12517

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AW/LBC/2017/0052** **LON/00AW/LSC/2017/0213** **LON/00AW/LAC/2017/0013**
Property	:	**Flat 1, 53 Palace Gardens, London W8 4SB**
Applicants	:	**Dr Maryam Taheri** **Dr Mohammed-Reza Taheri**
Representative	:	**Robert Brown (Counsel) instructed by Bishop & Sewell LLP**
Respondent	:	**Ms Natalie Campbell**
Representative	:	**No appearance**
Type of application	:	**1. Breach of Covenant;** **2. Liability to pay service charges;** **3. Liability to pay administration charges.**
Tribunal Members	:	**Judge Robert Latham** **Mr Hugh Geddes JP RIBA MRTPI** **Mr Leslie Packer**
Date and Venue	:	**4 December 2017 at** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**21 December 2017**

DECISION

Decisions of the Tribunal

(1) The Tribunal determines that for the purposes of section 168(4) of the Commonhold and Leasehold Reform Act 2002, the following breaches have occurred (particulars of which are provided in our decision):

(i) The Respondent has sublet the premises without the consent of her landlord;

(ii) The Respondent has failed to maintain the garden;

(iii) The Respondent has failed to pay ground rent and service charges;

(iv) The Respondent has failed to give her landlord access to the premises to inspect the same and carry out repairs;

(v) The Respondent has caused a nuisance or annoyance to her neighbours.

These are serious breaches and the next step may be for the Applicant to apply to the County Court to forfeit the lease. The Respondent is advised to seek legal advice at the earliest opportunity.

(2) The Tribunal determines that the following service charges are payable, namely £4,410 in respect of six advance service charge demands for 2016 and 2017.

(3) The Tribunal determines that the following service charge would be payable were a lawful demand to be made, namely £22,118.72 in respect of proposed major works.

(4) The Tribunal determines that the following administration charges are payable, namely £12,090.60 in respect of legal fees.

(5) The Tribunal determines that the Respondent shall pay the Applicant £400 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicant.

The Applications

1. The Tribunal is required to determine three applications issued by Dr Maruam Taheri and Dr Mohammad-Reza Taheri ("the Applicants") in May 2017:

(i) LON/00AW/LBC/2017/0052: The Applicants seek a determination under section 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") that the Respondent tenant is in breach of her lease in respect of Flat 1, 53 Place Gardens Terrace, London, W8 4SB ("the maisonette") in that she has (i) sublet the maisonette without the consent of her landlord; (ii) failed to maintain the garden; (iii) failed to

pay ground rent and service charges; (iv) failed to give her landlord access to the premises to inspect the same and carry out repairs; and (v) caused a nuisance or annoyance to her neighbours.

(ii) LON/00AW/LSC/2017/0213: The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondent in respect of the service charge years 2016 and 2017. The application relates to six interim service charges of £735 and to a sum of £22,118.72 in respect of major works which have not yet been executed.

(iii) LON/00AW/LAC/2017/0013: The Applicants seek a determination pursuant to Schedule 11 to the 2002 Act as to the amount of administration charges payable by the Respondent. The application relates to two administration charges of £1,038.60 and £11,052.00 in respect of legal charges.

2. On 2 and 18 August 2017, the Tribunal gave Directions. Pursuant to these Directions, the Applicants have:

(i) Provided official copies of the entries on the registers of the Respondent's title. It is apparent that there is a mortgagee, UCB Home Loans Corporation Limited ("the mortgagee"). On 7 August, the Tribunal notified the mortgagee of these proceedings.

(ii) On 12 August, sent the Respondent copies of the service charge accounts and the relevant demands for the service/administration charges .

(iii) On 21 September, sent both the Respondent and the Tribunal an extensive Bundle of Documents. This includes a witness statement from the First Applicant and Legal Submissions drafted by their Counsel.

3. The Respondent has played no active part in these proceedings.

(i) On 14 July, Jude Hewathanthrige, a programme worker with the Open Doors Programme in Melbourne, Australia, e-mailed the Tribunal enclosing a letter from the treating doctor. This stated that the Respondent had been residing in Melbourne since December 2016. She had been an inpatient with the Community Mental Health Service between 12 December 2016 and 6 January 2017. She was receiving regular follow-up treatment and would not be able to attend a Case Management Hearing ("CMH") which had been fixed for 1 August and would be unable to travel out of the country for the next three months. The Programme Worker stated:

"Natalie Campbell said that 'she would like to make submissions for the final hearing and request such submissions are not required within the next 3 months'".

