



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

Case Reference : **CAM/12UC/LSC/2021/0020**

HMCTS : **CVP**

Property : **88 Paddock Street, Soham, Ely
Cambridgeshire CB7 5JA**

Applicant (Tenant) : **Camille Properties**
Representative : **Robert Price**

**Respondent (Landlord &
Freeholder)** : **Iselgrove Homes Limited**
Representative : **John Price**

Type of Application : **1) To determine the reasonableness and
payability of Service Charges (Section 27A
Landlord and Tenant Act 1985) and
Administration Charges (Schedule 11
Commonhold and Leasehold Reform Act
2002)**
**2) For an Order to limit the service charges
arising from the landlord's costs of
proceedings (Section 20C Landlord and
Tenant Act 1985)**
**3) For an Order to reduce or extinguish the
Tenant's liability to pay an administration
charge in respect of litigation costs
(paragraph 5A of Schedule 11 of the
Commonhold and Leasehold Reform Act
2002)**

Tribunal : **Judge JR Morris
Ms A Flynn MRICS**

Date of Application : **14th March 2021**
Date of Directions : **23rd April 2021**
Date of Hearing : **17th August 2021**
Date of Decision : **7th October 2021**

DECISION

Covid-19 Pandemic: Remote Video Hearing

This determination included a remote video hearing together with the papers submitted by the parties which has been consented to by the parties. The form of remote hearing was Video. A face-to-face hearing was not held because it was not practicable, and all issues could be determined in a remote hearing/on paper. The documents referred to are in a bundle, the contents of which are noted.

Pursuant to Rule 33(2A) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and to enable this case to be heard remotely during the Covid-19 pandemic in accordance with the Practice Direction: Contingency Arrangements in the First-tier Tribunal and the Upper Tribunal the Tribunal has directed that the hearing be held in private. The Tribunal has directed that the proceedings are to be conducted wholly as video proceedings; it is not reasonably practicable for such a hearing, or such part, to be accessed in a court or tribunal venue by persons who are not parties entitled to participate in the hearing; a media representative is not able to access the proceedings remotely while they are taking place; and such a direction is necessary to secure the proper administration of justice.

Decision

1. In the absence of any evidence being adduced by either party the Tribunal strikes out that part of the Application relating to year ending 31st December 2019.
2. The Tribunal determined that the Service Charge of £400.00 for the year ending 31st December 2020 was reasonable and payable.
3. The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicants.
4. The Tribunal makes an Order extinguishing the Applicants' liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002.

Reasons

Application

5. This Application is one of three made by the Applicant in respect of properties in respect of which he has a leasehold interest. Each Application has been dealt with separately and a decision has been issued for each because there are differences with regard to the properties, the Leases and the covenants, the Service Charges and heads of expenditure and amount and the years in issue. However, a number of the issues raised are common, therefore, there is some repetition and similarities in the account of the evidence and the submissions made in each of the Decisions. The Statements of Case dealt with all three

Applications and the Tribunal has identified and addressed only those points and submissions that are relevant to each Application.

6. The Application dated 14th March 2021 is for:
 - 1) A determination of the reasonableness and payability of Service Charges incurred for the period 1st January to 31st December 2019 and 2020, (“the years in issue”). (Section 27A Landlord and Tenant Act 1985) and Administration Charges (Schedule 11 Commonhold and Leasehold Reform Act 2002);
 - 2) An Order to limit the service charges arising from the landlord’s costs of proceedings (Section 20C Landlord and Tenant Act 1985);
 - 3) An Order to reduce or extinguish the Tenant’s liability to pay an administration charge in respect of litigation costs (paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002) (Tab 3).
7. Directions were issued on 23rd April 2021.
8. The Tribunal notes that the parties are related and as individuals the tribunal members are not insensitive to the personal nature of this dispute, nevertheless, as a Tribunal it is only concerned with the law and its application to the evidence and submissions.
9. There is a mention of ground rent and breach of lease. The Tribunal only has jurisdiction in respect of the particular Applications to deal with service and administration charges.

