



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

Case Reference : CAM/34UF/LSC/2015/0077

Property : 11 West Cotton Close, Northampton,
NN4 8BX

Applicant (Landlord) : Towerlane Estates Ltd

Respondent (Tenant) : Syed Moosavi

Date of Application : 22nd September 2015

Date of Hearing : 7th January 2016

Type of Application : A determination of the reasonableness and
payability of Service Charges (Section 27A
Landlord and Tenant Act 1985) and
Administration Charges (Schedule 11
Commonhold & Leasehold Reform Act
2002

Tribunal : Judge JR Morris
Mr G Smith FRICS FAAV REV
Mr DS Reeve MVO MBE

Date of Hearing : 7th January 2016

Date of Decision : 10th February 2016

DECISION

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Decision

1. The Tribunal determines the reasonable Service Charge for costs incurred payable by the Respondent when properly demanded is £458.09 for the year ending 31st December 2013 and £714.98 for the year ending 31st December 2014.
2. The Tribunal determines the reasonable estimated Service Charge for costs to be incurred payable by the Respondent when properly demanded is £588.06 for the year ending 31st December 2015.

3. The Tribunal determines that none of the administrative charges of interest or for late payment referred to in the purported demands made by the Applicant to the Respondent in respect of the service charge for the years ending 31st December 2013, 2014 and 2015 are reasonable or payable.

Reasons

Application

1. On the 22nd September 2015 the Applicant made an application for a determination of the reasonableness and payability of Service Charges (Section 27A Landlord and Tenant Act 1985) and Administration Charges (Schedule 11 Commonhold & Leasehold Reform Act 2002) in the form of interest payable on service charge arrears and additional costs for late payment. The years in issue are the costs incurred in the years 1st January to 31st December 2013 and 2014 and to be incurred for the year 2015.

The Law

2. The relevant law is contained in the Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and Commonhold and Leasehold Reform Act 2002
3. 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, improvement or insurance or the landlord's costs of management, and*
 - (b) *the whole or part of which varies or may vary according to the relevant costs*
 - (2) *The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord or a superior landlord in connection with the matters of which the service charge is payable.*
 - (3) *for this purpose*
 - (a) *costs 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 period*
4. 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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.*
 - (2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and*

after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

5. Section 21B Notice to accompany demands for service charges

- (1) *A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.*
- (2) *The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.*
- (3) *A tenant may withhold payment of a service charge, which has been demanded from him if subsection (1) is not complied with in relation to the demand.*
- (4) *Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.*
- (5) *Regulations under subsection (2) may make different provision for different purposes.*
- (6) *Regulations under subsection (2) shall be made by statutory instrument, which shall be subject to annulment in pursuance of a resolution of either House of Parliament.*

6. Section 27A

- (1) *An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to-*
 - (a) *the person by whom it is payable,*
 - (b) *the person to whom it is payable,*
 - (c) *the amount which is payable,*
 - (d) *the date at or by which it is payable, and*
 - (e) *the manner in which it is payable.*
- (2) *Subsection (1) applies whether or not any payment has been made.*
- (3) *An application may also be made to a leasehold valuation tribunal for a determination whether if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and if it would, as to-*
 - (a) *the person by whom it would be payable,*
 - (b) *the person to whom it would be payable,*
 - (c) *the amount which would be payable,*
 - (d) *the date at or by which it would be payable, and*
 - (e) *the manner in which it would be payable.*
- (4) *No application under subsection (1) or (3) may be made in respect of a matter which –*
 - (a) *has been agreed or admitted by the tenant,*
 - (b) *has been or is to be referred to arbitration pursuant to a post arbitration agreement to which the tenant was a party*
 - (c) *has been the subject of a determination by a court*
- (5) *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*

The Lease

7. A copy of the Lease for the Property was provided dated 22nd November 2005 which was between Bellway Homes Limited (the Lessor) (1) and Syed Moosavi (the Lessee) (2). The Lease is for a term of 150 years at a rent of £399.00 per annum for the first 25 years and thereafter increasing every twenty five years in accordance with Clause 10 of the Lease.

