FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/21UC/LSC/2020/0028
Property	**:**	7B Baslow Road Eastbourne East Sussex BN20 7UJ
Applicant	**:**	Simone Gregory
Respondent	**:**	Beth Robertson and A Brindle
Respondent's Representative		Amanda Ritchie Chase Leasehold Management Ltd
Type of Application	**:**	Liability to pay and reasonableness of service charges; Sections 27A and 19 of the Landlord and Tenant Act 1985 (the Act)
Tribunal Members	**:**	Judge C A Rai (Chairman) Kevin Ridgeway (Chartered Surveyor)
Date and venue of Hearing	**:**	25 November 2020 at 10 a.m. Remotely by Full Video Hearing (FVH)
Date of Decision	**:**	7 December 2020

DECISION

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1. The Tribunal determines that in relation to those service charges challenged by the Applicant, for the service charge year ending 25 March 2018, the following sums are payable:-

a.	Agent's Fees	162.67
b.	Major Works fee (10%)	
c.	Fire Wall	
d.	Kingston Morehen Fee	180.00
e.	Clarke Roofing Invoice	407.20
f.	Spencer Aerials	
g.	Accountants Fee	50.00
h.	Exterior Decoration and Works	9,600.00
	Total	**10,399.87**

2. The reasons for its decision are set out below.

Background

3. The Property, Flat 7B Baslow Road Eastbourne East Sussex BN20 7UJ is the ground floor flat and one of three flats within 7 Baslow Road. The Property was demised by a lease dated 3 April 1970 made between John Norman Coleman and Josephine Marie Colonna Russell, for a term of ninety nine years from 25 March 1970 (the Lease). Mrs Gregory, the Applicant is the current Leaseholder and the Respondent is the current Freeholder. Following receipt of the 2017/2018 accounts dated 12 November 2018 Mrs Gregory made an application to the Tribunal disputing her liability to pay the service charges demanded by the Respondent listed in paragraph 1 above.

4. The Tribunal issued Directions dated 2 June 2020 and 20 July 2020 which required that the parties submit statements and copies of any documents on which they wished to rely to support their respective cases. Originally it was directed that the Application would be determined without a hearing but subsequently a hearing was arranged.

Hearing

5. This has been a remote hearing which was not objected to by the parties. The form of remote hearing was V – Video Hearing. A face to face hearing was not held because it was not practicable and all issues could be determined in a remote hearing. The documents that we were referred to were in five bundles the contents of which are recorded. These comprised the following bundles:- the Index Application and Lease (28 pages) [**A1**], the Tribunal Directions (2 pages) [**T1**], the Applicant's Statement and Documents (37 pages) [**A2**], the Respondents Reply (74 pages) [**R1**] and the Applicant's reply to the Respondent (11 pages) [**A3**].

6. The Tribunal has electronically numbered the pages in bundles A1 A2 and A3. The references to page numbers are to those numbers. The pages in Bundle R1 were numbered by the Respondent but the Tribunal has noted that some of the page numbers are duplicated. The Directions dated 2 June 2020 are not in Bundle T1, but the Tribunal has obtained a copy.

7. The Applicant represented herself at the Hearing with the assistance of Mr Coleman. Mrs Ritchie, the current managing agent, and Mrs Robertson both made submissions on behalf of the Respondent.

8. Major works have recently been carried out at 7 Baslow Road. The evidence disclosed a history of problems regarding water ingression from the floor of the balcony in the top flat which is the roof above part of Flat B. The Respondent's previous managing agent, Andrew Orr had issued a section 20 consultation notice in respect of major works dated 9 March 2017 which described the proposed works as "Decoration and repairs to the exterior of the property to include investigation into water ingress at Flat 7B". The reason given for the works was "preservation of the fabric of the building and maintenance of the property in a good state of repair". [R1 page 22].

9. The section 20 notice referred to a specification being "available for inspection". No copy of that specification is included in the bundles but the Respondent has provided a copy of a letter dated 18 January 2017 from B H Kensett Estimator which includes 2 pages of a 3 page Schedule of Work relating to the Property. [R1 pages 23 – 25]. That estimate is for £29,670 and specifically excludes a sum of £561 for Rubbertech tiles to "finish" the balcony.