The Law

10. A statement of the relevant law is attached to the end of these reasons.

Description of the Property

11. The Tribunal was not able to make an inspection of the Property or the Estate in which it is situated due to Government Coronavirus Restrictions. The following description is derived from the Lease, the Statements of Case and the Internet.
12. The Property is one of two flats (the Flats) in a building (the Building) which is part of a block of four similar purpose-built self-contained flats (the Block). The Block is part of a larger development (the Development) which the Applicant informed the Tribunal comprised of 7 houses (the Houses) although the plans annexed (Plans 1 and 2) to the Lease only show 6 houses.
13. Internally there are no Communal Parts to the Building and the flats are all accessed directly from the outside. Units of this kind are often referred to as maisonettes.
14. The Block has brick elevations under pitched tile roof. The doors, windows rainwater goods are upvc.

15. Externally there is a small patio to the rear of the Block. Each property on the Development has a designated parking space as stated in the Lease and shown on the Lease plan. There is also a bin store. There is an access road or drive (the Access Road) which is from the highway, between the Houses at the front of the Development, to the Block and Houses at the rear of the Development.
16. The terms Flats and Building are defined in the Lease.

The Lease

17. A copy of the Lease was provided dated 17th April 2018 which is for a term of 125 years from 1st January 2018 until 31st December 2142 made between (1) Islegrove Homes Limited (2) Camile Properties Limited (the Lease).
18. The following are the relevant provisions of the Lease.
19. In the Lease Clause 1.1 setting out the Definitions defines “the Building” as the land and building known as plots 7/8 Paddock Street registered at HM Land Registry with title numbers CB34458 and CB34464 shown edged in blue on Plan 2.
20. The “Common Parts” are defined as:
 - a) the front door, entrance hall, passages, staircases and landings of the Building; and
 - b) the external paths, driveways, yard, staircases, garden and refuse Area at the Building; and
 - c) cycle storage shedThat are not part of the Property or the Flats and which are intended to be used by the tenants and occupiers of the Building.
21. The “Flats” are defined as any premises forming part of the building that are capable of being let and occupied as a single dwelling (except the Property and the Retained parts)
22. The “Property” is defined as the ground floor of the Building known as Plot 7 Paddock Street Soham Cambridgeshire, the floor plans of which are shown edged red on Plan 1 and more particularly described in Schedule 1.
23. The “Retained Parts” are defined as all parts of the building other than the Property and the Flats including:
 - a) the main structure of the Building including the roof and roof structures, the foundations, the external walls and internal load bearing walls, the structural timbers, joists and the guttering;
 - b) all parts of the Building lying below the floor surfaces or above the ceilings;
 - c) all external decorative surfaces of (i) the building, (ii) the external doors, (iii) the external door frames and (iv) the external window frames;
 - d) the Common Parts;
 - e) the visiting Parking Spaces;(as shown on Plan 2)

- f) the service media which do not exclusively serve either the Property or the Flats; and
 - g) all boundary walls fences and railings of the Building.
24. The “Rent Payment Dates” are defined as 1st January in each year
25. The “Service Charge” is defined as a fair and reasonable proportion determined by the Landlord of the Service Costs.
26. The “Service Charge Year” is 1st January to 31st December in any one year.
27. The Services are as listed in Part 1 of Schedule 7 and the Service Costs are as listed in Part 2 of Schedule 7.
28. Schedule 4 Tenant Covenants
- 2 Service Charge
 - 2.1 The Tenant shall pay the estimated Service Charge for each Service Charge Year in two equal instalments on each of the rent Repayment Dates (Only one date, 1st January, is stated).
 - 2.3 If in respect of any Service Charge Year, the Landlord’s estimate of the Service Charge is less than the Service Charge, the Tenant shall pay the difference on demand. If, in respect of any service charge year, the Landlord’s estimate of the Service Charge is more than the Service Charge, the Landlord shall credit the difference against the Tenant’s next instalment of the estimated Service Charge...
29. Schedule 6 Landlord Covenants
- 4 Services and Service Costs
 - 4.2 Before or as soon as possible after the start of each Service Charge Year, the Landlord shall prepare and send to the tenant an estimate of the Service Charge for the Service Charge year and a statement of the estimated Service Charge for that Service Charge year.
 - 4.3 As soon as reasonably practicable after the end of each Service Charge year, the Landlord shall prepare and send to the tenant a certificate showing the Service Costs and the Service Charge for that Service Charge year. The certificate shall be in accordance with eservice charge accounts prepared and audited by the landlord’s independent accountants.
30. Schedule 7 Services and Service Costs
- Part 1 The Services (Only the relevant parts are referred to here)
- (a) Cleaning maintaining decorating repairing and replacing the Retained Parts and remedying nay inherent defect

