



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

Case Reference : LON/00BG/LSC/2019/0198

Property : Padstone, Bailey, Wealden and Shire Houses, Capulet Square, Bromley-by-Bow, London E3

Applicant : Viresh Kosambia (Flat 39, Wealden House); Stefano Tuveri (Flat 16 Bailey House) and the tenants of twelve other flats added by Direction of Judge Korn on 5th September 2019

Respondents : Capulet Square RTM Co Ltd

Type of Application : Liability to pay service charges

Tribunal Members : Judge Adrian Jack, Professional Member Christopher Gowman BSc MCIEH, Tribunal Member Paul Clabburn

Date and venue of hearing : 11th and 12th November 2019 and 20th February 2020
10 Alfred Place, London WC1E 7LR

Date of Directions : 20th August 2019 and 27th January 2020

DECISION

Procedural and background

1. By an application made 6th June 2019, the tenants apply for a determination under section 27A of the Landlord and Tenant Act 1985 as to the service charges payable by them for the years 2015 to 2018. (The service charge year is the calendar year.)

2. The estate in Capulet Square has already been the subject of two applications to this Tribunal. The first was a service charge dispute brought before the appointment of the RTM company to manage the estate. The parties were sixty-two tenants, headed by Mr Stephen Everitt, and Trinity (Estates) Management Ltd, the landlord. This resulted in a decision of this Tribunal (Lady Wilson, chairman; P M Casey MRICS; and Rosemary Turner JP) dated 6th August 2014. This decision contains a description of the four blocks comprising the premises which we gratefully incorporate in this decision.
3. The second was an application for the recognition of the RTM company, the current respondent, as the manager of the estate. This application against Trinity went to the Upper Tribunal (Lands Chamber), where the right to manage was granted with effect from February 2015. The lead protagonist on the tenants' and RTM company's behalf was again Mr Everitt.
4. The Tribunal heard this matter on 11th and 12th November 2019 after which it was adjourned to 20th February 2020. The respondent RTM company was represented by Mr Everitt, its sole director and the tenant of Flat 34 Wealden House. The two lead tenants represented the applicant tenants (who did not include Mr Everitt).
5. The first day of the hearing was largely taken up with the Tribunal and the parties going through the Scott Schedule of issues. We reached item 10 of the 27 items, although we dealt with item 13 at the same time as items 5, 6 and 9 and item 16 at the same time as item 2. On the second day, we heard four witnesses, Usne Silva of 33 Wealden; Nick Cooper who owned three flats, 1 Padstone, 16 Padstone and 16 Wealden, which he rented out; Kenneth Yau, who with Mr Everitt was one of the original directors of the RTM company, but who resigned in 2015; and Mrs Fahmeeda Seedat, who rented a flat, 20 Wealden, on the estate. We reached item 16 on this second day.
6. We will deal with the witnesses' evidence as we come to consider individual items, but we need to mention one incident, which occurred whilst Mrs Seedat was giving her evidence. She made a number of criticisms of Mr Everitt's management of the estate. After listening to her evidence for some time, he said that he did not want to listen to more of her criticisms. He left the Tribunal. Mrs Seedat in our judgment had been giving her evidence in a measured manner. There was no basis on which Mr Everitt could properly have complained of her evidence. Indeed, he made no application to have her evidence excluded or for the Tribunal to use its powers to control her manner of giving evidence. Accordingly, in our judgment there was no reason to stop hearing her evidence. After a few minutes, Mr Everitt returned to the Tribunal. We told him what Mrs Seedat had been saying and the hearing proceeded without objection from Mr Everitt.
7. It was clear during the course of the second day that the time estimate for the hearing was too short and that the Tribunal would need to list

the matter for a third day. Mr Everitt lives in Japan, so needed to fly back specially. The Tribunal members were also in difficulties fixing a date. In the event, the soonest everyone could resume was 20 February 2020.

