



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

Case Reference : CHI/000HN/LSC/2013/0111
Property : Flat 5 Caledonian Court, 446 Christchurch Road,
Bournemouth, Dorset BH1 4AY
Applicant : Caledonian Court (Bournemouth) Ltd
Representatives : Mrs G Drysdale
Mrs Janet Smith of Napier Management Services
Ltd.
Respondents : Miss Zoya Yousseffi
Type of Application : Section 27A Landlord & Tenant Act 1985
Tribunal Members : Mr K M Lyons FRICS
Judge W M S Tildsley OBE
Mr R T Dumont
Date of Directions : 26 September 2013 04 December 2013
Date of Hearing : 25 February 2014 Court No. 8 Bournemouth
County Court, Deansleigh Road, Bournemouth
BH7 7DS.
Tribunal reconvened in the absence of the parties
on 9 April 2014

DECISION

Introduction

1. By a claim in Bournemouth County Court the Applicant/Landlord claimed from the Respondent/Leaseholder the following sums in respect of the premises:

a.	arrears of rent and service charges ("particulars of which are set out in the statement attached")	2974.39
b.	costs to date	398.75

		3373.14

2. The service charge and administration charges claimed and which are within the jurisdiction of the Tribunal to determine are limited subject as below to those items set out in the statement of Napier Management Services limited dated 23 November 2012:-

a)	Service charge balance outstanding as at 31.12.10	£1,312.22
b)	Insurance due 25.01.11 for period 31.12.10 to 30.12.11	179.63
c)	Service charge due 24.06.11 for period 24.6.11 to 23.6.12	793.18*
d)	Insurance due 14.12.11 for period 31.12.11 to 31.12.12	186.90
e)	Service charge due 24.6.12 for period 24.6.12 to 23.6.13	750.55
f)	Administration fee due 23.11.12	150.00

*typographical error in regard to item c) directions £790.63 should read £793.18

Inspection

3. The Tribunal inspected the property on 25th February 2011 accompanied by Mrs G Drysdale and Mrs J Smith. The property is located on the corner of Christchurch Road and Drummond Road. The building, the original part of which was built circa 1910, has been substantially extended to comprise 2 sections containing 29 Flats in all on 3 floors. The building is constructed of brick walls, largely rendered and colour washed with tiled roofs and UPVC windows.

4. There is an area of car parking at the front and side of the site and a further area of parking accessed via the arch separating the two sections of the building. There is very limited garden area, part of which serves 3 Flats and which is gated off. There is an external store for bicycles and furniture adjacent to the refuse bins.

Directions

5. Directions were issued by the Tribunal on the 26th September 2013. Representations were made by the Respondent, Miss Zoya Youseffi on the 31st October and the 21st November 2013. Further Directions were issued on the 4th December 2013 to which the Respondent replied on the 9th December advising dates for the hearing to be avoided and making further representations.

6. Further representations were made by the Respondent on the 14th February and 20th February 2014 requesting that the hearing be adjourned until a later date.

7. On the 21st February 2014, the Tribunal advised the parties that it had considered the requests made by the Respondent for the hearing to be adjourned but considered that no reasonable grounds for a deferment had been made and that the hearing would proceed on the 25th February 2014.

8. The Respondent did not attend the hearing despite receiving due notice and the hearing proceeded in her absence. Following the hearing, the Tribunal invited the parties on the 10th March 2013 to submit their observations in regard to the following matter :-

“Further to the hearing held on Tuesday 25th February 2014 the Tribunal invites the parties to submit their observations in regard to the following matter:

Clause 3 of Seventh Schedule refers to insurance. Clause 19 of the Sixth Schedule requires the lessee to indemnify the landlord against 1/29th of the costs under Clauses 1-16 of the Seventh Schedule. Clause 20 requires the lessee to pay on the 24th June an advance of the amount in Clause 19. On this basis: Are the landlord’s demands for payment of insurance on the 25 January 2011 (212 of the bundle) and on 14 December 2011 (109 of the bundle) in accordance with the Lease.

