9790

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BK/LSC/2013/0216**
Property	:	**Flat 19, 11-20 Southwold Mansions London W9 2LE**
Applicant	:	**Mr J Sykes**
Representative	:	**In Person**
Respondent	:	**Lytton Grove Properties**
Representative	:	**Mr A Garwood-Watkins**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**S Carrott LLB** **Paul Clabburn** **Stephen Mason BSc FRICS FCIArb**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**14 November 2013**
Date of Reviewed Decision	:	**7 March 2014**

DECISION REVIEWED, CORRECTED AND CONFIRMED UNDER RULES 50, 51, 52, 53(1) AND 55 OF THE TRIBUNAL PROCEDURE (FIRST-TIER) (PROPERTY CHAMBER) RULES 2013 AND A DECISION ON THE APPLICATIONS FOR PERMISSION TO APPEAL MADE UNDER RULE 53(2)

Background

(1) Our decision determining the reasonableness of and liability to pay a service charge was given on 14 November 2013.

(2) In an application for permission to appeal dated 11 December 2013, Mr Sykes, the applicant leaseholder acting in person, challenged our decision on the grounds that: (a) the "decision was marked by omission and failure to address a substantial set of service charge issues" [which are detailed in the application], and (b) the tribunal failed "to find the landlord was in serious and serial breach of covenant in failing to keep the building in good repair, and in neglecting it over 8 years during 2005-2011" such that the landlord should have contributed to the additional costs of maintenance that resulted.

(3) In a subsequent application for permission to appeal dated 12 December 2013, Lytton Grove Properties, the respondent freeholder represented by Residential Facilities Management Ltd, challenged our decision on the grounds that: (a) the tribunal was wrong to grant the leaseholder's application for an order under section 20C of the 1985 Act, (b) the tribunal failed to make a determination of all the relevant years in the application, (c) some of the figures in the decision were wrong or had been transposed, and (d) the tribunal was incorrect to find that the management charges and service charges for the year ending 24 December 2011 were not payable.

(4) The tribunal considered the matters raised in both applications and decided to carry out a review of the original decision, under rule 55 of the Tribunal Procedure (First-tier) (Property Chamber) Rules 2013 ("the Rules"), having first considered rule 53(1) of the Rules. The tribunal's case officer wrote to the parties on 19 December 2013, informing them that the tribunal had decided to carry out a review of the decision (under rules 53(1) and 55 of the Rules) and it invited further representations. Chasing correspondence was sent on 16 January 2014, but no further representations were received.

(5) The tribunal met on 5 March 2014 to carry out a review of the decision in light of the two applications for permission to appeal.

Our review (under rules 53(1) and 55)

(6) In carrying out the review of the decision, we have carefully considered the parties' submissions in the two applications for permission to appeal - in light of the corrections proposed and accepted by the tribunal. As part of this review, we re-read the notes we made at the hearing and during our inspection, the relevant documents in the parties' bundles and the submissions made by the parties at the hearing.

(7) We start this review with a summary of the submissions made on behalf of the parties (referred to in (2) and (3) above).

Mr Sykes' submissions

(8) In his application for permission to appeal, Mr Sykes claims that the tribunal failed to consider the service charges for all relevant years, namely 2011, 2012 and 2013. However, paragraphs 1 and 12 of the original decision confirm that the tribunal made determinations in respect of the outstanding items in dispute at the hearing, namely certain service charges for 2012 and 2013, and the administration charge/ management fee for 2011.

(9) Mr Sykes also makes several complaints at paragraph 2.1.2, which are dealt with below, using his same numbering:

(i) with regard to drainage repairs and renewals, there was evidence of work being done, in the form of invoices at pages 207, 210 and 211 of the Applicant's bundle of documents. The tribunal accepted the respondent's explanation of the apportionment of charges;

(ii) the figure allowed for general maintenance and repair charges were supported by invoices at pages 212 to 217 of the Applicant's bundle;

(iii) evidence of the gardening was provided by invoices at pages 219 to 233 of the Applicant's bundle and by the tribunal's inspection (regarding which, see paragraphs 36 and 38(4) of the original decision);

(iv) the figure allowed for pest control was supported by invoices at pages 234 and 235 of the Applicant's bundle and see paragraph 22 of the original decision;