Company law matters

8. During the period of adjournment, there were developments as regards the governance of the RTM company. Mr Everitt had been elected at a General Meeting of the RTM company in 2014. Mr Yau was also elected as a director, as was a Mr Azim. Mr Yau resigned his directorship in 2015 leaving Mr Everitt and Mr Azim as the sole directors. Mr Azim never seems to have played a large rôle in the company and resigned as a director in 2018.
9. In May 2015 there was a General Meeting of the company, but thereafter Mr Everitt never subsequently called a General Meeting. This led to Mr Kosambia and Mr Tuveri asking Mr Everitt for a list of shareholders of the company in order that they could obtain the signatures of five per cent of the membership necessary for the requisitioning of a General Meeting. Mr Everitt did not provide them with a list, allegedly on data protection grounds.
10. By 23 December 2019 Mr Kosambia and Mr Tuveri say they obtained the necessary details and consent of 5 per cent of shareholders to requisition a General Meeting on 10 January 2020. They then sent notice of a meeting to be held on 10 January 2020. At this meeting resolutions were passed appointing Mr Kosambia and Mr Tuveri and others as directors and requiring Mr Everitt's resignation. They sent notification of the changes to Companies House, where the new directors were shown with effect from 10 January 2020 and with Mr Everitt shown as resigning on 30 January 2020. They subsequently took control of the company's bank account.
11. Mr Everitt disputed the validity of the General Meeting. He contested the validity of the calling of the meeting and the service of notices of the meeting on shareholders. He complained that any resolution dismissing him as a director required 28 days' notice.
12. When these matters were drawn to the Tribunal's attention, it seems to us that there was a problem. If the new directors were validly appointed, then they would have control of the case on behalf of the RTM company and would be able to compromise the case without the need for further involvement of the Tribunal.
13. These issues of company law are outside the jurisdiction of this Tribunal. The validity of the election of the new directors and the purported resignation of Mr Everitt are matters for the Chancery Division, or a County Court exercising company jurisdiction. Neither side, however, wanted to commence court proceedings, largely due to the likely legal costs involved.

14. When the case was resumed on 20 February 2020, we raised the problem of how we should proceed. Whilst there was a dispute as to whether Mr Everitt was a director, he could not represent the company as of right. It was clear to us that Mr Kosambia and Mr Tuveri had not thought this problem through. They initially suggested that Mr Everitt could be added as an additional respondent and participate in the proceedings in that way. However, that would not resolve the question of liability for service charges as between the RTM company and the tenants. Someone had to represent the company.
15. They next suggested that the current proceedings be adjourned. However, given that neither party wanted to issue court proceedings, it was difficult to see how this would result in any final resolution of the service charge dispute. We suggested to the parties that they could jointly agree to the calling of a fresh General Meeting, which all parties could agree was valid. However, no one was in favour of this course.
16. We suggested that a pragmatic course might be for the tenants, wearing their purported director hats, to appoint Mr Everitt to represent the company at the hearing before us. Mr Everitt was in favour of this approach, but initially the tenants were not. Eventually the Tribunal had to warn Mr Kosambia and Mr Tuveri that the Tribunal might have to consider using its powers under rule 9 of the Tribunal's Rules of Procedure to strike out the claim, since, as a result of their dogged resistance to any proposals for a way forward, there seemed no prospect of the Tribunal ever being able to determine the application.
17. At that point, Mr Kosambia and Mr Tuveri indicated that they were willing to appoint Mr Everitt to act on behalf of the company in the current application. Thus, after an hour and a quarter of discussions, the Tribunal was able to start dealing with the substantive issues stood over from November.

The third day

18. After this hiatus we were able to deal with the remaining items. We heard witness evidence from Mr Michael Traynor, an employee of Kilmers' Ltd, a firm of managing agents who managed a number of flats on the estate; and from Mr Leon Mark McKenzie, who had been the estate monitor since 2017. We were able to hear all the parties' submissions in relation to the remaining items.

