at a competitive cost. The tenants were not happy with this arrangement.
14. The service charges levied for 2016 and 2017 are not in dispute. The service charge year is the calendar year. In 2006, the total expenditure was £7,398 and there was a deficit of £60 (at p.38). In 2017, the

expenditure was £5,661.45 and there was a surplus of £3,844.28 over the budgeted expenditure of £9,505.50 (p.39).

15. On 13 April 2017, GH wrote to the tenants introducing themselves as the new managing agents. On 11 July 2017, Martin Athey, on behalf of the Respondent, completed leasehold property inquiries when Mr Woodhouse and Ms Clarke were acquiring Flat 3. GH were specified as the managing agents. The landlord stated that (i) there was no reserve fund; and (ii) no increase in the service charge of over 10% or £100, whichever is the greater, was anticipated over the next two years.
16. The current dispute arose on 13 April 2018, when GH wrote to the lead tenants demanding the interim service charge for 2018. The demand was accompanied by the budget which is at p.43. The budgeted expenditure had increased from £7,338.04 (see p.42) to £18,163, more than twice the budgeted expenditure in 2017. The sum demanded from the lead Applicants was £3,272.14, which they describe as a 148% increase over 2017.
17. None of the tenants have paid the sum demanded. On 20 June 2018, the Applicants issued their application to this Tribunal.
18. On 21 June, GH held a meeting with the tenants. GH were represented by Mr O'Sullivan and Ms Blackmore. The Notes of the meeting are at p.44. Mr O'Sullivan was asked to explain the increase in the budget:
  - (i) He stated that he had initially prepared the budget in November. No adequate explanation was given as to why the demands had only been dispatched the following April. It seems that the invoices were sent out to tenants on different dates.
  - (ii) He stated that the previous managing agents had not been managing the property properly. There had been no health and safety or fire risk assessments which would normally be carried out every three years. It is to be noted that the Respondent and Mileshead had common directors.
  - (iii) He stated that the cleaners were paid £50 per hour and now visited twice a month as opposed to once a month previously. This was not correct. The material before the Tribunal showed that the cleaners were paid £50 per visit. On some occasions, they had visited fortnightly in 2017. In June 2018, there was no cleaning service. GH had decided to suspend this service at the end of May as the tenants had not paid the sums demanded on 13 April.
  - (iv) Dr Blaxill was asked him to explain why there had been a 500% increase in the repairs and maintenance budget from £500. He responded that £500 had been completely insufficient and suggested

that £1,700 to £1,800 would be a reasonable figure. He produced a number of quotes which had been built into the 2018 budget which total £645 (at p.48).

19. The accounts for 2016 and 2017 were disclosed pursuant to the Directions given by this Tribunal. Two facts then became apparent: (i) Whilst the budgeted expenditure for 2017, was £7,338.04 (p.42) the actual expenditure was £5,661.45 (p.39); and (ii) there had been a surplus of £3,844.28 which the landlord was carrying forward, rather than refunding to the tenants.
20. Section 42 of the Landlord and Tenant Act 1987, provides that a landlord holds any surplus service charge funds on trust for the tenants. Mr Harvey-Hunter confirmed that as at March 2018, all the tenants had paid the sums demanded in 2017. He was unable to show how this surplus was being held.
21. The Respondent provided the Statement of Account for Flat 7, dated 8 November 2018. The 2017 service charge had been demanded on 15 August 2017 and had been paid on 12 September 2017. There was nothing to indicate that his surplus from the 2017 service account year was being carried forward as a credit for 2018 or was being held in trust for him in a reserve account.
22. Mr Harvey-Hunter explained that all expenditure had now been put on hold because of the tenants' failure to pay their service charge for 2018. On 3 May 2018, GH paid a bill of £4,414.58 to insure the building. The budgeted sum had been £3,350. The landlord is largely responsible for the cashflow problems that have arisen in that the service charge demands were not made until more than four months into the current financial year. Further, there was a substantial increase in the sum demanded, without any attempt to justify the increase. In any event, a tenants' payment of service charges is not a condition precedent to a landlord's duty to comply with its obligations under a lease (see *Yorkbrook Investments Ltd v Batten* (1985) 18 HLR 25).
23. GH has broken down the Service Charge Budget for 2018 under three heads:
  - (i) "2<sup>nd</sup> Schedule Part 1" Costs which include (a) ground maintenance; (b) general repair and maintenance; (c) fire risk assessment; (d) health and safety assessment; (e) a sinking fund and (f) a reserve fund. This is divided between the three elements (a) the seven lessees of 49A pay a total of 76%; (b) the lessee of 49B pays 13%; and (c) 49 (the Club) pays 11%. Flat 7 pays 17% of the total costs.
  - (ii) "2<sup>nd</sup> Schedule Part 2" Costs which include (a) electricity; (b) cleaning; (c) general repair and maintenance; (c) emergency light

testing; (d) Fire Risk Assessment; (e) health and safety assessment. All these costs are apportioned between the seven tenants at 49A. Flat 7 pays 22% of the total costs.