Please could I have your comments by the 31 March 2014”.

9. The Applicants replied on the 25th March 2014 as follows:

“After considering your observations and reading the relevant clauses of the lease as directed I would determine that the insurance sum has not been charged in accordance with the lease provisions for collecting such monies”.

The Tribunal reconvened in the absence of the parties on 9 April 2014 to consider its determination

Section 19(1) of the 1985 Act

10. Section 19(1) provides as follows:

(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 carryout out of works, only if the services or works are of a reasonable standard;
and the amount payable shall be limited accordingly

Documents

10. The material documents before the Tribunal are those referred to in these reasons.

The Lease of the Premises

11. The material schedules of the lease (at the end of the bundle before the Tribunal) are as follows:

Sixth Schedule

Covenants by the lessee

19 The lessee shall contribute and shall keep the lessor indemnified from and against 1/29 of all costs and expenses incurred by the lessor in carrying out its obligations under and giving effect to the provisions (clauses 1 to 16) of the seventh schedule hereto

20(a) The Lessee shall on the execution hereof pay to the Lessor on account of the Lessee's obligations under the last preceding clause an advance calculated from the date hereof to the Twenty-fourth day of June next at the rate of One hundred Pounds per annum

20(b) The lessee shall hereinafter on the twenty fourth day of June in each year during the continuance of this demise pay to the lessor an advance amounting to the proportionate amount (as certified in accordance with clause 15 of the seventh schedule) due from or paid by the lessee to the lessor for the accounting period to which the most recent notice under clause 16 of the seventh schedule relates

21 The Lessee shall within twenty-one days after the service by the Lessor on the Lessee of a notice in writing stating the proportionate amount (certified in accordance with Clause 15 of the Seventh Schedule) due from the Lessee to the Lessor pursuant to Clause 19 of this Schedule for the accounting period to which the notice relates pay to the Lessor or be entitled to receive from the Lessor the balance by which that proportionate amount respectively exceeds or falls short of the total sums paid by the Lessee to the Lessor pursuant to the last preceding clause during that period

23 The lessee shall pay to the lessor and the developer (as Head Lessor) all costs charges and expenses (including legal costs and surveyor fees) incurred by the lessor and the developer (as Head Lessor) for the purpose of or incidental to the preparation and service of any notice or proceedings under section 146 of the Law of Property Act 1925

Seventh Schedule before referred to
Covenants on the part of the lessor

1. The Lessor shall pay any existing and future rates taxes assessments and outgoings now or hereafter imposed on or payable in respect of the Reserved Property

2. The Lessee paying the rents hereby reserved and performing and observing the covenants on the part of the Lessee hereinbefore contained shall peaceably hold and enjoy the Premises during the term hereby granted without any interruption by the Lessor or any person lawfully claiming under or in trust for it.

3. The Lessor shall keep all buildings for the time being on the Estate insured in the joint names of the Lessor and the Developer (as Head Lessor) and of all persons having any interest therein against loss or damage by fire aircraft impact explosion storm tempest flood subsidence and (so far as insurable) act of war or accident and by any other peril within the usual comprehensive policy of the insurance to the full cost of rebuilding from time to time as specified by the Developer (as Head Lessor) under the terms of an index-linked policy plus 12.5% for professional fees in some reputable insurance office and through an agency nominated by the Developer (as Head Lessor) and shall make all payments necessary for those purposes within seven days after they become payable and shall produce to the Lessee on demand the policy or policies of such insurance and the receipt for every such payment as often as the Premises are destroyed or damaged by any of the insured risks the Lessor shall forthwith rebuild and reinstate the same in accordance with the bye-laws or building regulations and planning or development schemes of any competent authority for the time being affecting the Premises by applying all moneys received by virtue of such insurance for such purpose.