(v) the cost of window cleaning was not among the items for determination agreed by the parties at the start of the hearing (see paragraph 12 of the original decision);

(vi) the charge for the fire extinguisher maintenance was supported by an invoice from Chubb at page 236 of the Applicant's bundle, which was paid on 20 August 2012, but which covered a period from 26/4/12 to 26/2/13;

(vii) the audit and accountancy fees were not "self-certified", but resulted from the work of Roberts & Co, chartered accountants;

(viii) the cost of common parts lighting was not among the items for determination agreed by the parties at the start of the hearing (see paragraph 12 of the original decision). However, according to the accounts for 2012 at page 144 of the Applicant's bundle, the charge for electricity in 2012 was £203.96 (not £15) and the provisional sum in 2013 was £250, and there was nothing to

suggest that the increased estimated figure was unreasonable; and

(ix) for the reasons given the charges were neither "unwarranted altogether or excessive".

(10) At paragraphs 2.1.3 and 2.1.4 of the application for permission to appeal, Mr Sykes complains that the tribunal failed to consider whether the £10,000 charge for the reserve fund in 2011 and 2012 was reasonable, given (i) an alleged lack of basis of calculation by the landlord and (ii) the alleged neglect of the building by the landlord for many years, resulting in deterioration of the building.

(11) This issue was dealt with in paragraphs 29, 30, 37 and 38(11) of the original decision and the issue of neglect was not raised in this form.

(12) The 2011 administration charge/ management fee (paragraph 2.1.5 of the application for permission to appeal) was dealt with in paragraphs 16 and 38(1) Assessment of the 2012 management fee in the sum of £4,700 was dealt with in paragraphs 27, 28 and 38(10) of the decision. The documentation provided by the parties confirmed that the landlord's managing agents had been active in the management of the building over time.

(13) At paragraph 2.1.6 and 2.2.1 of the application for permission to appeal, the Applicant complained that the tribunal had not dealt with the issue of the landlord's neglect of the premises over time, leading he said to increased costs of repair and maintenance. However, this issue was not among the items for determination agreed by the parties at the start of the hearing (see paragraph 12 of the original decision).

(14) The tribunal members are both very experienced in housing disrepair issues and one of them is chartered surveyor. The tribunal recorded what it saw on the inspection at paragraphs 31 to 37 of the original decision and sees no reason to depart from its view. Upon viewing the property the tribunal was of the opinion that the Applicant had grossly exaggerated the extent of the disrepair.

(15) Any omissions in the original decision were inadvertent and do not reflect a failure to address service charge items. They have in any event been addressed by this review and by corrections to the original decision, appended below.

(16) With regard to the submission at paragraph 2.2.2 of the application for permission to appeal, that the tribunal's decision was perverse by failing to find the landlord had inflated service charges, this is an issue that has been covered adequately in the decision, as revised. It is worth noting that during the hearing the Applicant submitted that the property resembled a 'slum' and that the service charges were fraudulent (the latter allegation being withdrawn in writing following the hearing).

Lytton Grove Property's submissions

(17) In its application for permission to appeal, Lytton Grove Property makes several complaints, which are dealt with below, using the same numbering:

1.1 The tribunal was wrong to grant the leaseholder's application for an order under section 20C of the 1985 Act, because (a) the landlord succeeded on all points, barring some minor expenditure, and (b) the landlord's agents had sent vouchers to the accountants before the application was made, so that the Applicant's application was premature and ill conceived, particularly as the agents had written to leaseholders, including the Applicant, to say that there would likely be surplus of income over expenditure for the year. The tribunal has reviewed its decision under section 20C and agrees. It has therefore remade the section 20C decision, so that no order is made - see the revised paragraph 40 of the revised decision appended;

1.2 The tribunal failed to make a determination of all the relevant years in the application. However the Tribunal dealt with all of the issues presented to it as set on in paragraph 12 of the decision.