10. There is also an invoice for Job No 10011, dated 18 October 2020 headed final account with the name George Stone Limited (George Stone) for the sum of £38,667.88. Item 1 refers to "the amount of the accepted estimate including the addition of the extra cost for Rubbertech tiles as £30,231). The differences between the estimate first referred to above are listed as:-

a. item 2 omission of Provisional Sums (sic) carrying out timber repairs as per item 2 and repairs to gutters and downpipes as per item 11 – (£1,300).

b. Item 3 addition against Provisional Sums timber repairs all as detailed and gutter and downpipe repairs and replacement all as detailed £7,634.76.

c. Item 4 carry out additional works as follows being additional work to the chimney stack including repointing and replacement of tiles, pointing to the west elevation, removal of a double socket in Flat C, modifications to the existing balcony rail, replacement of missing and broken roof tiles and to vertical tile hanging, removal of nest, extra cost of scaffold due to both extra work on timber repair and gutters (3 weeks) and delayed payment (2 weeks) £2,102.12. [R1 page 26].

In summary the original estimate was reduced by £1,300 for "unspent provisions" and increased by £9,736.88 for "additional costs".

11. A bank statement showing a client deposit account in the name of Andrew Orr Elderly Services No 7 Client Account showed a credit of £28,816.00 on 2 June 2017. This was referred to by the parties as the "escrow" account and appears to have been intended to "hold" the sums collected from the parties to fund the works. A handwritten annotation endorsed on the statement indicates that the agent proposed to withdraw two sums, £2,370.72 being 10% of cost of works – "management", plus £540 for a survey by Kingston Morehen. [R1 pages 16, 20 & 27]. A second annotation calculated the remaining balance, following the withdrawal, as £25,905.58.

12. In an email dated 18 August 2017 Andrew Orr wrote to both Mrs Gregory and Mrs Robertson and stated that he intended to write a cheque from the escrow account for £540 payable to Kingston Morehen "and suggest that this sum is deducted from payments to George Stone together with our 10% for administration…"

13. Mrs Robertson sent an email to Andrew Orr on 15 September 2017, headed 7 Baslow termination [R1 page 29] in which she stated "I am in receipt of your statement concerning payment of £23,707.20 to the builders George Stone and your statement that the balance of £2,198.38 held in the account will be distributed as £1,465.59 to Mrs Robertson in respect of flats 7A and 7C and £732.79 in respect of flat 7B to Mrs Gregory." She instructed him to pay all remaining monies to the freeholder Mrs Robertson and not to any other person because he had not paid the remaining monies to the builder as instructed [R1 page 30].

14. By that date, both the Applicant and the Respondent were unhappy with the standard of the works undertaken by George Stone and the amount of time the works had taken. Mrs Ritchie told the Tribunal that George Stone had staffing shortages and had sent their "B" team to carry out the works. She said some of the redecoration was extremely poor and much of that had directly affected Flat 7B. Both the Applicant and the Respondent were unwilling to pay George Stone the full amount due but the Applicant was not party to the contract with George Stone. The Tribunal were told that the only documentation relating to the works was the estimate of the itemised works referred to in paragraph 9 above. County Court proceedings, instituted by Mrs Robertson, ensued, and were eventually settled by her in 2020. She made further payments to George Stone. Her evidence was that the original estimate did not include VAT so the Applicant is liable for one third of the VAT; The final invoice exceeded the estimate. The £732.79 returned by Andrew Orr should have been paid to George Stone and was part of the "credit" of £9,600 and is recoverable, and she has paid an additional £12,999 to George Stone to settle the proceedings.

15. Both parties made general submissions during the Hearing. Mrs Gregory stated that when she reviewed the accounts for 2017/2018, she was concerned about the form and the lack of a reference to the name or qualification of the Accountant. She had endeavoured to obtain information regarding the disputed building costs from Mrs Ritchie, the current managing agent appointed in April 2018, but had not received the requested information despite her issuing a section 22 notice. The Respondent and Mrs Ritchie both stated that it had been impossible to supply the final account from George Stone until the County Court proceedings were settled which had not been the case when the notice was received, although it was not clear if either had explained that to the Applicant. The final invoice dated 18 October 2020 is in the Respondents Bundle [R1 page 26].