(iii) "2<sup>nd</sup> Schedule Part 3" Costs which include (a) management fee; (b) accountancy; (c) sundries; (d) building insurance; (e) fire risk assessment; (f) health and safety assessment; (g) a sinking fund and (h) a reserve fund. This is divided between the three elements (a) the seven lessees pay a total of 64%; (b) the lessee of 49B pays 20%; and (c) 49 (the Club) pays 16%. Flat 7 pays 15% of the total costs.

It would seem that this is the first time that the service charge has been broken down in this way.

### **The Lease**

24. The lease for Flat 7 is dated 11 April 2016 (at p.58). The Respondent granted the lead tenants a term of 125 years.

25. The Second Schedule deals with the service charge expenditure. This is broken down under three heads (emphasis added):

(i) Part One: "Expenditure in the performance and observance of the covenants obligations and powers on the part of the Landlord and contained in this Lease .... relating to the Retained Parts of the Estate or its occupation and imposed by operation of law.

(ii) Part Two: "Expenditure in the performance and observance of the covenants obligations and powers on the part of the Landlord and contained in this Lease .... relating to the Main Retained Parts or its occupation and imposed by operation of law".

(iii) Part Three: "Expenditure in the performance and observance of the covenants obligations and powers on the part of the Landlord .... of the Car Park and for the insurance referred to in Clauses 6(3) and 6 (4)". Clause 6(3) is the Landlord's obligation to insure "the Estate (including the Landlord's fixtures fittings and furnishings and that part of the Building demised by the Club Lease)".

26. The "Tenant's Proportion" of the service charge is defined as 17% of expenditure described in the Second Schedule Part One, 22% of expenditure described in the Second Schedule Part Two, and 15% of expenditure described in the Second Schedule Part One,

27. The "Retained Parts" is defined as "those parts of the Estate for which the tenant of the Club Lease is required to contribute a proportion of the costs and expenses incurred by the Landlord in accordance with

Schedule 5 of the Club Lease". The "Club Lease" is defined as "the lease dated 12 May 2009 made between the Landlord (1) and The Streatham Constitutional Club Limited (2)"

28. The "Main Retained Parts" is defined as "the roof foundations main structural and load bearing walls (other than those between 49A and 49B Leigham Court Road which shall be a party wall) of the Building exterior door and window frames (not exclusively within any residential flats) the entrance and accessways exclusively serving the residential flats in the Building the Service Installations apparatus plant machinery and equipment exclusively serving the residential flats in the Building not included nor intended to be included in this demise or a demise of any other residential flats in the Building or in the Club Lease or for which the tenant of the Club Lease is liable to make contribution".
29. The Estate is defined as "49A and 49B Leigham Court Road, Streatham, London SW16 2NF as the same is registered at HM Land Registry under Title Number SGL170865 other than those premises demised by the Club Lease".
30. The lease can only be properly construed with sight of the Club Lease and the Official Copy of HM Land Registry under Title Number SGL170865. On 3 December, the Tribunal directed the Respondent to provide these documents. On 17 December, the Respondent provided a copy of the Club Lease and the extract from the Land Register Official Copy of Title. This did not include the lease plan. It is therefore not possible for the Tribunal to identify the extent of the Estate.
31. The Club Lease granted to Streatham Constitutional Club Limited is dated 12 May 2009. The tenant is required to contribute a service charge towards the maintenance of (i) the car park surface and gates which includes "cleaning as appropriate"; and (ii) the main structure of the premises. The service charge contribution is such fair and reasonable proportion as shall be determined by the Landlord's surveyor. On 22 December 2016, there was a deed of variation which is not before the Tribunal.
32. The Tribunal is required to determine whether the Landlord is authorised to maintain a reserve fund. Paragraph (e) of Part Three of the Second Schedule provides that: "the meaning of the Service Charge Expenditure shall be deemed to include reasonable provision for the future in respect of: (i) periodically recurring items whether recurring at regular or irregular intervals and (ii) the replacement or renewal of items.
33. A literal reading of the lease would suggest that the landlord can only collect a service charge in respect of the Second Schedule Part Three expenditure. The Tribunal is satisfied that such an interpretation would be wrong.