1.3 The complaint that some of the figures in the decision were wrong or had been transposed are unfortunate typographical errors, which have now been corrected. In paragraphs 12(3), 20 and 38(3) the sum claimed for repair costs should have been £870, not £232.64 as set in the Applicant's Schedule of Disputed Service Charges and the sum allowed should have been £870 and not £215. The pest control costs should have been £36.95, not £376.80;

1.4 With regard to the complaint that the tribunal was incorrect to decide that the management charges and service charges for the year ending 24 December 2011 were not payable, the only item in dispute for 2011 was the £300 administration charge/ management charge. That charge was mentioned by the previous tribunal decision dated 28 September 2011 (LON/00BK/LSC/2011/0182), in paragraph 7 of that decision. The previous tribunal determined that that there was no liability to pay the management fee for 2011 by reason of the defects in the landlord's demand (paragraphs 44 and 45), but that a charge may become payable if the landlord complied with the lease (paragraph 46). The landlord has so complied.

Conclusions on the review

(18) This brings us to our conclusions having reviewed the decision in its corrected form.

Decision on the applications for permission to appeal (rule 53)

(19) Both the application by Mr Sykes and by Lytton Grove Properties for permission to appeal are dismissed in view of the conclusions set out in the preceding paragraphs, in which we reviewed our original decision.

(20) There is a right to renew your application for permission to appeal against the revised decision below, within 28 days of after the date the revised decision is sent to you.

OUR ORIGINAL DECISION, CORRECTED AND CONFIRMED AFTER THE ABOVE REVIEW

Decisions of the tribunal

(1) The sum of £300, being an administration charge/management fee for the year 2011, is payable.

(2) The sum of £374 in respect of inspection and drainage works is reasonable and payable.

(3) The sum of £870 is allowed in respect of repairs to damaged ceiling, renewal of locks, repairs to the communal entrance door and the installation of a notice board. This sum is reasonable and payable.

(4) The sum of £376.80 in respect of gardening is reasonable and payable.

(5) The sum of £36.96 for pest control is reasonable and payable.

(6) The sum of £323.64 in respect of supply and maintenance of fire extinguishers is reasonable and payable.

(7) The sum of £420 for auditing and accountancy fees is reasonable and payable.

(8) The sum of £120 for structural risk survey is payable and reasonable.

(9) The sum of £439.50 for fire risk assessment is reasonable and payable.

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(7) The sum of £420 for auditing and accountancy fees is reasonable and payable.

(8) The sum of £120 for structural risk survey is payable and reasonable.

(9) The sum of £439.50 for fire risk assessment is reasonable and payable.

(10) The sum of £4700 including VAT in respect of managing agent's fees for 2012 is payable and reasonable.

(11) The sums of £10,000 for the years 2012 and 2013 in respect of the reserve fund are reasonable.

(12) The sum of Bank Charges for £15.90 are reasonable and payable.

(13) The Tribunal declines to make an order pursuant to section 20C of the Landlord and Tenant Act 1985.

(14) No order is made for the reimbursement of the Applicant's fees.

The application

1. The Applicant seeks 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 Applicant in respect of the service charge years 2012 to 2013 and administration charges under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") in 2011. In addition the Applicant seeks an order pursuant to section 20C of the 1985 Act in order to limit the landlord's costs of this application.

2. The relevant legal provisions referred to by the Tribunal are set out below in the Appendix to this decision.

The hearing

3. The Applicant appeared in person at the hearing and Mr A Garwood-Watkins of the managing agents represented the Respondent.

4. Immediately prior to the hearing the parties handed in further documents, including the Applicant's Skeleton Argument in support of a postponement of the hearing.

5. Mr Sykes told the Tribunal that his application for a postponement was forced by the landlord's recent service of certified accounts for 2011 – 2012 justifying expenditure and the Applicant's need to adduce expert evidence by way of a surveyor and for forensic examination of the accounts.,

6. Mr Sykes explained that his application was based upon two matters, the historical neglect of the building and the self-certification of accounts. Mr Sykes argued that following the current application the landlord had sought to carry out repairs by repainting and repairing the broken front door and was now seeking to hide behind certified

accounts. He told the Tribunal that there were a large number of items in dispute, all of which required the input of a surveyor.

7. Mr Garwood-Watkins opposed the application for an adjournment and took the Tribunal through the chronology of events and communications with the Applicant.

8. The Tribunal, having considered the contents of the trial bundle and the submissions by the parties, considered that the matter could be dealt with without the input of an expert surveyor. With regard to the issue of historical neglect, we decided that the Tribunal would carry out an inspection of the premises and that, if any matters arose thereafter, if necessary further submissions could be made by the parties. There was nothing on the face of the accounts themselves that suggested forensic examination was necessary and indeed although Mr Sykes at one stage suggested that the accounts or the management agents may have acted fraudulently, he quite properly withdrew that allegation.