- (c) Lighting the Common Parts and Parking Spaces
- (g) Cleaning maintaining decorating repairing and replacing refuse bins

Part 2 Service Costs

The Service Costs are the total of:

- (a) all of the costs reasonably and properly incurred or reasonably and properly estimated by the Landlord to be incurred of:
 - (i) providing the Services;
 - (ii) the supply ...of wate, sewage ...to and from the retained Parts;
 - (vi) putting aside such sum as shall reasonably be considered necessary by the Landlord ...to provide reserves or sinking funds for times of future expenditure to be or expected to be incurred at any time in connection with providing the Services.
- (b) The costs, fees and disbursements reasonably and properly incurred of:
 - (i) managing agents,
 - (ii) accountants for preparation and audit and
 - (iii) any other person reasonably and properly retained by the Landlord to act on their behalf in connection with the building

Issues Regarding the Lease

- 31. The Tribunal noted two potential issues regarding the Lease which were the subject of some discussion.
- 32. Firstly, the Service Charge Account of the Actual Costs for 2020 referred to a contribution to a reserve fund for maintaining the Access Road. The Tribunal found that the Lease does not specifically refer to the Access Road or whether the cost of maintaining it comes within the Service Charge although all the Flats in the Building and the Block and the Houses need to use the Access Road to access their respective flats, houses and parking spaces on the Development.
- 33. The Tribunal examined the Lease and found that the “Common Parts” are defined as:
 - b) the external paths, driveways, yard, staircases, garden and refuse Area at the Building;
 In addition, the “Retained Parts” include, d) the Common Parts.
- 34. The “Services” to be provided by the Landlord are listed in Part 1 of Schedule 7 and the “Service Costs” to be paid by the Tenant are listed in part 2 of Schedule 7. Paragraph (a) of Part 1 of Schedule 7 refers to “Cleaning maintaining decorating repairing and replacing the Retained Parts and remedying any inherent defect” and Paragraph (a)(i) of Part 1 of Schedule 7 refers to Service Costs as being all of the costs reasonably and properly incurred or reasonably and properly estimated by the Landlord to be incurred in providing the Services and to provide reserves or sinking funds for future expenditure.

35. The Tribunal was satisfied that the maintenance of the Access Road was chargeable to the Service Charge under the Lease. However, the Applicant under the Lease is only liable for a fair and reasonable proportion of the cost of maintaining the Access Road, the assessment of which would take into account the share attributable to the other flats in the Block and the Houses on the Development. It appeared to the Tribunal that the properties had equal use of the Access Road and that it was reasonable that each should pay an equal contribution to the Access Road Reserve Fund. Therefore, the Tribunal determined that the leaseholders or freeholders of the other flats in the Block and Houses on the Development or the Respondent where the properties are unsold, must pay the same sum into the Trust Fund for the year in issue as the Applicant.
36. Secondly, it appeared to the Tribunal that the Building is defined in the Lease as being only the two Flats which are on the first and second floor of the left-hand side of the Block looking from the highway along the Access Road. This includes the Property which is the first floor Flat. The reason for this is that “the Building” is defined as the land and building known as plots 7/8 shown edged in blue on Plan 2 and Plan 2 identifies the left-hand side of the Block looking from the highway along the Access Road by being edged in blue and the words Plot 7 and Plot 8. The flats in the Block on the right-hand side are not edged in any colour and are marked as Plots 9 and 10.
37. Therefore, in future, only the costs incurred for the ground and first floor flats are to be attributed to the Service Charge and apportioned between the two Flats. In the present case, as only one year is in issue and only costs under four heads of expenditure have been incurred the Tribunal finds that the issue is not significant but could be for future years.