16. The Applicant also queried some of the invoices/estimates in the Respondent's bundle and if some works were improvements rather than repairs. She criticised the standard of the works in her written statement and said that the snagging was not sufficiently thorough which led to additional costs. There had been water ingression problems with Flat 7B since 2002. She said she had been advised that in the absence of any contractual relationship with George Stone she would be unable to pursue any proceedings against the company for the poor quality of their works affecting the Property.

17. Mrs Ritchie responded generally explaining that her knowledge was limited because she had been appointed following completion of most of the works and during the county court proceedings. She said that the original schedule of works had been prepared by South Down Surveyors. There had been no written contract because of the "perceived" minor nature of the works. Kingston Morehen surveyors had been instructed to inspect the works when they overran and because of concerns about quality; although Andrew Orr had suggested that the costs of the survey should be paid by George Stone that was never agreed.

18. Her analysis, which she accepted was with the benefit of hindsight, was that the original consultation was insufficient because items such as the VAT and the costs of the agent's supervision were omitted. She suggested that Andrew Orr had incorrectly removed the costs of the balcony works because he decided these were not structural. In her view these were required works to the structure intended to achieve a solution to the water ingression which had persisted for so many years.

19. She accepted that insofar as costs had been incurred for tiling the surface of the balcony this was a cost payable by the owner of Flat C, (the freeholder), not from the common fund.

20. Mrs Ritchie commented as best she could in relation to each of the disputed items by reference to what was in the bundle although she explained that she could not refer to it during the hearing as her screen did not enable her to look at the documents and participate in the hearing simultaneously.

21. The amounts which the Applicant has challenged are the amounts specifically shown in the 2017/2018 Accounts.

22. The evidence provided by each party in their written and oral submissions in relation to each of the disputed service charges is recorded below.

Agents fees - £944

23. This was the total amount shown as incurred in the 2017/2018 accounts. The Applicant challenged her liability to contribute £314.66, one third of this amount when she became aware that Andrew Orr, the former managing agent, had only received six monthly payments totalling £450. She did not understand the difference between that amount and the amount shown in the accounts. The Respondent provided copies of invoices totalling £732 being monthly charges for May – September 2017 (5x 75) £375; a management fee of £54 (invoice dated 2 October 2017) for 10% of the Kingston Morehen survey fee; a fee for a visit to the Applicant of £59, dated 10 March 2017; and a "set up" fee of £250 paid on 15 February 2017. [R1 pages 8 - 15]. Mrs Ritchie said she thought that Mrs Gregory had requested the visit and had therefore agreed to pay for it. Mrs Gregory disputed her personal liability to pay the fee charged for visiting her because the invoice records that the visit to her East Dean home was made at the request of the Freeholder.

Major Works Fees – £732.66

24. The Application refers to £732.66, one third of the £2,198 shown in the accounts. This apparently related to the 10% management charge made by Andrew Orr. The balance of the escrow account was returned to the Applicant and the Respondent by Andrew Orr when he closed the account. It was part of the £9,600 paid into that account by Mrs Gregory and the £19,200 paid in by the Respondent. Andrew Orr repaid one third to Mrs Gregory and two thirds to Mrs Robertson. This was £732.79 which sum the Applicant assumed was one third of his supervision fee. It is a similar amount. Although the Respondent has provided evidence to the Tribunal in the form of a copy bank statement showing an intended withdrawal of £2,370 by Andrew Orr no copy of the invoice for this fee has been produced in the bundle. Mrs Ritchie was unable to explain the amount in the accounts and the Respondent has not explained it in her written evidence.