9. This present application follows on from a determination by a differently constituted Tribunal on 28 September 2011. In that application the Applicant successfully challenged the landlord's claim to service charges for the years ending 2005 to 2011 on the basis that the lease did not permit the Respondent landlord to self certify accounts. The Tribunal found that the Applicant was not liable to pay managing agents fees or the interim service charges.

10. The Applicant's present application was made on the same basis. However before the hearing of this application the landlord employed an accountant to certify the accounts and so the primary challenge to liability to pay service charges now disappears and the main complaint by the Applicant is that the service charges are not reasonable and that the service charge demands should be viewed against a background of historical neglect to the building.

11. The accounts themselves were considered by the Applicant with considerable suspicion but following the hearing he withdrew any allegation of fraud although he still maintained that much of the accounts were simply a paper exercise to justify the service charges. Accordingly the Tribunal has concentrated on the individual service charge items now challenged by the Applicant and the issue of historical neglect to the building.

12. Both parties completed a Scott Schedule setting out the various heads of service charge. There were various concessions made by the Applicant during the course of the hearing which left twelve items for consideration by the Tribunal. Those items are as follows –

(i) £300 administration charge/management fee for 2011

(ii) £374 cost of the landlord inspecting and clearing drains

(iii) £870 general maintenance repairs

(iv) £376.80 gardening

(v) £36.96 pest control

(vi) £323.64 fire appliance maintenance

(vii) £420 Audit and Accountancy fees

(viii) £120 Professional fees

(ix) £439.50 – fire risk assessment

(x) £4700 – managing agents fees for 2012

(xi) General reserve (£10,000 in both 2012 and 2013)

(xii) £15. 90 Bank charges

13. Mr Sykes in giving evidence told the Tribunal that he acquired his lease in 1983. Things began to go wrong in 2005 when a burglary occurred. Mr Sykes considered that the burglary was in part due to the fact that the resident caretaker was continuing to leave the communal entrance door open. Mr Sykes got a locksmith to secure the building and applied a set off to the amount he spent on this.

14. His main complaint was that the landlord had done nothing for a number of years to maintain the building despite apparently having incurred expenditure.

15. As regards the individual items of service charge, Mr Sykes relied upon the comments set out in the Scott Schedule and supplemented those comments in his oral evidence.

16. As to the £300 administration charge/management fee in 2011, Mr Sykes stated that there was no evidence of the management time spent so as to justify the charge of £300. He stated in the Scott Schedule that the amount was self-certified and therefore the sum was not payable.

17. Mr Garwood-Watkins' response was that since the Applicant had made his submissions, Roberts & Co, the landlord's auditors, had now issued service charge accounts for the years in question which set out in detail the expenditure incurred by the landlord in satisfaction of he covenants.

18. As to the £374 for inspecting and clearing drains, the Applicant's position was that no money was spent on these items and so the sum was not payable.

19. The Respondent's case, supported by invoices, was that the costs were so incurred. Mr Garwood-Watkins explained that this was the cost incurred for inspecting and clearing drains and the cost of adding the block to the 6 monthly service contract from October 2012. He explained that the charge was a proportionate charge shared amongst all blocks that make up 1 to 90 Southwold Mansions where a number of drains are shared. Mr Garwood-Watkins also referred to Clauses 1.1.2 of Part 3 of the Fifth Schedule to the lease.

20. The Respondent claimed that the cost of £870 had been incurred undertaking repairs to a damaged ceiling, the renewal of locks to the roof access, repairs to the communal entrance door and the installation of a notice board in the common parts. Whilst the Applicant accepted that a notice board had been put up he asserted that a damaged ceiling was not observed by him in the common parts and that the communal door was removed but negligently re-hung and only properly repaired after his current application to the Tribunal.

21. Mr Sykes disputed the full cost of the gardening (£376.80). He stated that the front garden had been unattended since 2005 and described it more particularly as being overgrown with no attendance to shrubs and trees. The Respondent contended that this cost included the monthly attendance to the front garden and a proportion of the cost of the communal garden.