The lease

19. The demised premises, as we have mentioned, comprise four blocks adjacent to Bromley-by-Bow underground station. We were shown a sample lease granted by Berkley Homes (South-East London) Ltd to Mr Yau. We discuss the few issues which arose under the leases under individual items. It was common ground that most of the items in dispute, insofar as they were properly claimed under the service charge, were in principle recoverable, subject to having been reasonably

incurred and the services being of reasonable quality. (There were some issues as to how monies received from Thames Water and Transport for London were accounted for. Mr Everitt disputed that these were properly service charge items. We consider these issues below under Items 2 and 16 and Items 4 and 8.)

Item 1: RTM set-up costs

20. Mr Everitt sought to recover £645 from each tenant to cover the cost of setting up the RTM company. The costs involved with the RTM application and the appeal to the Upper Tribunal were substantial. The lessees of 65 flats did voluntarily pay the £645. This left 39 who did not.
21. In our judgment, these costs are not properly chargeable through the service charges. We have sympathy for Mr Everitt's view that there is a moral claim against the 39 freeriders (who subsequently dropped to 38). He made a valiant submission that the monies claimed were "extra reserve acquisitions". He pointed to clause 6.13.1 of the lease, which allowed an individual tenant's share of the expenses to be recalculated. However, the internal costs of setting up the RTM company are not in our judgment expenses which are subject to the right to recalculation. Any claim against tenants who did not contribute should properly be brought under the Articles of Association of the RTM company.
22. We disallow this item completely.

Items 2 and 16: water refund and water charges

23. In February 2016 the RTM company received a refund of £9,954.80 from Thames Water. This refund resulted firstly from Thames Water charging the wrong VAT rate for a substantial period and secondly from a bypass meter being wrongly identified in Thames Water's accounting systems, so that the same water was charged twice. The refund monies were credited to the 2015 service charge account and were in fact used to pay the directors' emoluments. The tenants also complain that water charges in 2016 were higher than in 2015.
24. The tenants' case on this, as on several other items, suffers from an absence of analysis. The landlord has in general little opportunity to challenge water charges. The water company presents the bill based on consumption and the landlord must pay. Where the landlord has been able to show an error, then it received a refund.
25. The tenants are unable to show (and indeed have not endeavoured to show) that the water refund was too little. If the cost of water in 2016 was higher than in 2015, there is little the landlord can do, in the absence of some concrete problem, like a leaking pipe. We accept Mr Everitt's evidence that both years' bills are within the range of normal use. We disallow nothing.

26. That is sufficient to deal with these items, however, it ignores the real case put forward by Mr Kosambia and Mr Tuveri. Their real complaint is that the monies refunded by Thames Water were used to pay Mr Everitt and Mr Yau their directors' salaries and expenses. Under the RTM company's Articles of Association, directors were not entitled to remuneration in the absence of a resolution of a General Meeting. Although logically this should be discussed under other items, because it was argued under this item, we shall deal with it now.
27. Mr Everitt's case is that the payment of remuneration was agreed at the 2014 General Meeting. He produced certified minutes of that meeting. These permit the payment of remuneration to directors. In the first year that was limited to £1,000 per month, but there was, he argued, no cap in subsequent years. The managing agents, Urang, had withdrawn their services in early 2016, so the work for the directors necessarily increased with commensurate increase in remuneration. No one had objected at the time or subsequently, until the current application was issued.
28. The tenants disputed that such resolutions had been validly passed at the 2014 General Meeting, or that unlimited remuneration after the first year at been approved. They were not shareholders at that time and could not give direct evidence of what occurred at that meeting. However, Mr Yau supported their case that there was no adequate quorum and that the minutes of the meeting were inaccurate.
29. In our judgment, these points raised by the tenants are not matters within our jurisdiction. They are company-law issues relating to the internal governance of the RTM company, not service charge disputes. We therefore decline to determine these issues.