8. The relevant definitions in the Lease are:
“Demised Premises” are the second floor apartment including the roof space above and all floor screeds, window glass, all internal surfaces and the external door and frame together with exclusive use of a car parking space.

“Structure” means the “Building” comprising the foundations, all concrete floor slabs, all exterior and load bearing walls including window frames, ceiling joists, roof and conduits.

“Estate” means the development and “Common Parts” means the footpaths, drives, access roads, grass shrubs and trees intended to enhance and provide amenity areas for the benefit of the residents within the Estate.

9. The relevant provisions of the Lease were identified as follows:

10. Clause 4.2 of the Lease sets out the Tenant’s obligations in respect of the service charge:

To pay to the Interim Charge and the Service Charge at the times and in the manner provided in Schedule 4 both such charges to be recoverable in default as rent in arrear of such charges are not paid on the due dates the Lessee shall pay to the Lessor on demand interest on such charges at the rate of 5% per annum above the base rate of Barclays Bank Plc from time to time or equivalent calculated on a daily basis from the date due until the date of actual payment (whether before or after any judgement) and such interest shall be recoverable as a debt

11. Clause 4.4 requires the Tenant to:

Pay all charges for services supplied to the Demised Premises including all rental and standing and meter charges

12. Clause 5 sets out the Services for the Estate which include as follows:

5.1 Take all reasonable steps to maintain and keep in good and substantial repair and condition:

5.1.1 the structure of the Building and any other buildings on the Estate and the main entrances, stairways and passages of the Building and any other buildings on the Estate

5.1.2 all conduits within the Estate used in common by more than one dwelling...

5.1.3 *all common Parts and any other structures constructed on or over the Common Parts and*

5.1.4 *all walls, screen walls and fences within or on the boundaries of the Estate*

13. In brief the other provisions of Clause 5 include:

5.2 *To paint the outside wood and metal work*

5.3 *To paint all the interior common parts*

5.4 *Keep clean and properly lighted the main entrance, stairways, lifts and passages of the building used in common by residents*

5.5 *Keep clean the exterior windows in the Building*

5.6 *Keep clean and properly lighted those Common Parts comprising footpaths, drives and access roads and keep neatly cut, tidy and free from weeds all Common Parts as are grassed*

5.7 *Employ on such terms and conditions of employment as the Lessor shall in its absolute discretion think fit such person or persons as shall be reasonably necessary from time to time for the performance of the covenants...*

14. Schedule 4 of the Lease states that:

1. *In this Schedule the following expressions have the following meanings respectively:*

1.1 *“Total Expenditure” means all costs and expenses whatsoever incurred by the Lessor in any Accounting Period in carrying out its obligations this Lease including (without prejudice to the generality of the foregoing):*

1.1.4 *at its absolute discretion if considered to be appropriate or necessary by it, to set aside such sums of money as the Lessor shall in its absolute discretion require to meet such future costs as the Lessor shall in its absolute discretion shall expect to incur of replacing, maintaining and renewing those items which the Lessor covenants by this Lease to replace, maintain or renew; such sums of money to be held by the Lessor upon trust of the Lessee and the other residents and to be applied solely in accordance with the provisions of this Lease*

1.1.5 *any fees (legal or otherwise) properly incurred by the Lessor in collecting the Annual Rent, the Service Charge and Interim Charge and any other sums from the Lessee or resident*