Fire Wall - £900

25. It was not disputed that the works were carried out or that the Respondent paid £900 for these works. However, there was no prior consultation with the Applicant, so the Respondent sought to recover £250, being an appropriate amount, (defined by statute) that could be recovered. There is no invoice for the works. The Applicant paid a lump sum for three jobs, two of which were in respect of her own flats but has included copies of all three quotations in her bundle. A contribution of £250 was demanded following the preparation of the accounts which was more than 18 months after the work was carried out. The Applicant wanted to know why she was responsible for contributing towards those costs and was confused by two other quotations the Respondent included in her bundle, which she said related to works for which she had no liability to contribute and for all those reasons the Applicant was unwilling to pay. The Respondent clarified that the other two other estimates were included as evidence of her payment of the £900 shown in the accounts. In fact, the payment she had made related to all works referred to in the three estimates. Mrs Ritchie conceded that this was all irrelevant if payment was not demanded until 18 months after the work has been completed. She said that historically the Respondent has delayed demanding payment until the accounts for the year in which payment was made had been prepared.

Kingston Morehen Survey fee - £540

26. The parties both agreed that Andrew Orr commissioned this survey to assess the quality of the major works. It was suggested that George Stone had agreed to defray the costs of this survey because the company was at fault but had not. It was not disputed that Andrew Orr paid Kingston Morehen out of the escrow account.

Clarke Roofing - £1,221.60

27. The Tribunal were told the charge was for works carried out after the completion of the works within the George Stone contract, because the balcony continued to leak. Clarke Roofing had originally been engaged by George Stone as a sub-contractor but the Respondent had separately commissioned and paid them to repair the leaking roof. It was not suggested by the Respondent that there was any separate consultation although the leaking roof is mentioned as a reason for the works described in the section 20 consultation. The Applicant said that the additional work was necessary because George Stone did not fix the problem. She said she had assumed, based on the content of an email dated 4 August 2017, that the Respondent had agreed to pay the Clarke Roofing invoice herself. [A2 page 28; A3 page 10].

28. The Respondent stated that the section 20 consultation allowed for £250 for joinery repairs. She also produced an email which she had sent to Andrew Orr stating that the George Stone estimate had referred to reconstruction of the wing walls of the balcony. She said that she had been unwilling to provide any excuse to delay the progress of the work by asking for another estimate. Subsequently work was carried out and Clarke Roofing invoiced the Respondent for £1,221.60 on 28 November 2017 which she paid on 3 April 2018. [R1 page 59].

Spencer Aerials - £105

29. This charge of £35 was one third of a sum of £105 shown in the accounts. That was the cost of the replacement and fitting of the Applicant's satellite dish. The Applicant had agreed to pay this invoice and had sent the supplier a cheque which was not cashed by them because the Respondent had already paid their invoice together with another charge relating solely to her Property. This was not a service charge. The parties both accepted that this charge should not have been included in the accounts.

Accountants Fee - £150

30. This fee was disputed by the Applicant because of the form and content of the accounts. The invoice from Washington Accountants was for the preparation of the 2017/2018 accounts [R1 page 44].

Exterior Decoration Works - £28,902

31. This was the estimated cost of the major works of which £9,600 was demanded from the Applicant (and paid by her) as her contribution towards the estimated cost. The Applicant appears to have paid £9,605 (£34 less than one third of that amount). Subsequently Andrew Orr returned £732.79 to her so at the date of this decision she has paid £8,872.21 towards the sum demanded.

32. The Applicant questioned whether she should be liable to contribute one third of the final cost of the works because of the poor standard and because of what she described as negligence, on the part of the Respondent, in managing the works. She also stated she has not received a final invoice despite asking for confirmation as to the total cost of the works.

33. The Tribunal does not know when sums were demanded and how such sums were calculated and explained to the Applicant. The bank statement for the escrow account shows a credit of £9,605 on 2 June 2017, and two further credits totalling £19,210 which suggest that a credit of £9,605 was received from the Applicant although her Application refers to £9,600.

34. The Respondent's written evidence revealed that a final "settlement figure" was agreed with George Stone following the settlement of the County Court proceedings and subsequently paid by her .

Reasons for the Decision

The Lease

35. The Lease of the Property sets out the parties' respective obligations regarding services and service charges. Although there is an obligation for the Landlord to create a sinking fund (clause 4(ii))[A1 page 17] this was not done.