Hearing

38. A Hearing was held by video conferencing on 17th August 2021 which was attended by Mr Robert Price, Representing the Applicant, and Mr John Price representing the Respondent.

Service Charge

Service Charge for the Year Ending 31st December 2019

39. The Tribunal found on reading the Bundle that the Demands and Service Charge Accounts only related to the year ending 31st December 2020. No Demands, Estimated or Actual Cost Accounts have been provided for 2019 although the Applicant’s Representative said that he had received a demand in July 2021 for 2019. If the Applicant had not received a Demand for the Service Charge costs incurred in the year 31st December 2019 prior to July 2021 then the Applicant would not be liable for those costs pursuant to section 20B of the Landlord and Tenant Act 1985 as a Demand must be served within 18 months of costs being incurred.

Service Charge for the Year Ending 31st December 2020

40. The following documents were provided for year ending 31st December 2020:

- a) Two copies of Service Charge Demands together with a Summary of Tenants' Rights and Obligations as follows:
 - 1) Demand dated January 2020 for the period 1st January 2020 to 30th June 2020 for £120.00
 - 2) Demand dated January 2020 for the period 1st January 2020 to 31st December 2020 for £250.00
- b) The Service Charge Accounts dated December 2020 were provided, which appear to just relate to the Property although they are headed 86 Paddock Street, as follows:

Service Charge for year ending 31st December 2020		
Item	Description	£
1	Buildings Insurance	260.00
2	Water	40.00
3	Long Term Road Fund	500.00
4	Management Charge	400.00
	Total	1,200.00
	Unit Charge 1/4	400.00

- c) An invoice for insurance was provided dated 3rd August 2020 from Saffron Insurance Brokers for the period 22nd July 2020 to 21st July 2021. The insurance had been placed with Axa Insurance. The invoice does not refer to the Building. The amount is:
 - Premium £791.77
 - IPT £82.70
 - Administration Charge £20.00
 - Total £894.47

41. The Applicant's Representative identified in a Scott Schedule each of the items of the Service Charge disputed together with comments. The Respondent's Representative in turn made comments in reply. Both parties also added to their comments through their respective Statements of Case and oral submissions in the course of the hearing.

The Demands, Estimated and Actual Accounts

42. The Applicant's Representative stated that on 7th May 2021 the Respondent provided a version of the Service Charge Accounts for the Property. It was said that there are no accounts for the year 2019 although these costs have been demanded. He did not consider he should have to pay for these costs. He said that Demands, Estimates and Accounts have not been provided as specified in the Lease and are incorrectly issued.

43. The Respondent's Representative said that the Service Charges for 2019 were for Costs in Arrears. He submitted that this was a normal procedure. He said

that effectively he, as freeholder absorbed the costs for the year and then charges the leaseholders on the basis of costs incurred. This eliminates the need for projected costs because unless an unexpected cost is incurred the leaseholders understand they are receiving a non-profit charge for maintaining and protecting their investment property.

44. The Respondent's Representative said that the freeholder is at liberty to provide Accounts in Arrears. In this respect there is no requirement to provide estimates as the leaseholders simply reimburse the freeholder for the costs incurred.

1. *Building Insurance - £260.00*

45. The Applicant's Representative said that he did not dispute the insurance premium as an invoice had been provided.

46. The Respondent's Representative referred to the invoice attached which was for a total of £894.47.

2. *Water - £40.00*

47. The Applicant's Representative said that he required evidence of the water bill and proof of payment. It was added that the water is used by the Landlord on his building site. It was submitted that it was not for the Leaseholders to cover this cost and none should be payable.