4. The Lessor shall in the year One thousand nine hundred and Ninety-two and thereafter in every fourth year of the term hereby granted or more frequently if necessary paint with at least two coats of good quality paint in a workmanlike manner all wood iron and other parts of the exterior of the Estate usually or which ought to be painted.

5. The Lessor shall maintain the Reserved Property and all other parts of the Estate not included in the Underlease of any Flat in good repair and condition and properly cleaned at all times and shall pay a fair proportion of the expense of repairing and maintaining any party walls bounding of the Estate not included in any such Underlease.

6. The Lessor shall before repairing any walls serving the Premises in common with any other Flat on the Estate or with any other part of the Estate and before carrying out any repairs or works to the Reserved Property for the carrying out of which it requires access to the Premises give reasonable notice (and except in cases of extreme urgency at least forty-eight hours notice) in writing to the Lessee the Lessor shall on giving such notice be entitled to carry out those repairs or works in doing so to have any required access to the Premises but shall act carefully and reasonably doing as little damage as possible to the Premises and making good all damage done.

7. The Lessor shall keep the said garden area at the Estate properly cultivated and in a neat and tidy condition.

8. The Lessor shall take out and keep on foot in the joint names of the Lessor and the Developer a policy of insurance in some reputable insurance office nominated by the Developer through its agency covering liability for injury to persons on the Estate.

9. The Lessor shall maintain the paladin bunker forming part of the Reserved Property in good and substantial repair and in a tidy condition at all times and shall hire or otherwise provide one or more paladins and pay all fees due in respect thereof to the Local Authority or otherwise.

10. The Lessor shall pay the rents reserved by the Head Leases and shall perform and observe all the covenants on its part therein contained so far as neither the Lease nor any other Owner of a Flat is liable for such performance under the covenants on his part contained in this or a similar Underlease.

11. The Lessor shall be entitled to employ and engage such servants agents and contractors as it considers necessary or desirable for the performance of its obligations under this Schedule and pay their wages commissions fees and charges.

12. The Lessor shall provide such lighting television aerial and other services as it thinks fit.

13.(a) The Lessor shall so far as it considers practicable equalise the amount from year to year of its costs and expenses incurred in carrying out its obligations under this Schedule by charging against such costs and expenses in each year and carrying to a reserve fund or funds and in subsequent years expending such sums as it considers reasonable by way of provision for depreciation or for future expenses liabilities or payments whether certain or contingent and whether obligatory or discretionary.

(b) If and so far as any monies received by the Lessor from the Lessee during any year by way of contribution to the Lessor's said costs and expenses are not actually expended by the Lessor during that year in pursuance of this Schedule nor otherwise dealt with so as to be in allowable expense in calculating the Lessor's income for tax purposes for that year the Lessor shall hold those moneys upon trust to expend them in subsequent years in pursuance of this Schedule and subject thereto upon trust for the Lessee absolutely.

14. The Lessor shall keep proper books of account of all costs and expenses incurred by it carrying out its obligations under this Schedule and an account shall be taken on a date to be fixed by the Lessor within two years of the date hereof and on the anniversary of such date in every subsequent year during the continuance of this demise of the

amount of those costs and expenses incurred since the date hereof or the date of the last preceding account as the case may be which the account relates and the proportionate amount due from the Lessee to the Lessor pursuant to clause 19 of the Sixth Schedule.

16. The Lessor shall within two months of the date to which the account provided for in Clause 14 of this Schedule is taken serve on the Lessee a notice in writing stating the total and proportionate amounts specified in accordance with the last preceding clause.

12 The Landlord's Agents have prepared annual estimates and whilst annual accounts have been prepared the Agents have not reflected the year end balances between the estimates and the actual expenditure in the individual tenant's accounts.

13 The Tribunal acknowledges that whilst Clause 21 of the Sixth Schedule provides for a year end balance to be taken and any credit refunded to the Lessee Clause 13(b) of the Seventh Schedule provides for year end surpluses to be transferred to reserve.