34. The Supreme Court decision of *Arnold v Britton* [2015] UKSC 36; [2015] AC 1619 is the leading authority on interpreting contractual provisions, including those relating to service charges. Lord Neuberger of Abbotsbury PSC gave the leading judgment. At [15] he summarised the rules as follows:

“When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to “what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean”..... That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions.”

35. The Tribunal is satisfied that a literal reading of sub-paragraphs (a) to (e) do not reflect what the parties intended. The intent was that sub-paragraph (a) should define the scope of Second Schedule, Part Three expenditure. Sub-paragraphs (b) to (e) rather relate to Parts One, Two and Three. Part Three relates to the Car Park and the landlord's obligation to insure the Estate. Sub-paragraphs (b) to (e) are more appropriate to the services provided under Parts One and Two. Sub-paragraphs (b) refers to expenses relating to the “management of the Estate”, sub-paragraphs (c) refers to the provision of services “for the general benefit of the Estate”. The Tribunal is therefore satisfied that the landlord is entitled to establish a reserve fund for the purposes specified in sub-paragraph (e).

36. The Second Schedule also makes provision for the Service Charge Administration:

(i) As soon as convenient in each year, the Landlord shall prepare and submit to the Tenant a written statement setting out the service Charge expenditure in a way showing how it is or will be reflected in demands for payment of the Service Charge and showing money in hand.

(ii) The accounting period is twelve months from 1 January, but may be varied at the discretion of the Landlord;

(iii) A surplus of payments of the Service Charge in excess of the Tenant's Proportion of the Service Charge Expenditure shall be refunded or carried forward as the Landlord may think fit.

37. Whilst there is no obligation on the landlord to provide service charge accounts, this is the transparent manner for the landlord to show the “money in hand”. If there is any surplus in a service charge year, it is for the landlord to determine whether it should be refunded or carried forward. However, if this is to be carried forward, this should be apparent in the service charge balance for any tenant.

### **The Tribunal’s decision**

38. The Tribunal is asked to determine the payability and reasonableness of the advance service charges for the calendar year 2018. It is not considering the reasonableness of any actual expenditure. Any landlord has a discretion as to how the budget for a service charge year is to be constructed, subject to the lease permitting to the sums to be charged and the requirement that it should have acted reasonably. This must be assessed at the time that the advance service charge was demanded. Thus, it is not relevant that the landlord ceased to supply some of the services, for example the cleaning, in June. When the final accounts for the year are prepared, it would not be reasonable for the landlord to charge for any service that has not been provided.
39. This dispute has arisen as there was a lack of transparency in the manner in which GH, the current managing agents, constructed the budget. The service charge items in dispute are listed in a Scott Schedule. The Tribunal deals with the first two items together, namely £1,560 for internal cleaning of the communal areas and £600 for external grounds maintenance (car park sweeping). The internal cleaning is a Schedule 2, Part 2 item of expenditure, whilst the external cleaning is a Part 1 item
40. Mr Harvey-Hunter stated that the cleaners were paid £50 per visit and now visited twice a month as opposed to once a month previously. This was not correct. On some occasions in 2017, they had visited fortnightly. In May, there was only one visit. GH had decided to suspend this service in May as the tenants had not paid the sums demanded. In June 2018, there was no cleaning service.
41. The cleaning service has been provided by Magdalena Gryczewska. The internal cleaning is charged at £60 per visit, whereas the external cleaning is charged at £50 per visit. Separate charges are made for internal and external visits. In 2016, £780 was expended on cleaning (both internal and external); in 2017, £890 was expended on internal cleaning and £150 for ground maintenance (a total of £1,040). GH had increased this to £2,160.
42. The tenants have obtained a quote from another cleaning company who quoted £40 per visit for both internal and external cleaning (see p.76). The service would be better than the service currently provided as the

sweeping includes two men and a leaf blower. The total cost would be £460 for one visit per month and £960 for two.