48. The Respondent's Representative said that the quarterly bills were for the building site as work was still continuing. However, the tenants of the Building use the water to clean their cars and a nominal amount is charged. The charge amounts to 20 pence per week for water and a share of the standing charge which it was submitted was reasonable.

49. The supply is a service provided by the Respondent as the builder for the year in issue. It was not clear whether this was to be a permanent service.

3. *Long Term Road Fund - £500.00*

50. The Applicant's Representative said that he required evidence of the existence of the Client Trust bank Account into which the Long Term Road funds were being paid together with any surplus. In addition, the Applicant's Representative said that only the owners of the flats are being charged towards the maintenance of the road through the Long Term Road Fund when 7 other properties use it and so the costs should be apportioned.

51. The Respondent's Representative said that when all the incoming monies had been received an account can be opened. The Respondent's Representative added that a charge for the long-term maintenance of the private road is currently only being made against the four leasehold flats but when the second years accounts are prepared the freeholders using the road will be making the same contribution.

52. The Respondent's Representative said that at the time of the hearing the Respondent owned the freehold of all the houses and the long leasehold of the Building was held by the Applicant's Representative and one other and that the Respondent held the other two flats of the Block.

4. *Management Charge - £400.00*

53. The Applicant's Representative said that the Management Charge amounted to £100.00 per unit which he submitted was high when the only work required was to arrange buildings insurance on an annual basis. The Applicant's Representative said that he considered the Management Fee unreasonable as no other work other than arranging the annual insurance was undertaken and that a charge of £50.00 per Flat was reasonable.

54. The Respondent's Representative said that the Management Charge was reasonable. It included regular attendances, overseeing the safety of the premises including inspections of communal and emergency lighting, carrying out minor repairs, communications with utility companies, liaising with the Council when bin collections are missed, cleaning and sweeping the Bin Store and Bicycle Store and a trip to the recycling centre to dispose of excess rubbish. The time taken is about 30 minutes per week on average including some allowance for travelling time.

Generally

55. The Applicant's Representative said that the amount being charged is far higher than necessary and the Landlord has not been willing to provide information.

56. The Respondent's Representative said that no service is being charged for and not provided. The charges are cost based. The Landlord cannot provide every invoice for every year attached to a breakdown of expenses.

Decision

57. The Tribunal considered all the evidence and submissions made by the parties in writing and orally.

Service Charge for the Year Ending 31st December 2019

58. The Tribunal found on reading the Bundle that the Demands and Service Charge Accounts provided only related to the year ending 31st December 2020. No Demands, Estimated or Actual Cost Accounts have been provided for year ending 31st December 2019 and neither party has adduced any evidence in respect of that year.

