9373

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AG/LSC/2013/0189 &190**
Property	:	**Flats 1 & 2 The Crest, 93 Brecknock Road London N7 0BZ**
Applicant	:	**Mr Joseph Scott – Flat 1** **Mr Ian & Mrs Lesley Baxter – Flat 2**
Representative	:	**In person**
Respondent	:	**Longmint Ltd (In Administration)**
Representative	:	**Ms E Thompson of Thompson Allen LLP** **Mr Mark Allan of South East Property Services Limited ("SEPS")**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Judge: N Haria LLB(Hons)** **Professional Member: H Geddes JP RIBA MRTPI** **Lay Member: Mr P Clabburn**
Date and venue of Hearing	:	**9th and 10th September, 10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**25 November 2013**

DECISION

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Decisions of the Tribunal

(1) The Tribunal makes the determinations as set out under the various headings in this Decision.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge.

(3) The Tribunal determines that the Respondent shall pay the Applicant £350 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years:

   (i) 29 September 2006 to 28 September 2007,

   (ii) 29 September 2010 to 28 September 2011,

   (iii) 29 September 2011 to 28 September 2012, and

   (iv) 29 September 2012 to 28 September 2013.

2. The Tribunal received two separate identical applications, one in respect of each flat. The two applications were consolidated and dealt with together. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

3. The Applicants appeared in person at the hearing and the Respondent was represented by Ms Thompson. Mr Allan appeared as a witness on behalf of the Respondent.

4. The Applicants stated that the Witness statement of Mark Allan with a report from Iain Pendle, a Chartered Building Surveyor, was received on the 4 September 2013 and as the hearing was Scheduled for the 9 September they had not had the chance to seek the advice of their own expert on the contents of the report. The Tribunal offered the Applicants an adjournment of the hearing in order that they could seek the advice of an expert but the Applicants wanted to proceed with the

hearing. The Applicants stated that they had considered the report and disputed the statement under paragraph 3.19 of the report whereby Mr Pendle claimed he received no further instruction or heard any thing further as to the water ingress and referred to the email of the 16 July (267). The Applicants agreed to allow the Witness Statement and report to be put in evidence.

The background

5. The properties which are the subject of this application are two one bed flats in a purpose built block containing four flats. The leases of the other two flats are held by the London Borough of Camden.

6. The Applicants are the leaseholders of the flats and the Respondent is the freeholder of the block. SEPS took over the management of the block on the 31 July 2009 and prior to that the block was managed by Haywards Property Services (formerly a part of the Erinaceous Group) a part of the Residential Management Group Limited ("RMG").

7. Neither party requested an inspection and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

8. The Applicants hold long leases of the properties which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

9. A copy of the lease for each flat was produced in the bundle (46 -84). The two leases are not identical. The Respondent's statement of case sets out the relevant provisions of each lease (32 -34). The specific provisions of each lease will be referred to below, where appropriate.

The issues

10. At the start of the hearing the parties identified the relevant issues for determination as follows:

    (i) The payability and/or reasonableness of service charges for 29 September 2006 to 28 September 2007 relating to:

Service	Block total	Flat total
Cleaning & gardening	£ 725.41	£ 181.35

Major Works	£6580.00	£1645.00
Minor Repairs	£ 281.42	£ 70.35
Management fees	£ 799.00	£ 199.75
Professional fees	£ 411.25	£ 102.81
Total		£2199.26

(ii) The payability and/or reasonableness of service charges for 29 September 2010 to 28 September 2011 relating to the major works in the sum of £9813.99 for each flat.

(iii) The payability and/or reasonableness of service charges for 29 September 2011 to 28 September 2012 relating to management fees in the sum of £216.00 per flat. The Applicants also challenged the charge of £95.15 each in respect of the Health and Safety report. During the hearing Mr Allan on behalf of the Respondent confirmed that the Respondent will not seek to recover these charges.

(iv) The payability and/or reasonableness of service charges for 29 September 2012 to 28 September 2013 relating to each flat of:

Service	**Block total**	**Flat total**
Fire Risk		£ 50.00
Management fee		£216.00

The Applicants also challenged the anticipated sum of £2500 for minor repairs as well as the charge of £200 for professional fees for a surveyor. During the course of the hearing Mr Allan confirmed that no minor repairs had been carried out and as it was almost the end of the service year there would be no charge for minor repairs. Mr Allan confirmed that the professional fees related to the charges made by the Surveyor to carry out an asbestos survey. The Tribunal pointed out that the report produced states the surveyor did not gain access to the property so could not produce an asbestos survey report. Mr Allan on

behalf of the Respondent confirmed this charge will be withdrawn from the service charge.

11. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Service charges for 29 September 2006 to 28 September 2007

Cleaning and gardening:

12. The Applicants challenged the costs charged for the cleaning and gardening on the basis that there was no cleaning or gardening service provided. The Applicants claimed that no gardening had taken place in the previous 12 years other than that paid for and carried out by the Applicants themselves in 2009. The Applicants produced photographs of the condition of the garden both before and after they had undertaken works to the garden (300 – 311, 313 to 318 and 320 to 325). The Applicants referred to the email to Sally Glover of Erinaceous Group PLC dated 28 July 2007 and the attachment to the email in support of their claim that the garden had not been maintained and also the lack of cleaning.

13. The Respondent submits that under the provisions of the leases it is entitled to recover the cost of cleaning the internal common parts of the block. The Respondent's managing agents were not managing the block during the period in issue and although they have searched their database as well as the information handed over from the former managing agents RMG, they have been unable to locate a copy of the cleaning contract or any other information in relation to the cleaning and gardening. The Respondent relies on the certified service charge account (85) and the fact the accountant would have seen the invoices in relation to the costs incurred for the service in preparing the service charge account.

The Tribunal's decision:

14. The Tribunal determines that the amount payable in respect of cleaning and gardening is £0.00.

Reasons for the Tribunal's decision:

15. The Tribunal appreciated that the Respondents were not managing the block during the period in question and they therefore have no information other than the certified service charge account in support of these charges. The Tribunal was persuaded by the evidence presented by the Applicants which included photographic evidence as to the lack of a gardening service and the photographs show the garden

area to be totally overgrown. The Tribunal find that the condition of the garden was such that no gardening service was provided at the block. Accordingly the Tribunal does not allow a sum in respect of the gardening.

16. In relation to the cleaning service the Tribunal noted that there were several emails indicating that the manager was attempting to put in place a cleaning service either because there was no cleaning being undertaken or because whatever service was in place fell well below a reasonable standard. The email of the 23 May 2005 from Talia Vansing of Erinaceous sent after inspecting the property states *"... cleaning needs to be implemented on a bi – weekly basis....."* The email dated 15 September 2006 from Ian Baxter to Sally Glover (331) states that he would like the garden maintained on a regular basis and asks *"What day are the cleaners supposed to visit and what are the itemised duties they are expected to complete? I intend to make occasional checks......."*. The Tribunal infers from this exchange of emails that prior to May 2005 there was no cleaning service provided at the block and it was only put in place some time after May 2005. The Tribunal finds that the level of cleaning service provided fell so far below what was reasonable that it was as if there was no cleaning service. Accordingly despite the fact the Respondent may have incurred the charges for a cleaning service as certified in the service charge account (85) the Tribunal does not consider it reasonable for the Applicants to have to pay for such a poor service. Accordingly the Tribunal does not allow any sum towards the costs of providing a cleaning service.

Major Works:

17. The Applicants accepted that the major works for the rewiring of the common parts took place but challenged the sum of £6580.00 charged for the works as the Respondent failed to undertake full consultation in relation to the works. The Applicants admitted that they were served with the initial Notices of Intention in relation to re- wiring of the common parts (86-89) and also the replacement of the carpet in the common parts (90- 95). However they claimed that they were not supplied with any quotes or other information in relation to the works and they did not receive any copy invoices. The Applicants stated that the works comprised the replacement of 4 lights, 4 light switches, a new fuse board and associated cabling. The Applicants claimed the work was of a poor standard as the electrical fuse box was left unsafe and open (312, 319, and 326) and the linoleum was not replaced with carpet or any other material. The Applicants stated that they considered a sum of around £1000 to £2000 to be a reasonable sum for the works. The Applicants explained the building is a four storey building and the works covered the area of a single hallway and four landings. The Applicants contend that the works were of a poor standard and the sum of £6580.00 is excessive particularly as the carpet was not replaced.