Item 3: service charges written off

30. When the RTM company took over management of the estate from Trinity Estates in May 2015, Trinity passed over such monies as they had in the service charge account. There was, however, a sum of £67,067 which represented service charges billed by Trinity to tenants, which the tenants had not paid.
31. The tenants' case is that the RTM company should have pursued payment of these arrears. Mr Everitt's case is that that was precluded by section 97(5) of the Commonhold and Leasehold Reform Act 2002: only Trinity could pursue the arrears, not the RTM company. He had investigated this issue. He produced a letter dated 8 June 2016 from the RTM company's accountant which confirmed that interpretation of section 97(5). He agreed with Mr Kosambia's point that the RTM company could in theory have approached Trinity to pressure Trinity to get these monies in or at least to assign the sum to the RTM company. However, he said that relations with Trinity were so bad after the contested Upper Tribunal case that this was practically impossible. Mr Everitt also accepted that he had benefited from this approach by

having wiped out some £5,000 of service charges which he owed Trinity. He denied that this was the reason for the waiver.

32. We accept Mr Everitt's case on this. In our judgment he took reasonable steps to obtain recovery of the £67,000 arrears but was justified in wiping out the figure, when the difficulties of recovery became apparent. The fact that he benefited from that decision is not sufficient to render his approach improper. This sort of conflict of interest is likely to be inevitable in a tenant-managed RTM company.
33. No adjustment is to be made under this item.

Items 4 and 8: travel and expenses 2016 and 2017

34. Urang were the managing agents until early 2016, when Mr Everitt took over the sole management of the estate. In 2016 he charged £4,335 and £2,421, a total of £6,756, in respect of travel, accommodation and phone. (The £2,421 is corrected from £2,414 in the 2016 accounts.) In 2017 he charged £5,337 in respect of flights, plus £3,871 in respect of "rent compensation" and £4,000 for RTM expenses, a total of £13,208.
35. Throughout this period, Mr Everitt was living in Japan. He would fly in a couple of times a year for usually a few weeks, although later for a couple of months. He would generally stay in a fairly cheap hotel when he was over.
36. Service charges are only payable in respect of sums "reasonably incurred": see section 19(1)(a) of the Landlord and Tenant Act 1985. The cost of flights from Japan and then putting up in an hotel are not in our judgment reasonably incurred. As we have noted above, whatever might have been agreed between the RTM company and Mr Everitt as regards payment of his flights and accommodation, that is not decisive as between the RTM company and the tenants. In general, it is reasonable to expect a managing agent to live within a reasonable distance of the premises he is managing. Having an agent live in Japan to manage an estate in East London might perhaps most politely be described as Quixotic. In our judgment it is grossly unreasonable to expect tenants to pay for the managing agent to commute just short of 6,000 miles each way when he visits the estate.
37. Similarly, a managing agent based nearer the estate would pay for his own accommodation out of his remuneration, not stay in an hotel at the tenants' expense. Likewise, the cost of a mobile phone now-a-days should be part of a managing agent's internal costs. (The relevant part of the cost of a mobile is in any event small.)
38. The "rent compensation" arises from sums paid by Transport for London. TfL were carrying out major works at Bromley-by-Bow underground station, which neighbours the Capulet Square estate directly. In the course of the work, much nuisance and damage were caused. Mr Everitt negotiated the payment of £33,000 from TfL. This was used for building a bulk waste shelter, providing more parking

from May 2017, and the erection of a barrier to stop underground passengers discarding cigarettes and other waste. Money was also paid to individual tenants who were affected by the TfL works. Overall, Mr Everitt seems to have negotiated successfully with TfL. The figure for his work is reasonable in our judgment.

39. The £4,000 paid to the RTM company is in our judgment a reasonable figure for the work done by the RTM company. The RTM company has, after all, no alternative source of income; its sole purpose is the management of the estate. The cost of the RTM company is thus a proper service charge item.
40. Accordingly we disallow £6,756 in 2016 and £5,337 in 2017 in respect of travel, accommodation and phone, but otherwise disallow nothing under these two items.

