



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

Case reference : **LON/00BH/LSC/2018/0387**

Property : **Flat 5, 57 Elmsdale Road, London,
E17 6PN**

Applicant : **Wyndham Lodge Maintenance Ltd**

Representative : **Mr P Cleaver of URANG –
Managing Agent**

Respondent : **Mr Muhammad Afzal Khan**

Representative : **Mr Aslam Khan**

Type of application : **For the determination of the
reasonableness of and the liability
to pay a service charge**

Tribunal members : **Mr A Harris LLM FRICS FCI Arb
Mr M Taylor FRICS**

Venue : **10 Alfred Place, London WC1E 7LR**

Date of hearing : **2 April 2019**

Date of decision : **11 April 2019**

DECISION

Decisions of the tribunal

- (1) The tribunal determines that the sum shown below are payable by the Respondent in respect of the service charges for the years shown

Summary table	
Period	Amount payable
25/12/13 - 24/12/14	£ 1,414.58
25/12/14 - 24/12/15	£ 1,264.78
25/12/15 - 24/12/16	£ 1,563.91
24/12/16 - 25/12/17	£ 3,673.11
Total	£ 7,916.37

- (2) The tribunal makes the determinations as set out under the various headings in this Decision
- (3) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.
- (4) Since the tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the County Court at Clerkenwell and Shoreditch.

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 Respondent in respect of the service charge years 25 December 2013 to 25 December 2017 .
2. Proceedings were originally issued in the County Court at Clerkenwell and Shoreditch under claim no. E8AY5X05. The claim was transferred to this tribunal, by order of District Judge Manners on 10 October 2018.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. A hearing was held on 2 April 2019 at 10 Alfred Place London. The Applicant was represented by Mr P Cleaver of URANG, the managing agents and the Respondent was represented by Mr A Khan.

The background

5. The property which is the subject of this application is a substantial house dating from 1870 and converted into seven flats.
6. Photographs of the building were provided in the hearing bundle. The tribunal did not consider an inspection was necessary as the disputed items works were done some time ago, nor would it have been proportionate to the issues in dispute.
7. The Respondent holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.
8. It was common ground at the hearing that the building generally is in a poor state of repair. The managing agents attributed this to the lessees, who control the applicant company failing to become involved in the affairs of the company so that the sole director over much of the disputed period is someone resident in Australia.
9. The respondent did not apportion responsibility between the applicant company and the managing agent and does not challenge the managing agent's fees.
10. The tribunal heard detailed criticism from the respondent of the management of the building and of specific items in the service charges, but this was not supported by any alternative estimates or quotations. Much of the evidence relates to the current condition of the building whereas the disputed service charge items are for the period December 2013 to December 2017.
11. The tribunal received detailed explanations of the disputed items from the managing agent and in general accepts their evidence. The agents stated that the pattern of ownership has changed from the majority of flats being owned by landlords who sublet to a majority being owner occupied. This has resulted in a recent change of approach and a greater willingness from flat owners to being involved in the affairs of the applicant company. The respondent indicated he did not wish to be involved in the running of the company.
12. The respondent claims that no valid invoices have been supplied and that the contractor's invoices are incorrectly addressed as they are not addressed to the respondent. The applicant provided a copy of an invoice for service charge payments by the leaseholders which the tribunal finds to be compliant with the requirements. The tribunal is satisfied there is no requirement for individual contractor's invoices to be addressed to leaseholders.

The issues

13. At the start of the hearing the parties confirmed that the relevant issues for determination were the payability and/or reasonableness of service charges set out in the disputed service charge schedule contained within the bundle. The figures below are the total cost for the block and not the respondents share which is 1/7th.