18. The Respondent stated that it believes the major works undertaken were the rewiring of the common areas and may also have included the replacement of the carpet in the communal areas. The Respondent's managing agent stated that they have searched their database and information handed over from the former managing agents RMG and other than the copy Notices of Intention and service charge account (85) they have no further information in relation to the major works.

The Tribunal's decision

19. The Tribunal determines that the amount payable in respect of the major works is £250 per flat.

Reasons for the Tribunal's decision

20. The Tribunal finds that other than serving the Notice of Intention in relation to the works the Respondent failed to serve any of the other notices and to consult with the Applicants fully in relation to the major works. As a result the Applicants were denied the opportunity to make observations in respect of the qualifying works, they lost the opportunity to nominate a contractor; and they lost the opportunity to make observations in respect of any estimates obtained by the Respondent. The Respondent made no application for dispensation from the consultation requirements.

s. 20 of the 1985 Act provides that:
"(1) Where this section applies to any qualifying works.........., 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) a leasehold valuation tribunal."

21. The effect of s.20 of the 1985 Act is that, the relevant contributions of tenants to service charges in respect of (inter alia) "qualifying works" are limited to an amount prescribed by the 2003 Regulations unless either the relevant consultation requirements have been complied with in relation to those works or the consultation requirements have been dispensed with in relation to the works by (or on appeal from) a Tribunal

22. The "Qualifying works" are defined in s.20ZA of the 1985 Act as "works on a building or any other premises", and the amount to which contributions of tenants to service charges in respect of qualifying works is limited (in the absence of compliance with the consultation requirements or dispensation being given) is currently £250 per tenant by virtue of Regulation 6 of the 2003 Regulations.

23. **Minor Repairs:**

24. The Applicants claimed that no minor repairs took place. Mr Scott stated that he bought his flat in 2002 and lived there for 5 years and he claimed no one did anything. Mr Baxter recalled that the front door was replaced but he stated that this was paid for under an insurance claim. He stated that he had no information as to any excess on the insurance. He referred to his letter of the 27 April 2005 to the managing agent in which he complained that no works were being undertaken (343). In addition he referred to the correspondence between the managing agent and both himself and Mr Scott produced in the bundle (328, to 337 and 340 to 342), as well as the photographs (316 to 318). Mr Baxter stated that the managing agents had said they were not able to undertake any works as there was no reserve fund as some of the leaseholders were not paying the service charge (340-343).

25. The Respondent's managing agent states that they have searched their database and information handed over from the former managing agents RMG but due to the lack of information passed to them and the time elapsed since the minor works took place they have no further information in relation to these works.

The Tribunal's decision

26. The Tribunal determines that the amount payable in respect of minor works is £0.00.

Reasons for the Tribunal's decision

27. The parties were not able to give any evidence as to what works had been undertaken. The only information as to the minor works was the amount certified in the service charge account (85). This merely shows that the sum of £281.42 was incurred but it gives no information as to whether the works were necessary and whether it was reasonable to undertake the works or whether the works were of a reasonable standard. In the absence of any explanation as to what works were undertaken, why the works were undertaken and as to the standard of such works the Tribunal could not find the sum claimed to be reasonable and so did not allow the sum claimed.

Management Fee:

28. The Applicants accepted that they received a management service but it is their view that the service provided was a minimal management service. They accepted that the managing agents dealt with the insurance and gave instructions in relation to the major works, however the Applicants claimed they did not receive a full professional service as there were no site visits to inspect the major works and no health and

safety assessments undertaken, no gardening carried out and no refuse bins provided.

29. The Respondent claimed that it is entitled to recover the managing agent's fees under the terms of each Lease. The Respondent claimed that the managing agents are instructed to ensure the block is cleaned and the garden maintained, the regulatory health and safety requirements complied with and to attend to the repairs, serve notices, instruct surveyors and other professionals, instruct and review major works, serve demands, recover service charge arrears and provide audited accounts. The Respondent submitted that the fees of £799.00 for 2006/7 are in line with the market rate at that time and reasonable for the work undertaken.

The Tribunal's decision:

30. The Tribunal determines that the amount payable in respect of Management fee is £160.00 inclusive of VAT for the block instead of £799.00.

Reasons for the Tribunal's decision:

31. The Tribunal finds that under the provisions of each lease the Respondent is permitted to employ and retain managing agents and the Applicants have covenanted to pay a contribution towards the cost incurred. The current managing agents were not managing the block during the period in issue and have produced no evidence as to the service provided by RMG. The Respondent has been the landlord throughout the period but has not produced evidence to show the level of service provided by RMG. The Tribunal considered that for the period in question a fee of £799 per annum for a block of four units in north London to be above the normal range.