14 The Tribunal also acknowledges that Clause 20(b) of the Sixth Schedule requires the Lessee to pay on the 24th June each year 1/29th of the amount of the certified expenditure for the previous year it is impractical to calculate what figure this is until the certified account for the previous year has been calculated which in reality will not be completed until probably two to three months after the 24 June. It should be clearly noted, however, that the basis for the "on account" charge is not an amount "estimated" by the Landlord's Agent as there is no provision for such a basis within the terms of the lease but is an amount based on the previous years actual expenditure.

15 The Tribunal does not consider that it is within its remit to attempt to calculate what the actual balance on the Lessee's account would be if the year end balancing calculation had been carried out nor has sufficient evidence available to the Tribunal to enable it to do so. In order to clarify the situation at the end of each financial year the Tribunal recommends that a clear statement should be issued to the Lessees to show the year end balance and how that is being dealt with either by way of debiting or crediting the Lessee's account or by transfers from the reserve fund. For the benefit of the parties the tribunal sets out below the relevant terms of the lease in the chronological order in which the various steps in the accounting procedure are set out in the Lease.

	COMMENTS
<p>6th Schedule 20.(a) The Lessee shall on the execution hereof pay to the Lessor on account of the Lessee's obligations under the last preceding clause an advance calculated from the date hereto to the Twenty-fourth day of June next at the rate of One hundred pounds per annum.</p>	<p>Fixed on account payment for the first year of the Lease.</p>

<p>Sixth Schedule (b) The Lessee shall hereafter on the Twenty-fourth day of June in each year during the continuance of this demise pay to the Lessor an advance amounting to the proportionate amount (as certified in accordance with Clause 15 of the Seventh Schedule) due from or paid by the Lessee to the Lessor for the accounting period to which the most recent notice under Clause 16 of the Seventh Schedule relates.</p>	<p>In subsequent years pay on account on 24 June, 1/29th of amount of service charge expenditure certified for the preceding year.</p>
<p>Seventh Schedule 14. The Lessor shall keep proper books of accounts of all costs and expenses incurred by it in carrying out its obligations under this Schedule and an account shall be taken on a date to be fixed by the Lessor within two years of the date hereof and on the anniversary of such date in every subsequent year during the continuance of this demise of the amount of those costs and expenses incurred since the date hereof or the date of the last preceding account as the case may be.</p>	<p>Annual account.</p>
<p>Seventh Schedule 15. The account taken in pursuance of the last preceding clause shall be prepared and audited by a competent chartered accountant who shall certify the total amount of the said costs and expenses (including the audit fee of the of the accountant) for the period to which the account relates and the proportionate amount due from the Lessee to the Lessor pursuant to Clause 19 of the Sixth Schedule.</p>	<p>Account for expenditure for the year to 24 June.</p>
<p>Sixth Schedule 21. The Lessee shall within twenty-one days after the service by the Lessor on</p>	<p>Balancing charge based on certified expenditure.</p>

the Lessee of a notice in writing stating the proportionate amount (certified in accordance with Clause 15 of the Seventh Schedule) due from the Lessee to the Lessor pursuant to Clause 19 of this Schedule for the accounting period to which the notice relates pay to the Lessor or be entitled to receive from the Lessor the balance by which that proportionate amount respectively exceeds or falls short of the total sums paid by the Lessee to the Lessor pursuant to the last preceding clause during that period.

Sixth Schedule

19. The Lessee shall contribute and shall keep the Lessor indemnified from and against one twenty-ninth of all costs and expenses incurred by the Lessor in carrying out its obligations under and giving effect to the provisions (Clauses 1 to 16) of the Seventh Schedule hereto.

Seventh Schedule

16. The Lessor shall within two months of the date to which the account provided for in Clause 14 of this Schedule is taken serve on the Lessee a notice in writing stating the total and proportionate amounts specified in accordance with the last preceding clause.

Lessee to indemnify Landlord against 1/29th of annual cost.

Landlord to serve notice on Lessee within 2 months of 24 June stating total and proportionate amounts of expenditure.