43. The Tribunal is satisfied that the sum demanded is not reasonable. The increase has not been justified. The Tribunal can see no reason why both internal and external cleaning should not be included in one visit. The Tribunal allows a total of £960 per annum, of which some £700 relates to internal cleaning and £260 for external grounds maintenance. It is for the landlord to decide whether the internal areas need to be cleaned once or twice a month. A prudent landlord would consult with its tenants. External cleaning is required less regular and would be more onerous in the Autumn, when there would be leaves to be cleared.
44. The third item relates to general repairs for which the landlord claims £2,500 for Schedule 2, Part 1 items of expenditure, and £1,300 for Schedule 2, Part 2 (i.e. the internal common parts). In 2016, £1,000 was expended on "repairs and maintenance" and in 2017, £276. The accounts do not indicate how this was allocated between Part 1 and Part 2 expenditure.
45. The Tribunal reduces the sum allowed for general repairs and maintenance from £3,800 to £1,000. At the meeting on 21 June 2018, Dr Blaxill was asked Mr O'Sullivan to explain why there had been a 500% increase in the repairs and maintenance budget from £500. He responded that £500 had been completely insufficient and suggested that £1,700 to £1,800 would be a reasonable figure. He produced a number of quotes which had been built into the 2018 budget which total £645 (at p.48). It is unclear why these items were not included in the 2017 accounts or, if the works had been executed in 2018, why these had been delayed given that there were ample funds in the service charge accounts. We are satisfied that £1,000 is reasonable for the interim service charge, particularly given that a surplus of £3,844.28 had been accumulated. At the end of the financial year, the service charge accounts will be prepared which will record the actual level of expenditure.
46. The fourth item is the sum of £4,250 included as a contribution to a sinking fund. GH have included the following sums in the budget:
  - (i) Sinking Fund: Major Projects: £2,500 is attributed to Schedule 2, Part 1; £1,750 to Part 2; a total of £4,250;
  - (ii) Sinking Fund: Health & Safety: £500 is attributed to Schedule 2, Part 3;
  - (iii) Reserve Fund General: £329 is attributed to Schedule 2, Part 1.

47. The Tribunal is satisfied that the landlord is entitled to establish a reserve fund (see paragraph 34 above), However, this has to be justified. The RICS Service Charge Residential Management Code (3<sup>rd</sup> Edition, 2016) offers useful guidance on establishing such a fund. It notes that reserve (or sinking) funds can benefit both landlord and tenant by ensuring that monies are available when required for major works, cyclical works or replacing expensive plant. Managing agents are recommended to have a costed, long-term maintenance plan that reflects stock condition information and projected income streams. This should be made available to tenants on request and any potential purchasers upon resale. The level of contribution should be assessed with reference to the age and condition of the building and the likely future cost estimates.
48. There are a number of relevant factors in this case:
- (i) The conversion was carried out in 2016 and seems to have been done to a high standard.
- (ii) The Tribunal has been provided with the Agreement for Lease for Flat 3, dated 29 February 2016 (at p.74). Clause 11 provides that the landlord accepts liability for the initial £14,000 payable for repairs to the roof of the building in accordance with the service charge provisions of the lease. Thereafter, the costs will be the responsibility of the tenants in accordance with the provisions of the lease.
- (iii) On 11 July 2017, Martin Athey, on behalf of the Respondent, completed leasehold property inquiries when Mr Woodhouse and Ms Clarke were acquiring Flat 3. The landlord stated that there was no reserve fund.
49. Mr Harvey-Hunter referred to the discussion at the meeting held on 21 June. He states that the landlord considers this level to be appropriate, albeit that Mileshead which has common directors with the Respondent Company, had considered that no reserve fund was necessary. He states that the level has been determined at £4,000 for major projects
50. The Tribunal is satisfied that the Respondent has not justified the proposed reserve fund. This is an issue which the managing agents need to discuss with the tenants. The managing agents should prepare a costed, long-term maintenance plan that reflects stock condition information and projected income streams, including any contribution from the landlord towards roofing works. The landlord and tenants have a common interest in establishing such a fund. The plan should reflect any contribution that the landlord is required to make to any repairs to the roof.

### **Application under s.20C and Refund of Fees**

51. At the end of the hearing, the Applicants made an application for a refund of the fees of £300 which they have paid in respect of the application and hearing pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund the fees paid by the Applicant within 28 days of the date of this decision.
52. In the application form, Applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

### **The Next Steps**

53. It became apparent during the hearing, that an unnecessary degree of antagonism has built up between the parties, whereas the tenants, the managing agents and the landlord have a common interest in ensuring that this fine Victorian property is repaired and maintained to a high standard. We granted a short adjournment after which the parties indicated that they had agreed the following:
- (i) The tenants agreed to pay as an interim service charge, the same level of service charge as they paid in 2017 subject to adjustments (a) up to reflect the increased insurance premium that has become payable; (b) down to reflect the cleaning expenses which have not been incurred; and (c) a credit for the surplus on the 2017 service charge account.
  - (ii) In December or January, a meeting will be held between the managing agents and the tenants at which they will discuss the service charges for 2018 and 2019. This could include a specification for the cleaning of the internal communal areas and the maintenance of the external areas.
  - (iii) in so far as this Tribunal may conclude that the lease does not permit the landlord to establish a reserve fund or a sinking fund, whether such a fund should be established on a voluntary basis. The Tribunal has found that it is open to the landlord to establish such a fund.

**Judge Robert Latham,**

**21 December 2018**

## **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

## **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 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.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;



- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.