(ii) On 17 July, the Tribunal sent an e-mail to Ms Hewathanthrige advising her that the CMH had been adjourned. The Tribunal asked whether Ms Campbell had a legal representative, friend or relative who could attend any hearing in London. A response was requested by 25 July. No response was received.

(iii) The Applicants have confirmed that the address at Chynoweth House, Trevissome Park, Truro, is the only address that the Respondent has provided for correspondence. They have communicated with her at an e-mail address. Both the Tribunal and the Applicants have communicated with the Respondent by both the postal and e-mail addresses.

(iv) On 2 August, the Tribunal issued Directions on the papers. These were sent to the Respondent by post and e-mail. On 9 August, Ms Hewathanthrige e-mailed the Tribunal stating that the Respondent would be unable to make submissions for three months.

(v) On 18 August, the Tribunal gave further Directions. These extended the time within which the Respondent was to prepare her case. By 23 October, the Respondent was required to identify the service and administration charges that she disputed. By 30 October, the Respondent was to file her Bundle of Documents in response to the alleged breaches of covenant. The date fixed for the hearing was postponed from 23/24 October to 4/5 December. The Respondent was warned that a further postponement would only be granted in exceptional circumstances. She was advised to appoint an agent or attorney to represent her and make her case to the Tribunal. No response was received.

(vi) On 9 November, the Applicants informed the Tribunal that no documents had been received from the Respondent as required by the Tribunal. On 10 November, the Applicants asked the Tribunal to make a debarring order. On 17 November, the Applicants e-mailed both these letters to the Respondent. No response was received.

(vii) On 21 November, the Tribunal notified the Applicants that it was not appropriate to make a debarring order, albeit that the application could be renewed at the hearing. The Tribunal e-mailed this letter to the Respondent. No response was received from the Respondent.

(viii) On Friday, 1 December, Ms Hewathanthrige sent a further e-mail to the Tribunal. She stated: "Ms Campbell wishes me to inform you that whilst she intended to make submission to the applicants' allegations,

regretfully she is not well enough to do so at this time. Ms Campbell stated that she is no longer subletting her property and is not currently able to work so therefore has not been able to afford legal representation at the tribunal."

(ix) On 1 December, the Tribunal sent a letter by e-mail to the Respondent. The letter notified the Respondent that in the absence of any submissions from her, the Tribunal would consider the application on the basis of the papers received from the Applicant. The Respondent could, if so advised, apply for the hearing fixed for Monday, 4 December, to be postponed on medical grounds. Such an application must be accompanied by medical evidence. No response was received.

4. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

5. Both Applicants attended the hearing. They were represented by Mr Robert Brown (Counsel) instructed by Bishop & Sewell LLP.

6. Mr Brown urged the Tribunal to proceed with the application. He noted that no detail had been provided of the Respondent's illness. No postponement had been sought. The Applicants had successfully brought three previous applications before the Tribunal: (i) LVT/SC/007/151/01 and LVT/SCC/007/01 which were determined on 28 March 20011 and (ii) LON/00AW/LSC/2005/0148 which was determined on 23 November 2005. He noted in the latter case on the Friday before the hearing, the Tribunal had received an application from the Respondent for a postponement. This had been refused.

7. The Tribunal was satisfied that we should proceed. Neither the Respondent nor her programme worker has provided any evidence that the Respondent is not capable of taking decisions on her own behalf. We conclude the Respondent has taken an informed decision not to participate in these proceedings. She has been advised on the steps that she should take to protect her position. She has decided not to heed this advice. She has not applied for a postponement. She has failed to provide the medical evidence that the Tribunal would require before entertaining an adjournment.

8. Mr Brown adduced evidence from Dr Muruam Taheri. Her evidence is uncontradicted. We accept her as a truthful and accurate witness.

The Inspection

9. After the hearing, we inspected externally 53 Place Gardens Terrace ("the building"). We were not accompanied by either party. We could

only inspect the building externally. It is a substantial Victorian 5 storey double fronted end of terrace house with five flats. The porticoed and canopied main entrance is approached by a flight of 7 steps to a two leaf front door and is located on the Brunswick Gardens frontage of the building. The property is full stuccoed on both the Palace Gardens and the Brunswick Gardens elevations. The property seemed to be in a reasonable state of repair. It is in a desirable area close to Kensington Palace and Kensington Gardens.