Service charge balance as at 31.12.10 **£1,312.22**

16 The previous Tribunal found that the following sums were payable by the Respondent/Leaseholder.

Date		Amount
25.6.09	Insurance for year 30.12.10	£250.74
17.11.09	Estimated service charge In advance 24.6.09 to 24.12.09	£216.20
25.6.10	Estimated service charge in advance 24.6.10 to 24.12.10	£290.05
Total		<u>954.83</u>

Add ground rents due

25.6.09	£ 70.00
25.6.10	£ 70.00

£1094.83

Less Amounts Paid

20.01.10	£334.66
1.12.10	£497.84
	<u>£832.50</u>

Net amount outstanding

£262.33

Substituted for the outstanding balance of £1312.22
Shown on that statement from Napier Management Services Ltd
dated 22.10.13.

Insurance for year to 30.12.11

17 The Tribunal determines that the requirement to pay insurance is set out under clause 3 of the Seventh Schedule. Clause 19 requires the Lessee to indemnify the Lessor against 1/29th part of all costs and expenses which amount is to be paid by the Lessee on the 24 June in each year. The Applicant accepted that there is no facility for it to recover interim amounts during the financial year. The Tribunal determines that this sum was not payable.

Service Charge for year ended 23 June 2012

18 The estimated service charge budget in the sum of £793.18 per flat (total £23,002.35) for the year ended 23.06.12 is as follows.

Accountancy £377.00

19 The Tribunal considers based upon its own knowledge and expertise that the amount of £377.00 inclusive of VAT is reasonable.

Car Park Contract £1695.35

20 This amount is based upon actual quotations obtained by the Lessor's Managing Agent as evidenced in a letter dated 19 July 2010 which equates to the total of the cost of the works of £9,195.35 less the reserve fund held of £7,500.00. It is noted that the transfer of £7,500.00 from the reserve account to the service charge account would appear to have left a zero balance in the reserve account. The Tribunal considers this amount reasonable.

Cleaning £1800.00

21 Based upon the actual expenditure shown in the accounts for the years ended 24.06.12 and 24.06.11 the sums of £1666.00 and £1904.00 respectively, the Tribunal considers the amount shown is reasonable.

Electricity £400.00

22 Based upon the actual expenditure shown in the accounts for the years ended 24.06.12 and 24.06.11 the sums of £593.00 and £745.00 respectively, the Tribunal considers the amount shown is reasonable.

Fire Precautions £4500.00

23 There is no evidence before the Tribunal as to the work upon this amount is calculated and there is therefore no basis for the Tribunal to be able to determine whether the amount is reasonable and this amount is not recoverable.

Ground maintenance £1000.00

24 Based upon the expenditure shown in the accounts for the year ended 24.06.12 and 24.06.11 in the sums of £1352.00 and £988.00 respectively, the Tribunal considers the amount shown is reasonable.

Management Fee £5185.00

25 Based upon the expenditure shown in the accounts for the year ended 24.06.12 and 24.06.11 in the sums of £5132.00 and £5185.00 respectively. The sum equates to £149.00 per flat per annum plus VAT which the Tribunal considers to be reasonable.

Repairs – General £2500.00

26 There is no information before the Tribunal as to what works this amount refers to. The accounts for the year ended 24.06.11 the amounts shown in respect of repairs are as follows:-

General maintenance and repairs	£ 697.00
Electrical repairs	1368.00
Roof drains and gullies	360.00
Walls	222.00
Doors and windows	963.00
Damp works	1013.00
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	£4623.00

For the year ended 24.06.12 the expenditures were

General maintenance and repairs	£187.00
Electrical repairs	103.00
Roof drains and gullies	1345.00
Work	2376.00
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	£4011.00

In light of the expenditures for the years 2011 and 2012, the Tribunal considers that the sum is reasonable.