59. The Tribunal therefore strikes out that part of the Application relating to year ending 31st December 2019.

Service Charge for the Year Ending 31st December 2020

60. Firstly, it considered the Demands and Estimated and Actual Accounts for year ending 31st December 2020. The documents provided appeared to relate to all four flats or maisonettes. However, the Lease Plan shows the Building to be just the two Flats.
61. No Demands, Estimated or Actual Cost Accounts have been provided for 2019. If none have been served then pursuant to section 20B of the Landlord and Tenant Act 1985, 18 months would have elapsed since the costs were incurred and therefore, the Applicant's Representative is no longer liable.
62. The Demands for 2020 were not accompanied by an Estimate as required by the Lease. The Actual Cost Accounts provided were also not compliant with the Lease as they had not been certified or audited by an accountant. The Landlord must comply with the Lease, it is not at liberty to provide Accounts in Arrears. There is a requirement to provide estimates which must be followed by actual cost accounts at the end of the year.
63. Secondly the Tribunal considered the heads of expenditure and related amounts of what had been presented as Actual Cost Accounts.
 1. *Building Insurance - £260.00*
64. The parties agree the insurance therefore it is not in the Tribunal's jurisdiction.
 2. *Water - £40.00*
65. The charge of £40.00 for an outside tap divided between the four flats in the Block is £10.00 per annum. The Tribunal determined this to be reasonable for the year in issue. It was not clear whether this was to be a permanent service, if so consideration should be given to whether or not a supply should be provided in the future as in the experience of the Tribunal the provision of an outside tap raises a number of management issues such as metering and security.
 3. *Long Term Road Fund - £500.00*
66. The Royal Institute of Chartered Surveyors in its guidance to Residential Managers commends the establishment of a Reserve Fund. Where major works are required, it benefits both landlords and tenants to have a fund out of which deposits can be paid and from which the tenants' contribution to the full cost of the work under the service charge can be off-set in part or in full. Such fund should be based on a genuine pre-estimate of the costs likely to be incurred.
67. Here the Lease authorises a reserve fund and an estimate of costs should be prepared. In the meantime, the Tribunal determines that the sum of £100 per unit per annum is reasonable and payable on proof of a designated trust account.

68. The Tribunal determined that taking into account that the Respondent held the freehold of the Development then it must pay £100 for each property into the Trust Fund for the year in issue commensurate with the Applicant's payment. Alternatively, the Applicant's contribution to the Trust Fund must be held to the credit of the Applicant and following any expenditure must be used to set off against the Applicant's share of the cost. The remainder must then be paid by the leaseholders or freeholders of the other properties on the Development or the Respondent where the properties are unsold, according to their proportion.

4. *Management Charge - £400.00*

69. It appears from the Lease that there are only two Flats and no internal common parts. The external parts to the rear are hard landscaped and the only other common or retained parts is the Access Road.

70. There was no evidence of any utility bills other than the supply of water which appeared to be a casual service provided by the Respondent as builder for the time being.

71. The management was limited to occasional inspections to assess the condition of the Property, arranging repairs and paying invoices and collecting costs, when required and arranging insurance and collecting the premiums and ground rent. Notwithstanding a relatively small amount of management there is an optimum charge below which it would not be worth a managing agent's while to take on the work. In the present case the Tribunal determined that £100 per unit was reasonable.

Summary of Determination

72. The Tribunal determined that the Service Charge of £400.00 for the year ending 31st December 2020 was reasonable and payable.

Submissions Re Section 20C & Paragraph 5A of Schedule 11

73. The Applicant's Representative applied for an order under section 20C of the Landlord and Tenant Act 1985 that the landlord's costs arising from the proceedings should be limited in relation to the service charge and for an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 to reduce or extinguish the Tenant's liability to pay an administration charge in respect of litigation costs.

74. The Applicant's Representative stated that he had not received any estimated or actual accounts of the Service Charges. As he was liable for the Service Charges, he said he wanted to know what the costs were and to see the invoices. He said that before he had a meeting with the Respondent's Representative to discuss the Service Charges, he wanted to know what the costs were. The Respondent's Representative had all the information and he felt he would be at a disadvantage to discuss or agree anything without

knowing all the facts. There would have been no need to come to the Tribunal if he had been given the information he requested.

75. The Respondent's Representative said that he had never asked for the accounts before 2018 because Respondent's Representative had always paid everything, it is only now that he has been asked to pay that the Applicant's Representative has asked to see the accounts and invoices. The Respondent's Representative said the Applicant's Representative had only asked to see the documents once he knew that Respondent's Representative intended to pursue the matter. The Respondent's Representative said he had offered to meet and discuss matters but the Applicant's Representative had refused even after he had received all the information he had requested. The Respondent's Representative said that the matter could have been sorted out without a tribunal application.