32. The Tribunal was persuaded by the Applicants evidence and the copy correspondence that the service provided by the managing agents was a basic service. The correspondence shows that the Applicants undertook many of the duties that would normally be undertaken by a managing agent. The Applicants informed the managing agent of works that were required and also organised quotations for the works to the garden (321 - 327, 331, and 337). In addition the Applicants handled the insurance claim in respect of the door (328, 329 and 330). In order to be a good and effective management service a managing agent should visit and inspect the property being managed regularly and at the very least four times a year . In this case it appears from the evidence that the managing agents failed to visit the block regularly. Accordingly, for the reasons stated the Tribunal considered an 80% reduction in the fee to be reasonable and thus allowed a reduced fee of £160.

Professional Fee:

33. The Applicants had no information as to what these fees related to.

34. The Respondent claimed that it is entitled to recover the cost of surveyors and professional fees as a service charge under the terms of each Lease. The Respondent's managing agent stated that they have searched their database and the information handed over from the former managing agents RMG but due to the lack of information passed to them and the time elapsed they have no information as to the professional fees.

The Tribunal's decision:

35. The Tribunal determines that the amount claimed in respect of the professional fee is payable but that it is caught by the cap of £250 applicable to the costs of the major works, so, no additional sum over and above the £250 payable for the major works is payable in respect of the professional fees.

Reasons for the Tribunal's decision:

36. The Tribunal was persuaded that an invoice must have been rendered and seen by the Chartered Accountant in producing the certified service charge account (85). The lack of evidence in relation to the fees made it difficult for the Tribunal to assess whether the sum was reasonably incurred and whether the sum was reasonable. Although the parties had no information as to what the charges related to, the Tribunal considered it to be highly likely that the fees related to the services of a professional engaged in relation to the major works for example in order to produce a priced specification or provide some other service connected with the major works The Tribunal considered it was reasonable for a landlord to seek the advice of professionals such as surveyors when undertaking major works. The major works cost £6580.00, the fees amounted to about 6% of the cost of the works and the Tribunal considered this to be within the normal range for professional fees. Accordingly on a balance of probabilities the Tribunal determined that the fees were reasonable and reasonably incurred. The Tribunal considered that these fees should have been included in the fees incurred for the major works and should not have been charged separately. The Tribunal has found that the Respondent failed to undertake full consultation in respect of the major works as detailed at paragraphs 20 to 22, and therefore the amount payable in respect of the major works is subject to a cap of £250, accordingly, no further sum is due from the Applicants over and above the £250 payable in respect of the major works.

Service charges for 29 September 2010 to 28 September 2011

Major works

37. The Applicants admitted the major works took place and were necessary, they referred to a photograph showing the condition of the property prior to the works (288). The Applicants took issue with the cost, the standard of the work and the lack of adequate supervision of the works. The Applicants referred to an email from Tara Cookson the Housing manager at Camden council (the leaseholders of the remaining 2 flats in the block) which confirms that they have been unable to let flat 4 since 18.01.10 due to the water ingress (233). The Applicants claimed that although they each paid £9,813.99, which is 25% of the tendered sum, the roof was not adequately water tight and almost three years after the work was completed the roof continues to leak.

38. The Applicants claimed that the specification should have included work to the parapet wall and the coping stones and brickwork as this was where the leak was coming in from, they claim that the work to the water tank and roof alone was not sufficient to resolve the leak. They rely on the Leaseholders observations made during the consultation process (109, 111).

39. The Applicants claimed the internal painting was largely unnecessary as the communal area had been newly decorated at their expense (300) for £780. They admitted that some redecoration would have been necessary on completion of the major works but they estimated that only 25% of the £2850 charged for decorating was necessary as only the ceiling and wall on the top floor would have required decorating. They state that the area is about 10% of the total area but they accept about 25% of the sum charged.