Period	Item	Claimed Cost	
25/12/13 - 24/12/14			
	General Internal Cleaning	£ 1,760.00	
	Pest Control	£ 792.00	
	Green Waste and mattress removal	£ 132.00	
	General repairs and maintenance	£ 912.00	
	Legal Expenses	<u>£ 582.00</u>	
			£ 4,178.00
25/12/14 - 24/12/15			
	Garden maintenance	£ 45.00	
	stair well cleaning	£ 770.00	
	window cleaning	£ 415.00	
	general repairs	£ 2,295.00	
	Companies House	<u>£ 60.00</u>	
			£ 3,525.00
25/12/15 - 24/12/16			
	roof patch repair	£ 900.00	
	internal joist repair included in general repair	£ -	
	general repairs	£ 4,338.00	
	refuse removal	£ 180.00	
	surveyors visit	£ 576.00	
	general risk assessment	<u>£ 150.00</u>	
			£ 6,144.00
24/12/16 - 25-12/17			
	general repairs	£ 1,284.00	
	refuse and bins	£ 300.00	
	surveyors fees	£ 576.00	
	company secretary	£ 240.00	
	external works	<u>£ 3,360.00</u>	
			<u>£ 5,760.00</u>
			£19,607.00

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

Service charge period 25.12.13 to 24.12.14

General internal cleaning £1760.00

15. The schedule shows cleaning costs of £1760 supported by quarterly invoices in the bundle. The tenant argues from the evidence of contemporary photographs there is no evidence the building has been kept clean. Meeting minutes dating from August 2009 reported that cleaning costs of £75.90 per month were high. Alternative cleaning arrangements were made at that time at £20 per month. Allowing for inflation the tenant argues that cleaning costs should be £47.14 per flat over 12 months.
16. The landlord argues that the frequency and cost of cleaning were agreed by the leaseholders acting as directors of the head lease management company. The cleaning regime was for fortnightly visits and the amount proposed by the tenant would only allow for monthly visits which is not what the directors wanted. No query was raised about the standard of cleaning at the time.

The tribunal's decision

17. The tribunal determines that the amount payable in respect of general internal cleaning is £1760.00.

Reasons for the tribunal's decision

18. The tribunal finds that the points made by the managing agents are credible and there is no contemporary evidence that cleaning was considered unsatisfactory at that time. Recent photographs showing a different position do not assist.

Pest control £792.00

19. The tenant argues that pest control is not mentioned in the lease and that there is no evidence inside or outside the building to show the method or extent of treatment deployed in common areas or individual flats. Costs are excessive.

20. The landlord comments that the lessor covenants at clause 4 of the seventh schedule to “keep the Reserved Property and all fixtures and fittings therein and all additions thereto in a good and tenable state of repair decoration and condition”. Under the second schedule the Reserved Property includes “all gardens, pleasure grounds, drives, paths and forecourts forming part of the estate”.
21. Rats were reported at the property and there is a duty of care under the Health and Safety at Work etc Act 1974 to ensure the property is safe to visit and a pest control contract was put in place to deal with the problem. The contract included monthly visits at £55 plus VAT per visit. The problem has not recurred.

The tribunal’s decision

22. The tribunal determines that the amount payable in respect of pest control is £792.00.

Reasons for the tribunal’s decision

23. The tribunal finds the landlord’s explanation credible and there is no contemporary evidence challenging the need for or effectiveness of the work.

Green waste and mattress removal £132.00

24. The tenant challenges this work as not being the landlord’s responsibility and tenants can get up to 5 bulky items removed free of charge by Waltham Forest Council.
25. The landlord argues it has the right to arrange for disposal of rubbish where it is responsible for providing dustbins and arranging for disposal of rubbish deposited by the lessees. There is a wider clause to maintain the grounds. The landlord believes the items were fly -tipped preventing it from charging costs to any one lessee.

The tribunal’s decision

26. The tribunal determines that the amount payable in respect of green waste and mattress removal is £132.00

Reasons for the tribunal’s decision

27. The tribunal accepts the landlord’s account that rubbish was deposited by persons unknown and that the landlord is under general duty to keep the grounds clean and tidy. Allowing fly -tipped waste to

accumulate would be likely to encourage vermin and the tribunal determines this amount is recoverable.

General repairs and maintenance £912.00

28. The tenant challenges this work as no detail has been provided and no invoices to support the cost been supplied. The tenant claims no payment is due. A photograph was supplied purporting to show a skylight which had been felted over which it was said was an inadequate repair.
29. The landlord states that the tenant has provided invoices in his evidence which answer the question. £900.00 is for repairs to a roof skylight and £12.00 is for replacement lightbulbs. The landlord considers the cost is reasonable, the work cured the leaking skylight and the problem has not been repeated. The landlord stated that the photograph referred to above was not skylight which was repaired.