22. The cost of pest control (£36.96) was again said to be a proportional charge shared amongst all of the blocks The Applicant had stated, however, that he had not seen any evidence of pests let alone pest control. Mr Garwood-Watkins further explained that there was a problem with pests including pigeons but that the services of a hawk handler had been obtained and that explained the absence of pigeons.

23. The cost of the maintaining the fire appliances was disputed by Mr Sykes. He did not accept that this was real expenditure and considered that the Respondent should have asked questions about whether the maintenance was actually taking place. Mr Garwood-Watkins explained that there was a contract in place and that the Respondent was obliged to have them maintained and referred the Tribunal to the invoice at page 236.

24. As to the audit fee Mr Garwood-Watkins explained that the certification and verification of accounts was provided by Roberts and Co Chartered accountants and that the costs were recoverable under the terms of the lease. Mr Sykes disputed the costs. He maintained that all the accountants had done was to read receipts. There was no evidence that they probed the expenditure. Some of the receipts, he argued, applied to the whole street and he considered that the accountants were merely rubber-stamping the expenditure.

25. The professional fees and expenditure were said by the Respondent to arise from a structural risk survey in relation to the rear balconies. Mr Sykes said there was no substantial risk arising from the balconies and so therefore the expenditure was unnecessary.

26. With regard to the cost of the fire risk assessment, Mr Sykes withdraw this objection at the hearing.

27. As to the cost of management, Mr Sykes rested his challenge on the historical neglect of the building. According to Mr Sykes the conditions in the subject property were in effect dilapidated. No proper maintenance had been carried out. No proper work had been carried out and the landlord had merely been running up a bill.

28. Mr Garwood-Watkins resisted this, saying that the fee charged was reasonable and that the managing agents charged the same rate for the whole of the block and referred to the role of the managing agents and work undertaken by them. Mr Sykes rejoinder, however, was that the managing agents were simply acting as a business and nothing was really being done or got done in terms of the maintenance of the development.

29. As regards the general reserve fund Mr Garwood-Watkins said that this was to meet future expenditure and pointed to estimated building costs of between £50,000 to £65,000 in order to carry out works to the exterior of the premises.

30. Mr Sykes argued that the managing agents were not maintaining the block and so there was no need to maintain a reserve fund of this size.

The Tribunal's inspection

31. At the end of the hearing the Tribunal inspected the subject property in the presence of the parties. Although the Tribunal did not hear formal evidence at the inspection it allowed the Applicant and the Respondent to point out matters for the Tribunal's attention. We found as follows-

32. The subject property is Flat 19, 11-20 Southwold Mansions, London, W9 2LE. 11-20 Southwold Mansions comprises what appears to be an

Edwardian period purpose-built mansion block of flats with ten flats on lower ground, ground and three upper floors. The Applicant's flat (19) is located on the third floor. The mansion block forms part of a terrace of closely matching blocks which make up the remainder of Southwold Mansions.

33. The building is of traditional construction with solid facing brickwork forming the external walls with a pitched slate covered mansard main roof containing the third floor flats. The main entrance is from street level into a communal entrance hall with stairs only to the various floor levels.

34. Decorations are flaking from the external woodwork and redecoration is now required. The three communal painted softwood windows serving the staircase are in need of redecoration but did not appear to have any signs of significant rot to their frames or opening sashes. The communal entrance doors are in good decorative repair and working order.

35. The common entrance hall and staircase is carpeted with reasonable quality carpet which is stained in small areas but is still in serviceable condition. The walls and ceilings to the entrance hall and staircase are paper lined and emulsion painted with some soiling and marking.

36. To the rear of the block there is a private garden accessed via a passage through an adjacent block. We were informed the rear garden is shared with the other residents in the adjoining blacks forming the remainder of Southwold Mansions. To the front there is a small garden area which slopes down to a modern brick retaining wall and a concrete paved path. The communal gardens to both the front and rear are well maintained, although the hard standing adjacent to the rear of 11-20 Southwold Mansions is cracked and in poor condition.

37. Overall 11-20 Southwold Mansions appears to be in reasonable repair but in need of internal and external redecoration.

Service charge item & amount claimed

38. As to the items in dispute, we found as follows –

(1) Administration Charge/Management fee, £300 – This sum was reasonable and payable because the certified accounts had been subsequently produced at the hearing and the previous bar to payability by the previous tribunal had been removed.