36. The Retained Premises are defined in the Second Schedule as including "the paths and the hall staircases landings and other parts of the land and buildings forming part of the block of flats which are used in common by the owners or occupiers of any two or more of the flats" and "the main structural parts of the buildings forming part of the block of flats including the roofs foundations and external parts thereof (but not the glass in the windows of the flats nor the plaster or the battens and tiles affixed thereto or the ceilings and walls or the screed on the floors of the flat)and all cisterns tanks sewers drains pipes wires ducts and conduits aerials not sued solely for the purpose of one flat or included in any one of the flats from time to time unlet" [A1 page 18].

37. The Demised Premises are defined in the Third Schedule as being the self-contained ground floor flat known as Flat B ….including one half in depth of the structure between the floors of the flat and the ceilings of the flat below it and of the structure between the ceilings of the flat and the floors of the flat above it and subject to clause 4(vi) hereof the internal and external walls between such levels. The Tribunal suspect that that this cross reference is incorrect and should have referred to clause 4(v) which states "that every wall separating the flat from any adjoining flat shall be a party wall severed medially and shall be included in the premises hereby demised so far only as the medial plane thereof".

38. In summary therefore all structural parts of the building at 7 Baslow Road fall within the definition of Retained Parts in the Lease, save and except for the internal parts of the external walls.

39. The tenant covenants to pay by way of further and additional rent on the 25 March in year a sum in advance equal to the amount estimated to represent the cost to the landlord of performing the obligations on his part and providing the services and amenities specified in the Seventh Schedule. (The Fourth Schedule) [A1 page 20]. The provision provides for payment of an initial sum by the tenant and thereafter a sum calculated in advance when accounts are available for the preceding year with any adjustment in the amounts paid being made when certified as due by the auditor of the landlord. [Tribunal's emphasis].

40. The Seventh Schedule to the Lease sets out the tenant's contribution towards costs expenses and outgoings (A1 page 26 - 27). Paragraph 1 refers to the expenses of maintaining repairing redecorating and renewing (a) the main structure and in particular the roofs walls gutters and rainwater pipes of the block of flats (b) the gas and water pipes drains and electric installations cables and wires and supply lines or pipes in under or upon the block of flats or used by the tenant in common with the owners tenants and occupiers of other portions of the other flats (c) the main entrance passages landings and staircases of the block of flats so enjoyed or used by the Tenant in common as aforesaid (d) the main entrance and paths of the block of flats so enjoyed or used by the Tenant in common as aforesaid (e) the boundary and external walls and fences of the block of flats and generally the cost of carrying out the matters mentioned in the Fifth Schedule. Paragraph 4 refers to the cost of decorating the exterior of the block of flats and of cleaning repointing the exterior stone and brickwork thereof (sic). Paragraph 5 refers to the cost of employing any managing agents legal or professional fees.....in connection with the general management or maintenance thereof or to estimate carry out or supervise or arrange for the estimation carrying out execution or supervision of any or all of the above services or any or all of the Landlord's rights or obligations hereunder.

41. All the disputed costs relating to the major works and the management fees are within the definition of works or services in the Lease to which the tenant is obliged to contribute, save and except the Rubbertech balcony tiles.

42. The landlord's covenants, expressed to be subject to the payment by the tenant of the maintenance contributions, are to maintain repair and renew the structure which is described in the same way in both the definition of the "Retained Parts" and also in paragraph 1 of the Seventh Schedule, see paragraphs 36 and 39 above. The landlord also covenants to keep proper books of account of all costs charges and expenses incurred by it in carrying out its obligations. The accounting year is referred to as starting on 25 March in each year. The Account is to be prepared by the landlord or its agent and audited by his auditor whose fees shall be included in the account. The auditor is to certify the total amount of the costs and the due proportion which the tenant is obliged to pay (paragraphs 9 and 10) [A1 page 27].

The Legislation

43. Section 27A of the Act gives the Tribunal jurisdiction to determine the amount of the service charge payable. Application to the Tribunal may be made in respect of the liability of a tenant to pay charges already incurred (27A(1)) and in respect of services to be incurred (section 27A (3)) Section 27A (3) states that no application may be made in respect of the a matter which has been the subject of a determination by a court. Under section 27A (5A) a tenant is not to be taken to have agreed or admitted any matter by reason only of having made a payment. Section 19 gives the Tribunal jurisdiction to take account of relevant costs only to the extent that these costs are reasonably incurred and the provision of the services or works are of a reasonable standard. The Tribunal has no jurisdiction if the tenant admits or agrees that a payment is due. (section 27(4)).