The tribunal's decision

30. The tribunal determines that the amount payable for general repairs and maintenance is £912.00.

Reasons for the tribunal's decision

31. The tribunal accepts the landlord's account of the repairs which were carried out six years ago and there is no contemporary evidence challenging the need for or quality of the work. The amount is shown in the accounts for the year ended 24 December 2014 and has not been challenged in the intervening period.

Legal expenses £582.00

32. The tenant challenges legal expenses in the sum of £582.00 on the ground that details of the legal expenses not been provided and therefore there should not be any cost.
33. The landlord replies that the invoice has been supplied and relates to legal expenses relating to the collection of service charge arrears from flat 3. Most of the legal costs were recovered during the sale of the flat but some residual costs were left over. The directors took the view that pursuing these costs would be likely to cost as much as the recovery and that the costs should not be charged to the new owner of flat 3.

The tribunal's decision

34. The tribunal determines that the amount payable for legal expenses is £582.00.

Reasons for the tribunal's decision

35. The block is a small one and funded entirely by lessees contributions. For the block to function service charges need to be paid or collected. The tribunal has considered whether clause 10 of the seventh schedule is sufficiently broad to include legal costs in pursuance of arrears, and on balance in the context of this block concludes that it is. The tribunal therefore finds that this cost is recoverable.

Recoverable charges for the year

36. The unchallenged total for the year December 2013 to December 2014 comes to £5724.04 and the total determined in this Decision comes to £4178.00.
37. The total payable for the year is £9902.04 of which the respondents share is £1414.58.

Period	Item	amount determined		
25/12/13 - 24/12/14				
	General Internal Cleaning	£ 1,760.00		
	Pest Control	£ 792.00		
	Green Waste and mattress removal	£ 132.00		
	General repairs and maintenance	£ 912.00		
	Legal Expenses	<u>£ 582.00</u>		
			£ 4,178.00	
	unchallenged items		<u>£ 5,724.04</u>	
	Total due		£ 9,902.04	
	Flat 7 proportion 1/7th			£1,414.58

Service charge period 25.12.14 to 24.12.15

Garden maintenance £45.00

38. The schedule shows an amount for garden maintenance of £45.00. The lessee calculates that a one seventh share amounts to £6.43 and this is what should be charged.
39. The landlord states it can find no reference to a £45.00 invoice in the accounts. An invoice is supplied showing gardening carried out during April May and June at a total cost of £135.00. The work concerned was requested by the leaseholders and there was no query over the work at the time it was carried out. The contract was discontinued.

The tribunal's decision

40. The tribunal finds that an amount of £135 is payable.

Reasons for the tribunal's decision

41. The tribunal accepts the explanation provided by the managing agent that work at that time was requested by the leaseholders and was not challenged. The contract was discontinued.

Stairwell cleaning £770

42. The tenant challenges an amount of £770.00 for internal stairwell cleaning. The applicant states there is little evidence demonstrating the building has been kept clean and refers to photographs provided. The applicant refers to minutes of the meeting dated 19 August 2009 which stated that cleaning costs of £75.90 per month were high and a lessee undertook to make alternative arrangements for cleaning at a cost of £20 per month. Adjusting for inflation the cost should equate to £27.50 per month which over 12 months equates to £7.86 per flat.
43. The landlord states there is no record of an invoice for £770.00 for cleaning. There is an account for this year for works to postboxes and grounds and the amount shown in the accounts is £959.00. This is a considerable reduction on the previous year's cleaning.

The tribunal's decision

44. The tribunal finds that £959.00 is payable for cleaning in the service charge year.

Reasons for the tribunal's decision

45. The tribunal accepts the managing agent's explanation and notes there is no contemporaneous challenge to cleaning for this period. The present condition of the staircase shown in the photographs presented by the applicant does not prove that cleaning was not carried out in December 2014 to December 2015. The alternative arrangements referred to above for 2009 do not show that was not carried out in the relevant period.

Window cleaning February and March 2015 £415.00

46. The tenant challenges a cost of £415 for window cleaning on the basis that cleaning windows is the responsibility of individual leaseholders.
47. The landlord states that only one invoice was raised for window cleaning at a cost of £249 covering three cleans at £83 per clean. The leaseholders thought it will be more economical to get all the windows cleaned together but this was discontinued when one leaseholder subsequently objected.