10. We looked into the demised maisonette from the outside. We saw a bed and books. It was not clear whether the maisonette is currently occupied.

11. We had particular regard to the vaults. There was cracking to the front section of the vault on the Palace Gardens Terrace side. This is consistent with the photographs at p.119-120, p.308 and p.311 of the Bundle. There was also a lean in the wall and a missing handrail as illustrated in the plan at p.124. We noted that the offending sycamore had been removed. It was difficult to see what shrubs or trees could be grown in this garden area without the roots damaging the vaults.

The Lease

12. The lease for the maisonette (at p.54-96) is dated 8 May 1979 and grants a term of 68 years from 25 December 1978. The lease was originally granted by the Church Commissioners for England. Both freeholders and leaseholder are successors in title. The lease contains a number of covenants which we discuss when we consider the alleged breaches.

13. The First Schedule describes the demise to the tenant. The maisonette is on the ground and lower ground floors. The demise includes the following:

> "... the lower front residential maisonette ... TOGETHER with the garden at the front of the said building and the area at the front and side of the said building the said premises area and garden being shown coloured dark pink and light pink respectively on the plan annexed hereto ..."

The demise does not include the vaults which are retained within the possession of the landlord.

14. By Paragraph 1 of the Seventh Schedule, the landlord covenants to keep in repair the exterior and outside walls of the building. The First Schedule defines the "building" as "the building known as Number 53 Palace Gardens Terrace in the London Borough of Kensington and Chelsea". The building thus includes the vaults and the retaining wall.

The Background

15. On 9 February 1988, the Applicants acquired the freehold of the building (see p.71). On 28 March 2001, the Respondent was registered as the owner of the maisonette (p.75). The Tribunal was told that the Respondent had occupied the maisonette for some eight years prior to this. Neither of the parties lives in the building. The maisonette has two bedrooms.

16. There has been a long history of litigation between the parties:

(i) On 28 March 2002 in LVT/SC/007/151/01 and LVT/SCC/007/01, a Tribunal found that a series of services charges were reasonable and payable (at p.315-325).

(ii) On 23 November 2005 in LON/00AW/LSC/2005/0148 , a Tribunal found that service charges for major works found were reasonable and payable (at p.326-331).

(iii) On 3 November 2006 in 6WL02319, District Judge Woodgraft made a possession order suspended upon payment of £16,728 by 17 November 2006 (see p.332). This debt was settled by the mortgagee.

(iv) On 4 April 2016 in 2YN71143, District Judge ordered the Respondent to pay a judgement debt and costs totalling £11,272.96 (p.334-5). The Respondent applied to set this order aside. On 22 July 2016, District Judge Jackson dismissed this application and ordered the Respondent to pay costs of £1,200 (p.336).

LON/00AW/LBC/2017/0052: Breach of Covenant

(i) Subletting the Premises without Consent

17. By paragraphs 1 and 2 of the Sixth Schedule of the lease, the tenant covenants:

> "(1) The Lessee shall not :-
> ...
> (c) ... assign underlet or part with possession of the whole of the said premises without the written consent of the Lessors first obtained
>
> (2) That the Lessee will leave or cause to be left (within one month after the date thereof) for registration with the Lessors ...
>
> (a) every ... underlease ... of or affecting the said premises or a certified copy thereof

> "and will pay or cause to be paid to the Lessors the fee of Eight pounds for every such registration"

18. We are satisfied that the Respondent has breached this covenant. On 15 February 2016, the Respondent granted an Assured Shorthold Tenancy of the maisonette to Mr Andy Weltman for a term of two years at a rent of £875 per week (at p.274-289). On 18 August 2016, the Applicants wrote to the Respondent. On 26 August 2016, the Respondent replied in these terms:

> "Concerning the sub-letting issue, you appear to want me to confirm that I have breached the terms of the Lease. I do not accept that I have done so and wish to clarify that I have advised my tenant that it is not safe for him to stay there due to the criminal behaviour of your own clients, and can confirm that he is looking for somewhere else.

19. On 1 December 2017, Ms Hawathanthrige wrote to the Tribunal on behalf of the Respondent. The e-mail includes the statement: "Ms Campbell stated that she is no longer subletting her property". On our inspection, it was not apparent to us whether the maisonette is currently occupied. We are satisfied that the Respondent has not sought the consent of her landlord for the sub-tenancy granted to Mr Weltman.