Items 5, 6, 9 and 13: directors' remuneration and estate supervision 2016, 2017 and 2018

41. The tenants raised three issues in respect of these items: (a) whether the sums were a relevant cost for the service charge; (b) whether the amounts were reasonably incurred and (c) whether the services were of a reasonable standard.
42. The issue under (a) we have already dealt with. In principle, the remuneration of the directors (and the small amount paid to the company secretary, Mr Cooper) was recoverable through the service charge account.
43. The main challenge was under (c), the standard of services. This in turn impacted on the amount which could be charged under (b). It is on the standard of services that the majority of the witness evidence was adduced. Before looking at the individual witnesses, we should say a little about the challenges in managing this estate. It was common ground that Capulet Square is in a socially challenged part of London. There were problems of drug dealers seeking to operate from the estate. The widespread homelessness in the area resulted in rough sleepers seeking to use the estate to overnight. There were frequent burglaries. Fly tipping and the dumping of waste by residents or outsiders was common.
44. It is also common ground that Mr Everitt did take steps to try and deal with these problems. He had security doors installed (see items 21 and 26). He increased the amount of cleaning (see item 22). He improved the gardening (see item 23).
45. One item we can deal with quickly. Mr Everitt ensured that there was always an "estate monitor" living on the estate. Latterly this was Mr McKenzie. Initially he was paid £400 per month, but in 2018 this was increased to £600 per month, because he was assisting with the gardening. He was cross-examined by Mr Kosambia, but the questions were not directed to the quality of his work. The fact that following his

divorce Mr McKenzie had fallen on hard financial times was wholly irrelevant. There was no need to cross-examine on this at all. In our judgment the cost of paying the estate monitor was reasonable in amount and he seems to have done a good job.

46. As to the quality of the management, Usne Silva had lived in her flat since 2010. She said that “everything was much improved” since the RTM company took over. She walked up the stairs, the conditions of which could be improved, but also used the lift. She agreed that it did break down, however, it was repaired reasonably quickly. There was one occasion where it took a couple of weeks to repair, but otherwise it was fixed within a week. Mr Everitt reacted to problems raised with him reasonably quickly. Mr McKenzie kept an eye on things and did the gardening.
47. Mr Cooper did not live on the estate, but owned three flats on it. He said: “It is one of the best run estates I know. I have fourteen flats in nine developments, all in East London. The service charges were extremely low.” He said on other estates he paid £1,500 to £2,000 per annum, whereas at Capulet Square he was paying £1,100 per flat. Mr Cooper had been the company secretary for the RTM company. The tenants suggested that he was close to Mr Everitt.
48. Mr Yau had been a director until he resigned in 2015. He said that this was because he was not happy with the level of services provided after the RTM company took over. He had difficulties working with Mr Everitt. He found his work as a director was excessively demanding. Since Mr Everitt was in Japan, he ended up taking all the phone calls, day and night. Much of his cross-examination was about Urang, the original managing agents after the RTM company took over management, but this did not have much relevance to the issues in dispute.
49. Mrs Seedat said that she had been on the estate for twelve years. Her flat was on the fifth floor, so lift breakdowns were particularly problematic for her, when she had her young children with her. She considered the estate was “in the same state or worse than under Trinity.” The lift had once broken down and not been repaired for two months. There had been a long ongoing problem with the drains with slow flushing of toilets and sinks. This was usually sorted out by Thames Water flushing the drains, but this did not always work. Although initially she had been given a “pat on the back” by Mr Everitt, he had subsequently turned on her and they no longer got on. It had taken two weeks once to fix the security doors. People would not report matters to Mr Everitt because they were scared of him. There was only one resident estate monitor, which was inadequate with all the drug dealers around. There were problems with the intercom and with the parking barriers. Mr Everitt has failed to react adequately to issues of leaks. The cleaners had been changed regularly, because they were bad, but they have been the same for about eighteen months or two years. Mr Everitt made it difficult to deal with leaks, because he required

video footage and reports from the plumber. The best improvement was the security doors, but there are still intruders.