The tribunal's decision

48. The tribunal finds that window cleaning is not recoverable under the service charge.

Reasons for the tribunal's decision

49. The tenant is correct in stating that window cleaning is the responsibility of the individual leaseholders and not chargeable item under the service charge. Additionally, the presented accounts for the year 2015 do not include an amount for window cleaning and it is not clear that this amount has been charged to the leaseholders at all.

General repairs and maintenance £2295.00

50. The tenant challenges this expenditure on the ground that substantial sums have been expended on general repairs where no details of the works and no invoices have been supplied. There is no evidence to support that work has been undertaken. The tenant denies any payment is due.
51. The landlord refers to 5 invoices totalling £2235.00. The balance of the figure claimed is made up of two charges to Companies House totalling £60.00 which are not in dispute.

The tribunal's decision

52. The tribunal finds that an amount of £2235.00 is payable for general repairs and maintenance and £60.00 for companies House.

Reasons for the tribunal's decision

53. The tribunal has considered the invoices supplied and the explanation and is satisfied that the works have been properly carried out. The building has the appearance of one which has been subjected to various piecemeal repairs which contribute to its unsatisfactory current condition but there is no evidence before the tribunal that these works were not done.

Recoverable charges for the year 25.12.2014 – 24.12.2015

54. The unchallenged items for the year December 2014 to December 2015 total £5524.48. The amount determined in this Decision comes to £3329 which totals £8853.48 as the service charge for the year. The proportion due from flat seven is £1264.78.

Period	Item	amount determined		
25/12/14 - 24/12/15				
	Garden maintenance	£ 135.00		
	stair well cleaning	£ 959.00		
	window cleaning	£ -		
	general repairs	£ 2,235.00		
	Companies House	£ 60.00		
			£ 3,329.00	
	unchallenged items		£ 5,524.48	
	Total due		£ 8,853.48	
	Flat 7 proportion 1/7th			£1,264.78

Service charge period 25.12.2015 to 24.12.2016

Roof patch repair £900.00

55. The tenant challenges an invoice for an isolated patch repair to roof. The workmanship is said to be poor as shown in a photograph and a

cost is excessive for the element of the work undertaken. The tenant claims that a typical cost for a 1 m flat roof replacement is £175 plus VAT and assuming the work was complex this would double to £360.00 or £51.43 per flat.

56. The landlord states that the work was carried out on the recommendations of a surveyor's report which is included in the bundle. The work was successful in stopping water ingress and the photograph relied on by the applicant is of a different repair.

The tribunal's decision

57. The tribunal finds that the figure of £900.00 is properly recoverable under the service charge.

Reasons for the tribunal's decision

58. The tribunal has considered the surveyors report and contractors invoice and is satisfied that the work was properly described and carried out.

Internal joist replacement and painting £1740 .00

59. The tenant challenges the validity of his work. An invoice has been received but there is no evidence of work carried out in the building. There is no evidence of the extent of the work undertaken and no supporting contract. Tenants were not notified under clause 6 of the seventh schedule. Even if the work is correct the lessees proportion is £248.57.
60. The landlord states that the work was carried out above flat 7 to rectify damaged joists that appear to pose a safety problem. The invoice shows work was carried out.

The tribunal's decision

61. The tribunal finds that the figure of £1740.00 is correctly included in the service charge.

Reasons for the tribunal's decision

62. The work was carried out three years ago without apparent challenge at that time or until these proceedings. If work was carried out above flat 7 it is difficult to see how that work could have been carried out without prior notice to the occupier.

General repairs and maintenance £4338.00

63. The tenant says that the schedule shows vast expenditure against general maintenance with no backup information unacceptable and unjustified. This is unacceptable and not justified and unless clear and unambiguous invoices detailing the full extent of each item of work and photographic evidence is produced to show the work no further payments will be made.
64. The landlord points out that invoices have been included of £984 for lead work to the roof dormer window, £468 for tracing a leak, £900 for roof repairs and £102 for plumbing works. The balance of the amount claimed is made up of company secretarial fees of £144.00 and the invoice for joist repairs discussed above has been double counted. The revised total for maintenance is therefore £2454.00.