- 1.2 *“Service Charge” means the percentage of the Total Expenditure specified in paragraph 5 of the Particulars...*
- 1.3 *“Interim Charge” means such sum to be paid on account of the Service Charge in respect of each Accounting Period as the Lessor or its agents shall specify at its discretion to be a fair and reasonable interim payment*
2. *In this Schedule any surplus accumulated from previous years shall not include any sums set aside for the purposes of paragraph 1.1.4 of this Schedule*
3. *The first payment of the Interim Charge ... shall be paid to the Lessor by equal half yearly instalments by bankers order on the first days of January and July in advance and in case of default shall be recoverable from the Lessee as rent in arrear*
4. *If the Interim Charge paid by the Lessee in respect of any Accounting Period exceeds the Service Charge for that period the surplus of the Interim Charge so paid over and above the Service Charge shall be accumulated by the Lessor either:*
 - 4.1 *credited to the account of the Lessee in computing the Service Charge in succeeding Accounting Periods as provided in this Schedule*
 - or
 - 4.2 *(at the Lessor’s discretion or from time to time during the Term) set aside by the Lessor pursuant to paragraph 1.1.4 of this Schedule*
5. *If the Service Charge of any Accounting Period exceeds the Interim Charge paid by the Lessee in respect of that Accounting Period together with any surplus accumulation from previous years then the Lessee shall pay the excess to the Lessor ...*

The Inspection

15. The Tribunal inspected the Building in which the Property is situated in the presence of Mr S Moosavi (the Respondent) and Mr J Sternlicht (the Applicant’s Representative and Director) and Mr I Sternlicht.
16. The Building is a four storey block of seven purpose built flats constructed circa 2004. The Building has mostly brick elevations, with one section rendered, under a pitched tile roof. There are timber double glazed windows and upvc rainwater goods. There are two entrances providing access to either side of the Building. The main entrance, where the door entry system and letter boxes are situated, is in Balmsholme Close off Pomfret Arms Close although the address is taken from the other entrance on West Cotton Close. The structure is in fair to good order.
17. The external Common Parts are limited to the area around the Building. There are six car parking spaces which according to the Lease are designated. Two of the flats have garages, which are in a separate building. There is a bin store

and a pump house. The threshold of the pump house is damaged. The small area around the building is grass with shrubs. There is a larger area adjacent to the bin store which should be a lawn however it has now been taken over by weeds. There should be unimpeded access around the building but the Leaseholder of the ground floor flat has erected a gate between the Building and the adjacent garages to prevent that part of the grounds being used as a 'short cut' from Balmsholme Close to West Cotton Close.

18. There is a door entry system to the front door of the internal common hall, however, the external door on the other side of the hall was open on the day of the inspection negating the entry system's purpose. One of the post boxes was damaged. The hallway and stairs are carpeted. The carpet on the ground and first floor was dirty and in need of vacuuming. On the upper floors it was in better condition. The carpet was not so soiled as to be inconsistent with it having been vacuumed every two weeks. The mud caused by the construction work still taking place contributes to the condition of the floors. The surfaces appear to have been wiped. The walls in the hall, stairways and landings have recently been painted although there were marks which needed to be cleaned.

Attendance at the Hearing

19. The Hearing was attended by Mr Moosavi, the Respondent, and Mr J Sternlicht representing Towerlane Estates Limited, the Applicant, accompanied by Mr I Sternlicht.

Issues

20. The Applicant sought a determination of the reasonableness and payability of Service Charges and Administration Charges for the years ending 31st December 2013, 2014 and to be incurred for 2015 (the final accounts not having been prepared by the time of the hearing for 2015). The Application was made because the Respondent had refused to pay the service charge.
21. The Respondent provided a copy of an email dated 17th November 2014 which he said recorded a meeting he had with the Applicant's Representative on the 9th November 2014. The Applicant's Representative contested the contents of the email as a true record of the minutes of the meeting. Notwithstanding this the e mail did identify the items of the Service Charge which the Respondent was putting in issue. In essence the Respondent submitted that without supporting documentation he considered none of the items of the service charges were reasonable. In particular he wished to see the:
Caretaker Contract
Cleaning Contract
Electricity Bills for Lighting
Water Bills
He also questioned the Management Fees and related costs.
22. He also put the payability of the service charge in issue as it was alleged that no notice to accompany demands for service charges setting out the tenant's rights and obligations under section 21B had been provided.