50. Mr Traynor gave evidence particularly about one longstanding leak. This was eventually found to be coming from the soil stack, but there had been no smell from the leaking water. Finding the leak involved opening up part of the floor of the upper flat. His general point was that Mr Everitt insisted on leaseholders doing the initial investigation into any leak, whereas generally it would be the freeholder's responsibility to do the initial investigation. He thought the lifts broke down quite frequently and then required a couple of weeks to fix, although the lift in Bailey House had taken six weeks.
51. Mr Mark McKenzie gave evidence about his work on the estate. He tried to avoid getting involved in "political" issues between tenants and Mr Everitt. He kept an eye on everything and since 2018 helped with the gardening. The quality of his work on the estate was not contested in cross-examination by the defendants.
52. Looking at this evidence in the round, we consider that Mr Everitt did a reasonable job as managing agent. There are certainly criticisms which can be made. For example, his approach to leaks was idiosyncratic. However, putting the initial onus on the tenant to investigate a leak saves the RTM company from unnecessary call outs of plumbers. He seems to have reacted correctly to the cleaning problems (we discuss this in more detail under item 22). Likewise with lifts, his approach is defensible (again see our discussion of item 15). Overall, however, this was, as we have noted, an estate with problems. Mr Everitt attempted to tackle these and was reasonably successful, particularly with the installation of the security doors (even Mrs Seedat conceded this). We accept Mr Cooper's evidence that Mr Everitt was able to keep the service charge demands per flat at a competitive level, although we are doubtful about this being one of the best-run estates in East London.
53. In our judgment, Mr Everitt provided a good service in the difficult conditions in which he found the estate. Leaving aside the sums for travel etc which we have disallowed, the amounts he received as remuneration were reasonable in amount. Accordingly, we disallow nothing.

Item 7: Urang payoff

54. Urang was appointed as the managing agent after the RTM company took over management. They had apparently assisted Mr Everitt in pushing the RTM process through (which, as we have noted, went to the Upper Tribunal). Relations, however, subsequently broke down. One issue was Urang's failure to take electricity readings on the transfer from Trinity. We suspect a contributing factor was Mr Everitt's somewhat abrasive personality.
55. At any rate, when the RTM company was seeking to terminate Urang's services, it owed Urang about £7,000. There were various outstanding

matters which Mr Everitt wanted Urang to do. These would have cost the RTM company about £10,000. Relations had broken down so badly, however, that Urang preferred to walk away and waive the £7,000.

56. We do not need to make any determination of the rights and wrongs of this breakdown in relations. The RTM company gained a windfall. There is nothing to disallow.

Items 10, 11 and 19: insurance 2015-2018

57. The tenants complain that insurance premiums have increased by £16,848 as a result of Mr Everitt's inadequate response to two major water leaks. These leaks were from flats 24 to 5 and from flats 32 to 26. They assert: "The RTM Director is solely responsible for those [claims] which were down to escape of water."

58. We do not accept this last allegation. Mr Everitt did not cause the water leaks. There is no strict liability on a landlord, still less the director of a landlord or an RTM company, for such disasters.

59. As to the overall complaint, we do not consider that Mr Everitt behaved improperly. We have already commented on his wish for tenants to take the initial steps. Whilst not the usual procedure, it is not unreasonable. Even if it were, however, we are not satisfied that the adoption of this procedure caused any additional damage. A major problem was that the loss adjuster appointed by the insurers was refusing to accept liability at an early stage. There were multiple potential causes of the leaks. The absence of a sewage smell did not cause the plumbers investigating to focus on the soil stack. Discovery of the cause of one of the leaks required opening the floor of the tenant's flat.

60. There had been a fire in a flat in 2015, which lead to Axa wanting an increased premium in 2016, but St Giles, Urang's broker, had obtained a lower quote of £12,800 and this alternative was taken. The challenge for 2016 was not pursued by the tenants.

61. The tenants attacked the steps taken to ensure the renewal of the insurance was competitive. The renewal report from James Hallam Ltd, the brokers, shows that proper steps were taken to obtain a competitive quote. The tenants adduced no evidence that a cheaper quote could have been obtained for any of the years in dispute.