(ii) Failure to Maintain the Garden

20. By paragraph 10 of the Fourth Schedule of the lease, the tenant covenants:

> "(10) That the Lessee will permit the Lessors and their Surveyors and Agents with or without workmen and others at all reasonable times during the term to enter upon the said premises and take particulars of additions improvements fixtures and fittings thereto or thereon and to inspect the condition of the said premises and of all defects decays and wants of reparation then and there found and for which the Lessee shall be liable hereunder to give or leave notice in writing to the Lessee to repair and amend the same within the space of two calendar months then next following after such notice within which time the Lessee will repair and amend the same according to such notice and the covenants herein contained ..."

21. By paragraphs 9 and 10 of the Fifth Schedule of the lease, the tenant covenants:

"(9) During the said term to keep the garden belonging to the said premises in neat order and condition and properly laid out and planted as grass or garden ground

"(10) The Lessee shall preserve and deal with any trees in any garden included in this demise in accordance with the principles of good arboriculture and in particular and without prejudice to the following :-

"(a) The Lesee (sic) shall not at any time trim lop prune pollard or fell any such tree or trees without the prior consent in writing of the Lessors Surveyor (hereinafter called 'the Surveyor')

"(b) If in the opinion of the Surveyor it shall be necessary or desirable for any such tree or trees to be trimmed lopped pruned pollarded or felled then the Lessee shall deal with any such tree or trees in such manner as may be required by notice in writing served upon the Lessee by the Surveyor In the event of the Lessee failing to comply with such notice the Lessors shall be entitled to carry out the works specified in the notice and the Lessee shall pay to the Lessors the costs of such works and the costs of the Surveyor

...

"(e) The Lessee shall bear the cost and expenses of and incidental to such work as aforesaid"

22. We are satisfied that the Respondent has breached this covenant. We were referred to the plan at p124 and the report by Paul McCarthy who inspected the property on 19 April 2016. We were referred to the following passages of his report (at p.116-7):

"2.3 ... the Pear Tree appears to have been poorly pollarded.

...

"2.5 It is my opinion that the large Sycamore tree on the Palace Gardens Terrace elevation which was to be removed in 2012 but not removed until 2015 has caused the vaulted ceiling below the ground floor level to drop. During my inspection there are clearly large roots growing above the vaulted ceiling which has caused the damage along with the weight of the tree above. The wall on the local authority pavement was also damaged by the Sycamore tree with lifting brickwork and cracking in the wall.

...

2.7 The Sycamore tree and the fact that the Pear tree is still in place on the Brunswick Road elevation is the cause of the lean in the retaining wall. The lack of repair to the

garden and size of the trees has pushed the wall out of plumb.

2.8 The Sycamore trees have also since removal started to grow back which proves the measures taken for the removal have not been sufficient. The Holly tree on the boundary with the adjoining property has started to grow back since its removal.

2.9 The granting of the planning application also required the leaseholder to provide decorative shrubs that will not grow beyond a manageable size within the garden upon removal of the trees. From my inspection the garden has not had the shrubs planted and garden within the demise of the leaseholder has not been maintained. The garden is overgrown and the path has dropped in areas close to the location of the removed trees and garden within the demised area serving Flat 1.

2.10 The handrail is missing in part on the Brunswick Road elevation above the retaining wall which I believe has buckled and become damaged due to the movement of the wall below as a direct result of the lack of maintenance to the trees and garden within the demised area serving Flat 1."

23. On 21 November 2016 (at p.153), HPML, the managing agents, gave notice the Respondent pursuant to paragraph 10 of the Fourth Schedule of the lease. The notice required the Respondent:

> "1. To remove all trees including the pear and sycamore trees together with their roots as they are continuing to do further damage to retaining walls, vault ceilings the garden grounds, etc.
>
> "2. To remedy all the damages caused by the trees to the retaining walls, the vault ceilings, the boundary walls and the garden grounds.
>
> "3. To pay all the fees payable to the surveyor and the legal fees incurred."

We accept that the Respondent has failed to comply with this notice.

(iii) Failure to Pay Ground Rent and Service Charges

24. By the Third Schedule of the Lease, the tenant covenants to pay a ground rent of £750 per annum by quarterly payments on the usual quarter dates. The tenant also agrees to contribute to 21% of the service charge expenditure.