Evidence

23. Copies of the service charge accounts were provided for the years in issue as follows:

1st January 2013 to 31st December 2013	
Items	£
Cleaning (26 x £35)	910.00
Printing & Postage	180.00
Stationery & Phone	150.00
Lighting	1,055.00
Travel	180.00
Rent & Storage	260.00
Water	2,782.00
Repairs	172.00
Caretakers Fees	1,040.00
Management Fees	1,040.00
Total	7,769.00
Per Flat p.a. 7,769.00 ÷ 7	1,109.86
Interim Charge	4,200.00
Balance	3,569.00

1st January 2014 to 31st December 2014	
Items	£
Cleaning (26 x £35)	910.00
Printing & Postage	180.00
Stationery & Phone	150.00
Lighting	1,020.00
Travel	180.00
Repairs	1,199.00
Caretakers Fees	1,040.00
Management Fees	1,040.00
Rent & Storage	260.00
Fire Risk Assessment	336.00
Total	6,315.00
Per Flat p.a. 6,315.00 ÷ 7	902.14
Interim Charge	4,200.00
Balance	2,115.00

24. Insurance was charged separately as the policy was effective from the 18th September to the 17th September for each year. The charge for the period 18th September 2013 to the 17th September 2014 was £2,454.48 and for the period 18th September 2014 to the 17th September 2015 was £2,528.13. The charge for the period 18th September 2015 to the 17th September 2016 was £2,629.23.
25. The insurance was not in issue and it was apparent from the documents provided that the insurance was placed through a Broker, Lockton, and the insurance certificates showed the insurer to be Axa.

26. In written representations confirmed at the hearing by the Applicant's Representative that until 2009, when the Applicant purchased the Building, it had been managed by Blue Property Ltd. The leaseholders were not happy with the way the Building was managed and requested the Applicant should manage it. The Applicant's Representative said that the Applicant was not a professional managing agent but as this was what the leaseholders wanted and to minimise costs it was agreed that the Applicant would manage the Building.
27. The Applicant's Representative stated that there are no written contracts for the services of cleaning, caretaker or management. However the leaseholders in the building see regular services on a day to day basis and are very happy and do not have any complaints.

Cleaning

28. It was stated by the Applicant's Representative that cleaning is provided in all the common areas every second week which means 26 times per year at a rate of £35.00 each time which amounts to £910.00 a year. The Applicant's Representative stated at the hearing that the cleaning was carried out by the caretaker Mr M Weir. It was stated on behalf of the Applicant that Mr Weir took on average about 45 minutes to vacuum the carpets and wipe the surfaces every fortnight. The Tribunal considered that the grounds around the Building were modest and that the cost of cleaning should include tending the grounds.
29. At the hearing the Respondent acknowledged that he did not live at the Property but he had never seen the cleaner or seen evidence that the Building had been cleaned. The Tribunal expressed the view that although the carpets were dusty they were not so soiled as not to have been vacuumed for more than a fortnight.

Caretaking

30. It was stated by the Applicant's Representative that the caretaker, Mr M Weir is always available to settle a problem and looks after the building at a rate of £20.00 per week which is a total of £1,040 per annum. At the hearing it was confirmed that he lives about five miles from the Building. In response to questions from the Tribunal the Applicant's Representative said that his duties included cleaning the common parts and gardening (cutting the grass and keeping the area around the Building tidy). He also provided a general and emergency call service which the Applicant would not be able to provide due to it being based in London. More recently he has read the individual water meters and apportioned the cost of the water company invoice based on the central meter to the flats. He changes the light bulbs, arranges contractors and carries out maintenance work himself. In 2014 he re-decorated the common parts for which he charged separately. The cost of the redecorating was £626.00. The Applicant's Representative submitted that this charge was very reasonable.

31. The Respondent stated that he had asked the Applicant's Representative about the role of the caretaker but had not received a reply. He said that the role should be formalised with a contract including insurance.