The tribunal's decision

65. The tribunal finds that £2454 for maintenance is correctly included in the service charge.

Reasons for the tribunal's decision

66. The tribunal accepts the landlord's explanation that works were carried out between December 2015 and December 2016 with no recurrence of the roof problems which were attended to. The work was carried out in accordance with the surveyors recommendation, and the report is included in the tribunal bundle.

Company secretarial £144

67. This item is not challenged

Refuse and bin costs £180

68. The tenant argues that bins and refuse collection are covered by council tax payments. Unless the claimant can show this was a necessary expenditure no payments will be made.
69. The landlord shows an invoice showing the expense incurred. As a commercial landlord it is not open to the company to make use of the facility provided by the council to individual householders to remove bulk waste. Rubbish appeared to be fly -tipped and unless it is removed will be an eyesore and an encouragement to vermin. The company had no alternative but to pay to have it removed.

The tribunal's decision

70. The tribunal determines that refuse and bin collection of £180 is recoverable

Reasons for the tribunal's decision

71. The tribunal accepts the landlord's explanation and justification for this item if the rubbish is to be removed somebody has to take responsibility for it and this recognises the collective responsibility of the leaseholders.

Surveyors Visit £576.00

72. This item is challenged on the grounds that if the managing agents had undertaken their responsibilities diligently there would have been no requirement for a surveyor to identify potential issues at the property. This is a thorough waste of money and should not be paid.
73. The landlord states the invoice is for a survey and full report for which the engagement of a suitably qualified professional is required. The landlord is entitled to employ and engage such contractors as it considers necessary for the performance of its obligations under the lease. It is good practice to employ competent professionals to advise on work required and the leaseholders have done so at reasonable cost.

The tribunal's decision

74. The tribunal determines that the fee of £576.00 is recoverable

Reasons for the tribunal's decision

75. The lease entitles the landlord to obtain professional advice where it is appropriate to do so and in the case of repairs required to remedy roof leaks and other items it is not unreasonable to obtain professional advice rather than rely entirely on contractors.

General risk assessment £150.00

76. The tenant challenges this on the ground that the risk assessment should have been carried out by competent person in the employ of the managing agents and there was no reason to use an external adviser.
77. The landlord states that the performance of the general risk assessment falls outside the remit of the managing agent. The market rate for risk assessments is normally £250 or above so the price charged in this case

is reasonable. The landlord is entitled to use suitable advisors where appropriate.

The tribunal’s decision

78. The tribunal finds that the fee of £150.00 is recoverable.

Reasons for the tribunal’s decision

79. The tribunal accepts that the provision of specialist advice on risk assessments for fire precautions and health and safety is outside the scope of the skills of a normal property manager and it is appropriate from time to time to obtain specialist advice in this area which carries significant legal responsibilities.

Recoverable charges for the year

80. The unchallenged items in the service charge income and expenditure account total £4803.34 and adding to this the expenditure above of £6144.00 reconciles with the total due from all lessees. The proportion due to flat 7 is £1563.91.

25/12/15 - 24/12/16				
	roof patch repair	£	900.00	
	internal joist repair	£	1,740.00	
	general repairs	£	2,454.00	
	Company secretarial	£	144.00	
	refuse removal	£	180.00	
	surveyors visit	£	576.00	
	general risk assessment	£	<u>150.00</u>	
				£ 6,144.00
	unchallenged items			£ 4,803.34
	Total due			£10,947.34
	Flat 7 proportion 1/7th			£1,563.91

Service charge year 24 .12. 2016 to 25 .12. 2017

General repairs £1284

81. The tenant challenges this item on the grounds that details have not been supplied by the claimant for this element of work. A full account of the works is required with detailed invoices and photographic evidence

to show the work has been. The property is in a bad state of repair and this cost cannot be justified by the claimant.

82. The landlord says invoices have been supplied consisting of £726 for gutter works, £168 for handrail repairs, £360 for repairs to damaged gates and £30 as Companies House charges.

The tribunal's decision

83. The tribunal determines that the amount claimed of £1284.00 is properly chargeable to the service charge.

Reasons for the tribunal's decision

84. The tribunal accepts the evidence provided that the works were carried out. It might have been better if the Companies House charge had been shown separately as this element is not challenged. The schedule below shows this item separately.

Refuse and bins £300.00

85. This item is challenged for the same reasons as in previous years.
86. The landlord justifies this sum for same reasons as previously.