44. The reference to a determination by a court in the Act is to a determination relating to the payment of the service charge and would not prevent a determination by this Tribunal of whether or not the costs of the works carried out by George Stone determined by the County Court were reasonable and were reasonably incurred, under its jurisdiction in section 19 of the Act.

45. Section 20 of the Act limits a tenant's obligation to contribute towards the cost of qualifying works unless the consultation requirements have either been complied with or dispensed with. Where qualifying works such as the major works are undertaken by a landlord he must consult with the tenant if the contribution of any tenant towards the costs of those works will exceed the "appropriate amount", a statutory amount which is currently £250, which is why Andrew Orr sent the section 20 qualifying notice to the Applicant. **The Service Charges (Consultation Requirements) (England) Regulations 2003 [SI 1987]** prescribe the appropriate amount and set out the framework of the necessary consultation.

The disputed service charges

46. Although the Respondent employed a manging agent, she was also involved in the management of the works carried out to the Property. This was a necessity following the termination of Andrew Orr as managing agent and before the appointment of Mrs Ritchie. Her accountant must have prepared the 2017/2018 accounts in reliance on the information she provided. The Respondent's bundle suggests that her paperwork is muddled. It included three copies of the same bank statement. No coherent trail in date order of the sums the Respondent had paid and when she, or her agent demanded contributions from the Applicant has been disclosed. She has not separated out the costs of tiling the balcony although Mrs Ritchie acknowledged that was not a "joint" expense. Furthermore, it seems likely to the Tribunal that the Respondent has not understood that the Tribunal's jurisdiction is only to determine the Application in relation to the 2017/2018 service charge payments disputed by the Applicant in that service charge year.

47. The service charge accounts for 2017/2018 should refer to the actual expenditure incurred in the relevant service charge year and the amounts demanded and collected "on account" to fund the major works.

48. Further amounts due or paid in subsequent years will be incorporated in those years' service charge accounts. Demands for service charges should have been made accordance with the Lease. If works are anticipated which will result in the Applicant being asked for a contribution of more than £250 she should be consulted about the works before they are carried out and any failure on the part of the Respondent to do this will result in the liability of the Applicant being limited to the appropriate amount. Invoices and receipts for all expenditure should have been provided to the accountant to enable him to prepare the 2017/2018 accounts including evidence of the sums paid on account of the major works during that year.

Agents Fees £314.66

49. The Tribunal determines that the Applicant is liable to pay £162.67. That is one third of the five payments made to Andrew Orr for £75 for May to September 2017 plus the invoice for £54 dated September and the invoice for £59 for the visit to the Applicant. No evidence of a sixth payment to Andrew Orr was provided although both parties evidence suggested that he received six payments.

50. The management "set up" fee was paid to Andrew Orr on 16 February 2017 before the end of the preceding service charge year and cannot therefore be part of the charge for the 2017/2018 year. That payment should not have been included within the 2017/2018 accounts which the Accountant has approved as covering transactions "for the Expenditure Year ended 25 March 2018". [R1 Page 46].

51. The Applicant claimed that she should not contribute anything towards the fee charged by Andrew Orr for visiting her because the freeholder requested the visit. The Tribunal does not agree and has determined that this fee is recoverable as a service charge to which she should contribute her one third share. The provisions in the Lease enable the Respondent to recover fees in connection with general management to be recovered as service charges. See paragraph 40 above.

Major works Fee £732.66

52. This charge was £2,198 of which one third is £732.39. The Tribunal does not know how the accountant verified this charge. The Respondent has not addressed this in her response to the Application.

53. If the accountant intended to show Andrew Orr's 10% management charge in the accounts, which he should have done, the accounts should have referred to £2,370.70 with one third (£790.24) recoverable from Mrs Gregory. Andrew Orr should also have invoiced that amount rather than just deducting it from the escrow account. He invoiced the 10% fee he charged for supervision of the Kingston Morehen Survey.