Decision re Section 20C & Paragraph 5A of Schedule 11

76. Leases may contain provisions enabling a landlord to obtain the costs incurred in proceedings before a tribunal or court either through the service charge or directly from a tenant. Where the lease contains these provisions, the costs of the proceedings could be claimed by a landlord under either lease provision but not both. The difference between the two was referred to in the *Freeholders of 69 Marina St Leonards on Sea v Oram & Ghoorun* [2011] EWCA Civ 1258.
77. The provision enabling a landlord to claim its costs through the service charge might be seen as collective, in that a tenant is only liable to pay a contribution to these costs along with the other tenants as part of the service charge. Under section 20C of the Landlord and Tenant Act 1985 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed through a service charge.
78. The provision enabling a landlord to claim its costs directly from a tenant might be seen as an individual liability, whereby a tenant alone bears the landlord's costs of the proceedings. Under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 a tribunal may, if it is satisfied it is just and equitable, make an order that a landlord's costs, either in part or whole, cannot be re-claimed directly from a tenant.
79. First the Tribunal considered whether the Lease contained a provision allowing the Landlord to claim its legal costs through the Service Charge. The Tribunal was of the opinion that there was no provision in Schedule 7 to include legal costs in respect of these proceedings.
80. Secondly the Tribunal considered whether the Lease contained a provision allowing the Landlord to claim its legal costs directly from the Tenant Applicant. It was of the opinion that paragraph 7(a) and (b) or paragraph 16 of Schedule 4 of the Lease is not authority for the Landlord to claim its legal costs in the proceedings before the Tribunal. The Application is made by the Applicant for a determination of reasonableness of the Service Charges. The Application is not an action by the Landlord to enforce any of the tenant

Covenants or in connection with or reasonable contemplation of preparing or serving a section 146 Notice (paragraph 7(a) and (b)) nor is it in connection with any breach of any of the Tenant covenants or any act or omission of the Tenant (paragraph 16).

81. Notwithstanding its opinion that the Landlord was not able to claim its legal costs in the proceedings before the Tribunal, the Tribunal considered whether it was just and equitable to make an order under section 20C of the Landlord and Tenant Act 1985 or paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Tribunal found that the Respondent was obliged to provide the information requested regarding the costs irrespective of the Applicant's motivation. In addition, the Tribunal was of the opinion that the changes in approach that had occurred in 2018 had led to a contentious relationship between the parties. To require one to pay the costs of the other would only exacerbate the situation. The effect of making the orders means that each party pays its own costs which the tribunal is satisfied is just and equitable. Therefore,
- 1) The Tribunal makes an Order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in connection with these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the Applicant.
 - 2) The Tribunal makes an Order extinguishing the Applicant's liability to pay an administration charge in respect of litigation costs under paragraph 5A of Schedule 11 of the Commonhold and Leasehold reform Act 2002.

Judge JR Morris

APPENDIX 1 - RIGHTS OF APPEAL

1. If a party wishes to appeal the 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.
2. 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.
3. 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.
4. 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.

APPENDIX 2 – THE LAW

The Law

1. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002.
2. Section 18 Landlord and Tenant Act 1985
 - (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, improvement 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 of which the service charge is payable.
 - (3) for this purpose
 - (a) costs include 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 period
3. Section 19 Landlord and Tenant Act 1985
 - (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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.
 - (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.
4. Section 21A Withholding of service charges
 - (1) A tenant may withhold payment of a service charge if—
 - (a) the landlord has not provided him with information or a report—
 - (i) at the time at which, or
 - (ii) (as the case may be) by the time by which, he is required to provide it by virtue of section 21, or
 - (b) the form or content of information or a report which the landlord has provided him with by virtue of that section (at any time) does not conform exactly or substantially with the requirements prescribed by regulations under that section.