The tribunal's decision

87. The tribunal determines that the figure of £300.00 for refuse disposal is recoverable under the service charge.

Reasons for the tribunal's decision

88. The reasoning of the tribunal under this item is the same as for previous years.

Surveyors fees £576.00

89. The tenant challenges this on the basis that for the second year the claimant has employed a surveyor without any valid reason.
90. The landlord states that the invoice shows that the surveyor was engaged to assess external specifications for planned major works to be the subject of a section 20 consultation in due course.

The tribunal's decision

91. The tribunal finds that surveyors fees of £576 are recoverable under service charge.

Reasons for the tribunal's decision

92. The tribunal considers it is reasonable for the landlord to engage a surveyor to prepare specifications for major external works. The tribunal accepts that a section 20 consultation is planned and the leaseholder will have right to challenge plan expenditure during the consultation and subsequently under the normal arrangements.

Company secretary £240

93. The tenant challenges this on the ground that a company secretary is not justified. The additional staff requirement should be borne by the management fees. Management fees have increased by 13% from the previous year.
94. The landlord states that all leaseholder members of the head leasehold company and are required to contribute its running costs. Rather than running a separate collection of costs of running the company, the directors decided to collect this as part of the service charge to save costs. The expenditure is recoverable under the lease.

The tribunal's decision

95. The tribunal determines that the company secretarial costs of £240 are recoverable.

Reasons for the tribunal's decision

96. The company secretary carries legal responsibilities including overseeing the proper running of the company and ensuring it meets its legal obligations. The cost of this is properly recoverable from the leaseholders who are members of the company.

External works £3360.00

97. The tenant challenges this on the grounds that no details have been provided by the claimant except for an application for payment for major works in the sum of £419.40. If this relates to the timber post and hoarding fence with two gates which have been erected then the cost is excessive for this work. The work and materials are of poor quality and will not stand harsh weather conditions in the future. The cost should be not more than 50%.

98. The landlord states that the invoice is included in the bundle along with the notice of intent and statement of Estimates under the section 20 consultation process. No comments were received during this process from the tenant and the works proceeded in accordance with the statutory requirements of section 20 of the Landlord and Tenant Act 1985.

The tribunal's decision

99. The tribunal determines that external works of £3360.00 are recoverable.

Reasons for the tribunal's decision

100. The works have been carried out in accordance with the invoice supplied and following a consultation under section 20. We note that the tenant made no observations during the works or the consultation period. The tenant stated his property manager visited the property regularly and if the works were improperly carried out or to an unsatisfactory standard the tribunal would have expected a challenge at that time.

Recoverable charges for the year 24.12.2016 to 25 .12.2017

101. The unchallenged items in the income and expenditure account for the year ended December 2017 amount to £19,951.75 including a major works reserve fund and adding the items considered above totalling £5760.00 gives a total for the year of £25,711.75 which reconciles with the income and expenditure account. Your recoverable proportion of 17 amounts to £3673.11.

24/12/16 - 25/12/17				
	general repairs	£	1,254.00	
	Companies House	£	30.00	
	refuse and bins	£	300.00	
	surveyors fees	£	576.00	
	company secretary	£	240.00	
	external works	£	<u>3,360.00</u>	
				£ 5,760.00
	unchallenged items			<u>£19,951.75</u>
	Total due			£25,711.75
	Flat 7 proportion 1/7th			£3,673.11

Summary

102. The total amount payable by the lessee are therefore

Summary table	
Period	Amount payable
25/12/13 - 24/12/14	£ 1,414.58
25/12/14 - 24/12/15	£ 1,264.78
25/12/15 - 24/12/16	£ 1,563.91
24/12/16 - 25/12/17	£ 3,673.11
Total	£ 7,916.37

Application under s.20C and refund of fees

103. No application for a refund of any fees paid to the tribunal has been made.
104. No application has been made for an order under section 20C of the 1985 Act.
105. The tribunal has no jurisdiction over ground rent or county court costs. This matter should now be returned to the County Court at Clerkenwell and Shoreditch.

Name: Mr A Harris LLM FRICS FCI Arb

Date: 11 April 2019

Valuer Chair

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

Landlord and Tenant Act 1985 (as amended)

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

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

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
 - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

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).