40. In response to Mr Pendle's statement at paragraph 3.19 of his report the Applicants claimed that they had informed the managing agents about their concerns regarding the ongoing water damage even after the new roof had been finished but their correspondence was never answered (267, 280, 281, 284, 285). They stated that at the time they were not aware that their contacts at the managing agents had left the company and so as a result the correspondence went unanswered. The Applicants confirmed that Mr Pendle attended a meeting at the property on the 19 April and on the 8 May 2012 an email together with a photograph taken on that day was sent to Mr Pendle (271) and this stated "...... *It is without question that new water marks have appeared, this is not part of the drying out process from the original problem as suggested by you and Mr Miller. It may have been a possibility but unfortunately it is not the case and the problem is getting worse.*"

41. The Applicants claimed that the Respondent substituted cheaper carpet instead of the hard floor covering originally specified without consulting with, or informing the leaseholders. The Applicants

submitted that the cost of £1970 for the floor covering is unreasonable as the specification had provided for vinyl tiles at £15 /sq m but this was substituted with a cheaper carpet that did not even meet the nosing on the stairs. The Applicants referred to the photograph (286) and the note sent to Mr Pendle detailing all the issues (287). The photograph shows the old linoleum was still visible under the carpet and there was no contrasting nosing on the edge of each step.

42. Mr Baxter stated that overall the major works needed to be undertaken, and although they did not object to the works they wanted the works done to a reasonable standard, and he considered that overall 75% of the costs would be reasonable for the work undertaken.

43. The Respondent relied on the witness statement of Mr Allan a Chartered Building Surveyor and Head of Property Management for SEPS and the report produced by Mr Pendle a Chartered Building Surveyor who was the surveyor involved in the 2011 major works.

44. Ms Thompson on behalf of the Respondent submitted that they had properly consulted with the leaseholders in relation to the major works, and although they appreciated that issues were raised regarding the roof works and the water tank, the amount of water ingress has lessened in the areas where the works were carried out. She stated that four quotes were obtained and the cost of the works was reasonable. She stated that the Applicants have not produced any other quotes or evidence to show the sum incurred was unreasonable. She also confirmed that the cost of the works came in under the estimated cost, the saving being partly due to the change in the floor covering. She stated that this change in floor covering was instigated on instructions from the Respondent.

45. Mr Pendle's report confirmed that he attended at the property after practical completion as a lessee had reported there was water ingress visible at a higher level against the flank wall elevation. He conducted an inspection and concluded slight visible staining was not due to a leak but due to residual dampness retained within the structure. He examined the roof membrane and could see no defects with the workmanship and he decided to leave the matter and monitor the situation, but he heard nothing further until he was contacted recently by Mr Allan. The report further confirmed that Mr Pendle and Mr Allan undertook a joint inspection of the property on 21 August 2013 and gained access to the roof where they noted a new metal cap flashing had been installed over the parapet wall. Mr Pendle stated that he was unsure when or who had installed the flashing detail. He stated that he could see no further defects which had occurred within the last 2 years or since his last inspection and found the roof to be generally in a satisfactory condition. Mr Pendle confirmed that the area was tested and found to be dry and that both he and Mr Allan were of the opinion that the water penetration at the top floor was not in connection with

any work which had been undertaken in 2011. Mr Pendle stated that water penetration was noted at mid- level on the flank elevation of the common parts, penetrating directly through the brickwork and at a position which correlated exactly to the position of an externally leaking overflow adjacent to the stack.

The Tribunal's decision:

46. The Tribunal determines that the sum of £9813.99 for each flat to be reasonable and payable by the Applicants to the Respondent in respect of the major works.

Reasons for the Tribunal's decision:

47. The Applicants accepted that the works were necessary and that they had been properly consulted in relation to the works. The Applicants challenged the cost of the works as they claimed that the works were not completed to a reasonable standard. In relation to the roof works the Applicants claimed that the roof works had not resolved the issue of water ingress as there continued to be problems with water ingress. The Applicants also claimed that the floor covering provided was of a lower quality than was originally specified. In addition the Applicants did not consider a full redecoration of the common parts to be necessary as they had recently redecorated the common parts, although they accepted that it was necessary to redecorate the area that had been affected by the water ingress.

48. The Tribunal was persuaded by the report produced by Mr Pendle and accepted his conclusions on the water ingress. The Respondent produced copies of the certificates for payment as well as the certificate of practical completion and the Tribunal found these certificates persuasive as they would have been issued once the contract administrator was satisfied that the works specified had been completed and that they had been done to the standard specified. Although the floor covering was not as specified, this had led to a reduction in the final cost of the works. The internal decoration was part of the works in the original specification and the Tribunal considered it reasonable to redecorate the property in order to properly finish the works. Accordingly the Tribunal considered the costs of the works to be reasonable for the works undertaken.