62. We disallow nothing.

Item 12: CCTV

63. CCTV was not in fact installed. At the directions hearing, it was agreed that the real issue was the security doors. Since no monies were expended, there is nothing for the tenants to challenge.

Item 14: window cleaning 2016

64. The tenants complain that window cleaning only occurs once a quarter and the windows are left dirty.
65. We do not accept this complaint. The evidence is good that the window cleaner attends once every two months. He uses long hoses to clean the outside. He does not clean the inside of windows or French windows. We accept Mr Everitt's evidence that there have been no complaints. The tenants did not adduce any alternative quotes for the work. We find the amounts paid are reasonable.
66. We disallow nothing.

Item 15: lifts 2016

67. The tenants complain that the cost of lift maintenance increased substantially over 2015. The landlord explains that this is because the 2015 figure was artificially low due to Trinity already having put a maintenance contract in place which was allowed to run on after the handover.
68. The tenants also make complaints, including in relation to later years, about delays in getting lifts repaired after a breakdown. The later years are not strictly within this head. We accept Mr Everitt's evidence that it was very much cheaper to source items like circuit boards and brake coils second hand. This would justify a slight lengthening in the time for effecting a repair. We also accept his evidence that the breakdowns were not for as long as the tenants allege. Mr Everitt adequately tested the market before letting the maintenance contract. The tenants had no contemporaneous evidence of the periods of breakdown. They obtained no quotations to show that Mr Everitt's approach was flawed and that repairs could have been obtained faster and cheaper. We disallow nothing.

Item 17: electricity 2016

69. The tenants did not dispute the amount in the accounts for electricity of £8,581. Their complaint was as to its allocation between different sub-accounts. The amount allocated for parking should not have been increased from 10 per cent to 16 per cent between 2015 and 2016.
70. The RTM company has a discretion under the lease as to how to allocate expenses. Mr Everitt explained that he had looked at electricity usage among the blocks and the parking. In our judgment, the tenants have failed to show that the (re)allocation of the electricity charges was unreasonable.
71. We disallow nothing.

Item 18: general repair and maintenance 2016

72. The tenants complain that the amount spent doubled from the previous year. The landlord, however, has produced all the relevant invoices.
73. One large item was the cost of pest control. We accept Mr Everitt's evidence that there was a major problem with rats, caused both by the railway and by the lifting of manhole covers to the sewers. The tenants' suggestion that an infestation of rats does not amount to a "nuisance" under the terms of the lease is a nonsense. Part of the increase in this year was a result of vehicle hitting the door to 22-48 Wealden. The costs went down the following year.
74. We disallow nothing.

Item 20: estate supervision 2016

75. The tenants complain that this was an increase over the previous year. The increase is readily explicable by Urang's contract ending, so that the separate estate supervision head necessarily increased as Urang's services were replaced by Mr Everitt doing the work. This is really the same complaint we have discussed above about the director paying himself remuneration. We have already explained that this issue of company law is outwith our jurisdiction.
76. Estate supervision is payable under clause 1.1.12 of the lease. The tenants have adduced no evidence that it could be done more cheaply.
77. In these circumstances, we disallow nothing.

Items 21 and 26: security doors 2016 and 2017

78. Security doors were installed in two stages. Three perimeter doors were installed in 2016 and five doors were installed on individual blocks in 2017. The tenants alleged that the price was excessive. Doors could have been obtained for £1,900 each, or £2,500 each including installation. Further there was no section 20 consultation.
79. Dealing with this last point, the doors were paid for out of the reserve fund, so there is no "relevant contribution" by a tenant. The RMT company did not therefore need to consult: it already had the money.
80. Dealing with price, the tenants adduced no evidence to support their assertion that adequate doors could have been obtained for £1,900 or £2,500 with installation. Mr Everitt did investigate the market. The doors he chose were bespoke and justified a small increase in price over non-bespoke doors. It was not unreasonable to want uniformity of the doors over the whole estate. The 2017 doors were provided by a subsidiary of the 2016 door manufacturer, so no issue arises as to the manufacturer. All the witnesses who addressed the issue agreed that the security doors had improved overall security.