Electricity for Lighting

32. The Applicant's Representative said that invoices for electricity could not be provided because the Applicant has not received any electricity bills for the last few years. Therefore the charge for electricity had been estimated on the basis of previous years when a charge was made at £1,000 for the year.
33. In response to questions from the Tribunal the Applicant's Representative said that some attempt had been made to contact the electricity company to obtain an actual reading and invoice. The Applicant's Representative said he was not aware of the legal obligation to keep the money collected for services in a separate account and held on trust for the leaseholders. The Tribunal expressed concern about this and informed the importance of this provision when such large sums were being held on account to the leaseholders' credit.
34. The Tribunal said that taking into account the number of lights a £1,000 was too high a charge, notwithstanding the door entry system and emergency lighting would be run from this supply. The Applicant's Representative said that the light switch system had recently been replaced by a sensor system to prevent lights being left on unnecessarily and that this should reduce the cost.
35. The Respondent was very critical of the Applicant's failure to obtain an actual reading and up to date invoice for the past three years and said he felt justified in retaining money if it was not being held in an appropriate account. He added that he had visited the Building in the day and lights had been left on in the internal Common Parts. He considered this was a matter that the managing agent should have dealt with earlier by fitting sensors.

Water

36. The Applicant's Representative provided all the water invoices for the period in issue. The Respondent said that the amounts demanded were not consistent half year by half year, with the 2013 and 2014 being far more than either previous or recent invoices.
37. After some discussion it was found that the amounts of the invoices were complicated by balances brought forward from previous invoices that had not been paid. The Tribunal considered the clearest way to identify reasonableness was to identify water usage and the related cost. The invoices were incomplete in that the page setting out the actual amount of water used had not been included. The Tribunal therefore tabulated the cost of the usage including VAT for each half year as set out below:

Period	Total for Usage
19/08/11 – 14/08/12 - Full Year	499.04
15/08/12/ - 18/02/13 – Half Year	324.67
19/02/13 – 27/08/13 – Half Year	2235.26
28/08/13 – 07/02/14 – Half Year	3012.91
08/02/14 – 13/08/14 – Half Year	759.89
14/08/14 – 23/02/15 – Half Year	789.41
24/02/15 – 21/08/15 – Half Year	796.99

38. The Tribunal noted that the year August 2011 to August 2012 and the half year August 2012 to February 2013 appeared to show relatively low usage although the cost per litre had increased since then. The next two half years of February 2013 to August 2013 and August 2013 to February 2014 showed a very substantial increase, £2,235.26 and £3,012.91 respectively. The Tribunal considered this to be out of proportion to the previous or the following half year invoices. The Applicant's Representative could not explain the increase. He stated that the invoices had been questioned and a rebate of £1,851.57 had been made.
39. The Tribunal found that the total for the two half years was £5,248.17 when this was reduced by the rebate of £1,851.57 the total for the two periods was £3,396.60 which still gave a half year of £1,698.30. This was still more than twice the amounts for the following half years which were £759.85, £789.41 and £766.99. The Tribunal asked the Applicant's Representative if it had been possible to identify whether there had been a leak or whether one flat had registered exceptionally high water usage perhaps due to a tap left on. The Applicant's Representative said that individual meter reading and apportionment of the bill based on those readings had not been undertaken until 2014. Prior to that only the main meter had been read and the invoice had been divided equally between the flats.
40. The Respondent stated that the Service Charge Accounts lacked transparency in that he could not see where the rebate had been credited to the Leaseholders. It was also not clear why the payments were in arrears.

Repairs

41. The Applicant's Representative was not able to provide invoices or details of the repair costs for the year ending 31st December 2013. The Respondent agreed the sum was modest at £172.00 and therefore accepted it as reasonable. An undated invoice was provided from Matrix Architectural Ironmongery Ltd for £25.00 for a Digital Lock plus £15.00 for Labour from M Weir which may relate to this year.
42. Invoices were provided for the year ending 31st December 2014 as follows:
- | | | |
|-----------------------------|--------------------|---------|
| Repairs to locks - M Weir | Cylinder | £65.00 |
| Pruning Trees – D Rood | Labour | £185.00 |
| | Skip Hire | £270.00 |
| Gardening Materials– M Weir | Bark Chippings | £23.00 |
| Redecoration – M Weir | Materials & Labour | £626.00 |

Window Cleaning – Crystal Clear	<u>£30.00</u>
Total	£1,199.00

43. The Respondent accepted these costs although questioned the window cleaning as he said he had never seen a window cleaner there or evidence of the windows being cleaned. The Applicant's Representative replied that the work had been done and the contractor paid.