25. We are satisfied that the Respondent has breached this covenant and is in breach of her covenants to pay both ground rent and service charges. The Applicant relies upon the following demands, each of which are accompanied by the requisite summary of rights and obligations. Each of these quarterly invoices demand payment of service charges on account of £735 and ground rent of £187.50:

(i) Invoice, dated 14 December 2016, for the quarter 25 March to 23 June 2016 (p.177-8)

(ii) Invoice, dated 14 December 2016, for the quarter 24 June to 28 September 2016 (p.173-6)

(iii) Invoice, dated 14 December 2016, for the quarter 29 September to 24 December 2016 (p.169-172)

(iv) Invoice, dated 14 December 2016, for the quarter 25 December to 24 March 2017 (p.165-8)

(v) Invoice, dated 11 August 2017, for the quarter 25 March to 23 June 2017 (p.387-90)

(vi) Invoice, dated 11 August 2017, for the quarter 24 June to 28 September 2017 (p.383-6).

26. Mr Brown referred us to the Statement of Account dated 12 June 2017 at p.260. We were told that the Respondent has ignored all demands for rent and service charges since 2011. On 4 April 2016 (at p.334), the Applicants obtained a judgment against the Respondent in the sum of £11,272.96. This debt, which covered the Respondent's liability up to 29 September 2016 was settled by the mortgagee. We are satisfied that these further sums are still outstanding.

(iv) Failure to afford the landlord access to inspect and carry out repairs

27. By paragraph 11 of the Fourth Schedule of the lease, the tenant covenants:

> "(11) To permit the Lessors and their Agents and all persons authorised by them at all reasonable times to enter and take inventories of the fixtures in the said premises and to execue (sic) any repairs or work to the inside or outside of the said premises and also for the purpose of executing any repairs or work to or in connection with any other parts of the said building or of adjoining premises to enter upon the said premises or any part thereof with or without any necessary tools or appliances"

28. We are satisfied that the Respondent has breached this covenant On 7 September 2016 (at p.132), Bishop & Sewell LLP, Solicitors acting on behalf of the Applicants, wrote to the Respondent seeking access to carry out work. The letter stated:

> "Our client's builder will be attending at the property on Wednesday 14th or Thursday 15th September 2016 to prop up the vaults and make them safe".

29. The Respondent replied to this by a letter which is wrongly dated "11 August 2016" (at p.134). We are satisfied that it was sent on 13 September 2016 and was received in the normal course of the post. The Respondent refused access.

(v) Nuisance and Annoyance

30. By paragraph 11 of the Fourth Schedule of the lease, the tenant covenants:

> "(3) Not to obstruct any areas access ways steps entrance doors lobbies staircases and landings of the said building ... and not to make or permit any noise in or about the same nor permit the same to be used for any purpose other than that of access to and egress from the said premises nor permit the same to be used for any purpose which would be a nuisance to any occupier of the said building ..."

31. By paragraph 1 of the Fifth Schedule of the lease, the tenant covenants:

> "(1) Not to use the said premises nor permit the same to be used for any purpose other than that of a private residential maisonette in single family occupation nor in any manner which may at any time be or become a nuisance or annoyance to the Lessors or the other tenants or occupants of the said building or injurious or detrimental to the reputation of the said building as private residential maisonettes or flats and in particular but without prejudice to the foregoing not to use the said premises or permit the same to be used for any illegal or immoral purpose"

32. We are satisfied that the Respondent has breached this covenant. The complaint is that the Respondent assaulted Georgia Wagner, another leaseholder at the property. On 10 November, the Respondent pleaded guilty to a charge of common assault at the Hammersmith Magistrates Court (see p.457). We are satisfied that the Respondent launched herself against Ms Wagner when she saw a package which UPS had left

on her garden area for Ms Wagner. She then tried to pull her down the front stairs. (see press report at p.198).

(vi) Insurance

33. The Applicants have further suggested that the Respondent is in breach of paragraph 13 of the Fourth Schedule by acting in a manner as a result of which the insurance for the building may be rendered or increased. This is not a breach that is raised in the application form. We make no finding on this alleged breach.

LON/00AW/LSC/2017/0213: Service Charge Demands

34. By clause 1 of the lease, the tenant covenants to pay the rents specified in the Third Schedule. This Schedule requires the tenant to pay 21% of the service charge expenditure which is reserved as rent. The Seventh Schedule sets out the item of expenditure which are covered by the service charge.