81. We disallow nothing.

Item 22: block cleaning 2017

82. The tenants complain that the cost has more than doubled. The landlord says that this was the inevitable result of increasing the cleaning from once a fortnight to once a week.

83. In our judgment, it was reasonable to increase the amount of cleaning. As Mrs Seedat said, the cleaning had been bad when it was only once a fortnight. We accept Mr Everitt's evidence that the new cleaners, working once a week, have done a much better job. There is no sufficient evidence that the cleaning from 2017 onwards was inadequate. Indeed, the tenants' case is confusing in their entries in the Scott Schedule. The tenants have adduced no alternative quotes, so there is no basis for a challenge to the amount. We agree with them that it might be better to have a system where the cleaners sign a schedule to show when they attended. This would assist Mr McKenzie to monitor the work, but this does not in our judgment affect the reasonableness of the amount.

84. We disallow nothing.

Item 23: gardening 2017

85. The tenants complain that the cost of gardening in 2017 increased over the previous year. Mr Everitt accepted that that had occurred. He said that this was due to more work being done in 2017. The garden was the most problematic issue after the lifts. Urang, he said, had employed a gardener, but he was dismissed in 2016 for doing a poor job and was replaced in 2017. It was difficult to supervise gardeners, but the estate monitor did take before and after photographs. Eventually in 2018, he and Mr McKenzie took to doing the gardening themselves.

86. We accept that the gardening work was done and was paid for. Mr Everitt took reasonable steps to ensure quality. There was little else he could have done. We disallow nothing.

Item 24: fire alarm and emergency light 2017

87. The tenants complain that the amount has increased over the previous year. They say that the lights stay on until 10pm and that the motion sensors in the common parts do not work. Mr Everitt said that the amount was higher than in 2015-16, because Urang had simply not carried out the tests. The issues with the lights staying on until 10pm and the motion sensors were not matters relevant to the emergency lighting.

88. We accept Mr Everitt's evidence on this. The tenants produced photographs showing green lights shining on the emergency lighting. Contrary to their contention, this shows that the emergency lighting was working. The tenants are confusing the motion sensors with the

emergency lighting: the two are separate systems. There was no evidence of any problems with the fire alarms.

89. We disallow nothing.

Item 25: management fees 2017

90. The tenants complain in their description of the dispute under this heading that the cost of management has increased. As part of their reply in the Scott Schedule they sought to raise issues of the quality of the management. We do not consider it appropriate to raise a new matter in the response to the RTM company's case in the Scott Schedule, but in any event we have dealt with the quality of the services when considering Items 5, 6, 9 and 13.

91. So far as the increase in costs is concerned, this is factually incorrect. The cost in fact dropped from £49,965 in 2016 to £44,216 in 2017. (This is the reason for the tenants' attempting to retreat to a challenge as to quality in the Scott Schedule.) Given our conclusion as to the quality of the services provided, we disallow nothing.

Costs

92. Neither party made submissions as to costs. The tenants seek an order under section 20C of the Landlord and Tenant Act 1985 to prevent the RTM company recovering any legal costs against them. Our preliminary view is that the RTM company has not expended any monies on legal costs so there is no need to make any such order (assuming the Tribunal was otherwise minded to make an order). However, we will give the parties seven days to make submissions as to costs, with a further seven days for any submissions in answer.

DECISION

1. The Tribunal disallows Item 1 completely and disallows £6,756 in 2016 and £5,337 in 2017 in Items 4 and 8. It otherwise disallows nothing.
2. The Tribunal adjourns consideration of what, if any, costs orders to make. The parties are to make any submissions within seven days of the sending of this judgment to them with replies within seven days thereafter. Any submissions sent to the Tribunal shall be copied to the other side as well.

Name: Adrian Jack

Date: 2nd March 2020

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 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.
- (5) Regulations under subsection (2) may make different provision for different purposes.
- (6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.