Fire Risk Assessment

44. An invoice was provided for a Fire Risk Assessment. The Tribunal found that these assessments are now a legal requirement and that in the experience of the Tribunal members the cost was not unreasonable. However, the Tribunal was of the opinion that such assessments need only be carried out periodically unless there is a change in the building.

Management

45. In response to the Tribunal's questions the Applicant's Representative confirmed that the Service Charge items of Printing & Postage, Stationery & Phone, Travel and Rent & Storage were office costs which are all incurred in the course of managing the Building. The Management Fees of £160.00 per unit were the time costs in managing the Building from London and included arranging insurance and the day to day work of typing letters in answer to queries and sending payment demands and dealing with the accounts. The Applicant in a letter to the Respondent dated 2nd July 2013 had said, that a large Northampton Agent, without seeing the Building, suggested they would it for £200.00 which was confirmed at the hearing by the Applicant's Representative. The Representative went on to say that the Caretaker's Fees were Mr Weir's time costs in managing the Building in Northampton. The Applicant's Representative referred to the duties of the Caretaker saying that he now also reads the meters and apportions the costs as well as cleaning, gardening and carrying out general maintenance and contacting contractors. The Tribunal pointed out that the cleaning, gardening and repairs were charged for separately.
46. The Tribunal stated that all the costs referred to would normally be included in a Managing Agent's unit charge. The general and emergency call out provided by the Caretaker would also be included in the fee. The unit charge including the management fees and office costs of printing, postage, stationery, telephone, travel, rent and storage would be £260.00. If the caretakers fees were also included the unit charge would be £410.00. The Tribunal suggested that in Northamptonshire a unit charge of £175.00 per unit was more usual.
47. The Respondent stated that he considered the Management Fee excessive because the management was poor. He said he had repeatedly asked for information which had not been supplied. He felt the accounting procedures were lacking and there was a complete failure of communication. He did not feel he should have to pay any management fee.

Payability

48. The Respondent submitted that he was not obliged to pay the Service Charge in any event because he had not received a notice under section 21B setting out the Leaseholders rights and obligations which must accompany demands for service charges for any of the years in issue.
49. In response to the Tribunal's inquiry as to the correctness of this allegation the Applicant's Representative agreed he had not sent such a Notice until the most recent demand. A copy was provided but the handwritten demands issued with it were not compliant as they did not have the Landlord's name and address on them. The Tribunal informed the Parties that the failure to provide a Notice and demands with the correct information was remediable by the issuing of fresh demands in accordance with the legislation.

Decision

Reasonableness of the Service Charge

50. The Tribunal considered the evidence relating to each of the items of the Service Charge.

Cleaning

51. At the inspection the Tribunal noted there were marks on the wall which needed to be cleaned off and the carpets also needed vacuuming. Nevertheless they were in such a condition as to indicate that they had been vacuumed and the surfaces had been wiped within the past two weeks as submitted by the Applicant's Representative. The Tribunal found overall the internal common parts were in fair condition. The external common parts were tidy. However, the Tribunal found that the area which was identified for grass has given way to weeds. The few shrubs around the Building were cut back. The Respondent had acknowledged that he did not live at the Property and therefore the Tribunal did not feel he could give authoritative evidence as to the frequency or thoroughness of the cleaning and gardening. The Tribunal determined that the charge of £35.00 per fortnight for internal cleaning and external gardening was reasonable.