Reserve Fund Contribution £5000.00

27 Clause 13 of the Seventh Schedule entitles the Landlord to equalise from year to year its cost and expenses by carrying to a reserve account such sums as it considers reasonable by way of provision for depreciation or for future expenses, liabilities or payments. The Lease, therefore, entitles the Lessor to include an amount for reserve fund contribution. The Tribunal considers that having regard to the size and condition of the building the figure of £5,000.00 is reasonable.

Refuse Removal £200.00

28 Based upon the expenditure shown in the accounts for the year ended 24.06.12 and 24.06.11 the sums of £45.00 and £150.00 respectively, the Tribunal considers the amount shown is reasonable.

Company Expenses

CS Company Secretary	£105.00
D & O Insurance	225.00
Filing fee	15.00

29 There is no provision in the Lease for recovery of these amounts by way of service charge.

Conclusion

30 This Tribunal considers that there is provision in the Lease for the estimation of future service charges. The Tribunal determines, therefore, that the amount of £18,157.35 being the total of the service charge estimate for the year ended 24.06.2012 is recoverable. The Respondent's contribution is £626.11.

Insurance £186.90

31 The Tribunal determines that the requirement to pay insurance is set out under clause 3 of the Seventh Schedule. Clause 19 requires the Lessee to indemnify the Lessor against 1/29th part of all costs and expenses which amount is to be paid by the Lessee on the 24 June in each year. The Applicant accepted that there is no facility for it to recover interim amounts during the financial year. The Tribunal determines that this sum was not payable.

Service Charge for the year ended 24 June 2013

32 The estimated service charge budget in the sum of £750.55 per Flat (total £21766.00) for the year for the year ended 24.06.13 is **set out below under the various headings**

Accountancy £377.00

33 The Tribunal considers based upon its own knowledge and expertise that the amount of £377.00 inclusive of VAT is reasonable.

Cleaning £1800.00

34 Based upon the actual expenditure shown in the accounts for the years ended 24.06.12 and 24.06.11 the sums of £1666.00 and £1904.00 respectively, the Tribunal considers the amount shown is reasonable.

Electricity £400.00

35 Based upon the actual expenditure shown in the accounts for the years ended 24.06.12 and 24.06.11 the sums of £593.00 and £745.00 respectively, the Tribunal considers the amount shown is reasonable.

Fire Precautions £350.00

35 Fire precautions; copies of invoices in respect of repair and maintenance work were submitted to the Tribunal and based upon the expenditure shown therein it is considered that this amount is reasonable

Gardening expenses £1000.00

36 Based upon the expenditure shown in the accounts for the year ended 24.06.12 and 24.06.11 in the sums of £1352.00 and £988.00 respectively, the Tribunal considers the amount shown is reasonable.

Health & Safety survey £400.00

37 Based upon the Tribunal's knowledge and expertise this amount is considered to be reasonable.

Management fee £5394.00

38 Based upon the expenditure shown in the accounts for the year ended 24.06.12 and 24.06.11 in the sums of £5132.00 and £5185.00 respectively. The sum equates to £155.00 per flat per annum plus VAT which the Tribunal considers to be reasonable.

Repairs general £2500.00

39 There is no information before the Tribunal as to what works this amount refers to. The accounts for the year ended 24.06.11 the amounts shown in respect of repairs are as follows:-

General maintenance and repairs	£ 697.00
Electrical repairs	1368.00
Roof drains and gullies	360.00
Walls	222.00
Doors and windows	963.00
Damp works	1013.00

£4623.00

For the year ended 24.06.12 the expenditures were

General maintenance and repairs	£187.00
Electrical repairs	103.00
Roof drains and gullies	1345.00
Work	2376.00

£4011.00

In light of the expenditures for the years 2011 and 2012, the Tribunal considers that the sum is reasonable.

Reserve fund contribution £9000.00

40. Clause 13 of the Seventh Schedule entitles the Landlord to equalise from year to year its cost and expenses by carrying to a reserve account such sums as it considers reasonable by way of provision for depreciation or for future expenses, liabilities or payments. The Lease, therefore, entitles the Lessor to include an amount for reserve fund contribution. The Tribunal considers that having regard to the size and condition of the building the figure of £9,000.00 is reasonable.