35. We are required to determine whether the following advance service charges of £735 are reasonable and payable:

(i) Invoice, dated 14 December 2016, for the quarter 25 March to 23 June 2016 (p.177-8)

(ii) Invoice, dated 14 December 2016, for the quarter 24 June to 28 September 2016 (p.173-6)

(iii) Invoice, dated 14 December 2016, for the quarter 29 September to 24 December 2016 (p.169-172)

(iv) Invoice, dated 14 December 2016, for the quarter 25 December to 24 March 2017 (p.165-8)

(v) Invoice, dated 11 August 2017, for the quarter 25 March to 23 June 2017 (p.387-90)

(vi) Invoice, dated 11 August 2017, for the quarter 24 June to 28 September 2017 (p.383-6).

36. Mr Brown has referred us to the Service Charge Accounts for 2016 (at p.366-76). We have also been provided with the Budget for 2017 (at p.375). These confirm our view that the advance service charges which have been demanded are reasonable and payable.

37. The Applicants also ask us to determine whether a service charge of £22,118.72 (namely 21% of £105,327.24) would be payable were a lawful demand to be made for this. On 3 January 2017 (p.158), HPML

sent the tenants a Notice of Intention to carry out external repairs and decorations to the boundary walls, retaining walls and pathways, and external decorations and repairs to the main building. On 8 May 2017 (p.363), HPML served the Notice of Estimates. Estimates had been sought from five contractors, two of whom had declined to submit a tender. The Applicants are minded to proceed with the estimate from Henderson Building Services Ltd which is the lowest estimate which was submitted in the sum of £105,327.24.

38. The Tribunal is satisfied that these repairs fall within the landlord's covenant to repair. The Tribunal is further satisfied that the proposed service charge of £22,118.72 would be reasonable and payable by the Respondent.

39. An issue has arisen as to whether the cost of repairing the boundary wall, retaining wall and the vault ceiling should be borne by all the tenants as part of the service charge or by the Respondent by reason of her breach of covenant in respect of her failure to maintain her garden. The other tenants have sought to argue that the whole cost should be borne by the Respondent. On 12 August 2017 (at p.338) the Applicant demanded the sum of £34,063.20. The tender analysis prepared by Paul McCarthy, dated 22 March 2017, is at p.343-361. In support of their argument that the Respondent should be solely liable for these works, the Applicants rely upon the report by Matt Deller, dated 26 October 2016, at p.302-312. Mr Brown referred us to the discussion at p.309. This Tribunal is satisfied that we do not have jurisdiction to determine whether the cost should be borne solely by the Respondent as damage arising from her breach of covenant. This is a matter for the County Court.

LON/00AW/LAC/2017/0013: Administration Charges

40. By paragraph 11 of the Fourth Schedule of the lease, the tenant covenants:

> "to pay to the Lessors all costs charges and expenses (including legal costs and any fees payable to a surveyor) incurred by the Lessors of or incidental to the preparation and service of such notice or contemplation of any proceedings under Sections 146 and 147 of the Law of Property Act or any subsequent amending Statute".

41. The Applicants ask the Tribunal to determine the reasonableness and payability of two administration charges, namely:

(i) £1,038.60 demanded in respect of legal charges on 14 August 2016 (at p.400); and

(ii) £11,052.00 demanded in respect of legal charges on 14 December 2016 (at p.181). A breakdown of these charges is to be found at p.415-432.

Given the background of this case, the Tribunal is satisfied that these sums are reasonable and payable.

Refund of Fees

42. 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 pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules"). The Applicant has paid a total of £400. Having regard to our findings above, the Tribunal orders the Respondent to refund the tribunal fees of £400, which have been paid by the Applicant, within 28 days of the date of this decision.

Judge Robert Latham

21 December 2017

Rights of Appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Commonhold and Leasehold Reform Act 2002

Section 168

(1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.

(2) This subsection is satisfied if—

(a) it has been finally determined on an application under subsection (4) that the breach has occurred,

(b) the tenant has admitted the breach, or

(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

(4) A landlord under a long lease of a dwelling may make an application to the appropriate tribunal for a determination that a breach of a covenant or condition in the lease has occurred.

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,
(b) the person to whom it is payable,
(c) the amount which is payable,
(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).