Electricity

52. The Tribunal found that the Applicant had been remiss in not obtaining an actual reading and invoice for electricity supplied to the common parts within the past two years. The Tribunal were also very concerned that the leaseholders appeared to be paying sums to the Applicant on account which were not being held in a separate trust account pursuant to section 42 and 42A of the Landlord and Tenant Act 1987. If this is the case it is unlawful and must be remedied immediately.
53. As stated at the hearing that taking into account the number of lights (whether sensor controlled or not), the door entry system and emergency lighting the Tribunal considered an estimated charge of over £1,000 was too high and that

£420.00 per annum was reasonable. However, as no bill has been received or money paid the costs cannot be said to have been incurred. It cannot therefore be a cost in the final account of the Service Charge for the years ending 31st December 2013 and 2014. However, the Tribunal advise that the Applicant agree with the leaseholders that a sum of £420.00 for each of those years be held on account subject to an actual meter reading and related invoice being received.

Water

54. From an examination of the invoices for water it was apparent that a reasonable cost for water could be assessed from the 18 month period from February 2014 to August 2015. The Applicant was remiss in not investigating the high cost between February 2013 and February 2014 which was double what might be anticipated from the invoices before and after that period. Such investigation was possible because each flat is metered. Therefore it would be possible to identify if one flat in particular was using a very high quantity of water or that there was a leak in the flat, in which case the matter could be taken up with the individual leaseholder. Alternatively there may have been an error in the amount charged or a leak between the main meter and the meters of the flats. Whatever the reason the Applicant as Agent should have gathered the evidence and taken up the matter with the water company rather than accepting an apparently arbitrary rebate and an equally arbitrary distribution of the cost amongst the leaseholders.
55. The average cost for 2014 onwards is £770.00 per half year including VAT. Discounting for a cost of living increase the Tribunal found that the cost per half year for February 2013 and February 2014 would average £750.00 per half year. The tribunal therefore determined a reasonable charge per annum for water for the year ending:
- 31st December 2013 is £1,074.67 including VAT based on the invoice periods 15th August 2012 to 18th February 2013 of £324.67 and 19th February 2013 to 27th August 2013 of £750.00 and
 - 31st December 2014 is £1,509.89 based on the invoice periods 28th August 2012 to 7th February 2013 of £750.00 and 8th February 2013 to 13th August 2013 of £759.89.
 - 31st December 2015 is £1,586.40 based on the invoice periods 28th August 2012 to 7th February 2013 of £789.41 and 8th February 2013 to 13th August 2013 of £796.99.
56. The Tribunal noted that the invoices had not always been paid on time and large sums were carried over. The Leaseholders should not be liable for penal charges or rates due to non-payment by the Applicant.

Repairs

57. The Tribunal determines that in the absence of evidence to the contrary the charges for Repairs (including that for window cleaning) to be reasonable.

Fire Risk Assessment

58. The Tribunal determines that in the absence of evidence to the contrary the charges for the Fire Risk Assessment to be reasonable.

Caretaking & Management Fees Together with Printing & Postage, Stationery & Phone, Travel and Rent & Storage

59. The service charge items of Caretaking and Management Fees, Printing and Postage, Stationery and Phone, Travel, Rent and Storage were considered together. As stated by the Tribunal at the hearing all the costs referred to, together with the role of the caretaker which excluded the cleaning/gardening and maintenance work, should be included in a managing agent's unit charge.
60. The Tribunal noted that as managing agent the Applicant ran an office, arranged insurance for the Building, made inspections by Mr Weir, provided general and emergency cover through Mr Weir, and engaged contractors via Mr Weir.
61. In addition an Agent would arrange for meter readings, send out service charges and prepare accounts. However, In respect of the electricity there did not appear to have been any meter readings and no invoices had been received and little or no follow up with the utility company to remedy this. There had been no investigation of the high water invoices although this could have been undertaken through reading the meters. The service charge demands were not compliant with legislation and the accounts did not appear to be compliant with the lease or legislation. In addition the accounts did not appear to be in accordance with legislation.
62. As a result the Tribunal was of the opinion that there were serious shortcomings in the management of the Building. Unit charges in Northamptonshire are on average about £175.00 per unit for a block of this size. The Tribunal determined that in this instance a charge of £150 per unit was reasonable.

