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

Case Reference : CHI/00HP/LSC/2013/0055

Property : Flat 1 Woodgrove, 85 Bournemouth Road, Poole,  
Dorset, BH14 0ER

Applicant : Ms Kamini Alena Hola (the Landlord)

Representative : ---

Respondent : Miss Emma Wallis (the Tenant)

Representative : ---

Type of Application: Transfer from Bournemouth and Poole County  
Court to determine whether the service charges  
claimed are recoverable and if so in what amount

Tribunal Members : Judge P.J. Barber Chairman  
Mr A J Mellery-Pratt FRICS Valuer Member  
Mr J Mills Lay Member

Date and venue of Hearing : 19<sup>th</sup> August 2013 Court No. 8 Bournemouth  
County Court, Deansleigh Road,  
Bournemouth, Dorset BH7 7DS

Date of Decision: 27th August 2013

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**DECISION**

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## **THE LEASE**

4. The Lease of the Flat is dated 28 September 2007 and is for a term of 125 years from 25 March 2007. The obligation to pay service charges is contained at Clause 5.17 and as set out in Schedule 7 to the Lease :-

*"5.17. The Lessee must observe and perform his obligations contained in Schedule 7"*

Schedule 7 of the Lease sets out in detail the arrangements and mechanisms pertaining to service charges.

Clause 1.1.21 of the Lease further provides that :-

*"the `Service Charge Percentage` means :*

*50% of the total cost of the repair and maintenance of the structure and exterior decoration of the building and of the party drains pipes and wires serving the Flat and the Other Flat.*

*25% of the cost of maintaining the driveway and forecourt coloured brown on the Plan*

*33.33% of the cost of the structural repair and decoration of the brickbuilt garage block on the Estate."*

## **THE LAW**

5. Section 19(1) of the Landlord and Tenant Act 1985 ("the 1985 Act") provides that :

*"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."*

6. Sub-Sections 27A (1), (2) and (3) of the 1985 Act provide that :

*"(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*

14. Miss Hola referred to her accounts for 2012 at Page 65 of her bundle; in regard to those items which were at variance with the budget, namely the repair to Flat 1's garage door (£70.00) and grounds maintenance (£225.00), Miss Wallis said she did not dispute either amount.
15. In regard to the water tank in the loft, Miss Hola submitted that this is no longer connected to or used by her Flat 2, following installation of a combination boiler, not requiring a separate tank. Miss Hola referred to a report from her heating engineer at Page 95 of her bundle, in which he said that the current tank is mounted on an unsafe platform with no cover and rusting galvanised pipework. Miss Hola feels that good practice requires that the tank & related pipework be replaced and/or made safe and secure. Miss Hola felt that when Miss Wallis had had the Flat 1 boiler replaced in 2009, it would have been preferable if a combination type boiler had then been chosen. Miss Hola said that the solutions identified in the quotes at Pages 96 & 98 of her bundle, other than fitting a further new boiler to Flat 1, ranged from £695.00 to £1,800.00. Submissions were made by the parties regarding responsibility for the water tank under the provisions of the Lease, given that such tank now only serves Flat 1. However, Miss Wallis specifically confirmed that in her view any work to or relating to the water tank should fall within the service charge and that the portion of cost attributable to Flat 1 should be 50% in accordance with Clause 1.1.21 of the Lease.
16. In closing, Miss Wallis said that she was not the bad person such as she felt she had been described by Miss Hola but that the parties simply had very different views about how the property should be run; Miss Wallis regarded Flat 1 as an investment, while, she said, Flat 2 is Miss Hola's own home. Miss Wallis said she would herself expect to do more work to her own home, than to an investment property. Miss Hola said in closing, that she has lived at the property for 14 years and had never had previous problems; Miss Hola said that Miss Wallis has a poor record in making service charge payments and that her insistence on inspecting invoices before paying, contradicted the advance payment mechanism for estimated service charges as provided for in the Lease. Miss Hola said she has had to spend huge amounts of time chasing the Respondent for payments; she added that she does not charge any amount for management and felt she was effectively continually subsidising Miss Wallis.

### **CONSIDERATION**

17. We, the Tribunal, have taken into account all the oral evidence and the case papers, including those particularly brought to our attention, and the submissions of the parties. The Tribunal noted that the matter for determination is the reasonableness only of the estimates of service charges for the two middle quarters of 2012, and that it remains open to the Respondent to challenge the actual or final service charges for this period should she consider them to have been unreasonably incurred. However it is noted that Miss Wallis at this hearing accepted all of the costs incurred in the accounts for 2012. Nevertheless on the information provided, the Tribunal considers that the Applicant had acted reasonably in preparing an advance budget and submitting the same to the Respondent. The Tribunal takes the view that the estimates on which the Applicant has sought payments of £500.00 and £300.00 for the periods concerned are

reasonable. The amounts estimated were supported by competitive quotes, where these had been obtained. In regard to loft and cavity insulation, whilst Miss Hola had indicated she was not intending to include the cost of same in subsequent actual service charges, the Tribunal nevertheless is of the view that at the time the budget was prepared, it was not unreasonable for the estimated cost of such work to have been included. In regard to the water tank, the Tribunal notes that Miss Wallis accepts that the cost of works should fall within the service charge, with 50% being charged, via the service charge mechanism, to Flat 1. The contribution for Flat 1 of £600.00 for water tank work shown in the 2012 budget on Page 73 of the Applicant`s bundle, appears to represent a reasonably acceptable median figure, taking into account a comparison of the gross cost of such work which varied between £695.00 (Page 96 of the bundle) and £1,800.00 (Page 98) – accordingly a gross sum of £1,200.00, upon which a 50% or £600.00 contribution by Flat 1 would be based, would appear to be not unreasonable.

18. We made our decisions accordingly.

Judge P J Barber (Chairman)

A member of the Tribunal  
appointed by the Lord Chancellor

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.
2. The application must arrive at the 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 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.