54. Mrs Ritchie, relying upon the Applicant's claim, suggested the charge related to the amount returned by Andrew Orr out of the escrow account. [R1 page 30]. In fact, that was a different amount of £2,198.**38,** albeit the Tribunal was only able to clarify this after hearing the parties. Having re-examined all the evidence before it the Tribunal believes this entry in the accounts was intended to refer to the **supervision** fee charged by Andrew Orr for management of the works of £2,370.72. It has relied upon the annotated escrow account bank statement to ascertain this figure. [R1 pages 16,20 & 27]. However, the handwritten annotations are indistinct. The Respondent's evidence is that Andrew Orr paid George Stone £23,707.20 [R1 page 30]. The Tribunal has received no evidence explaining the amount of this service charge in the accounts. Furthermore, Mrs Ritchie suggested that Andrew Orr omitted any reference to agent's supervision costs when he undertook the section 20 consultation. The Tribunal is satisfied that it was not essential for the Section 20 consultation to refer to the VAT or supervision fees. The legislation refers to the consultation relating to the costs of the works. The quotation disclosed does refer to the estimate being subject to VAT and it is reasonable to assume that the Applicant would have been aware that the managing agent would make a charge for supervising the works. In the case of **Marionette Limited v Visible Information Packaged Systems Ltd [2002] All ER (D) 377** Nicholas Warren QC determined that the services for which fees are paid are not part of the works themselves. In that case he went on to consider whether, even if he were wrong in his interpretation of section 20, he could assume in that case that the tenant was aware that there would be supervision fees and he did. In fact, he went further and waived compliance which he had discretion to do at that time. Since then that version of section 20 was substituted with provisions inserted by CLARA. In this case the Tribunal believes that the accounts intended to refer to supervision fee charged by Andrew Orr. Had the Respondent provided the Tribunal with a copy of an invoice relating to the fee it may have determined it was payable. In the absence of any invoice it determines that the Applicant is not liable to pay this amount.

Fire Wall £250

55. The Respondent accepted that there was no section 20 consultation before the work was completed so that the Applicant's contribution would be limited to £250. The Applicant objected to the "unsigned" quotation and the fact that she was not asked for a contribution towards the costs until August 2019, more than 18 months after the cost was incurred. The Respondent's evidence revealed that she paid for the work on the 24 August 2017. During the Hearing Mrs Ritchie accepted that the demand for a contribution was out of time if it was made more than 18 months after the cost was incurred. The provisions of section 20B of the Act to which the Applicant referred require that a landlord demand service charges from a tenant within 18 months of incurring the cost failing which the tenant shall not be liable unless the landlord previously notified the tenant in writing that the costs had been incurred and he would be required to contribute at a later date. The Tribunal therefore determines that the Applicant is not liable to contribute towards this service charge.

Kingston Morehen Fee (Survey) £180

56. The survey fee charged by Kingston Morehen was for assessing the quality of the work undertaken by George Stone. It was not disputed that both parties were aware that the survey had been commissioned as both were concerned about the quality of the work being carried out or procured by George Stone.

57. The Applicant claims she was advised that George Stone would pay for the survey. However, the evidence on which she relied was an email from the former managing agent Andrew Orr in which he stated that he would suggest this, not that George Stone had agreed to pay. The bank statement for the escrow account suggested that he intended to pay Kingston Morehen from that account and sought authority from both Applicant and Respondent to do so. A copy of the Kingston Morehen invoice has been produced. [R1 page 19]. The Tribunal determine that this fee is recoverable as a service charge because it was incurred with the agreement of both parties and therefore the Applicant is liable to contribute £180.