Payability of the Service Charge

63. The Tribunal found that the Service Charge for the years ending 31st December 2013 and 2014 had not been properly demanded in that the Notice of Rights and Obligations required under section 21B of the Landlord and Tenant Act 1985 had not been provided and the demands did not include the name and address of the Applicant as required by section 47 of the Landlord and tenant Act 1987. Therefore these demands are not payable until the provisions are complied with.
64. The Tribunal also found that because the service charge is not payable then no interest may accrue and no late payment charge can be levied. Therefore none of the administrative charges of interest or for late payment referred to in the purported demands made by the Applicant to the Respondent in respect of the service charge for the years ending 31st December 2013, 2014 and 2015 are reasonable or payable.

Determination

65. The Tribunal determined the reasonable costs of the Service charge for the years ending 31st December 2013 and 2014 are as set out in the tables below.

1st January 2013 to 31st December 2013		
Items	£	
Cleaning (26 x £35)	910.00	Determined reasonable & includes gardening
Printing & Postage	0	To be included in Management Fee
Stationery & Phone	0	To be included in Management Fee
Lighting	0	An estimate of £420 might be held on account with the leaseholders' agreement subject to a meter reading and related invoice
Travel	0	To be included in Management Fee
Rent & Storage	0	To be included in Management Fee
Water	£1,074.67	Amount determined to be reasonable
Repairs	172.00	Determined reasonable
Caretakers Fees	0	To be included in Management Fee
Management Fees	1,050.00	Amount adjusted to include items referred to determined to be reasonable
Total	3,206.67	
Per Flat 3,206.67 ÷ 7	458.09	

1st January 2014 to 31st December 2014		
Items	£	
Cleaning (26 x £35)	910.00	Determined reasonable includes gardening
Printing & Postage	0	To be included in Management Fee
Stationery & Phone	0	To be included in Management Fee
Lighting	0	An estimate of £420 might be held on account with the leaseholders' agreement subject to a meter reading and related invoice
Water	£1,509.89	Amount determined to be reasonable
Travel	0	To be included in Management Fee
Repairs	1,199.00	Determined to be reasonable
Caretakers Fees	0	To be included in Management Fee
Management Fees	1,050.00	Amount adjusted to include items referred to determined to be reasonable
Rent & Storage	0	To be included in Management Fee
Fire Risk Assessment	336.00	Determined to be reasonable
Total	5,004.89	
Per Flat 5,004.89 ÷ 7	714.98	

66. The Tribunal determines the reasonable Service Charge payable by the Respondent when properly demanded is £458.09 for the year ending 31st December 2013 and £714.98 for the year ending 31st December 2014.
67. The Tribunal determines that the reasonable costs to be incurred for the year ending 31st December 2015 are as set out in the table below and are based on the previous year's actual costs and the actual costs for the year where available.

1st January 2014 to 31st December 2015		
Items	£	
Cleaning (26 x £35)	910.00	Estimate determined reasonable & includes gardening
Printing & Postage	0	To be included in Management Fee
Stationery & Phone	0	To be included in Management Fee
Lighting	420.00	Estimate subject to invoice
Travel	0	To be included in Management Fee
Rent & Storage	0	To be included in Management Fee
Water	£1,586.40	Actual amount determined to be reasonable
Repairs	150.00	Estimate determined reasonable
Caretakers Fees	0	To be included in Management Fee
Management Fees	1,050.00	Amount adjusted to include items referred to determined to be reasonable
Total	4,116.40	
Per Flat	4,116.40 ÷ 7	588.06

68. The Tribunal determines the reasonable estimated Service Charge payable by the Respondent when properly demanded is £588.06 for the year ending 31st December 2015.

Judge JR Morris

ANNEX - RIGHTS OF APPEAL

- i. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
- ii. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- iii. If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- iv. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.