Refuse removal £200.00

41 Based upon the expenditure shown in the accounts for the year ended 24.06.12 and 24.06.11 the sums of £45.00 and £150.00 respectively, the Tribunal considers the amount shown is reasonable.

Company Expenses

CS Company Secretary	£105.00
D & O Insurance	225.00
Filing fee	15.00

42 There is no provision in the Lease for recovery of these amounts by way of service charge.

Conclusion

43 This Tribunal considers that there is provision in the Lease for the estimation of future service charges. The Tribunal determines, therefore, that the amount of £21,421 being the total of the service charge estimate for the year ended 24.06.2013 is recoverable. The Respondent's contribution is £738.65.

Administration fee

44 The Applicant accepted that the fee of £150 had been charged in error

Decision

45 On the evidence before it the Tribunal determines that in respect of the items referred by the Court to the Tribunal the amounts which are payable are as follows:-

a.	Service charge outstanding balance as at 31.12.2010	£262.33
b.	Insurance 31.12.2010 – 30.12.2011	nil
c.	Service charge to 23.06.2012	£626.11
d.	Insurance 31.12.2011 – 30.12.2012	nil
e.	Service charge to 23.06.2013	£738.65
f.	Administration fee	nil
		<hr/>
	Total payable	<u>£1627.09</u>

46 The Tribunal confirms that the Landlord is entitled to request advance payments but this does not entitle the Landlord to carry on indefinitely demanding monies without reference to the certified accounts.

47 The Tribunal strongly recommends, therefore, that in future, the Landlord/Landlord's Agent adheres to the accounting provisions in the Lease. The accounts should provide for the establishment of a reserve fund in accordance with the Clause 13a of the Seventh Schedule as follows:-

The Lessor shall so far as it considers practicable equalise the amount from year to year of its costs and expenses incurred in carrying out its obligations under this Schedule by charging against such costs and expenses in each year and carrying to a reserve fund or funds and in subsequent years expending such sums as it considers reasonable by way of provision for depreciation or for future expenses liabilities or payments whether certain or contingent and whether obligatory or discretionary.

48 The Landlords should comply with the requirements of Clause 21 of the Sixth Schedule to calculate an end of year balancing figure as follows:

The Lessee shall within twenty one days after the service by the Lessor on the Lessee of a notice in writing stating the proportionate amount (certified in accordance with Clause 15 of the Seventh Schedule) due from the Lessee to the Lessor pursuant to Clause 19 of this Schedule for the accounting period to which the notice relates pay to the Lessor or be entitled to receive from the Lessor the balance by which that proportionate amount respectively exceeds or falls short of the total sums paid by the Lessee to the Lessor pursuant to the last preceding clause during that period.

49 In the alternative that the Landlord opts to adopt the provisions in Clause 13(b) of the Seventh Schedule as follows:-

If and so far as any moneys received by the Lessor from the Lessee during any year by way of contribution to the Lessor's said costs and expenses are not actually expended by the Lessor during that year in pursuance of this Schedule

If and so far as any moneys received by the Lessor from the Lessee during any year by way of contribution to the Lessor's said costs and expenses are not actually expended by the Lessor during that year in pursuance of this Schedule nor otherwise dealt with so as to be an allowable expense in calculating the Lessor's income for tax purposes for that year the Lessor shall hold those moneys upon trust to expend them in subsequent years in pursuance of this Schedule and subject thereto upon trust for the Lessee absolutely.

The Landlord will adjust the contribution in the following years to the reserve fund to reflect the additional contribution made by the Lessee to the reserve fund by way of the transfer of any excesses.

50 This decision is remitted back to the County Court.

RIGHTS OF APPEAL

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

Signed

K M Lyons FRICS

Dated 30th April 2014