(2) Drainage Repairs and Renewals £374 – this was reasonable and payable. Although Mr Sykes had not observed the works being carried out it was clear on the evidence that such works had been carried out at the Respondent's expense and therefore the Respondent was entitled to claim the costs under the service charge. The work was supported by invoices at pages 207, 210 and 211 of the Applicant's bundle.

(3) As to the £870 for general repairs, we were satisfied that the work had been carried out looking at pages 212 to 217 of the Applicant's bundle and the £870 would be allowed as reasonable and payable, that figure being made out.

(4) £376.80 Gardening – This sum was both reasonable and payable. We found on the day of inspection that both front and rear gardens had been well maintained. The gardens may not have maintained to the exacting standards required by the Applicant but nevertheless it was clear the work had not only been carried out but also to a reasonable standard. The work was supported by invoices at pages 219 to 233 of the Applicant's bundle.

(5) £36.96 pest control – We did not observe any pigeons on the inspection or signs that there had been any but would nevertheless allow this sum having accepted the evidence of Mr Garwood-Watkins. The work was supported by invoices at pages 234 and 235 of the Applicant's bundle.

(6) £323.64 – There was evidence that there was an annual contract with Chubb. The fire extinguishers were required to be maintained and accordingly this sum was reasonable and payable. The cost was supported by an invoice at page 236 of the Applicant's bundle.

(7) Audit and Accountancy Fees – £420. There was no need for the accountants to undertake any forensic analysis of the figures put before them by the managing agents. The managing agents had provided a sufficient paper trail for the expenditure incurred. It was unreasonable of the Applicant to think that a forensic analysis was either necessary or could be achieved for the sum claimed. Under the terms of the lease it was necessary to have the accounts certified and the sum was therefore reasonable and payable.

(8) Professional Fees Health and Safety - £120. The Tribunal was able to observe the rear balconies and in our view the managing agents were correct to allow for their inspection. The sum was both reasonable and payable. The cost was supported by an invoice at page 238 of the Applicant's bundle.

(9) Fire risk assessment – £439.96. The Applicant's objection to this item was withdrawn at the hearing and so it would be allowed in full.

(10) Managing Agents Fees – £4700 (including VAT) for 2012. Although the Applicant did during the course of evidence provide some comparables they were not like for like. The managing agents had shown on the evidence that they were providing a service up to a reasonable standard and it was unfair to say that the building was simply being neglected. The property as a whole was in reasonable condition although in need of internal and external redecoration. It was clear from the invoices and items of expenditure that the managing agents were attending to the building and accordingly this sum was both reasonable and payable.

(11) With regard to the reserve fund, although this was based upon the future external and internal works we considered that the estimate for the external works seemed excessive and that the external works at this stage would be achieved for approximately £20,000 to £25,000. We have not seen proper estimates or quotations for the proposed work but would nevertheless say at this stage the contribution to the reserve fund was reasonable and payable.

(12) The Bank Charges of £15.90 were reasonable and payable. There was no real basis for the challenge to this figure.

(13) During the course of the hearing there was a challenge to the sum of £6,792.02 in respect of certain repairs. This item was not included in the disputed items in the original Scott Schedule and was only raised on the day. We decided that we would not entertain this challenge since it was raised too late in the day in order for the Respondent to be able deal with the matter fairly.

Application under s.20C and refund of fees

39. At the end of the hearing, the Applicant made an application for a refund of the fees that he had paid in respect of the application/ hearing. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant. The Tribunal reached this decision after taking into account the circumstances of the case including the conduct of the parties. The Tribunal determined that it was not appropriate to order a refund of fees in this case because the

Respondent had in fact succeeded on all of the items of challenge raised at the hearing.

40. It was clear from the email dated 27 February 2013 (contained in the Applicant's bundle at p274), that the accounts for 2012 had not been prepared but would be available by June 2013. However the Applicant issued his challenge on 22 March 2013 even though he had been notified that the accounts were forthcoming. To the extent that he challenged the 2012 accounts, he was premature and even though he was entitled to make such challenge, in those circumstances it would not be just and equitable to make the order sought. We also take into account that the landlord has succeeded on all of the issues raised by the Applicant at the hearing.

Name:	S Carrott LLB	**Date:**	14 November 2013
		Revised & redated:	7 March 2014