Service charges for 29 September 2011 to 28 September 2012

Management Fee:

49. The Applicants accepted that a minimum management service was provided and as a percentage they estimated that a fee of 10-20% of the fee charged was justified for the level of service they received. They had

not obtained quotes from other agents to see what they would charge for a basic management service. The Applicants referred to an email dated 30 November 2012 sent by them to Mr Allan requesting a meeting to which they received no response.

50. Mr Allan explained that the management service provided by SEPS included insuring the building, arranging a Health and Safety report, having the accounts produced but no site visits. He stated that the fee was charged on a basis of the number of units and came to about £216 including VAT per unit. He stated that it was calculated on the basis of the number of units, the size and location of the property and as a general rule the fee decreases as the number of units increase. He stated that the fee of £216 including VAT may not provide for any site visits. Mr Allan accepted that the level of service fell below the level for a fee of £216 and agreed that a fee of £120 excluding VAT per unit was a more reasonable fee.

The Tribunal's decision:

51. The Tribunal determines that sum of £120 exclusive of VAT would be a reasonable fee and allows this amount in respect of the management fee.

Reasons for the Tribunal's decision:

52. The Tribunal considered that no managing agent operating in North London would provide a service for a fee of between £20 to £45 per unit as suggested by the Applicants. The Tribunal considered the fee of £120 excluding VAT per unit to be in line with the fees charged by managing agents providing a basic service for properties in North London. Mr Allan had admitted that he had not visited the property until the 21 August as he was dealing with other properties and this was not a priority. The Tribunal noted that Mr Allan had not responded to the request from the Applicants for a meeting. He stated at the hearing that he had not been aware of the issues raised by the Applicants prior to the hearing.

Service charges for 29 September 2012 to 28 September 2013

The Fire Risk Assessment

53. The Applicants agreed the fire risk assessment took place but thought that it was not done for the benefit of the leaseholders but in order to get the property ready to sell the freehold. In addition the Applicants challenged the value of the report as it makes no mention of intumescent strips on the intake cupboard just to give one example.

54. Mr Allan stated that the fire risk assessment was for the benefit of both the leaseholders and the landlord. He stated that it was good management practice and since the Respondent has gone in to administration there is an obligation on the managing agent to undertake such an assessment. He stated that the survey was the start of the process and the surveyor appointed will pick up points highlighted in the assessment and take the recommendations forward. He referred to item 35 in the assessment (199) where it is stated that the electrical enclosure is not fire rated so the issue raised by the Applicants is covered in the assessment. He confirmed that the recommendations of the report would be implemented by the end of the year.

The Tribunal's decision:

55. The Tribunal allows the sum of £200 in respect of the fire risk assessment.

Reasons for the Tribunal's decision:

56. The Tribunal considers it to be reasonable and prudent for a managing agent to commission such an assessment. It is for the benefit of both the leaseholders and the landlord. The Tribunal noted that Mr Allan confirmed the recommendations of the assessment would be implemented by the end of the year. The Tribunal considers the cost to be reasonable and finds that the Applicants are liable to pay a contribution towards the cost in accordance with their lease.

Management fee

57. The parties relied on the submissions detailed above at paragraph 49 and 50 in respect of the management fee.

The Tribunal's decision:

58. The Tribunal determines the sum of £120 exclusive of VAT to be a reasonable amount payable in respect of management fee.

Reasons for the Tribunal's decision:

59. The fee is a budgeted sum for the coming year and the Tribunal considered it good management practice to base the budget on the previous year's actual figures. The Tribunal's reasons are as set out at paragraph 52 above.

Application under s.20C and refund of fees

60. At the end of the hearing, the Applicants made an application for a refund of the fees that they had paid in respect of the application and the hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicants within 28 days of the date of this decision.

61. In the application form, the Applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

62. Although the Applicants did not succeed in their claim in respect of the major works, the Tribunal considered that the Applicants had no choice but to make the application to the Tribunal as they had tried repeatedly to seek answers to their queries and also to resolve the issues they faced at the property and were not assisted by the Respondent or the managing agent.

Name: N Haria **Date:** 25 November 2013

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[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

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 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.