Clarke Roofing £407.20

58. The Applicant claims that the Respondent agreed to pay this invoice in reliance on an email from Andrew Orr dated 4 August 2017. [A2 page 28]. The Respondent stated that this was a separate expense incurred because the leaking balcony should have been remedied by George Stone and when it was not, she had no alternative but to employ Clarke Roofing directly and also to pay them. She said that the consultation notice referred to roof works and this invoice related to such works. Having considered the documentation before it the Tribunal determines this should be recoverable as a service charge. Although the Respondent paid Clarke Roofing her costs could, and perhaps should, have been part of the costs for the contracted works. The roof repair was disclosed as one of the reasons for the works referred to in the section 20 notice and the repair was specifically referred to in the Estimate dated 18 January 2017. Both parties have confirmed that water ingress had continued for many years so the Applicant was aware that she would be expected to pay towards the repair. It is accepted by both parties that these works are works to the Retained Parts of the building the cost of which is recoverable from the owners of all flats. The works are referred to within the estimated costs of £29,670 + VAT. [R1 page 25]. For those reasons, the Tribunal determines that the Applicant is obliged to contribute £407.20 towards the amount paid by the Respondent to Clarke Roofing.

Spencer Aerials -£35

59. The parties agreed that this charge should not have been included in the accounts for 2017/2018.

Accountants fee - £50

60. The Lease enables the Respondent to recover the accountant's fee as a service charge. The strict terms of the Lease regarding the accounts have not been complied with by the Respondent. The Tribunal does not believe that the accounts are an entirely accurate reflection of the service charge expenditure for 2017/2018 for the reasons already recorded in this decision. However, it does not know what information the accountant received from the Respondent. On the basis that an accountant's fee is recoverable under the Lease and that the amount charged by the accountant is reasonable it determines that the Applicant is liable to pay £50 towards this fee. It would however be sensible for the Respondent to ensure that she takes account of the provisions in the lease when issuing instructions for the preparation of subsequent years accounts.

Exterior Decoration Works £9,600

61. This was a payment on account demanded as a contribution towards the costs of the major works and was preceded by a section 20 consultation notice. Those works have been completed. Following the settlement of the county court proceedings the Respondent has obtained the final invoice and has disclosed a copy to the Applicant and the Tribunal as with the details of the county court settlement. However most of this information is not directly relevant to the application which asked the Tribunal to determine if £9,600, which the Applicant has already paid, was a reasonable amount for the Respondent to demand as an advance payment during the 2017/2018 service charge year.

62. The Tribunal's jurisdiction is limited to determining those amounts challenged by the Applicant relating to the 2017/2018 service charge year, not least because it is likely that the additional amounts that have been incurred, were paid in a subsequent service charge year.

63. The estimate produced by the Respondent dated 18 January 2017 is for £29,670 plus VAT [R1 page 25]. Mrs Ritchie stated that the section 20 consultation omitted to refer to the VAT but the Kensett estimate does refer to VAT. Based on the information it has seen the Tribunal finds that it was reasonable to demand £9,600 from the Applicant as an advance payment on account of the costs of the works. Such determination does not imply any finding of reasonableness as to the quality of the works or the final cost. Furthermore, as already explained, the determination by the court of the amount due from the Respondent to George Stone is not a binding court determination for the purposes of the Tribunal's jurisdiction in relation to the service charge year in which that payment was made. (See paragraph 44 above).

64. The parties agreed that the Applicant has already paid the £9,600 to the Respondent, of which £732.79 was repaid to her, so the Tribunal determines that in relation to the disputed service charges for the service charge year 2017/2018 the balance due is £1,532.56. (£10,399.87 – (£9,600 – £732.79)).

Section 20C application and application under paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002 (CLARA)

65. The Applicant applied for an order under section 20C that the Respondent's costs in connection with these proceedings should not be treated as relevant costs to be taken into account when determining future service charge. She also sought an order extinguishing her liability to pay a particular administration cost in respect of litigation costs.

66. The Tribunal having taken account of:-
a. the background to this Application,
b. the issues which prompted the Applicant to make it and
c. the inconsistencies in the 2017/2018 accounts,
makes an order under section 20C of the Act that the Respondent may not recover any costs in connection with these proceedings as relevant costs recoverable as service charges. It also makes an order under paragraph 5A of Schedule 11 of CLARA extinguishing the Applicant's liability to pay an administration charge in respect the Respondent's litigation costs.

Judge C A Rai (Chairman)

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. Where possible you should send your application for permission to appeal by email to rpsouthern@justice.gov.uk as this will enable the First-tier Tribunal Regional office to deal with it more efficiently.

2. The application must arrive at the First-tier 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 First-tier 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.