- (2) The maximum amount which the tenant may withhold is an amount equal to the aggregate of—
 - (a) the service charges paid by him in the period to which the information or report concerned would or does relate, and
 - (b) amounts standing to the tenant's credit in relation to the service charges at the beginning of that period.
 - (3) An amount may not be withheld under this section—
 - (a) in a case within paragraph (a) of subsection (1), after the information or report concerned has been provided to the tenant by the landlord, or
 - (b) in a case within paragraph (b) of that subsection, after information or a report conforming exactly or substantially with requirements prescribed by regulations under section 21 has been provided to the tenant by the landlord by way of replacement of that previously provided.
 - (4) If, on an application made by the landlord to the appropriate tribunal, the tribunal determines that the landlord has a reasonable excuse for a failure giving rise to the right of a tenant to withhold an amount under this section, the tenant may not withhold the amount after the determination is made.
 - (5) Where a tenant withholds a service charge under this section, any provisions of the tenancy 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. Section 21B Notice to accompany demands for service charges
- (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.
6. Section 27A Landlord and Tenant Act 1985
- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and

- (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the 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 arbitration agreement to which the tenant was a party
 - (c) has been the subject of a determination by a court
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

7. 20C Landlord and Tenant Act 1985

Limitation of service charges: costs of proceedings.

- (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 leasehold valuation tribunal or the First-tier 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 the county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (ba) in the case of proceedings before the First-tier Tribunal, to the 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 the 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.

Limitation of administration charges: costs of proceedings

- 5A(1)A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
 - (3) In this paragraph—
 - (a) “litigation costs” means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
 - (b) “the relevant court or tribunal” means the court or tribunal mentioned in the table in relation to those proceedings.

Only have use of the space within the flat
The walls and grounds still belong to the Landlord
Pay rent for the use of the land and building
Pay insurance for the building

Pay a service charge for the facilities and maintaining the building
Pay reserve to avoid big bills

Must be reasonable but this is a matter for the tribunal.

Service Charge money kept in a trust fund includes premiums between collection and payment

1. The Tribunal considered all the evidence adduced. Having read the Applicants' Statements of Case, heard their submissions and read the emails seeking to negotiate a settlement, the Tribunal was not convinced that they fully understood the way the day to day Service Charge, as opposed to the Reserve or Sinking Fund operated and appeared new to the concept.
2. The Tribunal gives a brief outline of the day to day Service Charge here for their benefit as it is relevant to its decision.
3. The Applicants appeared to be aware that under the Lease (Schedule 7) the Landlord is obliged to carry out services such as cleaning of common parts, window cleaning, maintenance of the lift and electronic gates, internal and external decoration etc. and to insure the Building. These services are for the benefit of the Tenants both with regard to day to day living, the long-term maintenance of the Building and the protection of their investment and under the Lease the Tenants pay for these services through the Service Charge.
4. What the Applicants appeared to be less clear about is that under the Service Charge the Tenants pay the *actual* cost of providing the services, no more and no less.
5. In this Lease, as is common in most leases, the Landlord or its Agent are able at the beginning of the year to demand an advance payment of the Service Charge based on a reasonable estimate of the costs to be incurred. This is held in a service charge trust fund and used to pay for the services as they are performed by contractors. At the end of the year if the trust fund is in credit this is put towards next years' service costs. If it is in debit, because the services cost more than was estimated, then the Tenants must pay the balance. It is the actual cost that is charged.
6. It appears that the Applicants mistakenly think that the Landlord, through its Agent, charges a fee at the beginning of the year out of which it pays for the services irrespective of their actual cost. Their attempt to limit the estimated service charge to £2,000 per annum indicates that they believe that if the fee is high the Landlord obtains a profit at the end of the year.
7. Both estimate and actual costs must be reasonable. Estimates that do not cover the actual costs lead to high balancing payments. Estimates that more

than cover the actual costs lead to large accruals, which may or may not be justified but must always be held in the trust fund for the Tenants' benefit. Where either estimates or actual costs are considered to be too high by Tenants and the matter cannot be settled between the Landlord and Tenant, then either may apply to the Tribunal for a determination as to what is reasonable.

8. In addition to the day to day Service Charge the Lease authorises the Landlord to set aside an amount in a Reserve or Sinking Fund in anticipation of future expenses, particularly for major works, with a view to reducing the burden of a large Service Charge demand. Like the day to day Service Charge this amount must be reasonable.